

# EXPOSURE DRAFT

2019-2020-2021-2022

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
----------------

## **Transport Security Amendment (Critical Infrastructure) Bill 2022**

**No.     , 2022**

*(Home Affairs)*

**A Bill for an Act to amend legislation relating to  
transport security, and for other purposes**

**EXPOSURE DRAFT**



# EXPOSURE DRAFT

---

## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
<b>Schedule 1—Amendment of the Aviation Transport Security Act 2004</b>		3
Part 1—General amendments		3
Division 1—Amendments		3
<i>Aviation Transport Security Act 2004</i>		3
Division 2—Application provisions		46
Part 2—Other amendments		49
Division 1—Amendments		49
<i>Aviation Transport Security Act 2004</i>		49
Division 2—Application provisions		58
<b>Schedule 2—Amendment of the Maritime Transport and Offshore Facilities Security Act 2003</b>		59
Part 1—General amendments		59
Division 1—Amendments		59
<i>Maritime Transport and Offshore Facilities Security Act 2003</i>		59
Division 2—Application provisions		127
Part 2—Other amendments		131
Division 1—Amendments		131
<i>Maritime Transport and Offshore Facilities Security Act 2003</i>		131
Division 2—Application provisions		145



# EXPOSURE DRAFT

1     **A Bill for an Act to amend legislation relating to**  
2     **transport security, and for other purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act is the *Transport Security Amendment (Critical*  
6                     *Infrastructure) Act 2022*.

7     **2 Commencement**

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

# EXPOSURE DRAFT

---

---

## Commencement information

---

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

---

1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
---	---	--

---

2. Schedule 1, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
-----------------------	--	--

---

3. Schedule 1, Part 2	Immediately after the commencement of the provisions covered by table item 2.	
-----------------------	---	--

---

4. Schedule 2, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
-----------------------	--	--

---

5. Schedule 2, Part 2	Immediately after the commencement of the provisions covered by table item 4.	
-----------------------	---	--

---

1 Note: This table relates only to the provisions of this Act as originally  
2 enacted. It will not be amended to deal with any later amendments of  
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.  
5 Information may be inserted in this column, or information in it  
6 may be edited, in any published version of this Act.

### 3 Schedules

8 Legislation 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.

# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
General amendments **Part 1**

---

1 **Schedule 1—Amendment of the Aviation**  
2 **Transport Security Act 2004**

3 **Part 1—General amendments**

4 **Division 1—Amendments**

5 *Aviation Transport Security Act 2004*

6 **1 Section 4 (after paragraph beginning “Part 6”)**

7 Insert:

8 Part 6A deals with the submission of reports by aviation industry  
9 participants, known consignors and regulated agents.

10 **2 Section 4 (after paragraph beginning “Part 7”)**

11 Insert:

12 Part 7A provides that the making of a record, or the use or  
13 disclosure, of protected information is authorised in particular  
14 circumstances but is otherwise an offence.

15 **3 Section 4 (paragraph beginning “Part 8”)**

16 After “infringement notices,”, insert “improvement notices,”.

17 **4 Section 6**

18 Before “Section 15.2”, insert “(1)”.

19 **5 Section 6**

20 After “Act”, insert “(other than section 112E)”.

21 **6 At the end of section 6**

22 Add:

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

- 1 (2) Section 15.1 of the *Criminal Code* (extended geographical  
2 jurisdiction—category A) applies to an offence against  
3 section 112E.

## 4 7 Section 9

5 Insert:

6 **access**, in relation to a computer program, means the execution of  
7 the computer program.

8 **access to computer data** means:

- 9 (a) in a case where the computer data is held in a computer—the  
10 display of the data by the computer or any other output of the  
11 data from the computer; or  
12 (b) in a case where the computer data is held in a computer—the  
13 copying or moving of the data to:  
14 (i) any other location in the computer; or  
15 (ii) another computer; or  
16 (iii) a data storage device; or  
17 (c) in a case where the computer data is held in a data storage  
18 device—the copying or moving of the data to:  
19 (i) a computer; or  
20 (ii) another data storage device.

21 **asset** includes:

- 22 (a) a system; and  
23 (b) a network; and  
24 (c) a facility; and  
25 (d) a computer; and  
26 (e) a computer device; and  
27 (f) a computer program; and  
28 (g) computer data; and  
29 (h) premises; and  
30 (i) any other thing.

31 **computer** means all or part of:

- 32 (a) one or more computers; or  
33 (b) one or more computer systems; or



# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
General amendments **Part 1**

---

- 1 (c) one or more computer networks; or  
2 (d) any combination of the above.

3 **computer data** means data held in:

- 4 (a) a computer; or  
5 (b) a data storage device.

6 **connected**, in relation to equipment, includes connection otherwise  
7 than by means of physical contact, for example, a connection by  
8 means of radiocommunication.

9 **cyber security incident** has the meaning given by section 9B.

10 **data** includes information in any form.

11 **data storage device** means a thing (for example, a disk or file  
12 server) containing (whether temporarily or permanently), or  
13 designed to contain (whether temporarily or permanently), data for  
14 use by a computer.

15 **electronic communication** means a communication of information  
16 in any form by means of guided or unguided electromagnetic  
17 energy.

18 **impairment of electronic communication to or from a computer**  
19 includes:

- 20 (a) the prevention of any such communication; and  
21 (b) the impairment of any such communication on an electronic  
22 link or network used by the computer;

23 but does not include a mere interception of any such  
24 communication.

25 **improvement notice** means a notice under subsection 117A(2).

26 **lawful advocacy, protest, dissent or industrial action** does not  
27 include a cyber security incident.

28 **modification**:

- 29 (a) in respect of computer data—means:  
30 (i) the alteration or removal of the data; or  
31 (ii) an addition to the data; or  
32 (b) in respect of a computer program—means:
-

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

- 1 (i) the alteration or removal of the program; or  
2 (ii) an addition to the program.

## 3 **8 Section 9 (definition of *national security*)**

4 Repeal the definition.

## 5 **9 Section 9**

6 Insert:

7 *operation of an aviation industry participant* means the operation  
8 of the participant in the participant's capacity as an aviation  
9 industry participant.

10 *protected information* means information that:

- 11 (a) is obtained by a person in the course of exercising powers, or  
12 performing duties or functions, under this Act; or  
13 (b) is security compliance information; or  
14 (c) is aviation security information; or  
15 (d) if a transport security program for an aviation industry  
16 participant is in force—is about the content of the program.

17 *relevant impact* has the meaning given by section 9D.

18 *technical assistance notice* has the same meaning as in Part 15 of  
19 the *Telecommunications Act 1997*.

20 *technical assistance request* has the same meaning as in Part 15 of  
21 the *Telecommunications Act 1997*.

22 *technical capability notice* has the same meaning as in Part 15 of  
23 the *Telecommunications Act 1997*.

24 *unauthorised access, modification or impairment* has the meaning  
25 given by section 9C.

## 26 **10 After Division 4 of Part 1**

27 Insert:

# EXPOSURE DRAFT

1 **Division 4A—Cyber security incidents**

2 **9B Meaning of *cyber security incident***

3 A *cyber security incident* is one or more acts, events or  
4 circumstances involving any of the following:

- 5 (a) unauthorised access to:  
6 (i) computer data; or  
7 (ii) a computer program;  
8 (b) unauthorised modification of:  
9 (i) computer data; or  
10 (ii) a computer program;  
11 (c) unauthorised impairment of electronic communication to or  
12 from a computer;  
13 (d) unauthorised impairment of the availability, reliability,  
14 security or operation of:  
15 (i) a computer; or  
16 (ii) computer data; or  
17 (iii) a computer program.

18 **9C Meaning of *unauthorised access, modification or impairment***

- 19 (1) For the purposes of this Act:  
20 (a) access to:  
21 (i) computer data; or  
22 (ii) a computer program; or  
23 (b) modification of:  
24 (i) computer data; or  
25 (ii) a computer program; or  
26 (c) the impairment of electronic communication to or from a  
27 computer; or  
28 (d) the impairment of the availability, reliability, security or  
29 operation of:  
30 (i) a computer; or  
31 (ii) computer data; or  
32 (iii) a computer program;

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 1 General amendments

---

- 1 by a person is unauthorised if the person is not entitled to cause  
2 that access, modification or impairment.
- 3 (2) For the purposes of subsection (1), it is immaterial whether the  
4 person can be identified.
- 5 (3) For the purposes of subsection (1), if:
- 6 (a) a person causes any access, modification or impairment of a  
7 kind mentioned in that subsection; and
- 8 (b) the person does so:
- 9 (i) under a warrant issued under a law of the  
10 Commonwealth, a State or a Territory; or
- 11 (ii) under an emergency authorisation given to the person  
12 under Part 3 of the *Surveillance Devices Act 2004* or  
13 under a law of a State or Territory that makes provision  
14 to similar effect; or
- 15 (iii) under a tracking device authorisation given to the  
16 person under section 39 of the *Surveillance Devices Act*  
17 *2004*; or
- 18 (iv) in accordance with a technical assistance request; or
- 19 (v) in compliance with a technical assistance notice; or
- 20 (vi) in compliance with a technical capability notice;
- 21 the person is entitled to cause that access, modification or  
22 impairment.

#### 23 **9D Meaning of *relevant impact***

- 24 Each of the following is a ***relevant impact*** of a cyber security  
25 incident on an asset:
- 26 (a) the impact (whether direct or indirect) of the incident on the  
27 availability of the asset;
- 28 (b) the impact (whether direct or indirect) of the incident on the  
29 integrity of the asset;
- 30 (c) the impact (whether direct or indirect) of the incident on the  
31 reliability of the asset;
- 32 (d) the impact (whether direct or indirect) of the incident on the  
33 confidentiality of:
- 34 (i) information about the asset; or
- 35 (ii) if information is stored in the asset—the information; or
-

# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
General amendments **Part 1**

---

1 (iii) if the asset is computer data—the computer data.

## 2 **11 Paragraph 10(1)(a)**

3 Repeal the paragraph, substitute:

4 (a) taking control of an aircraft:

5 (i) whether by force, or threat of force, or any other form of  
6 intimidation; or

7 (ii) whether by any trick or false pretence; or

8 (iii) whether by any other means;

## 9 **12 Paragraph 10(1)(g)**

10 Omit “false or misleading”.

## 11 **13 After paragraph 10(1)(g)**

12 Insert:

13 (ga) doing anything in relation to an aircraft that:

14 (i) puts the safety of the aircraft at risk; or

15 (ii) puts the safety of any person on board the aircraft at  
16 risk; or

17 (iii) puts the safety of a person outside the aircraft at risk;

18 (gb) putting the safe operation of an aviation industry participant  
19 at risk by communicating information;

## 20 **14 Paragraph 10(1)(h)**

21 Omit “at an airport”.

## 22 **15 Paragraph 10(1)(h)**

23 Omit “the airport” (wherever occurring), substitute “an airport”.

## 24 **16 At the end of subsection 10(1)**

25 Add:

26 ; (i) committing an act, or causing any interference or damage,  
27 that puts the safe operation of an aviation industry participant  
28 at risk.

## 29 **17 At the end of section 10**

30 Add:

---

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 1 General amendments

---

- 1 (3) If a cyber security incident has a relevant impact on an asset that is:  
2 (a) used in connection with the operation of an aviation industry  
3 participant; and  
4 (b) owned or operated by an aviation industry participant;  
5 the cyber security incident is an *unlawful interference with*  
6 *aviation*.

#### 7 **18 After subsection 16(2)**

- 8 Insert:
- 9 (2A) A transport security program for an aviation industry participant  
10 must include a security assessment for the participant's operation.
- 11 (2B) The security assessment under subsection (2A) must:  
12 (a) take into account any documents required in writing by the  
13 Secretary to be taken into account; and  
14 (b) address any matters prescribed in the regulations.
- 15 (2C) A transport security program for an aviation industry participant  
16 must set out how the participant will address the results of the  
17 security assessment included in the program.

#### 18 **19 Subsection 19(6)**

- 19 Repeal the subsection, substitute:
- 20 (6) The notice must specify a reasonable period within which the  
21 information must be given.
- 22 (6A) The Secretary may, if requested to do so by the participant, vary a  
23 notice under subsection (5) by extending the period specified in the  
24 notice.

#### 25 **20 Paragraph 19(7)(b)**

- 26 Repeal the paragraph, substitute:
- 27 (b) ending at:  
28 (i) if the information requested in that notice was given  
29 within the period specified in that notice—the end of the  
30 period of 30 days beginning on the day on which the  
31 information requested in that notice was received by the  
32 Secretary; or

# EXPOSURE DRAFT

- 1 (ii) if the information requested in that notice was not given  
2 within the period specified in that notice—the end of  
3 that period.

## 4 **21 Paragraph 23A(7)(b)**

- 5 Omit “period of 60 days after the request was given”, substitute  
6 “consideration period”.

## 7 **22 At the end of section 23A**

8 Add:

9 *Secretary may request further information*

- 10 (8) The Secretary may, by written notice given to the participant  
11 within the consideration period, request the participant to give the  
12 Secretary specified information relevant to the approval of the  
13 alterations.
- 14 (9) The notice must specify a reasonable period within which the  
15 information must be given.
- 16 (10) The Secretary may, if requested to do so by the participant, vary a  
17 notice under subsection (8) by extending the period specified in the  
18 notice.

19 *Consideration period*

- 20 (11) The ***consideration period*** is the period of 60 days starting on the  
21 day on which the request was given under subsection (1), extended,  
22 for each notice given under subsection (8), by the number of days  
23 falling within the period:
- 24 (a) starting on the day on which the notice was given; and  
25 (b) ending at:
- 26 (i) if the information requested in that notice was given  
27 within the period specified in that notice—the end of the  
28 period of 30 days beginning on the day on which the  
29 information requested in that notice was received by the  
30 Secretary; or  
31 (ii) if the information requested in that notice was not given  
32 within the period specified in that notice—the end of  
33 that period.
-

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

1 **23 At the end of Division 5 of Part 2**

2 Add:

3 **26AA Reviewing programs**

4 If:

5 (a) a transport security program for an aviation industry  
6 participant is in force; and

7 (b) the program was not given to the participant under  
8 section 26B;

9 the participant must review the program on a regular basis.

10 Civil penalty: 200 penalty units.

11 **24 After subsection 26C(1)**

12 Insert:

13 (1AA) A transport security program that is given to an aviation industry  
14 participant under section 26B may set out the security activities or  
15 measures to be undertaken or implemented by the participant under  
16 the program for the purposes of safeguarding against unlawful  
17 interference with aviation.

18 (1A) A transport security program that is given to an aviation industry  
19 participant under section 26B may include a security assessment  
20 for the participant's operation.

21 **25 Section 39 (paragraph beginning "The matters")**

22 Omit "examining and clearing", substitute "cargo".

23 **26 Division 2A of Part 4 (heading)**

24 Omit "Examining and clearing cargo", substitute "Cargo".

25 **27 Section 44C (heading)**

26 Omit "for examining and clearing", substitute "relating to".

27 **28 At the end of paragraph 44C(1)(g)**

28 Add:

29 ; or (iv) all aircraft operators; or

---



# EXPOSURE DRAFT

- 1 (v) one or more specified classes of aircraft operators; or  
2 (vi) one or more specified aircraft operators.

## 29 After subsection 44C(3A)

4 Insert:

- 5 (3B) A known consignor security program provided to a known  
6 consignor under the regulations may include a security assessment  
7 for the consignor's operation.
- 8 (3C) A RACA security program provided to a regulated air cargo agent  
9 under the regulations may include a security assessment for the  
10 agent's operation.
- 11 (3D) An AACA security program provided to an accredited air cargo  
12 agent under the regulations may include a security assessment for  
13 the agent's operation.

## 30 Subsection 67(1)

15 Repeal the subsection, substitute:

16 (1) If:

- 17 (a) both of the following apply:  
18 (i) a specific threat of unlawful interference with aviation is  
19 made or exists;  
20 (ii) the Secretary is satisfied that giving a direction under  
21 this subsection is an appropriate response to the threat;  
22 or
- 23 (b) both of the following apply:  
24 (i) there is a change in the nature of an existing general  
25 threat of unlawful interference with aviation;  
26 (ii) the Secretary is satisfied that giving a direction under  
27 this subsection is an appropriate response to the threat;  
28 or
- 29 (c) both of the following apply:  
30 (i) a national emergency declaration (within the meaning of  
31 the *National Emergency Declaration Act 2020*) is in  
32 force;

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 1 General amendments

---

- 1 (ii) the Secretary is satisfied that giving a direction under  
2 this subsection is appropriate to support the national  
3 emergency declaration;  
4 the Secretary may, in writing, direct that:  
5 (d) a specified act or thing be done; or  
6 (e) a specified act or thing not be done.

#### 31 After subsection 70(4)

8 Insert:

- 9 (4A) The Secretary may, by writing, revoke a special security direction.

#### 32 After paragraph 79(2)(g)

11 Insert:

- 12 (ga) operate equipment at a place mentioned in paragraph (a) or  
13 (b) for the purposes of testing the equipment; or  
14 (gb) connect equipment to equipment at a place mentioned in  
15 paragraph (a) or (b) for the purposes of testing the  
16 last-mentioned equipment; or

#### 33 After subsection 79(2)

18 Insert:

- 19 (2AA) For the purposes of paragraph (2)(g), it is immaterial whether a  
20 document in electronic form, or a record in electronic form, is held:  
21 (a) at a place mentioned in paragraph (2)(a) or (b); or  
22 (b) at another place:  
23 (i) in Australia; or  
24 (ii) outside Australia.

- 25 (2AB) Subsection (2AA) is enacted for the avoidance of doubt.

#### 34 At the end of Division 2 of Part 5

27 Add:

# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
General amendments **Part 1**

---

## 1 **80A Investigation powers**

### 2 *Provisions subject to investigation*

- 3 (1) A provision is subject to investigation under Part 3 of the  
4 *Regulatory Powers (Standard Provisions) Act 2014* if it is an  
5 offence against this Act.

### 6 *Authorised applicant*

- 7 (2) For the purposes of Part 3 of the *Regulatory Powers (Standard*  
8 *Provisions) Act 2014*, each of the following persons is an  
9 authorised applicant in relation to evidential material that relates to  
10 a provision mentioned in subsection (1):

- 11 (a) an aviation security inspector;  
12 (b) an SES employee, or an acting SES employee, in the  
13 Department.

14 Note: The expressions *SES employee* and *acting SES employee* are defined  
15 in section 2B of the *Acts Interpretation Act 1901*.

### 16 *Authorised person*

- 17 (3) For the purposes of Part 3 of the *Regulatory Powers (Standard*  
18 *Provisions) Act 2014*, an aviation security inspector is an  
19 authorised person in relation to evidential material that relates to a  
20 provision mentioned in subsection (1).

### 21 *Issuing officer*

- 22 (4) For the purposes of Part 3 of the *Regulatory Powers (Standard*  
23 *Provisions) Act 2014*, each of the following persons is an issuing  
24 officer in relation to evidential material that relates to a provision  
25 mentioned in subsection (1);

- 26 (a) a magistrate;  
27 (b) a judge of a court that is, for the purposes of that Part, a  
28 relevant court in relation to such evidential material.

29 Note: For *relevant court*, see subsection (9).

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 1 General amendments

---

1

#### *Relevant chief executive*

2

(5) For the purposes of Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*, the Secretary is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).

3

4

5

6

(6) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (7) to a person who is an SES employee or an acting SES employee in the Department.

7

8

9

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

10

11

(7) The powers and functions that may be delegated are:

12

(a) powers under Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014* in relation to evidential material that relates to a provision mentioned in subsection (1); and

13

14

15

(b) powers and functions under the *Regulatory Powers (Standard Provisions) Act 2014* that are incidental to a power mentioned in paragraph (a).

16

17

18

(8) A person exercising powers or performing functions under a delegation under subsection (6) must comply with any directions of the relevant chief executive.

19

20

21

#### *Relevant court*

22

(9) For the purposes of Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):

23

24

25

(a) the Federal Court;

26

27

(b) the Federal Circuit and Family Court of Australia (Division 2);

28

29

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

30

31

#### *Person assisting*

32

(10) An authorised person may be assisted by other persons in exercising powers, or performing functions or duties, under Part 3

33

# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
General amendments **Part 1**

---

1 of the *Regulatory Powers (Standard Provisions) Act 2014* in  
2 relation to evidential material that relates to a provision mentioned  
3 in subsection (1), so long as those other persons have appropriate  
4 skills and expertise to assist the authorised person.

5 *External Territories*

6 (11) Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*,  
7 as it applies in relation to the provisions mentioned in  
8 subsection (1), extends to every external Territory.

9 *Other powers not limited*

10 (12) This section does not, by implication, limit a power conferred by  
11 another provision of this Division.

12 **80B Persons to assist aviation security inspectors**

13 *Scope*

14 (1) If a person is:  
15 (a) an aviation industry participant; or  
16 (b) an employee of an aviation industry participant;  
17 an aviation security inspector may, by written notice given to the  
18 person, require the person to provide the inspector with specified  
19 assistance that is reasonably necessary to allow the inspector to  
20 exercise powers conferred on the inspector by this Act.

21 *Compliance with notice*

22 (2) A person must comply with a notice under subsection (1).

23 Civil penalty: 150 penalty units.

24 *Liability*

25 (3) A person is not liable to an action or other proceeding for damages  
26 for, or in relation to, an act done or omitted in good faith in  
27 compliance with a notice under subsection (1).

28 (4) An officer, employee or agent of a person is not liable to an action  
29 or other proceeding for damages for, or in relation to, an act done

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

1 or omitted in good faith in connection with an act done or omitted  
2 by the person as mentioned in subsection (3).

## 3 **80C Information gathering direction**

### 4 *Direction*

- 5 (1) If:
- 6 (a) a person is:
- 7 (i) an aviation industry participant; or
- 8 (ii) an employee of an aviation industry participant; and
- 9 (b) an aviation security inspector has reason to believe that the
- 10 person has, or is capable of obtaining, information that is
- 11 reasonably necessary to allow the inspector to exercise
- 12 powers conferred on the inspector by this Act;
- 13 the aviation security inspector may, by written notice given to the
- 14 person, direct the person to:
- 15 (c) give any such information to the aviation security inspector;
- 16 and
- 17 (d) do so within the period, and in the manner, specified in the
- 18 direction.

### 19 *Offence*

- 20 (2) A person commits an offence if:
- 21 (a) the person is given a notice under subsection (1); and
- 22 (b) the person engages in conduct; and
- 23 (c) the person's conduct breaches the notice.

24 Penalty: 45 penalty units.

- 25 (3) Subsection (2) is an offence of strict liability.

### 26 *Other powers not limited*

- 27 (4) This section does not, by implication, limit a power conferred by
- 28 another provision of this Act.

# EXPOSURE DRAFT

## 80D Self-incrimination

- 1  
2 (1) An individual is not excused from giving information under  
3 section 80C on the ground that giving the information might tend  
4 to incriminate the individual in relation to an offence.

5 Note: A body corporate is not entitled to claim the privilege against  
6 self-incrimination.

- 7 (2) However:

- 8 (a) the information given; or  
9 (b) giving the information; or  
10 (c) any information, document or thing obtained as a direct or  
11 indirect consequence of giving the information;

12 is not admissible in evidence against the individual:

- 13 (d) in civil proceedings for the recovery of a penalty; or  
14 (e) in criminal proceedings (other than proceedings for an  
15 offence against section 137.1 or 137.2 of the *Criminal Code*  
16 that relates to giving the information).

- 17 (3) If, at general law, an individual would otherwise be able to claim  
18 the privilege against self-exposure to a penalty (other than a  
19 penalty for an offence) in relation to giving information under  
20 section 80C, the individual is not excused from giving information  
21 or producing a document under that section on that ground.

22 Note: A body corporate is not entitled to claim the privilege against  
23 self-exposure to a penalty.

## 80E Persons assisting aviation security inspectors

24 *Aviation security inspectors may be assisted by other persons*

- 25  
26 (1) An aviation security inspector may be assisted by other persons in  
27 exercising powers under section 79 or 80, so long as those other  
28 persons have appropriate skills and expertise to assist the aviation  
29 security inspector.  
30 (2) A person giving such assistance is a *person assisting* the aviation  
31 security inspector.
-

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

1

## *Powers of a person assisting*

2

(3) A person assisting the aviation security inspector:

3

(a) may exercise any of the powers conferred on the aviation security inspector under section 79 or 80, as the case

4

requires; and

5

6

(b) must do so in accordance with a direction given to the person assisting by the aviation security inspector.

7

8

(4) A power exercised by a person assisting the aviation security

9

inspector as mentioned in subsection (3) is taken for all purposes to have been exercised by the aviation security inspector.

10

11

(5) If a direction is given under paragraph (3)(b) in writing, the

12

direction is not a legislative instrument.

13

### **35 Paragraph 100(1)(a)**

14

After “aviation security incident”, insert “(other than a cyber security incident)”.

15

16

### **36 At the end of section 100**

17

Add:

18

## *Cyber security incidents*

19

(4) If:

20

(a) an aviation industry participant is an airport operator; and

21

(b) the participant becomes aware of an aviation security incident that is a cyber security incident;

22

the participant must:

23

24

(c) report the incident to:

25

(i) the Secretary; and

26

(ii) the Australian Signals Directorate; and

27

(d) do so as soon as possible.

28

Civil penalty: 50 penalty units.

29

(5) Subsection (4) does not apply in relation to a report that must be

30

made to a particular person or body if:

---



# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
General amendments **Part 1**

---

- 1 (a) the participant believes, on reasonable grounds, that the  
2 person or body is already aware of the incident; or  
3 (b) the participant has a reasonable excuse.

4 Note: A defendant bears an evidential burden in relation to the matters in  
5 subsection (5) (see section 96 of the *Regulatory Powers (Standard*  
6 *Provisions) Act 2014*).

## 7 **37 Paragraph 101(1)(a)**

8 After “aviation security incident”, insert “(other than a cyber security  
9 incident)”.

## 10 **38 At the end of section 101**

11 Add:

12 *Cyber security incidents*

- 13 (4) If:  
14 (a) an aviation industry participant is an aircraft operator; and  
15 (b) the participant becomes aware of an aviation security  
16 incident that is a cyber security incident;  
17 the participant must:  
18 (c) report the incident to:  
19 (i) the Secretary; and  
20 (ii) the Australian Signals Directorate; and  
21 (d) do so as soon as possible.

22 Civil penalty: 50 penalty units.

- 23 (5) Subsection (4) does not apply in relation to a report that must be  
24 made to a particular person or body if:  
25 (a) the participant believes, on reasonable grounds, that the  
26 person or body is already aware of the incident; or  
27 (b) the participant has a reasonable excuse.

28 Note: A defendant bears an evidential burden in relation to the matters in  
29 subsection (5) (see section 96 of the *Regulatory Powers (Standard*  
30 *Provisions) Act 2014*).

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

1 **39 Paragraph 102(1)(a)**

2 After “aviation security incident”, insert “(other than a cyber security  
3 incident)”.

4 **40 After subsection 102(3)**

5 Insert:

6 *Cyber security incidents*

7 (3A) If:

8 (a) a person is a person with incident reporting responsibilities;  
9 and

10 (b) the person becomes aware of an aviation security incident  
11 that is a cyber security incident;

12 the person must:

13 (c) report the incident to:

14 (i) the Secretary; and

15 (ii) the Australian Signals Directorate; and

16 (d) do so as soon as possible.

17 Civil penalty: 50 penalty units.

18 (3B) Subsection (3A) does not apply in relation to a report that must be  
19 made to a particular person or body (the *person or body to be*  
20 *notified*) if:

21 (a) the person with incident reporting responsibilities believes,  
22 on reasonable grounds, that the person or body to be notified  
23 is already aware of the incident; or

24 (b) the person with incident reporting responsibilities has a  
25 reasonable excuse.

26 Note: A defendant bears an evidential burden in relation to the matters in  
27 subsection (3B) (see section 96 of the *Regulatory Powers (Standard*  
28 *Provisions) Act 2014*).

29 **41 Before subsection 102(4)**

30 Insert:

---

# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
General amendments **Part 1**

---

1 *Persons with incident reporting responsibilities*

2 **42 Paragraph 103(1)(a)**

3 After “aviation security incident”, insert “(other than a cyber security  
4 incident)”.

5 **43 At the end of section 103**

6 Add:

7 *Cyber security incidents*

8 (4) If:

- 9 (a) an employee is an employee of an aviation industry  
10 participant; and  
11 (b) the employee becomes aware of an aviation security incident  
12 that is a cyber security incident;  
13 the employee must:  
14 (c) report the incident to:  
15 (i) the Secretary; and  
16 (ii) the Australian Signals Directorate; and  
17 (d) do so as soon as possible.

18 Civil penalty: 50 penalty units.

19 (5) Subsection (4) does not apply in relation to a report that must be  
20 made to a particular person or body if:

- 21 (a) the employee believes, on reasonable grounds, that the  
22 person or body is already aware of the incident; or  
23 (b) the employee has a reasonable excuse.

24 Note: A defendant bears an evidential burden in relation to the matters in  
25 subsection (5) (see section 96 of the *Regulatory Powers (Standard*  
26 *Provisions) Act 2014*).

27 **44 Subsection 104(1)**

28 After “aviation security incidents”, insert “(other than cyber security  
29 incidents)”.

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

1 **45 Subsection 105(1)**

2 After “aviation security incidents”, insert “(other than cyber security  
3 incidents)”.

4 **46 Subsection 106(1)**

5 After “aviation security incidents”, insert “(other than cyber security  
6 incidents)”.

7 **47 After Part 6**

8 Insert:

9 **Part 6A—Reports by aviation industry**  
10 **participants, known consignors and**  
11 **regulated agents**  
12

13 **107A Simplified outline of this Part**

14 Certain aviation industry participants are required to submit  
15 periodic reports.

16 If an aviation industry participant has been given a transport  
17 security program, the Secretary may require the participant to  
18 submit a report.

19 If a known consignor has been provided with a known consignor  
20 security program, the Secretary may require the known consignor  
21 to submit a report.

22 If a regulated cargo agent has been provided with a RACA security  
23 program, the Secretary may require the agent to submit a report.

24 If an accredited air cargo agent has been provided with an AACA  
25 security program, the Secretary may require the agent to submit a  
26 report.

# EXPOSURE DRAFT

1 **107B Certain aviation industry participants must submit periodic**  
2 **reports**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) a transport security program was, or is, in force for an
  - 6 aviation industry participant; and
  - 7 (b) an applicable reporting period for the transport security
  - 8 program has ended; and
  - 9 (c) the transport security program was not given to the
  - 10 participant under section 26B; and
  - 11 (d) the transport security program included, or includes, a
  - 12 security assessment; and
  - 13 (e) the participant is included in a class of aviation industry
  - 14 participants specified in the regulations.

15 *Periodic report*

- 16 (2) The participant must, within 90 days after the end of the applicable
- 17 reporting period, give the Secretary a report that:
- 18 (a) relates to the applicable reporting period; and
  - 19 (b) sets out such matters (if any) as are specified in the
  - 20 regulations; and
  - 21 (c) if the participant has a board, council or other governing
  - 22 body—includes whichever of the following statements is
  - 23 applicable:
    - 24 (i) if the transport security program was up to date
    - 25 immediately before the end of the applicable reporting
    - 26 period—a statement by the board, council or other
    - 27 governing body to that effect;
    - 28 (ii) if the transport security program was not up to date
    - 29 immediately before the end of the applicable reporting
    - 30 period—a statement by the board, council or other
    - 31 governing body to that effect; and
  - 32 (d) if the participant has a board, council or other governing
  - 33 body—includes whichever of the following statements is
  - 34 applicable:

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 1 General amendments

---

- 1 (i) if the transport security program adequately addressed  
2 the relevant requirements under Division 4 of Part 2 at  
3 the end of the applicable reporting period—a statement  
4 by the board, council or other governing body to that  
5 effect;
- 6 (ii) if the transport security program did not adequately  
7 address the relevant requirements under Division 4 of  
8 Part 2 at the end of the applicable reporting period—a  
9 statement by the board, council or other governing body  
10 to that effect; and
- 11 (e) is in the form approved, in writing, by the Secretary.

12 Civil penalty: 150 penalty units.

- 13 (3) A matter must not be specified in regulations made for the  
14 purposes of paragraph (2)(b) unless the matter relates to:
- 15 (a) unlawful interference with aviation; or  
16 (b) safeguarding against unlawful interference with aviation.
- 17 (4) A report given by a person under subsection (2) is not admissible  
18 in evidence against the person in:
- 19 (a) criminal proceedings for an offence against this Act; or  
20 (b) civil proceedings relating to a contravention of a civil penalty  
21 provision of this Act (other than this section).

22 *Applicable reporting period for a transport security program*

- 23 (5) For the purposes of this section, an ***applicable reporting period for***  
24 ***a transport security program*** is:
- 25 (a) if the transport security program has been in force for at least  
26 30 months:
- 27 (i) the 30-month period that began when the program came  
28 into force; or  
29 (ii) the remainder of the period for which the program was  
30 in force; or
- 31 (b) in any other case—the period when the transport security  
32 program was in force.

# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
General amendments **Part 1**

---

- 1 (6) However, an *applicable reporting period for a transport security*  
2 *program* does not include a day that occurred before the  
3 commencement of this section.

4 **107C Secretary may require an aviation industry participant to**  
5 **submit report**

6 *Scope*

- 7 (1) This section applies if:  
8 (a) a transport security program was, or is, in force for an  
9 aviation industry participant; and  
10 (b) the transport security program was given to the participant  
11 under section 26B.

12 *Notice*

- 13 (2) The Secretary may, by written notice given to the participant,  
14 require the participant to:  
15 (a) give the Secretary a report that:  
16 (i) relates to the period specified in the notice; and  
17 (ii) sets out such matters (if any) as are specified in the  
18 regulations; and  
19 (iii) is in the form approved, in writing, by the Secretary;  
20 and  
21 (b) do so within 90 days after the notice is given.
- 22 (3) The period specified in the notice:  
23 (a) must consist of, or be included in, the period for which the  
24 transport security program was, or is, in force; and  
25 (b) must end before the notice is given; and  
26 (c) must begin after the commencement of this section.
- 27 (4) A matter must not be specified in regulations made for the  
28 purposes of subparagraph (2)(a)(ii) unless the matter relates to:  
29 (a) unlawful interference with aviation; or  
30 (b) safeguarding against unlawful interference with aviation.

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

1 *Compliance*

2 (5) A person must comply with a notice under subsection (2).

3 Civil penalty: 150 penalty units.

4 (6) A report given by a person in compliance with a notice under  
5 subsection (2) is not admissible in evidence against the person in:

6 (a) criminal proceedings for an offence against this Act; or

7 (b) civil proceedings relating to a contravention of a civil penalty  
8 provision of this Act (other than this section).

## 9 **107D Secretary may require a known consignor to submit report**

10 *Scope*

11 (1) This section applies if:

12 (a) a known consignor security program was, or is, in force for a  
13 known consignor; and

14 (b) the known consignor security program was provided to the  
15 known consignor under the regulations.

16 *Notice*

17 (2) The Secretary may, by written notice given to the known  
18 consignor, require the known consignor to:

19 (a) give the Secretary a report that:

20 (i) relates to the period specified in the notice; and

21 (ii) sets out such matters (if any) as are specified in the  
22 regulations; and

23 (iii) is in the form approved, in writing, by the Secretary;  
24 and

25 (b) do so within 90 days after the notice is given.

26 (3) The period specified in the notice:

27 (a) must consist of, or be included in, the period for which the  
28 known consignor security program was, or is, in force; and

29 (b) must end before the notice is given; and

30 (c) must begin after the commencement of this section.



# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
General amendments **Part 1**

---

- 1 (4) A matter must not be specified in regulations made for the  
2 purposes of subparagraph (2)(a)(ii) unless the matter relates to:  
3 (a) unlawful interference with aviation; or  
4 (b) safeguarding against unlawful interference with aviation.

5 *Compliance*

- 6 (5) A person must comply with a notice under subsection (2).

7 Civil penalty: 150 penalty units.

- 8 (6) A report given by a person in compliance with a notice under  
9 subsection (2) is not admissible in evidence against the person in:  
10 (a) criminal proceedings for an offence against this Act; or  
11 (b) civil proceedings relating to a contravention of a civil penalty  
12 provision of this Act (other than this section).

13 **107E Secretary may require a regulated air cargo agent to submit**  
14 **report**

15 *Scope*

- 16 (1) This section applies if:  
17 (a) a RACA security program was, or is, in force for a regulated  
18 air cargo agent; and  
19 (b) the RACA security program was provided to the regulated air  
20 cargo agent under the regulations.

21 *Notice*

- 22 (2) The Secretary may, by written notice given to the regulated air  
23 cargo agent, require the regulated air cargo agent to:  
24 (a) give the Secretary a report that:  
25 (i) relates to the period specified in the notice; and  
26 (ii) sets out such matters (if any) as are specified in the  
27 regulations; and  
28 (iii) is in the form approved, in writing, by the Secretary;  
29 and  
30 (b) do so within 90 days after the notice is given.

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 1 General amendments

---

- 1 (3) The period specified in the notice:  
2 (a) must consist of, or be included in, the period for which the  
3 RACA security program was, or is, in force; and  
4 (b) must end before the notice is given; and  
5 (c) must begin after the commencement of this section.
- 6 (4) A matter must not be specified in regulations made for the  
7 purposes of subparagraph (2)(a)(ii) unless the matter relates to:  
8 (a) unlawful interference with aviation; or  
9 (b) safeguarding against unlawful interference with aviation.

#### 10 *Compliance*

- 11 (5) A person must comply with a notice under subsection (2).  
12 Civil penalty: 150 penalty units.
- 13 (6) A report given by a person in compliance with a notice under  
14 subsection (2) is not admissible in evidence against the person in:  
15 (a) criminal proceedings for an offence against this Act; or  
16 (b) civil proceedings relating to a contravention of a civil penalty  
17 provision of this Act (other than this section).

### 18 **107F Secretary may require an accredited air cargo agent to submit** 19 **report**

#### 20 *Scope*

- 21 (1) This section applies if:  
22 (a) an AACA security program was, or is, in force for an  
23 accredited air cargo agent; and  
24 (b) the AACA security program was provided to the accredited  
25 air cargo agent under the regulations.

#### 26 *Notice*

- 27 (2) The Secretary may, by written notice given to the accredited air  
28 cargo agent, require the accredited air cargo agent to:  
29 (a) give the Secretary a report that:  
30 (i) relates to the period specified in the notice; and

# EXPOSURE DRAFT

- 1 (ii) sets out such matters (if any) as are specified in the  
2 regulations; and  
3 (iii) is in the form approved, in writing, by the Secretary;  
4 and  
5 (b) do so within 90 days after the notice is given.
- 6 (3) The period specified in the notice:  
7 (a) must consist of, or be included in, the period for which the  
8 AACA security program was, or is, in force; and  
9 (b) must end before the notice is given; and  
10 (c) must begin after the commencement of this section.
- 11 (4) A matter must not be specified in regulations made for the  
12 purposes of subparagraph (2)(a)(ii) unless the matter relates to:  
13 (a) unlawful interference with aviation; or  
14 (b) safeguarding against unlawful interference with aviation.
- 15 *Compliance*
- 16 (5) A person must comply with a notice under subsection (2).  
17 Civil penalty: 150 penalty units.
- 18 (6) A report given by a person in compliance with a notice under  
19 subsection (2) is not admissible in evidence against the person in:  
20 (a) criminal proceedings for an offence against this Act; or  
21 (b) civil proceedings relating to a contravention of a civil penalty  
22 provision of this Act (other than this section).

## 48 Subsection 109(2)

23 After “has”, insert “, or is capable of obtaining.”

## 49 After Part 7

25 Insert:  
26

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

1 **Part 7A—Use and disclosure of protected**  
2 **information**

3 **Division 1—Simplified outline of this Part**

4 **112AA Simplified outline of this Part**

5 

The making of a record, or the use or disclosure, of protected 6 information is authorised in particular circumstances but is 7 otherwise an offence.
---

8 **Division 2—Authorised use and disclosure**

9 **112A Authorised use and disclosure—performing functions etc.**

10 (1) A person may make a record of, use or disclose protected  
11 information if the person makes the record, or uses or discloses the  
12 information, for the purposes of:

- 13 (a) exercising the person's powers, or performing the person's  
14 functions or duties, under this Act; or  
15 (b) otherwise ensuring compliance with a provision of this Act.

16 Note: This subsection is an authorisation for the purposes of other laws,  
17 including the Australian Privacy Principles.

18 (2) A person may make a record of, use or disclose protected  
19 information if the person makes the record, or uses or discloses the  
20 information, for purposes in connection with the administration or  
21 execution of this Act.

22 Note: This subsection is an authorisation for the purposes of other laws,  
23 including the Australian Privacy Principles.

24 **112B Authorised use and disclosure—other person's functions etc.**

- 25 (1) The Secretary may:  
26 (a) disclose protected information to a person mentioned in  
27 subsection (2); and  
28 (b) make a record of or use protected information for the purpose  
29 of that disclosure;
-

# EXPOSURE DRAFT

1 for the purposes of enabling or assisting the person to exercise the  
2 person's powers or perform the person's functions or duties.

3 Note: This subsection is an authorisation for the purposes of other laws,  
4 including the Australian Privacy Principles.

- 5 (2) The persons to whom the Secretary may disclose protected  
6 information are the following:
- 7 (a) a Minister of the Commonwealth who has responsibility for  
8 any of the following:
    - 9 (i) national security;
    - 10 (ii) law enforcement;
    - 11 (iii) foreign investment in Australia;
    - 12 (iv) taxation policy;
    - 13 (v) industry policy;
    - 14 (vi) promoting investment in Australia;
    - 15 (vii) defence;
    - 16 (viii) customs;
    - 17 (ix) immigration;
    - 18 (x) transport;
    - 19 (xi) health;
    - 20 (xii) biosecurity;
    - 21 (xiii) emergency management;
    - 22 (xiv) the regulation or oversight of aviation safety;
    - 23 (xv) a matter specified in an instrument made under  
24 subsection (3);
  - 25 (b) a Minister of a State, the Australian Capital Territory, or the  
26 Northern Territory, who has responsibility for any of the  
27 following:
    - 28 (i) emergency management;
    - 29 (ii) transport;
    - 30 (iii) health;
    - 31 (iv) law enforcement;
    - 32 (v) a matter specified in an instrument made under  
33 subsection (4);
  - 34 (c) a person employed as a member of staff of a Minister  
35 mentioned in paragraph (a) or (b);
-

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 1 General amendments

---

1 (d) the head of an agency (including a Department) administered  
2 by a Minister mentioned in paragraph (a) or (b), or an officer  
3 or employee of that agency.

4 (3) The Minister may, by legislative instrument, specify one or more  
5 matters for the purposes of subparagraph (2)(a)(xv).

6 (4) The Minister may, by legislative instrument, specify one or more  
7 matters for the purposes of subparagraph (2)(b)(v).

#### 8 **112C Authorised disclosure relating to law enforcement**

9 The Secretary may disclose protected information to an  
10 enforcement body (within the meaning of the *Privacy Act 1988*) for  
11 the purposes of one or more enforcement related activities (within  
12 the meaning of that Act) conducted by or on behalf of the  
13 enforcement body.

14 Note: This section is an authorisation for the purposes of other laws,  
15 including the Australian Privacy Principles.

#### 16 **112CA Authorised disclosure—instrument made by Secretary**

17 (1) A person may disclose protected information to another person for  
18 a particular purpose if:

19 (a) the other person is specified in an instrument under  
20 subsection (2); and

21 (b) the purpose is specified in the instrument in relation to the  
22 other person.

23 Note 1: This subsection is an authorisation for the purposes of other laws,  
24 including the Australian Privacy Principles.

25 Note 2: For record-keeping requirements, see section 112H.

26 (2) The Secretary may, by legislative instrument, specify:

27 (a) one or more persons for the purposes of subsection (1); and

28 (b) for each of those persons—one or more purposes in relation  
29 to the person concerned.

# EXPOSURE DRAFT

1 **112D Secondary use and disclosure of protected information**

2 A person may make a record of, use or disclose protected  
3 information if:

- 4 (a) the person obtains the information under this Division  
5 (including this section); and  
6 (b) the person makes the record, or uses or discloses the  
7 information, for the purposes for which the information was  
8 disclosed to the person.

9 Note: This section is an authorisation for the purposes of other laws,  
10 including the Australian Privacy Principles.

11 **Division 3—Offence for unauthorised use or disclosure**

12 **112E Offence for unauthorised use or disclosure of protected**  
13 **information**

14 A person commits an offence if:

- 15 (a) the person obtains information; and  
16 (b) the information is protected information; and  
17 (c) the person:  
18 (i) makes a record of the information; or  
19 (ii) discloses the information to another person; or  
20 (iii) otherwise uses the information; and  
21 (d) the making of the record, or the disclosure or use, is not  
22 authorised by this Act.

23 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

24 **112F Exceptions to offence for unauthorised use or disclosure**

25 *Required or authorised by law*

- 26 (1) Section 112E does not apply if the making of the record, or the  
27 disclosure or use, of the protected information is required or  
28 authorised by or under:  
29 (a) a law of the Commonwealth; or  
30 (b) a law of a State or Territory prescribed by the regulations.

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 1 General amendments

---

1

#### *Good faith*

2

- (2) Section 112E does not apply to a person to the extent that the person makes a record of, discloses or otherwise uses protected information in good faith and in purported compliance with this Act.

3

4

5

6

#### *Person to whom the protected information relates*

7

- (3) Section 112E does not apply to a person if:

8

(a) the person discloses protected information to the person to whom the information relates; or

9

10

(b) the person is the person to whom the protected information relates; or

11

12

(c) the making of the record, or the disclosure or use, of the protected information is in accordance with the express or implied consent of the person to whom the information relates.

13

14

15

16

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

17

18

### **112G No requirement to provide information**

19

- (1) A person is not (subject to subsections (2) and (3)) to be required to disclose protected information, or produce a document containing protected information, to:

20

21

22

(a) a court; or

23

(b) a tribunal, authority or person that has the power to require the answering of questions or the production of documents.

24

25

- (2) Subsection (1) does not prevent a person from being required to disclose protected information, or to produce a document containing protected information, if it is necessary to do so for the purposes of giving effect to this Act.

26

27

28

29

- (3) Subsection (1) does not prevent a person from being required to disclose protected information, or to produce a document containing protected information, in a judicial review proceeding before:

30

31

32

33

(a) the High Court of Australia; or

34

(b) the Federal Court; or



# EXPOSURE DRAFT

- 1 (c) the Federal Circuit and Family Court of Australia  
2 (Division 2).

## 3 **Division 4—Record-keeping**

### 4 **112H Record-keeping requirements**

- 5 (1) If:  
6 (a) a person (the *first person*) discloses protected information to  
7 another person (the *recipient*); and  
8 (b) the disclosure is covered by section 112CA;  
9 the first person must:  
10 (c) make a record of:  
11 (i) the disclosure; and  
12 (ii) the identity of the recipient; and  
13 (d) keep the record for 90 days.
- 14 (2) A person commits an offence if:  
15 (a) the person is subject to a requirement under subsection (1);  
16 and  
17 (b) the person engages in conduct; and  
18 (c) the conduct breaches the requirement.

19 Penalty for contravention of this subsection: 50 penalty units.

### 20 **50 Section 116 (paragraph beginning “To ensure”)**

21 After “criminal offences”, insert “or civil penalties”.

### 22 **51 Section 116 (paragraph beginning “To ensure”)**

23 After “criminal prosecution”, insert “or civil penalty proceedings”.

### 24 **52 Section 116 (paragraph beginning “The enforcement 25 options”)**

26 Repeal the paragraph, substitute:

- 27 The enforcement options (and the relevant Divisions) are as  
28 follows:  
29 (a) infringement notices (Division 2);

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

- |   |   |
|---|---|
| 1 | (b) improvement notices (Division 2A);      |
| 2 | (c) enforcement orders (Division 3);        |
| 3 | (d) enforceable undertakings (Division 3A); |
| 4 | (e) injunctions (Division 4);               |
| 5 | (f) demerit points system (Division 5).     |

6 **53 After Division 2 of Part 8**

7 Insert:

8 **Division 2A—Improvement notices**

9 **117A Improvement notices**

10 *Scope*

- 11 (1) This section applies if an aviation security inspector reasonably  
12 believes that an aviation industry participant:
- 13 (a) is contravening a provision of this Act; or
  - 14 (b) has contravened a provision of this Act in circumstances that  
15 make it likely that the contravention will continue or be  
16 repeated; or
  - 17 (c) is likely to contravene a provision of this Act.

18 *Improvement notice*

- 19 (2) The aviation security inspector may give the aviation industry  
20 participant a written notice requiring the participant to:
- 21 (a) remedy the contravention; or
  - 22 (b) prevent the likely contravention from occurring; or
  - 23 (c) remedy the things or operations causing the contravention or  
24 likely contravention.
- 25 (3) A notice under subsection (2) is to be known as an *improvement*  
26 *notice*.

27 **117B Contents of improvement notices**

- 28 (1) An improvement notice given to an aviation industry participant by  
29 an aviation security inspector must state:
-

# EXPOSURE DRAFT

- 1 (a) that the inspector reasonably believes that the participant:  
2 (i) is contravening a provision of this Act; or  
3 (ii) has contravened a provision of this Act in circumstances  
4 that make it likely that the contravention will continue  
5 or be repeated; or  
6 (iii) is likely to contravene a provision of this Act; and  
7 (b) the provision the inspector believes is being, has been, or is  
8 likely to be, contravened; and  
9 (c) briefly, how the provision is being, has been, or is likely to  
10 be, contravened; and  
11 (d) the period within which the participant must comply with the  
12 notice.
- 13 (2) The improvement notice may include directions concerning the  
14 measures to be taken to:  
15 (a) remedy the contravention; or  
16 (b) prevent the likely contravention from occurring; or  
17 (c) remedy the things or operations causing the contravention or  
18 likely contravention.
- 19 (3) The period stated for compliance with the improvement notice  
20 must be reasonable in all the circumstances.

## 21 **117C Compliance with improvement notice**

- 22 (1) A person commits an offence if:  
23 (a) the person is:  
24 (i) an aircraft operator; or  
25 (ii) an airport operator; and  
26 (b) the person is given an improvement notice; and  
27 (c) the person engages in conduct; and  
28 (d) the person's conduct breaches the improvement notice.
- 29 Penalty: 200 penalty units.
- 30 (2) Subsection (1) is an offence of strict liability.
- 31 (3) A person commits an offence if:  
32 (a) the person is an aviation industry participant other than:

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 1 General amendments

---

- 1 (i) an aircraft operator; or  
2 (ii) an airport operator; and  
3 (b) the person is given an improvement notice; and  
4 (c) the person engages in conduct; and  
5 (d) the person's conduct breaches the improvement notice.

6 Penalty: 100 penalty units.

- 7 (4) Subsection (3) is an offence of strict liability.

#### 8 **117D Extension of time for compliance with improvement notices**

##### 9 *Scope*

- 10 (1) This section applies if a person has been given an improvement  
11 notice.

##### 12 *Extension of compliance period*

- 13 (2) An aviation security inspector may, by written notice given to the  
14 person, extend the compliance period for the improvement notice.  
15 (3) However, the aviation security inspector may extend the  
16 compliance period only if the period has not ended.  
17 (4) In this section, *compliance period* means the period stated in the  
18 improvement notice under section 117B, and includes that period  
19 as extended under this section.

#### 20 **117E Variation of improvement notices**

##### 21 *Scope*

- 22 (1) This section applies if a person has been given an improvement  
23 notice.

##### 24 *Changes*

- 25 (2) An aviation security inspector may, by written notice given to the  
26 person, vary the notice.

# EXPOSURE DRAFT

- 1 (3) An aviation security inspector may also, in accordance with  
2 section 117D, extend the compliance period for an improvement  
3 notice.

## 4 **117F Revocation of improvement notices**

- 5 (1) If:  
6 (a) a person has been given an improvement notice; and  
7 (b) at a time during the compliance period for the notice, an  
8 aviation security inspector forms a reasonable belief that the  
9 notice is no longer required for the purposes of requiring the  
10 person to:  
11 (i) remedy a contravention of this Act; or  
12 (ii) prevent a likely contravention of this Act from  
13 occurring; or  
14 (iii) remedy the things or operations causing a contravention,  
15 or likely contravention, of this Act;  
16 the inspector must, by written notice given to the person, revoke  
17 the notice.
- 18 (2) In this section, *compliance period* means the period stated in the  
19 improvement notice under section 117B, and includes that period  
20 as extended under section 117D.

## 21 **117G Formal irregularities or defects in improvement notices**

- 22 An improvement notice is not invalid only because of:  
23 (a) a formal defect or irregularity in the notice unless the defect  
24 or irregularity causes or is likely to cause substantial  
25 injustice; or  
26 (b) a failure to use the correct name of the person to whom the  
27 notice is issued if the notice sufficiently identifies the person.

## 28 **54 At the end of Part 8**

29 Add:

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

1 **Division 6—Civil penalties**

2 **125A Civil penalty provision**

3 *Enforceable civil penalty provision*

4 (1) A civil penalty provision in this Act is enforceable under Part 4 of  
5 the *Regulatory Powers (Standard Provisions) Act 2014*.

6 Note: Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*  
7 allows a civil penalty provision to be enforced by obtaining an order  
8 for a person to pay a pecuniary penalty for the contravention of the  
9 provision.

10 *Authorised applicant*

11 (2) For the purposes of Part 4 of the *Regulatory Powers (Standard*  
12 *Provisions) Act 2014*, the Secretary is an authorised applicant in  
13 relation to a civil penalty provision in this Act.

14 *Relevant court*

15 (3) For the purposes of Part 4 of the *Regulatory Powers (Standard*  
16 *Provisions) Act 2014*, the Federal Court of Australia and the  
17 Federal Circuit and Family Court of Australia (Division 2) are  
18 relevant courts in relation to a civil penalty provision in this Act.

19 *Extension to external Territories etc.*

20 (4) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*,  
21 as it applies in relation to a civil penalty provision in this Act,  
22 extends to every external Territory.

23 **55 Before section 126**

24 Insert:

25 **Division 1—External review**

26 **56 At the end of subsection 126(1)**

27 Add:  
28 ; or (g) under section 126D (internal review).

# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
General amendments **Part 1**

---

1 **57 At the end of Part 9**

2 Add:

3 **Division 2—Internal review**

4 **126B Which decisions are internally reviewable**

5 The following table sets out:

- 6 (a) decisions made under this Act that are internally reviewable  
7 in accordance with this Division (*internally reviewable*  
8 *decisions*); and  
9 (b) who is eligible to apply for review of an internally  
10 reviewable decision (the *eligible person*).

---

**Internally reviewable decisions**

---

<b>Item</b>	<b>Provision under which internally reviewable decision is made</b>	<b>Eligible person in relation to internally reviewable decision</b>
1	Section 117A (giving an improvement notice).	The person to whom the notice was given.
2	Section 117D (extension of time for compliance with improvement notice).	The person to whom the notice was given.
3	Section 117E (variation of improvement notice).	The person to whom the notice was given.

---

12 **126C Application for internal review**

- 13 (1) An eligible person in relation to an internally reviewable decision  
14 may apply to the Secretary for review (an *internal review*) of the  
15 decision within:  
16 (a) the prescribed time after the day on which the decision first  
17 came to the eligible person's notice; or  
18 (b) such longer period as the Secretary allows.
- 19 (2) The application must be made in the manner and form required by  
20 the Secretary.
- 21 (3) For the purposes of this section, the *prescribed time* is:

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 1 General amendments

---

- 1 (a) in the case of a decision to give an improvement notice—the  
2 period specified in the notice for compliance with the notice  
3 or 14 days, whichever is the lesser; and  
4 (b) in any other case—14 days.

#### 5 **126D Decision on internal review**

- 6 (1) The Secretary must:  
7 (a) review the internally reviewable decision; and  
8 (b) make a decision:  
9 (i) as soon as is reasonably practicable; and  
10 (ii) in any event, within 14 days after the application for  
11 internal review is received.
- 12 (2) The decision may be:  
13 (a) to confirm or vary the internally reviewable decision; or  
14 (b) to set aside the internally reviewable decision and substitute  
15 another decision that the Secretary considers appropriate.
- 16 (3) If the Secretary seeks further information from the applicant, the  
17 14-day period ceases to run until the applicant provides the  
18 information to the Secretary.
- 19 (4) The applicant must provide the further information within the time  
20 (being not less than 7 days) specified by the Secretary in the  
21 request for information.
- 22 (5) If the applicant does not provide the further information within the  
23 required time, the decision is taken to have been confirmed by the  
24 Secretary at the end of that time.
- 25 (6) If the internally reviewable decision is not varied or set aside  
26 within the 14-day period, the decision is taken to have been  
27 confirmed by the Secretary.

#### 28 **126E Notification of decision on internal review**

- 29 As soon as practicable after reviewing the decision, the Secretary  
30 must give the applicant in writing:  
31 (a) the decision on the internal review; and  
32 (b) the reasons for the decision.
-



# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
General amendments **Part 1**

---

1 **126F Stays of internally reviewable decisions**

2 (1) If an application is made for an internal review of a decision to  
3 issue an improvement notice, the Secretary may stay the operation  
4 of the decision pending a decision on the internal review.

5 (2) A stay of the operation of a decision pending a decision on an  
6 internal review continues until whichever of the following is the  
7 earlier:

8 (a) the end of the period for applying to the Administrative  
9 Appeals Tribunal for review of the decision made on the  
10 internal review;

11 (b) an application is made to the Administrative Appeals  
12 Tribunal for review of the decision made on the internal  
13 review.

14 **58 Subsection 127(1)**

15 After “this Act”, insert “(other than powers or functions under  
16 Division 2 of Part 9)”.

17 **59 Paragraph 127(1)(b)**

18 Omit “that carries on activities that relate to national security”.

19 **60 Subsection 127(1A)**

20 After “the delegation”, insert “in writing”.

21 **61 After paragraph 127(2)(b)**

22 Insert:  
23 ; or (c) Division 2 of Part 9;

24 **62 After subsection 127(2A)**

25 Insert:  
26 (2B) The Secretary may, by writing, delegate all or any of the  
27 Secretary’s powers and functions under Division 2 of Part 9 to an  
28 SES employee who holds, or performs the duties of, an SES Band  
29 2 position, or an SES Band 3 position, in the Department.

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

1 **63 After subsection 132(2)**

2 Insert:

3 (2A) This Act also has the effect that it would have if:

- 4 (a) each reference to an aviation industry participant were  
5 expressly confined to an aviation industry participant that is a  
6 corporation to which paragraph 51(xx) of the Constitution  
7 applies; and
- 8 (b) each reference to an airport operator were expressly confined  
9 to an airport operator that is a corporation to which  
10 paragraph 51(xx) of the Constitution applies; and
- 11 (c) each reference to an aircraft operator were expressly confined  
12 to an aircraft operator that is a corporation to which  
13 paragraph 51(xx) of the Constitution applies; and
- 14 (d) each reference to a known consignor were expressly confined  
15 to a known consignor that is a corporation to which  
16 paragraph 51(xx) of the Constitution applies; and
- 17 (e) each reference to a regulated air cargo agent were expressly  
18 confined to a regulated air cargo agent that is a corporation to  
19 which paragraph 51(xx) of the Constitution applies; and
- 20 (f) each reference to an accredited air cargo agent were  
21 expressly confined to an accredited air cargo agent that is a  
22 corporation to which paragraph 51(xx) of the Constitution  
23 applies; and
- 24 (g) each reference to a regulated agent were expressly confined  
25 to a regulated agent that is a corporation to which  
26 paragraph 51(xx) of the Constitution applies.

27 **Division 2—Application provisions**

28 **64 Application—transport security programs**

- 29 (1) The amendment of section 16 of the *Aviation Transport Security Act*  
30 *2004* made by this Part applies in relation to a transport security  
31 program for an aviation industry participant if:
- 32 (a) the participant gives the program to the Secretary under  
33 section 18 of that Act after the commencement of this item;  
34 or

# EXPOSURE DRAFT

- 1 (b) the participant gives a copy of the program to the Secretary  
2 under section 22 of that Act after the commencement of this  
3 item; or  
4 (c) the participant gives the program to the Secretary in  
5 compliance with a notice that was given under section 23 of  
6 that Act after the commencement of this item.

7 (2) Despite subitem (1), in determining, for the purposes of sections 21, 23,  
8 23A and 25 of the *Aviation Transport Security Act 2004*, whether a  
9 transport security program adequately addresses the relevant  
10 requirements under Division 4 of Part 2 of that Act, assume that the  
11 amendment of section 16 of that Act made by this Part applies in  
12 relation to the program.

13 (3) The amendment of section 26C of the *Aviation Transport Security Act*  
14 *2004* made by this Part applies in relation to a transport security  
15 program if the program is given to an aviation industry participant  
16 under section 26B of that Act after the commencement of this item.

## 17 **65 Application—known consignor security programs**

18 (1) Subsection 44C(3B) of the *Aviation Transport Security Act 2004* (as  
19 amended by this Part) applies in relation to a known consignor security  
20 program if the program is given to a known consignor under the  
21 regulations after the commencement of this item.

22 (2) For the purposes of this item, *regulations* means regulations made  
23 under the *Aviation Transport Security Act 2004*.

## 24 **66 Application—RACA security programs**

25 (1) Subsection 44C(3C) of the *Aviation Transport Security Act 2004* (as  
26 amended by this Part) applies in relation to a RACA security program if  
27 the program is given to a regulated cargo agent under the regulations  
28 after the commencement of this item.

29 (2) For the purposes of this item, *regulations* means regulations made  
30 under the *Aviation Transport Security Act 2004*.

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 1 General amendments

---

1 **67 Application—AACA security programs**

2 (1) Subsection 44C(3D) of the *Aviation Transport Security Act 2004* (as  
3 amended by this Part) applies in relation to an AACA security program  
4 if the program is given to an accredited cargo agent under the  
5 regulations after the commencement of this item.

6 (2) For the purposes of this item, *regulations* means regulations made  
7 under the *Aviation Transport Security Act 2004*.

8 **68 Application—security directions**

9 The amendment of section 67 of the *Aviation Transport Security Act*  
10 *2004* made by this Part applies in relation to a special security direction  
11 given after the commencement of this item.

12 **68A Application—request for further information**

13 The amendments of section 19 of the *Aviation Transport Security Act*  
14 *2004* made by this Part apply in relation to a notice given under  
15 subsection 19(5) of that Act after the commencement of this item.

16 **68B Application—deemed refusal of request for alterations of  
17 a transport security program**

18 The amendment of subsection 23A(7) of the *Aviation Transport*  
19 *Security Act 2004* made by this Part applies in relation to a request  
20 given by an aviation industry participant after the commencement of  
21 this item.

# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
Other amendments **Part 2**

---

1 **Part 2—Other amendments**

2 **Division 1—Amendments**

3 *Aviation Transport Security Act 2004*

4 **69 Subsection 3(1)**

5 After “aviation”, insert “and operational interference with aviation”.

6 **70 Subsection 3(2)**

7 Omit “security” (first occurring).

8 **71 Section 4 (paragraph beginning “This Act establishes”)**

9 After “aviation”, insert “and operational interference with aviation”.

10 **72 Section 4 (paragraph beginning “Part 2”)**

11 After “operations”, insert “, and may also deal with safeguarding  
12 against operational interference with aviation”.

13 **73 Section 9**

14 Insert:

15 *critical aviation industry participant* has the meaning given by  
16 section 10B.

17 *operational interference with aviation* has the meaning given by  
18 section 10AA.

19 *relevant interference* has the meaning given by section 9E.

20 **74 After Division 4A of Part 1**

21 Insert:

22 **Division 4B—Relevant interference**

23 **9E Meaning of relevant interference**

24 (1) Each of the following is a *relevant interference* with an asset:

---

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 2 Other amendments

---

- 1 (a) interference (whether direct or indirect) with the availability  
2 of the asset;
- 3 (b) interference (whether direct or indirect) with the integrity of  
4 the asset;
- 5 (c) interference (whether direct or indirect) with the reliability of  
6 the asset;
- 7 (d) interference (whether direct or indirect) with the  
8 confidentiality of:
- 9 (i) information about the asset; or  
10 (ii) if information is stored in the asset—the information; or  
11 (iii) if the asset is computer data—the computer data.
- 12 (2) Each of the following is a *relevant interference* with the operation  
13 of an aviation industry participant:
- 14 (a) interference (whether direct or indirect) with the availability  
15 of the operation of the participant;
- 16 (b) interference (whether direct or indirect) with the integrity of  
17 the operation of the participant;
- 18 (c) interference (whether direct or indirect) with the reliability of  
19 the operation of the participant;
- 20 (d) interference (whether direct or indirect) with the  
21 confidentiality of information relating to the operation of the  
22 participant.

## 75 After Division 5 of Part 1

23 Insert:

## 24 Division 5A—Operational interference with aviation

### 25 10AA Meaning of operational interference with aviation

- 26 (1) For the purposes of this Act, *operational interference with*  
27 *aviation* means:
- 28 (a) committing, or attempting to commit, an act that results in a  
29 relevant interference with the operation of an aviation  
30 industry participant; or  
31 (b) committing, or attempting to commit, an act that results in a  
32 relevant interference with an asset that is:  
33

# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
Other amendments **Part 2**

---

- 1 (i) used in connection with the operation of an aviation  
2 industry participant; and  
3 (ii) owned or operated by an aviation industry participant;  
4 or  
5 (c) the occurrence of a hazard that results in a relevant  
6 interference with the operation of an aviation industry  
7 participant; or  
8 (d) the occurrence of a hazard that results in a relevant  
9 interference with an asset that is:  
10 (i) used in connection with the operation of an aviation  
11 industry participant; and  
12 (ii) owned or operated by an aviation industry participant.
- 13 (2) However, *operational interference with aviation* does not include  
14 any of the following:  
15 (a) unlawful interference with aviation;  
16 (b) lawful advocacy, protest, dissent or industrial action.

## 76 At the end of Part 1

17 Add:  
18

## 19 Division 7—Critical aviation industry participants

### 20 10B Minister may declare critical aviation industry participants

- 21 (1) The Minister may, by writing, declare that a specified aviation  
22 industry participant is a critical aviation industry participant for the  
23 purposes of this Act.
- 24 (2) A declaration under subsection (1) is not a legislative instrument.
- 25 (3) Subsection 33(3AB) of the *Acts Interpretation Act 1901* does not  
26 apply to subsection (1) of this section.
- 27 Note: Subsection 33(3AB) of the *Acts Interpretation Act 1901* deals with  
28 specification by class.
- 29 (4) The Minister must not specify an aviation industry participant  
30 under subsection (1) unless the Minister is satisfied that:  
31 (a) the participant is critical to:

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 2 Other amendments

---

- 1 (i) the social or economic stability of Australia or its  
2 people; or  
3 (ii) the defence of Australia; or  
4 (iii) national security (within the meaning of the *Security of*  
5 *Critical Infrastructure Act 2018*); and  
6 (b) there is a risk, in relation to the participant, that may be  
7 prejudicial to security (within the meaning of the *Australian*  
8 *Security Intelligence Organisation Act 1979*).
- 9 (5) In making a declaration under subsection (1), the Minister must  
10 have regard to:  
11 (a) such matters (if any) as are specified in the regulations; and  
12 (b) such other matters (if any) as the Minister considers relevant.
- 13 *Class of aviation industry participants*
- 14 (6) The Minister may, by legislative instrument, declare that each  
15 aviation industry participant included in a specified class of  
16 aviation industry participants is a critical aviation industry  
17 participant for the purposes of this Act.
- 18 (7) The Minister must not specify a class of aviation industry  
19 participants under subsection (6) unless the Minister is satisfied  
20 that:  
21 (a) each aviation industry participant in the class is critical to:  
22 (i) the social or economic stability of Australia or its  
23 people; or  
24 (ii) the defence of Australia; or  
25 (iii) national security (within the meaning of the *Security of*  
26 *Critical Infrastructure Act 2018*); and  
27 (b) there is a risk, in relation to each aviation industry participant  
28 in the class, that may be prejudicial to security (within the  
29 meaning of the *Australian Security Intelligence Organisation*  
30 *Act 1979*).
- 31 (8) In making a declaration under subsection (6), the Minister must  
32 have regard to:  
33 (a) such matters (if any) as are specified in the regulations; and  
34 (b) such other matters (if any) as the Minister considers relevant.
-



# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
Other amendments **Part 2**

---

1 **77 At the end of section 16**

2 Add:

3 (4) The regulations may prescribe matters that:

4 (a) relate to safeguarding against operational interference with  
5 aviation; and

6 (b) must be dealt with in each transport security program for a  
7 critical aviation industry participant.

8 (5) Subsection (4) does not limit subsection (3).

9 **78 After subsection 26C(1AA)**

10 Insert:

11 (1AB) A transport security program that is given to an aviation industry  
12 participant under section 26B may set out the activities or measures  
13 to be undertaken or implemented by the participant under the  
14 program for the purposes of safeguarding against operational  
15 interference with aviation.

16 **79 Subsection 35(1)**

17 After “aviation”, insert “or safeguarding against operational interference  
18 with aviation”.

19 **80 Subsection 36(1)**

20 After “aviation”, insert “or safeguarding against operational interference  
21 with aviation”.

22 **81 Subsection 36A(1)**

23 After “aviation”, insert “or safeguarding against operational interference  
24 with aviation”.

25 **82 Subsection 37(1)**

26 After “aviation”, insert “or safeguarding against operational interference  
27 with aviation”.

28 **83 Subsection 38(1)**

29 After “aviation”, insert “or safeguarding against operational interference  
30 with aviation”.

---

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 2 Other amendments

---

1 **84 Subsection 38A(1)**

2 After “aviation”, insert “or safeguarding against operational interference  
3 with aviation”.

4 **85 Subsection 44C(1)**

5 After “safeguarding against unlawful interference with aviation”, insert  
6 “or safeguarding against operational interference with aviation”.

7 **86 After paragraph 67(1)(b)**

8 Insert:

9 (ba) both of the following apply:

- 10 (i) a specific threat of operational interference with  
11 aviation is made or exists;  
12 (ii) the Secretary is satisfied that giving a direction under  
13 this subsection is an appropriate response to the threat;  
14 or

15 (bb) both of the following apply:

- 16 (i) there is a change in the nature of an existing general  
17 threat of operational interference with aviation;  
18 (ii) the Secretary is satisfied that giving a direction under  
19 this subsection is an appropriate response to the threat;  
20 or

21 **87 After subsection 70(5)**

22 Insert:

23 (5A) A special security direction made under paragraph 67(1)(ba) must  
24 be revoked when the specific threat no longer exists.

25 **88 Section 107A (before paragraph beginning “Certain”)**

26 Insert:

27 

Critical aviation industry participants are required to submit 28 periodic reports.
--

29 **89 After section 107A**

30 Insert:

---

# EXPOSURE DRAFT

1 **107AA Critical aviation industry participants must submit periodic**  
2 **reports**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) a transport security program was, or is, in force for a critical
  - 6 aviation industry participant; and
  - 7 (b) an applicable reporting period for the transport security
  - 8 program has ended.

9 *Periodic report*

- 10 (2) The participant must, within 90 days after the end of the applicable
- 11 reporting period, give the Secretary a report that:
- 12 (a) relates to the applicable reporting period; and
  - 13 (b) sets out such matters (if any) as are specified in the
  - 14 regulations; and
  - 15 (c) if the participant has a board, council or other governing
  - 16 body—includes whichever of the following statements is
  - 17 applicable:
    - 18 (i) if the transport security program was up to date
    - 19 immediately before the end of the applicable reporting
    - 20 period—a statement by the board, council or other
    - 21 governing body to that effect;
    - 22 (ii) if the transport security program was not up to date
    - 23 immediately before the end of the applicable reporting
    - 24 period—a statement by the board, council or other
    - 25 governing body to that effect; and
  - 26 (d) if the participant has a board, council or other governing
  - 27 body—includes whichever of the following statements is
  - 28 applicable:
    - 29 (i) if the transport security program adequately addressed
    - 30 the relevant requirements under Division 4 of Part 2 at
    - 31 the end of the applicable reporting period—a statement
    - 32 by the board, council or other governing body to that
    - 33 effect;
    - 34 (ii) if the transport security program did not adequately
    - 35 address the relevant requirements under Division 4 of

# EXPOSURE DRAFT

## Schedule 1 Amendment of the Aviation Transport Security Act 2004

### Part 2 Other amendments

---

1 Part 2 at the end of the applicable reporting period—a  
2 statement by the board, council or other governing body  
3 to that effect; and

4 (e) is in the form approved, in writing, by the Secretary.

5 Civil penalty: 150 penalty units.

6 (3) A matter must not be specified in regulations made for the  
7 purposes of paragraph (2)(b) unless the matter relates to:

8 (a) unlawful interference with aviation; or

9 (b) safeguarding against unlawful interference with aviation; or

10 (c) operational interference with aviation; or

11 (d) safeguarding against operational interference with aviation.

12 (4) A report given by a person under subsection (2) is not admissible  
13 in evidence against the person in:

14 (a) criminal proceedings for an offence against this Act; or

15 (b) civil proceedings relating to a contravention of a civil penalty  
16 provision of this Act (other than this section).

17 *Applicable reporting period for a transport security program*

18 (5) For the purposes of this section, an *applicable reporting period for*  
19 *a transport security program* is:

20 (a) if the transport security program was in force for the whole  
21 of a financial year—the financial year; or

22 (b) if the transport security program was in force for a part of a  
23 financial year—the part of the financial year.

24 (6) However, an *applicable reporting period for a transport security*  
25 *program* does not include a day that occurred before the  
26 commencement of this section.

### 27 **90 Section 107B (heading)**

28 After “participants”, insert “(other than critical aviation industry  
29 participants)”.

### 30 **91 Paragraph 107B(1)(a)**

31 After “participant”, insert “(other than a critical aviation industry  
32 participant)”.

---

# EXPOSURE DRAFT

Amendment of the Aviation Transport Security Act 2004 **Schedule 1**  
Other amendments **Part 2**

---

1 **92 At the end of subsection 107B(3)**

2 Add:

3 ; or (c) operational interference with aviation; or

4 (d) safeguarding against operational interference with aviation.

5 **93 At the end of subsection 107C(4)**

6 Add:

7 ; or (c) operational interference with aviation; or

8 (d) safeguarding against operational interference with aviation.

9 **94 At the end of subsection 107D(4)**

10 Add:

11 ; or (c) operational interference with aviation; or

12 (d) safeguarding against operational interference with aviation.

13 **95 At the end of subsection 107E(4)**

14 Add:

15 ; or (c) operational interference with aviation; or

16 (d) safeguarding against operational interference with aviation.

17 **96 At the end of subsection 107F(4)**

18 Add:

19 ; or (c) operational interference with aviation; or

20 (d) safeguarding against operational interference with aviation.

21 **97 After paragraph 111(2)(d)**

22 Insert:

23 (da) information about activities undertaken, or to be undertaken,  
24 at an airport for the purposes of safeguarding against  
25 operational interference with aviation;

26 **98 Paragraph 119(2)(b)**

27 Repeal the paragraph, substitute:

28 (b) it is necessary to make the order to:

29 (i) safeguard against unlawful interference with aviation; or

30 (ii) safeguard against operational interference with aviation.

# EXPOSURE DRAFT

Schedule 1 Amendment of the Aviation Transport Security Act 2004

Part 2 Other amendments

---

1 **99 Subsection 121(2)**

2 After “aviation”, insert “or safeguard against operational interference  
3 with aviation”.

4 **100 Paragraph 121(3)(a)**

5 After “aviation”, insert “or adequately safeguards against operational  
6 interference with aviation”.

7 **Division 2—Application provisions**

8 **101 Application—transport security programs**

- 9 (1) The amendment of section 16 of the *Aviation Transport Security Act*  
10 *2004* made by this Part applies in relation to a transport security  
11 program for an aviation industry participant if:
- 12 (a) the participant gives the program to the Secretary under  
13 section 18 of that Act after the commencement of this item;  
14 or
  - 15 (b) the participant gives a copy of the program to the Secretary  
16 under section 22 of that Act after the commencement of this  
17 item; or
  - 18 (c) the participant gives the program to the Secretary in  
19 compliance with a notice that was given under section 23 of  
20 that Act after the commencement of this item.
- 21 (2) Despite subitem (1), in determining, for the purposes of sections 21, 23,  
22 23A and 25 of the *Aviation Transport Security Act 2004*, whether a  
23 transport security program adequately addresses the relevant  
24 requirements under Division 4 of Part 2 of that Act, assume that the  
25 amendment of section 16 of that Act made by this Part applies in  
26 relation to the program.
- 27 (3) The amendment of section 26C of the *Aviation Transport Security Act*  
28 *2004* made by this Part applies in relation to a transport security  
29 program if the program is given to an aviation industry participant  
30 under section 26B of that Act after the commencement of this item.

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

## Schedule 2—Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

### Part 1—General amendments

#### Division 1—Amendments

#### *Maritime Transport and Offshore Facilities Security Act 2003*

##### 1 Title

Omit “related”, substitute “other”.

##### 2 Section 4 (after paragraph beginning “Part 9”)

Insert:

Part 9A deals with the submission of reports by maritime industry participants, ship operators and offshore industry participants.

##### 3 Section 4 (after paragraph beginning “Part 10”)

Insert:

Part 10A provides that the making of a record, or the use or disclosure, of protected information is authorised in particular circumstances but is otherwise an offence.

##### 4 Section 4 (paragraph beginning “Part 11”)

After “infringement notices,”, insert “improvement notices,”.

##### 5 Subsection 6(1)

After “(2)”, insert “or (3)”.

# EXPOSURE DRAFT

Schedule 2 Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Part 1 General amendments

---

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

2 Add:

3 (3) Section 15.1 of the *Criminal Code* (extended geographical  
4 jurisdiction—category A) applies to an offence against  
5 section 185G.

6 **7 Section 10**

7 Insert:

8 **access**, in relation to a computer program, means the execution of  
9 the computer program.

10 **access to computer data** means:

- 11 (a) in a case where the computer data is held in a computer—the  
12 display of the data by the computer or any other output of the  
13 data from the computer; or  
14 (b) in a case where the computer data is held in a computer—the  
15 copying or moving of the data to:  
16 (i) any other location in the computer; or  
17 (ii) another computer; or  
18 (iii) a data storage device; or  
19 (c) in a case where the computer data is held in a data storage  
20 device—the copying or moving of the data to:  
21 (i) a computer; or  
22 (ii) another data storage device.

23 **asset** includes:

- 24 (a) a system; and  
25 (b) a network; and  
26 (c) a facility; and  
27 (d) a computer; and  
28 (e) a computer device; and  
29 (f) a computer program; and  
30 (g) computer data; and  
31 (h) premises; and  
32 (i) any other thing.



# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 **Commonwealth body** means a body established by a law of the  
2 Commonwealth.

3 **computer** means all or part of:

- 4 (a) one or more computers; or  
5 (b) one or more computer systems; or  
6 (c) one or more computer networks; or  
7 (d) any combination of the above.

8 **computer data** means data held in:

- 9 (a) a computer; or  
10 (b) a data storage device.

11 **connected**, in relation to equipment, includes connection otherwise  
12 than by means of physical contact, for example, a connection by  
13 means of radiocommunication.

14 **cyber security incident** has the meaning given by section 10A.

15 **data** includes information in any form.

16 **data storage device** means a thing (for example, a disk or file  
17 server) containing (whether temporarily or permanently), or  
18 designed to contain (whether temporarily or permanently), data for  
19 use by a computer.

20 **electronic communication** means a communication of information  
21 in any form by means of guided or unguided electromagnetic  
22 energy.

23 **evidential burden**, in relation to a matter, means the burden of  
24 adducing or pointing to evidence that suggests a reasonable  
25 possibility that the matter exists or does not exist.

26 **impairment of electronic communication to or from a computer**  
27 includes:

- 28 (a) the prevention of any such communication; and  
29 (b) the impairment of any such communication on an electronic  
30 link or network used by the computer;

31 but does not include a mere interception of any such  
32 communication.

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1                    *improvement notice* means a notice under subsection 187A(2).

2                    *lawful advocacy, protest, dissent or industrial action* does not  
3                    include a cyber security incident.

4                    **8 Section 10 (definition of *maritime transport or offshore***  
5                    ***facility security incident*)**

6                    Omit “subsections 170(1) and (2)”, substitute “section 170”.

7                    **9 Section 10**

8                    Insert:

9                    ***modification:***

10                    (a) in respect of computer data—means:

11                        (i) the alteration or removal of the data; or

12                        (ii) an addition to the data; or

13                    (b) in respect of a computer program—means:

14                        (i) the alteration or removal of the program; or

15                        (ii) an addition to the program.

16                    **10 Section 10 (definition of *national security*)**

17                    Repeal the definition.

18                    **11 Section 10**

19                    Insert:

20                    *operation of a maritime industry participant* means the operation  
21                    of the participant in the participant’s capacity as a maritime  
22                    industry participant.

23                    *operation of an offshore industry participant* means the operation  
24                    of the participant in the participant’s capacity as an offshore  
25                    industry participant.

26                    *protected information* means information that:

27                        (a) is obtained by a person in the course of exercising powers, or  
28                        performing duties or functions, under this Act; or

29                        (b) is security compliance information; or

30                        (c) if:

---

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (i) a maritime security plan; or  
2 (ii) a ship security plan; or  
3 (ii) an offshore security plan;  
4 for a maritime industry participant is in force—is about the  
5 content of the plan.

6 *relevant impact* has the meaning given by section 10C.

7 *technical assistance notice* has the same meaning as in Part 15 of  
8 the *Telecommunications Act 1997*.

9 *technical assistance request* has the same meaning as in Part 15 of  
10 the *Telecommunications Act 1997*.

11 *technical capability notice* has the same meaning as in Part 15 of  
12 the *Telecommunications Act 1997*.

13 *test weapon* means a weapon of a kind that is a replica or an  
14 imitation of another weapon.

15 *unauthorised access, modification or impairment* has the meaning  
16 given by section 10B.

## 17 **12 After Division 4 of Part 1**

18 Insert:

## 19 **Division 4A—Cyber security incidents**

### 20 **10A Meaning of *cyber security incident***

21 A *cyber security incident* is one or more acts, events or  
22 circumstances involving any of the following:

- 23 (a) unauthorised access to:  
24 (i) computer data; or  
25 (ii) a computer program;  
26 (b) unauthorised modification of:  
27 (i) computer data; or  
28 (ii) a computer program;  
29 (c) unauthorised impairment of electronic communication to or  
30 from a computer;
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1 (d) unauthorised impairment of the availability, reliability,  
2 security or operation of:  
3 (i) a computer; or  
4 (ii) computer data; or  
5 (iii) a computer program.

6 **10B Meaning of *unauthorised access, modification or impairment***

- 7 (1) For the purposes of this Act:  
8 (a) access to:  
9 (i) computer data; or  
10 (ii) a computer program; or  
11 (b) modification of:  
12 (i) computer data; or  
13 (ii) a computer program; or  
14 (c) the impairment of electronic communication to or from a  
15 computer; or  
16 (d) the impairment of the availability, reliability, security or  
17 operation of:  
18 (i) a computer; or  
19 (ii) computer data; or  
20 (iii) a computer program;  
21 by a person is unauthorised if the person is not entitled to cause  
22 that access, modification or impairment.
- 23 (2) For the purposes of subsection (1), it is immaterial whether the  
24 person can be identified.
- 25 (3) For the purposes of subsection (1), if:  
26 (a) a person causes any access, modification or impairment of a  
27 kind mentioned in that subsection; and  
28 (b) the person does so:  
29 (i) under a warrant issued under a law of the  
30 Commonwealth, a State or a Territory; or  
31 (ii) under an emergency authorisation given to the person  
32 under Part 3 of the *Surveillance Devices Act 2004* or  
33 under a law of a State or Territory that makes provision  
34 to similar effect; or
-

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (iii) under a tracking device authorisation given to the  
2 person under section 39 of the *Surveillance Devices Act*  
3 *2004*; or  
4 (iv) in accordance with a technical assistance request; or  
5 (v) in compliance with a technical assistance notice; or  
6 (vi) in compliance with a technical capability notice;  
7 the person is entitled to cause that access, modification or  
8 impairment.

## 9 **10C Meaning of *relevant impact***

- 10 Each of the following is a *relevant impact* of a cyber security  
11 incident on an asset:  
12 (a) the impact (whether direct or indirect) of the incident on the  
13 availability of the asset;  
14 (b) the impact (whether direct or indirect) of the incident on the  
15 integrity of the asset;  
16 (c) the impact (whether direct or indirect) of the incident on the  
17 reliability of the asset;  
18 (d) the impact (whether direct or indirect) of the incident on the  
19 confidentiality of:  
20 (i) information about the asset; or  
21 (ii) if information is stored in the asset—the information; or  
22 (iii) if the asset is computer data—the computer data.

## 23 **13 Subsection 11(1)**

24 After “done”, insert “, or attempted to be done,”.

## 25 **14 Paragraph 11(1)(g)**

26 Omit “or security systems”, substitute “, security systems or other  
27 systems”.

## 28 **15 Paragraph 11(1)(h)**

29 Omit “false”.

## 30 **16 At the end of section 11**

31 Add:

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1 (3) If a cyber security incident has a relevant impact on an asset that is:  
2 (a) used in connection with the operation of a maritime industry  
3 participant; and  
4 (b) owned or operated by a maritime industry participant;  
5 the cyber security incident is an *unlawful interference with*  
6 *maritime transport or offshore facilities*.

## 17 After subsection 22(3)

8 Insert:

9 (3A) A heightened risk to maritime transport or offshore facilities may  
10 involve a cyber security incident.

11 (3B) Subsection (3A) does not limit subsection (3).

## 18 Subsection 33(1)

13 Repeal the subsection, substitute:

14 (1) If:

15 (a) both of the following apply:

16 (i) a specific threat of unlawful interference with maritime  
17 transport or offshore facilities is made or exists;

18 (ii) the Secretary is satisfied that giving a direction under  
19 this subsection is an appropriate response to the threat;  
20 or

21 (b) both of the following apply:

22 (i) there is a change in the nature of an existing general  
23 threat of unlawful interference with maritime transport  
24 or offshore facilities;

25 (ii) the Secretary is satisfied that giving a direction under  
26 this subsection is an appropriate response to the threat;  
27 or

28 (c) both of the following apply:

29 (i) a national emergency declaration (within the meaning of  
30 the *National Emergency Declaration Act 2020*) is in  
31 force;

32 (ii) the Secretary is satisfied that giving a direction under  
33 this subsection is appropriate to support the national  
34 emergency declaration;

---

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 the Secretary may, in writing, direct that:  
2 (d) a specified act or thing be done; or  
3 (e) a specified act or thing not be done.

## 4 **19 Subsection 33(3)**

5 Repeal the subsection.

## 6 **20 Paragraph 37(3)(c)**

7 Omit “paragraph 33(3)(b)”, substitute “paragraph 33(1)(c)”.

## 8 **21 Subsection 38(1)**

9 Repeal the subsection, substitute:

10 (1) The Secretary may, by writing, revoke a security direction.

11 (1A) A security direction covered by paragraph 33(1)(a) must be  
12 revoked when the specific threat no longer exists.

## 13 **22 At the end of section 41**

14 Add:

15 

The Secretary may give a maritime security plan to a maritime 16 industry participant. This is dealt with in Division 6. That Division 17 also deals with the content, revision and cancellation of such plans.
---

## 18 **23 Before section 47**

19 Insert:

## 20 **46A Application of this Division**

21 This Division applies to a maritime security plan other than a  
22 maritime security plan given by the Secretary under Division 6.

## 23 **24 After paragraph 47(1)(a)**

24 Insert:

25 (aaa) set out how the participant will address the results of the  
26 security assessment included in the plan; and

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1 (aa) set out how the participant will respond to maritime security  
2 incidents; and

## 3 **25 Before section 50**

4 Insert:

### 5 **49A Application of this Division**

6 This Division applies to a maritime security plan other than a  
7 maritime security plan given by the Secretary under Division 6.

## 8 **26 Subsection 51(6)**

9 Repeal the subsection, substitute:

10 (6) The notice must specify a reasonable period within which the  
11 information must be given.

12 (6A) The Secretary may, if requested to do so by the participant, vary a  
13 notice under subsection (5) by extending the period specified in the  
14 notice.

## 15 **27 Paragraph 51(7)(b)**

16 Repeal the paragraph, substitute:

17 (b) ending at:

18 (i) if the information requested in that notice was given  
19 within the period specified in that notice—the end of the  
20 period of 30 days beginning on the day on which the  
21 information requested in that notice was received by the  
22 Secretary; or

23 (ii) if the information requested in that notice was not given  
24 within the period specified in that notice—the end of  
25 that period.

## 26 **28 Subsection 52A(9)**

27 Repeal the subsection, substitute:

28 (9) The notice must specify a reasonable period within which the  
29 information must be given.



# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 (9A) The Secretary may, if requested to do so by the participant, vary a  
2 notice under subsection (8) by extending the period specified in the  
3 notice.

## 4 **29 Paragraph 52A(10)(b)**

5 Repeal the paragraph, substitute:

6 (b) ending at:

- 7 (i) if the information requested in that notice was given  
8 within the period specified in that notice—the end of the  
9 period of 30 days beginning on the day on which the  
10 information requested in that notice was received by the  
11 Secretary; or  
12 (ii) if the information requested in that notice was not given  
13 within the period specified in that notice—the end of  
14 that period.

## 15 **30 At the end of Division 5 of Part 3**

16 Add:

### 17 **59AA Reviewing maritime security plans**

18 If:

- 19 (a) a maritime security plan for a maritime industry participant is  
20 in force; and  
21 (b) the plan was not given to the participant under section 59A;  
22 the participant must review the plan on a regular basis.

23 Civil penalty: 200 penalty units.

## 24 **31 At the end of Part 3**

25 Add:

## 26 **Division 6—Maritime security plans given by the Secretary**

### 27 **59A Secretary may give participants a maritime security plan**

- 28 (1) The Secretary may, by written notice, give a maritime security plan  
29 to a maritime industry participant referred to in subsection 42(1).
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1 (2) The notice must set out, or be accompanied by writing that sets out,  
2 the maritime security plan for the participant.
- 3 (3) The Secretary may give a participant a maritime security plan  
4 under subsection (1) only if the Secretary is satisfied that it is  
5 appropriate to do so, taking into account existing circumstances as  
6 they relate to maritime security.

## 7 **59B Content of maritime security plans**

- 8 (1) A maritime security plan that is given to a maritime industry  
9 participant under section 59A must:  
10 (a) deal with any matter required to be dealt with in the maritime  
11 security plan by regulations made for the purposes of  
12 subsection (4); and  
13 (b) be appropriate for the operations or locations covered by the  
14 plan.
- 15 (2) A maritime security plan that is given to a maritime industry  
16 participant under section 59A may set out the security activities or  
17 measures to be undertaken or implemented by the participant under  
18 the plan for the purposes of safeguarding against unlawful  
19 interference with maritime transport or offshore facilities.
- 20 (3) A maritime security plan that is given to a maritime industry  
21 participant under section 59A may include a security assessment  
22 for the participant's operation.
- 23 (4) The regulations may prescribe other matters that are to be dealt  
24 with in one or more of the following:  
25 (a) each maritime security plan given under section 59A;  
26 (b) each maritime security plan for a particular kind of maritime  
27 industry participant given under section 59A;  
28 (c) each maritime security plan for a particular class of a  
29 particular kind of maritime industry participant given under  
30 section 59A.
- 31 (5) A maritime security plan that is given to a maritime industry  
32 participant under section 59A may:
-

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (a) set out the security activities or measures to be undertaken or  
2 implemented by the participant under the plan for maritime  
3 security levels 1, 2 and 3; and  
4 (b) designate, by name or by reference to a position, all security  
5 officers responsible for implementing and maintaining the  
6 plan; and  
7 (c) make provision for the use of declarations of security; and  
8 (d) demonstrate that the implementation of the plan will make an  
9 appropriate contribution towards the achievement of the  
10 maritime security outcomes.

## 11 **59C When a maritime security plan is in force**

12 *When maritime security plan comes into force*

- 13 (1) A maritime security plan given under section 59A comes into force  
14 at the time specified in the notice giving the maritime security plan.  
15 The time specified must not be earlier than the time the notice is  
16 given.

17 *Period in which maritime security plan remains in force*

- 18 (2) The maritime security plan remains in force until the earliest of the  
19 following times:  
20 (a) if the notice giving the maritime security plan specifies a  
21 time at which the maritime security plan ceases to be in  
22 force—that time;  
23 (b) if the maritime security plan is replaced under section 59E—  
24 the time of replacement;  
25 (c) if the maritime security plan is cancelled under section 59E  
26 or 59G—the time of cancellation.

## 27 **59D Relationship with Division 5**

28 If a maritime security plan given to a maritime industry participant  
29 under section 59A is in force, the participant must not give the  
30 Secretary another maritime security plan under Division 5 unless  
31 the Secretary has given the participant written permission to do so.

32 Note: The permission could be a permission under subsection 42(2).

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1 **59E Secretary may revise or cancel inadequate maritime security**  
2 **plan**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) a maritime security plan given to a maritime industry  
6 participant under section 59A (the *existing plan*) is in force;  
7 and
  - 8 (b) the Secretary is no longer satisfied that the existing plan is  
9 appropriate:
    - 10 (i) because there is a change in the circumstances that  
11 relate to maritime security; or
    - 12 (ii) because there is a change in circumstances that could  
13 impact on maritime security; or
    - 14 (iii) for some other reason.

15 *Revise or cancel*

- 16 (2) The Secretary may:
- 17 (a) give the participant another maritime security plan under  
18 section 59A (a *revised plan*); or
  - 19 (b) by written notice to the participant, cancel the existing plan.
- 20 (3) If the Secretary gives the participant a revised plan, the revised  
21 plan replaces the existing plan when it comes into force.

22 **59G Cancelling maritime security plans on request**

- 23 (1) A maritime industry participant may, in writing, request the  
24 Secretary to cancel a maritime security plan given to the participant  
25 under section 59A.
- 26 (2) The request must set out reasons for making the request.
- 27 (3) The Secretary may, by written notice given to the participant,  
28 cancel the maritime security plan if the Secretary is satisfied that it  
29 is appropriate to do so, taking into account existing circumstances  
30 as they relate to maritime security.
- 31 (4) If the Secretary is not so satisfied, the Secretary must:
-

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (a) refuse to cancel the maritime security plan; and  
2 (b) give the participant written notice of the refusal.

3 **32 Section 60 (after paragraph beginning “The approval”)**

4 Insert:

5 The Secretary may give a ship security plan to a ship operator for a  
6 regulated Australian ship. This is dealt with in Division 5A. That  
7 Division also deals with the content, revision and cancellation of  
8 such plans.

9 **33 Before section 66**

10 Insert:

11 **65A Application of this Division**

12 This Division applies to a ship security plan other than a ship  
13 security plan given by the Secretary under Division 5A.

14 **34 After paragraph 66(1)(a)**

15 Insert:

- 16 (aaa) set out how the ship operator for the ship will address the  
17 results of the security assessment included in the plan; and  
18 (aa) set out how the ship operator will respond to maritime  
19 security incidents that affect the ship; and

20 **35 Before section 69**

21 Insert:

22 **68A Application of this Division**

23 This Division applies to a ship security plan other than a ship  
24 security plan given by the Secretary under Division 5A.

25 **36 Subsection 70(6)**

26 Repeal the subsection, substitute:

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1 (6) The notice must specify a reasonable period within which the  
2 information must be given.

3 (6A) The Secretary may, if requested to do so by the ship operator, vary  
4 a notice under subsection (5) by extending the period specified in  
5 the notice.

## 6 **37 Paragraph 70(7)(b)**

7 Repeal the paragraph, substitute:

8 (b) ending at:

9 (i) if the information requested in that notice was given  
10 within the period specified in that notice—the end of the  
11 period of 30 days beginning on the day on which the  
12 information requested in that notice was received by the  
13 Secretary; or

14 (ii) if the information requested in that notice was not given  
15 within the period specified in that notice—the end of  
16 that period.

## 17 **38 Subsection 71A(8)**

18 Repeal the subsection, substitute:

19 (8) The notice must specify a reasonable period within which the  
20 information must be given.

21 (8A) The Secretary may, if requested to do so by the ship operator, vary  
22 a notice under subsection (7) by extending the period specified in  
23 the notice.

## 24 **39 Paragraph 71A(9)(b)**

25 Repeal the paragraph, substitute:

26 (b) ending at:

27 (i) if the information requested in that notice was given  
28 within the period specified in that notice—the end of the  
29 period of 30 days beginning on the day on which the  
30 information requested in that notice was received by the  
31 Secretary; or

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (ii) if the information requested in that notice was not given  
2 within the period specified in that notice—the end of  
3 that period.

## 4 **40 At the end of Division 5 of Part 4**

5 Add:

### 6 **78AA Reviewing ship security plans**

7 If:

- 8 (a) a ship security plan for a regulated Australian ship is in force;  
9 and  
10 (b) the plan was not given to the ship operator for the ship under  
11 section 78A;  
12 the ship operator must review the plan on a regular basis.

13 Civil penalty: 200 penalty units.

## 14 **41 After Division 5 of Part 4**

15 Insert:

### 16 **Division 5A—Ship security plans given by the Secretary**

#### 17 **78A Secretary may give ship operators a ship security plan**

- 18 (1) If a ship is a regulated Australian ship, the Secretary may, by  
19 written notice, give the ship operator for the ship a ship security  
20 plan for the ship.
- 21 (2) The notice must set out, or be accompanied by writing that sets out,  
22 the ship security plan for the ship operator.
- 23 (3) The Secretary may give a ship operator a ship security plan under  
24 subsection (1) only if the Secretary is satisfied that it is appropriate  
25 to do so, taking into account existing circumstances as they relate  
26 to maritime security.

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1 **78B Content of ship security plans**

- 2 (1) A ship security plan that is given to a ship operator under  
3 section 78A must:
- 4 (a) deal with any matter required to be dealt with in the ship  
5 security plan by regulations made for the purposes of  
6 subsection (3); and
- 7 (b) be appropriate for the operations or locations covered by the  
8 plan.
- 9 (1A) A ship security plan that is given to a ship operator under  
10 section 78A may set out the security activities or measures to be  
11 undertaken or implemented by the ship operator under the plan for  
12 the purposes of safeguarding against unlawful interference with  
13 maritime transport or offshore facilities.
- 14 (2) A ship security plan that is given to a ship operator under  
15 section 78A may include a security assessment for the ship  
16 concerned.
- 17 (3) The regulations may prescribe other matters that are to be dealt  
18 with in one or more of the following:
- 19 (a) each ship security plan given under section 78A;  
20 (b) each ship security plan for a particular kind of ship given  
21 under section 78A;  
22 (c) each ship security plan for a particular class of a particular  
23 kind of ship given under section 78A.
- 24 (4) A ship security plan that is given to a ship operator under  
25 section 78A may:
- 26 (a) set out the security activities or measures to be undertaken or  
27 implemented on, or in connection with, the ship for maritime  
28 security levels 1, 2 and 3; and
- 29 (b) designate, by name or by reference to a position, all security  
30 officers responsible for implementing and maintaining the  
31 plan; and
- 32 (c) make provision for the use of declarations of security; and  
33 (d) demonstrate that the implementation of the plan will make an  
34 appropriate contribution towards the achievement of the  
35 maritime security outcomes.
-



# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

## 78C When a ship security plan is in force

*When ship security plan comes into force*

- (1) A ship security plan given under section 78A comes into force at the time specified in the notice giving the ship security plan. The time specified must not be earlier than the time the notice is given.

*Period in which ship security plan remains in force*

- (2) The ship security plan remains in force until the earliest of the following times:
- (a) if the notice giving the ship security plan specifies a time at which the ship security plan ceases to be in force—that time;
  - (b) if the ship security plan is replaced under section 78D—the time of replacement;
  - (c) if the ship security plan is cancelled under section 78D or 78F—the time of cancellation.

## 78D Secretary may revise or cancel inadequate ship security plan

*Scope*

- (1) This section applies if:
- (a) a ship security plan given to a ship operator under section 78A (the *existing plan*) is in force; and
  - (b) the Secretary is no longer satisfied that the existing plan is appropriate:
    - (i) because there is a change in the circumstances that relate to maritime security; or
    - (ii) because there is a change in circumstances that could impact on maritime security; or
    - (iii) for some other reason.

*Revise or cancel*

- (2) The Secretary may:
- (a) give the ship operator another ship security plan under section 78A (a *revised plan*); or

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1 (b) by written notice to the ship operator, cancel the existing  
2 plan.

3 (3) If the Secretary gives the ship operator a revised plan, the revised  
4 plan replaces the existing plan when it comes into force.

## 5 **78F Cancelling ship security plans on request**

6 (1) A ship operator may, in writing, request the Secretary to cancel a  
7 ship security plan given to the ship operator under section 78A.

8 (2) The request must set out reasons for making the request.

9 (3) The Secretary may, by written notice given to the ship operator,  
10 cancel the ship security plan if the Secretary is satisfied that it is  
11 appropriate to do so, taking into account existing circumstances as  
12 they relate to maritime security.

13 (4) If the Secretary is not so satisfied, the Secretary must:

14 (a) refuse to cancel the ship security plan; and

15 (b) give the ship operator written notice of the refusal.

## 16 **42 At the end of section 100A**

17 Add:

18 

The Secretary may give an offshore security plan to an offshore 19 industry participant. This is dealt with in Division 6. That Division 20 also deals with the content, revision and cancellation of such plans.
---

## 21 **43 Before section 100G**

22 Insert:

## 23 **100FA Application of this Division**

24 This Division applies to an offshore security plan other than an  
25 offshore security plan given by the Secretary under Division 6.

## 26 **44 After paragraph 100G(1)(a)**

27 Insert:

---

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (aaa) set out how the participant will address the results of the  
2 security assessment included in the plan; and  
3 (aa) set out how the participant will respond to maritime security  
4 incidents; and

## 5 **45 Before section 100J**

6 Insert:

### 7 **100IA Application of this Division**

8 This Division applies to an offshore security plan other than an  
9 offshore security plan given by the Secretary under Division 6.

## 10 **46 Subsection 100K(6)**

11 Repeal the subsection, substitute:

- 12 (6) The notice must specify a reasonable period within which the  
13 information must be given.  
14 (6A) The Secretary may, if requested to do so by the participant, vary a  
15 notice under subsection (5) by extending the period specified in the  
16 notice.

## 17 **47 Paragraph 100K(7)(b)**

18 Repeal the paragraph, substitute:

- 19 (b) ending at:  
20 (i) if the information requested in that notice was given  
21 within the period specified in that notice—the end of the  
22 period of 30 days beginning on the day on which the  
23 information requested in that notice was received by the  
24 Secretary; or  
25 (ii) if the information requested in that notice was not given  
26 within the period specified in that notice—the end of  
27 that period.

## 28 **48 Subsection 100LA(9)**

29 Repeal the subsection, substitute:

- 30 (9) The notice must specify a reasonable period within which the  
31 information must be given.
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1 (9A) The Secretary may, if requested to do so by the participant, vary a  
2 notice under subsection (8) by extending the period specified in the  
3 notice.

## 4 **49 Paragraph 100LA(10)(b)**

5 Repeal the paragraph, substitute:

6 (b) ending at:

- 7 (i) if the information requested in that notice was given  
8 within the period specified in that notice—the end of the  
9 period of 30 days beginning on the day on which the  
10 information requested in that notice was received by the  
11 Secretary; or  
12 (ii) if the information requested in that notice was not given  
13 within the period specified in that notice—the end of  
14 that period.

## 15 **50 At the end of Division 5 of Part 5A**

16 Add:

### 17 **100TAA Reviewing offshore security plans**

18 If:

- 19 (a) an offshore security plan for an offshore industry participant  
20 is in force; and  
21 (b) the plan was not given to the participant under  
22 section 100TA;  
23 the participant must review the plan on a regular basis.

24 Civil penalty: 200 penalty units.

## 25 **51 At the end of Part 5A**

26 Add:

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 **Division 6—Offshore security plans given by the Secretary**

2 **100TA Secretary may give offshore industry participants an**  
3 **offshore security plan**

- 4 (1) The Secretary may, by written notice, give an offshore security  
5 plan to an offshore industry participant referred to in  
6 subsection 100B(1).
- 7 (2) The notice must set out, or be accompanied by writing that sets out,  
8 the offshore security plan for the offshore industry participant.
- 9 (3) The Secretary may give an offshore industry participant an  
10 offshore security plan under subsection (1) only if the Secretary is  
11 satisfied that it is appropriate to do so, taking into account existing  
12 circumstances as they relate to maritime security.

13 **100TB Content of offshore security plans**

- 14 (1) An offshore security plan that is given to an offshore industry  
15 participant under section 100TA must:
- 16 (a) deal with any matter required to be dealt with in the offshore  
17 security plan by regulations made for the purposes of  
18 subsection (3); and
- 19 (b) be appropriate for the operations or locations covered by the  
20 plan.
- 21 (1A) An offshore security plan that is given to an offshore industry  
22 participant under section 100TA may set out the security activities  
23 or measures to be undertaken or implemented by the participant  
24 under the plan for the purposes of safeguarding against unlawful  
25 interference with maritime transport or offshore facilities.
- 26 (2) An offshore security plan that is given to an offshore industry  
27 participant under section 100TA may include a security assessment  
28 for the offshore industry participant's operation.
- 29 (3) The regulations may prescribe other matters that are to be dealt  
30 with in one or more of the following:
- 31 (a) each offshore security plan given under section 100TA;

# EXPOSURE DRAFT

## Schedule 2 Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

### Part 1 General amendments

---

- 1 (b) each offshore security plan for a particular kind of offshore  
2 industry participant given under section 100TA;
- 3 (c) each offshore security plan for a particular class of a  
4 particular kind of offshore industry participant given under  
5 section 100TA.
- 6 (4) An offshore security plan that is given to an offshore industry  
7 participant under section 100TA may:
- 8 (a) set out the security activities or measures to be undertaken or  
9 implemented by the participant under the plan for maritime  
10 security levels 1, 2 and 3; and
- 11 (b) designate, by name or by reference to a position, all security  
12 officers responsible for implementing and maintaining the  
13 plan; and
- 14 (c) make provision for the use of declarations of security; and
- 15 (d) demonstrate that the implementation of the plan will make an  
16 appropriate contribution towards the achievement of  
17 maritime security outcomes; and
- 18 (e) complement, to the fullest extent possible, the occupational  
19 health and safety requirements under the laws of the  
20 Commonwealth, a State or Territory applying at the facility.

#### 21 **100TC When an offshore security plan is in force**

##### 22 *When offshore security plan comes into force*

- 23 (1) An offshore security plan given under section 100TA comes into  
24 force at the time specified in the notice giving the offshore security  
25 plan. The time specified must not be earlier than the time the notice  
26 is given.

##### 27 *Period in which offshore security plan remains in force*

- 28 (2) The offshore security plan remains in force until the earliest of the  
29 following times:
- 30 (a) if the notice giving the offshore security plan specifies a time  
31 at which the offshore security plan ceases to be in force—that  
32 time;
- 33 (b) if the offshore security plan is replaced under  
34 section 100TE—the time of replacement;

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (c) if the offshore security plan is cancelled under section 100TE  
2 or 100TG—the time of cancellation.

## 3 **100TD Relationship with Division 5**

4 If an offshore security plan given to an offshore industry  
5 participant under section 100TA is in force, the participant must  
6 not give the Secretary another offshore security plan under  
7 Division 5 unless the Secretary has given the participant written  
8 permission to do so.

9 Note: The permission could be a permission under subsection 100B(2).

## 10 **100TE Secretary may revise or cancel inadequate offshore security** 11 **plan**

12 *Scope*

- 13 (1) This section applies if:  
14 (a) an offshore security plan given to an offshore industry  
15 participant under section 100TA (the *existing plan*) is in  
16 force; and  
17 (b) the Secretary is no longer satisfied that the existing plan is  
18 appropriate:  
19 (i) because there is a change in the circumstances that  
20 relate to maritime security; or  
21 (ii) because there is a change in circumstances that could  
22 impact on maritime security; or  
23 (iii) for some other reason.

24 *Revise or cancel*

- 25 (2) The Secretary may:  
26 (a) give the offshore industry participant another offshore  
27 security plan under section 100TA (a *revised plan*); or  
28 (b) by written notice to the offshore industry participant, cancel  
29 the existing plan.
- 30 (3) If the Secretary gives the offshore industry participant a revised  
31 plan, the revised plan replaces the existing plan when it comes into  
32 force.
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1 **100TG Cancelling offshore security plans on request**

- 2 (1) An offshore industry participant may, in writing, request the  
3 Secretary to cancel an offshore security plan given to the offshore  
4 industry participant under section 100TA.
- 5 (2) The request must set out reasons for making the request.
- 6 (3) The Secretary may, by written notice given to the offshore industry  
7 participant, cancel the offshore security plan if the Secretary is  
8 satisfied that it is appropriate to do so, taking into account existing  
9 circumstances as they relate to offshore facility security.
- 10 (4) If the Secretary is not so satisfied, the Secretary must:  
11 (a) refuse to cancel the offshore security plan; and  
12 (b) give the offshore industry participant written notice of the  
13 refusal.

14 **52 At the end of subsection 139(2)**

15 Add:

- 16 ; (g) operate equipment on the ship for the purposes of testing the  
17 equipment;
- 18 (h) connect equipment to equipment on the ship for the purposes  
19 of testing the last-mentioned equipment;
- 20 (i) test a security system (including by using an item, test  
21 weapon or vehicle to test its detection) in a restricted access  
22 area of the ship, in accordance with any requirements  
23 prescribed in the regulations.

24 Note: A maritime security inspector must ensure that the exercise of the  
25 power under paragraph (i) does not seriously endanger the health  
26 or safety of any person, or the inspector will not be immune from  
27 civil or criminal liability (see subsection (4)).

28 **53 After subsection 139(2)**

29 Insert:

- 30 (2A) However, a power under paragraph (2)(i) must not be exercised  
31 unless regulations prescribing requirements for conducting tests of  
32 security systems have been made for the purposes of that paragraph  
33 and are in force.



# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (2B) For the purposes of paragraph (2)(f), it is immaterial whether a  
2 document in electronic form, or a record in electronic form, is held:  
3 (a) on a security regulated ship; or  
4 (b) at a place:  
5 (i) in Australia; or  
6 (ii) outside Australia.

7 (2C) Subsection (2B) is enacted for the avoidance of doubt.

## 8 **54 At the end of section 139**

9 Add:

10 *Power to test a security system—immunity*

- 11 (4) A maritime security inspector is not subject to any civil or criminal  
12 liability under a law of the Commonwealth, a State or a Territory  
13 in relation to the exercise of a power under paragraph (2)(i) to the  
14 extent that the exercise of the power:  
15 (a) is in good faith; and  
16 (b) does not seriously endanger the health or safety of any  
17 person; and  
18 (c) does not result in significant loss of, or serious damage to,  
19 property.

20 Note: A defendant bears an evidential burden in relation to the matter in this  
21 subsection for a criminal proceeding (see subsection 13.3(3) of the  
22 *Criminal Code*).

- 23 (5) A person who wishes to rely on subsection (4) in relation to a civil  
24 proceeding bears an evidential burden in relation to that matter.

## 25 **55 Paragraph 140(2)(a)**

26 Omit “inspection”, substitute “exercise of the power”.

## 27 **56 At the end of subsection 140A(2)**

28 Add:

- 29 ; (g) operate equipment on the facility for the purposes of testing  
30 the equipment;  
31 (h) connect equipment to equipment on the facility for the  
32 purposes of testing the last-mentioned equipment;
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1 (i) test a security system (including by using an item, test  
2 weapon or vehicle to test its detection) in a restricted access  
3 area on the facility, in accordance with any requirements  
4 prescribed in the regulations.

5 Note: A maritime security inspector must ensure that the exercise of the  
6 power under paragraph (i) does not seriously endanger the health  
7 or safety of any person, or the inspector will not be immune from  
8 civil or criminal liability (see subsection (5)).

## 57 After subsection 140A(2)

9 Insert:

10 (2A) However, a power under paragraph (2)(i) must not be exercised  
11 unless regulations prescribing requirements for conducting tests of  
12 security systems have been made for the purposes of that paragraph  
13 and are in force.  
14

15 (2B) For the purposes of paragraph (2)(f), it is immaterial whether a  
16 document in electronic form, or a record in electronic form, is held:

17 (a) on a security regulated offshore facility; or

18 (b) at a place:

19 (i) in Australia; or

20 (ii) outside Australia.

21 (2C) Subsection (2B) is enacted for the avoidance of doubt.

## 58 At the end of section 140A

22 Add:

23 *Power to test a security system—immunity*

24 (5) A maritime security inspector is not subject to any civil or criminal  
25 liability under a law of the Commonwealth, a State or a Territory  
26 in relation to the exercise of a power under paragraph (2)(i) to the  
27 extent that the exercise of the power:

28 (a) is in good faith; and

29 (b) does not seriously endanger the health or safety of any  
30 person; and

31 (c) does not result in significant loss of, or serious damage to,  
32 property.  
33

---

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 Note: A defendant bears an evidential burden in relation to the matter in this  
2 subsection for a criminal proceeding (see subsection 13.3(3) of the  
3 *Criminal Code*).

4 (6) A person who wishes to rely on subsection (5) in relation to a civil  
5 proceeding bears an evidential burden in relation to that matter.

## 6 59 Paragraph 140B(2)(a)

7 Omit “inspection”, substitute “exercise of the power”.

## 8 60 Paragraph 141(2)(f)

9 Omit “at a place”, substitute “in a place, vehicle or vessel”.

## 10 61 At the end of subsection 141(2)

11 Add:

12 ; (g) operate equipment in a place, vehicle or vessel mentioned in  
13 paragraph (a) for the purposes of testing the equipment;

14 (h) connect equipment to equipment in a place, vehicle or vessel  
15 mentioned in paragraph (a) for the purposes of testing the  
16 last-mentioned equipment;

17 (i) test a security system (including by using an item, test  
18 weapon or vehicle to test its detection) in a place, vehicle or  
19 vessel mentioned in paragraph (a), in accordance with any  
20 requirements prescribed in the regulations.

21 Note: A maritime security inspector must ensure that the exercise of the  
22 power under paragraph (i) does not seriously endanger the health  
23 or safety of any person, or the inspector will not be immune from  
24 civil or criminal liability (see subsection (4)).

## 25 62 After subsection 141(2)

26 Insert:

27 (2A) However, a power under paragraph (2)(i) must not be exercised  
28 unless regulations prescribing requirements for conducting tests of  
29 security systems have been made for the purposes of that paragraph  
30 and are in force.

31 (2B) For the purposes of paragraph (2)(f), it is immaterial whether a  
32 document in electronic form, or a record in electronic form, is held:

33 (a) at a place, vehicle or vessel mentioned in paragraph (2)(a); or

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1 (b) at another place:  
2 (i) in Australia; or  
3 (ii) outside Australia.

4 (2C) Subsection (2B) is enacted for the avoidance of doubt.

## 5 **63 At the end of section 141**

6 Add:

7 *Power to test a security system—immunity*

- 8 (4) A maritime security inspector is not subject to any civil or criminal  
9 liability under a law of the Commonwealth, a State or a Territory  
10 in relation to the exercise of a power under paragraph (2)(i) to the  
11 extent that the exercise of the power:  
12 (a) is in good faith; and  
13 (b) does not seriously endanger the health or safety of any  
14 person; and  
15 (c) does not result in significant loss of, or serious damage to,  
16 property.

17 Note: A defendant bears an evidential burden in relation to the matter in this  
18 subsection for a criminal proceeding (see subsection 13.3(3) of the  
19 *Criminal Code*).

- 20 (5) A person who wishes to rely on subsection (4) in relation to a civil  
21 proceeding bears an evidential burden in relation to that matter.

## 22 **64 At the end of Division 2 of Part 8**

23 Add:

### 24 **145BA Investigation powers**

25 *Provisions subject to investigation*

- 26 (1) A provision is subject to investigation under Part 3 of the  
27 *Regulatory Powers (Standard Provisions) Act 2014* if it is an  
28 offence against this Act.

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 *Authorised applicant*

2 (2) For the purposes of Part 3 of the *Regulatory Powers (Standard*  
3 *Provisions) Act 2014*, each of the following persons is an  
4 authorised applicant in relation to evidential material that relates to  
5 a provision mentioned in subsection (1):

- 6 (a) a maritime security inspector;  
7 (b) an SES employee, or an acting SES employee, in the  
8 Department.

9 Note: The expressions *SES employee* and *acting SES employee* are defined  
10 in section 2B of the *Acts Interpretation Act 1901*.

11 *Authorised person*

12 (3) For the purposes of Part 3 of the *Regulatory Powers (Standard*  
13 *Provisions) Act 2014*, a maritime security inspector is an  
14 authorised person in relation to evidential material that relates to a  
15 provision mentioned in subsection (1).

16 *Issuing officer*

17 (4) For the purposes of Part 3 of the *Regulatory Powers (Standard*  
18 *Provisions) Act 2014*, each of the following persons is an issuing  
19 officer in relation to evidential material that relates to a provision  
20 mentioned in subsection (1);

- 21 (a) a magistrate;  
22 (b) a judge of a court that is, for the purposes of that Part, a  
23 relevant court in relation to such evidential material.

24 Note: For *relevant court*, see subsection (9).

25 *Relevant chief executive*

26 (5) For the purposes of Part 3 of the *Regulatory Powers (Standard*  
27 *Provisions) Act 2014*, the Secretary is the relevant chief executive  
28 in relation to evidential material that relates to a provision  
29 mentioned in subsection (1).

30 (6) The relevant chief executive may, in writing, delegate the powers  
31 and functions mentioned in subsection (7) to a person who is an  
32 SES employee or an acting SES employee in the Department.

# EXPOSURE DRAFT

## Schedule 2 Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

### Part 1 General amendments

---

1 Note: The expressions *SES employee* and *acting SES employee* are defined  
2 in section 2B of the *Acts Interpretation Act 1901*.

3 (7) The powers and functions that may be delegated are:

4 (a) powers under Part 3 of the *Regulatory Powers (Standard*  
5 *Provisions) Act 2014* in relation to evidential material that  
6 relates to a provision mentioned in subsection (1); and

7 (b) powers and functions under the *Regulatory Powers*  
8 *(Standard Provisions) Act 2014* that are incidental to a power  
9 mentioned in paragraph (a).

10 (8) A person exercising powers or performing functions under a  
11 delegation under subsection (6) must comply with any directions of  
12 the relevant chief executive.

#### 13 *Relevant court*

14 (9) For the purposes of Part 3 of the *Regulatory Powers (Standard*  
15 *Provisions) Act 2014*, each of the following courts is a relevant  
16 court in relation to evidential material that relates to a provision  
17 mentioned in subsection (1):

18 (a) the Federal Court;

19 (b) the Federal Circuit and Family Court of Australia  
20 (Division 2);

21 (c) a court of a State or Territory that has jurisdiction in relation  
22 to matters arising under this Act.

#### 23 *Person assisting*

24 (10) An authorised person may be assisted by other persons in  
25 exercising powers, or performing functions or duties, under Part 3  
26 of the *Regulatory Powers (Standard Provisions) Act 2014* in  
27 relation to evidential material that relates to a provision mentioned  
28 in subsection (1), so long as those other persons have appropriate  
29 skills and expertise to assist the authorised person.

#### 30 *External Territories*

31 (11) Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*,  
32 as it applies in relation to the provisions mentioned in  
33 subsection (1), extends to every external Territory.

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 *Other powers not limited*

2 (12) This section does not, by implication, limit a power conferred by  
3 another provision of this Division.

## 4 **145BB Persons to assist maritime security inspectors**

5 *Scope*

6 (1) If a person is:  
7 (a) a maritime industry participant; or  
8 (b) an employee of a maritime industry participant;  
9 a maritime security inspector may, by written notice given to the  
10 person, require the person to provide the inspector with specified  
11 assistance that is reasonably necessary to allow the inspector to  
12 exercise powers conferred on the inspector by this Act.

13 *Compliance with notice*

14 (2) A person must comply with a notice under subsection (1).

15 Civil penalty: 150 penalty units.

16 *Liability*

17 (3) A person is not liable to an action or other proceeding for damages  
18 for, or in relation to, an act done or omitted in good faith in  
19 compliance with a notice under subsection (1).

20 (4) An officer, employee or agent of a person is not liable to an action  
21 or other proceeding for damages for, or in relation to, an act done  
22 or omitted in good faith in connection with an act done or omitted  
23 by the person as mentioned in subsection (3).

## 24 **145BC Information gathering direction**

25 *Direction*

26 (1) If:  
27 (a) a person is:  
28 (i) a maritime industry participant; or

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1 (ii) an employee of a maritime industry participant; and  
2 (b) a maritime security inspector has reason to believe that the  
3 person has, or is capable of obtaining, information that is  
4 reasonably necessary to allow the inspector to exercise  
5 powers conferred on the inspector by this Act;  
6 the maritime security inspector may, by written notice given to the  
7 person, direct the person to:  
8 (c) give any such information to the maritime security inspector;  
9 and  
10 (d) do so within the period, and in the manner, specified in the  
11 direction.

## 12 *Offence*

- 13 (2) A person commits an offence if:  
14 (a) the person is given a notice under subsection (1); and  
15 (b) the person engages in conduct; and  
16 (c) the person's conduct breaches the notice.

17 Penalty: 45 penalty units.

- 18 (3) Subsection (2) is an offence of strict liability.

## 19 *Other powers not limited*

- 20 (4) This section does not, by implication, limit a power conferred by  
21 another provision of this Act.

## 22 **145BD Self-incrimination**

- 23 (1) An individual is not excused from giving information under  
24 section 145BC on the ground that giving the information might  
25 tend to incriminate the individual in relation to an offence.

26 Note: A body corporate is not entitled to claim the privilege against  
27 self-incrimination.

- 28 (2) However:  
29 (a) the information given; or  
30 (b) giving the information; or



# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (c) any information, document or thing obtained as a direct or  
2 indirect consequence of giving the information;  
3 is not admissible in evidence against the individual:  
4 (d) in civil proceedings for the recovery of a penalty; or  
5 (e) in criminal proceedings (other than proceedings for an  
6 offence against section 137.1 or 137.2 of the *Criminal Code*  
7 that relates to giving the information).

- 8 (3) If, at general law, an individual would otherwise be able to claim  
9 the privilege against self-exposure to a penalty (other than a  
10 penalty for an offence) in relation to giving information under  
11 section 145BC, the individual is not excused from giving  
12 information or producing a document under that section on that  
13 ground.

14 Note: A body corporate is not entitled to claim the privilege against  
15 self-exposure to a penalty.

## 16 145BE Persons assisting maritime security inspectors

17 *Maritime security inspectors may be assisted by other persons*

- 18 (1) A maritime security inspector may be assisted by other persons in  
19 exercising powers under section 138, 139, 140A or 141, so long as  
20 those other persons have appropriate skills and expertise to assist  
21 the maritime security inspector.
- 22 (2) A person giving such assistance is a **person assisting** the maritime  
23 security inspector.

24 *Powers of a person assisting*

- 25 (3) A person assisting the maritime security inspector:  
26 (a) may exercise any of the powers conferred on the maritime  
27 security inspector under section 138, 139, 140A or 141, as  
28 the case requires; and  
29 (b) must do so in accordance with a direction given to the person  
30 assisting by the maritime security inspector.
- 31 (4) A power exercised by a person assisting the maritime security  
32 inspector as mentioned in subsection (3) is taken for all purposes to  
33 have been exercised by the maritime security inspector.
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1 (5) If a direction is given under paragraph (3)(b) in writing, the  
2 direction is not a legislative instrument.

## 65 At the end of subsection 148(2)

- 3 Add:  
4 ; (e) operate equipment in the operational area of a security  
5 regulated ship for the purposes of testing the equipment;  
6 (f) connect equipment to equipment in the operational area of a  
7 security regulated ship for the purposes of testing the  
8 last-mentioned equipment.  
9

## 66 After subsection 148(2)

- 10 Insert:  
11 (2A) For the purposes of paragraph (2)(d), it is immaterial whether a  
12 document in electronic form, or a record in electronic form, is held:  
13 (a) on a security regulated ship; or  
14 (b) at a place:  
15 (i) in Australia; or  
16 (ii) outside Australia.  
17 (2B) Subsection (2A) is enacted for the avoidance of doubt.  
18

## 67 At the end of subsection 148A(2)

- 19 Add:  
20 ; (f) operate equipment in the operational area of a security  
21 regulated offshore facility for the purposes of testing the  
22 equipment;  
23 (g) connect equipment to equipment in the operational area of a  
24 security regulated offshore facility for the purposes of testing  
25 the last-mentioned equipment.  
26

## 68 After subsection 148A(2)

- 27 Insert:  
28 (2A) For the purposes of paragraph (2)(e), it is immaterial whether a  
29 document in electronic form, or a record in electronic form, is held:  
30 (a) on a security regulated offshore facility; or  
31
-

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (b) at a place:  
2 (i) in Australia; or  
3 (ii) outside Australia.

4 (2B) Subsection (2A) is enacted for the avoidance of doubt.

## 5 **69 Section 170**

6 Repeal the section, substitute:

### 7 **170 Meaning of maritime transport or offshore facility security** 8 **incident**

9 Each of the following is a *maritime transport or offshore facility*  
10 *security incident*:

- 11 (a) a threat of unlawful interference with maritime transport or  
12 offshore facilities;  
13 (b) an unlawful interference with maritime transport or offshore  
14 facilities.

## 15 **70 Paragraph 171(1)(a)**

16 After “maritime transport or offshore facility security incident”, insert  
17 “(other than a cyber security incident)”.

## 18 **71 At the end of section 171**

19 Add:

20 *Cyber security incidents*

- 21 (4) If a port operator becomes aware of a maritime transport or  
22 offshore facility security incident that is a cyber security incident,  
23 the port operator must:  
24 (a) report the incident to:  
25 (i) the Secretary; and  
26 (ii) the Australian Signals Directorate; and  
27 (b) do so as soon as possible.

28 Civil penalty: 50 penalty units.

# EXPOSURE DRAFT

## Schedule 2 Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

### Part 1 General amendments

---

1 (5) Subsection (4) does not apply in relation to a report that must be  
2 made to a particular person or body if:

- 3 (a) the port operator believes, on reasonable grounds, that the  
4 person or body is already aware of the incident; or  
5 (b) the port operator has a reasonable excuse.

6 Note: A defendant bears an evidential burden in relation to the matters in  
7 subsection (5) (see section 96 of the *Regulatory Powers (Standard*  
8 *Provisions) Act 2014*).

### 9 **72 Paragraph 172(1)(a)**

10 After “maritime transport or offshore facility security incident”, insert  
11 “(other than a cyber security incident)”.

### 12 **73 At the end of section 172**

13 Add:

14 *Cyber security incidents*

- 15 (4) If the master of:  
16 (a) a security regulated ship; or  
17 (b) a ship regulated as an offshore facility;  
18 becomes aware of a maritime transport or offshore facility security  
19 incident that is a cyber security incident, the master must:  
20 (c) report the incident to:  
21 (i) the Secretary; and  
22 (ii) the Australian Signals Directorate; and  
23 (d) do so as soon as possible.

24 Civil penalty: 50 penalty units.

- 25 (5) Subsection (4) does not apply in relation to a report that must be  
26 made to a particular person or body if:  
27 (a) the master believes, on reasonable grounds, that the person or  
28 body is already aware of the incident; or  
29 (b) the master has a reasonable excuse.

30 Note: A defendant bears an evidential burden in relation to the matters in  
31 subsection (5) (see section 96 of the *Regulatory Powers (Standard*  
32 *Provisions) Act 2014*).

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 **74 Paragraph 173(1)(a)**

2 After “maritime transport or offshore facility security incident”, insert  
3 “(other than a cyber security incident)”.

4 **75 At the end of section 173**

5 Add:

6 *Cyber security incidents*

7 (4) If a ship operator for a security regulated ship becomes aware of a  
8 maritime transport or offshore facility security incident that is a  
9 cyber security incident, the ship operator must:

- 10 (a) report the incident to:  
11 (i) the Secretary; and  
12 (ii) the Australian Signals Directorate; and  
13 (b) do so as soon as possible.

14 Civil penalty: 50 penalty units.

15 (5) Subsection (4) does not apply in relation to a report that must be  
16 made to a particular person or body if:

- 17 (a) the ship operator believes, on reasonable grounds, that the  
18 person or body is already aware of the incident; or  
19 (b) the ship operator has a reasonable excuse.

20 Note: A defendant bears an evidential burden in relation to the matters in  
21 subsection (5) (see section 96 of the *Regulatory Powers (Standard*  
22 *Provisions) Act 2014*).

23 **76 Paragraph 174(1)(a)**

24 After “maritime transport or offshore facility security incident”, insert  
25 “(other than a cyber security incident)”.

26 **77 At the end of section 174**

27 Add:

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1

## *Cyber security incidents*

2

(4) If a port facility operator becomes aware of a maritime transport or offshore facility security incident that is a cyber security incident, the port facility operator must:

3

4

5

(a) report the incident to:

6

(i) the Secretary; and

7

(ii) the Australian Signals Directorate; and

8

(b) do so as soon as possible.

9

Civil penalty: 50 penalty units.

10

(5) Subsection (4) does not apply in relation to a report that must be made to a particular person or body if:

11

12

(a) the port facility operator believes, on reasonable grounds, that the person or body is already aware of the incident; or

13

14

(b) the port facility operator has a reasonable excuse.

15

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see section 96 of the *Regulatory Powers (Standard Provisions) Act 2014*).

16

17

18

## **78 Paragraph 174A(1)(a)**

19

After “maritime transport or offshore facility security incident”, insert “(other than a cyber security incident)”.

20

21

## **79 At the end of section 174A**

22

Add:

23

## *Cyber security incidents*

24

(4) If an offshore facility operator becomes aware of a maritime transport or offshore facility security incident that is a cyber security incident, the offshore facility operator must:

25

26

27

(a) report the incident to:

28

(i) the Secretary; and

29

(ii) the Australian Signals Directorate; and

30

(b) do so as soon as possible.

31

Civil penalty: 50 penalty units.

---

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 (5) Subsection (4) does not apply in relation to a report that must be  
2 made to a particular person or body if:

3 (a) the offshore facility operator believes, on reasonable  
4 grounds, that the person or body is already aware of the  
5 incident; or

6 (b) the offshore facility operator has a reasonable excuse.

7 Note: A defendant bears an evidential burden in relation to the matters in  
8 subsection (5) (see section 96 of the *Regulatory Powers (Standard*  
9 *Provisions) Act 2014*).

## 10 80 Paragraph 175(1)(a)

11 After “maritime transport or offshore facility security incident”, insert  
12 “(other than a cyber security incident)”.

## 13 81 After subsection 175(3)

14 Insert:

15 *Cyber security incidents*

16 (3A) If a person with incident reporting responsibilities becomes aware  
17 of a maritime transport or offshore facility security incident that is  
18 a cyber security incident, the person must:

19 (a) report the incident to:

20 (i) the Secretary; and

21 (ii) the Australian Signals Directorate; and

22 (b) do so as soon as possible.

23 Civil penalty: 50 penalty units.

24 (3B) Subsection (3A) does not apply in relation to a report that must be  
25 made to a particular person or body (the *person or body to be*  
26 *notified*) if:

27 (a) the person with incident reporting responsibilities believes,  
28 on reasonable grounds, that the person or body to be notified  
29 is already aware of the incident; or

30 (b) the person with incident reporting responsibilities has a  
31 reasonable excuse.

32 Note: A defendant bears an evidential burden in relation to the matters in  
33 subsection (3B) (see section 96 of the *Regulatory Powers (Standard*  
34 *Provisions) Act 2014*).

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1 **82 Paragraph 176(1)(a)**

2 After “maritime transport or offshore facility security incident”, insert  
3 “(other than a cyber security incident)”.

4 **83 At the end of section 176**

5 Add:

6 *Cyber security incidents*

7 (4) If an employee of a maritime industry participant becomes aware  
8 of a maritime transport or offshore facility security incident that is  
9 a cyber security incident, the employee must:

- 10 (a) report the incident to:  
11 (i) the Secretary; and  
12 (ii) the Australian Signals Directorate; and  
13 (b) do so as soon as possible.

14 Civil penalty: 50 penalty units.

15 (5) Subsection (4) does not apply in relation to a report that must be  
16 made to a particular person or body if:

- 17 (a) the employee believes, on reasonable grounds, that the  
18 person or body is already aware of the incident; or  
19 (b) the employee has a reasonable excuse.

20 Note: A defendant bears an evidential burden in relation to the matters in  
21 subsection (5) (see section 96 of the *Regulatory Powers (Standard*  
22 *Provisions) Act 2014*).

23 **84 Subsection 177(1)**

24 After “maritime transport or offshore facility security incidents”, insert  
25 “(other than cyber security incidents)”.

26 **85 Subsection 178(1)**

27 After “maritime transport or offshore facility security incidents”, insert  
28 “(other than cyber security incidents)”.

29 **86 Subsection 179(1)**

30 After “maritime transport or offshore facility security incidents”, insert  
31 “(other than cyber security incidents)”.

---



# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 **87 Subsection 179A(1)**

2 After “maritime transport or offshore facility security incidents”, insert  
3 “(other than cyber security incidents)”.

4 **88 Subsection 180(1)**

5 After “maritime transport or offshore facility security incidents”, insert  
6 “(other than cyber security incidents)”.

7 **89 Subsection 181(1)**

8 After “maritime transport or offshore facility security incidents”, insert  
9 “(other than cyber security incidents)”.

10 **90 After Part 9**

11 Insert:

12 **Part 9A—Reports by maritime industry**  
13 **participants, ship operators and offshore**  
14 **industry participants**  
15

16 **182A Simplified outline of this Part**

17 Certain maritime industry participants, ship operators and offshore  
18 industry participants are required to submit periodic reports.

19 If a maritime industry participant has been given a maritime  
20 security plan, the Secretary may require the participant to submit a  
21 report.

22 If a ship operator for a regulated Australian ship has been given a  
23 ship security plan, the Secretary may require the ship operator to  
24 submit a report.

25 If an offshore industry participant has been given an offshore  
26 security plan, the Secretary may require the participant to submit a  
27 report.

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1 **182B Certain maritime industry participants must submit periodic**  
2 **reports**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) a maritime security plan was, or is, in force for a maritime  
6 industry participant; and
  - 7 (b) an applicable reporting period for the maritime security plan  
8 has ended; and
  - 9 (c) the maritime security plan was not given to the participant  
10 under section 59A; and
  - 11 (d) the maritime security plan included, or includes, a security  
12 assessment; and
  - 13 (e) the participant is included in a class of maritime industry  
14 participants specified in the regulations.

15 *Periodic report*

- 16 (2) The participant must, within 90 days after the end of the applicable  
17 reporting period, give the Secretary a report that:
- 18 (a) relates to the applicable reporting period; and
  - 19 (b) sets out such matters (if any) as are specified in the  
20 regulations; and
  - 21 (c) if the participant has a board, council or other governing  
22 body—includes whichever of the following statements is  
23 applicable:
    - 24 (i) if the maritime security plan was up to date immediately  
25 before the end of the applicable reporting period—a  
26 statement by the board, council or other governing body  
27 to that effect;
    - 28 (ii) if the maritime security plan was not up to date  
29 immediately before the end of the applicable reporting  
30 period—a statement by the board, council or other  
31 governing body to that effect; and
  - 32 (d) if the participant has a board, council or other governing  
33 body—includes whichever of the following statements is  
34 applicable:

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (i) if the maritime security plan adequately addressed the  
2 relevant requirements under Division 4 of Part 3 at the  
3 end of the applicable reporting period—a statement by  
4 the board, council or other governing body to that  
5 effect;
- 6 (ii) if the maritime security plan did not adequately address  
7 the relevant requirements under Division 4 of Part 3 at  
8 the end of the applicable reporting period—a statement  
9 by the board, council or other governing body to that  
10 effect; and
- 11 (e) is in the form approved, in writing, by the Secretary.
- 12 Civil penalty: 150 penalty units.
- 13 (3) A matter must not be specified in regulations made for the  
14 purposes of paragraph (2)(b) unless the matter relates to:
- 15 (a) unlawful interference with maritime transport or offshore  
16 facilities; or
- 17 (b) safeguarding against unlawful interference with maritime  
18 transport or offshore facilities.
- 19 (4) A report given by a person under subsection (2) is not admissible  
20 in evidence against the person in:
- 21 (a) criminal proceedings for an offence against this Act; or  
22 (b) civil proceedings relating to a contravention of a civil penalty  
23 provision of this Act (other than this section).
- 24 *Applicable reporting period for a maritime security plan*
- 25 (5) For the purposes of this section, an ***applicable reporting period for***  
26 ***a maritime security plan*** is:
- 27 (a) if the maritime security plan has been in force for at least 30  
28 months:
- 29 (i) the 30-month period that began when the plan came into  
30 force; or
- 31 (ii) the remainder of the period for which the plan was in  
32 force; or
- 33 (b) in any other case—the period when the maritime security  
34 plan was in force.
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1                   (6) However, an *applicable reporting period for a maritime security*  
2                   *plan* does not include a day that occurred before the  
3                   commencement of this section.

## 4                   **182C Certain ship operators must submit periodic reports**

### 5                   *Scope*

- 6                   (1) This section applies if:  
7                   (a) a ship security plan was, or is, in force for a ship operator for  
8                   a regulated Australian ship; and  
9                   (b) an applicable reporting period for the ship security plan has  
10                  ended; and  
11                  (c) the ship security plan was not given to the ship operator  
12                  under section 78A; and  
13                  (d) the ship security plan included, or includes, a security  
14                  assessment; and  
15                  (e) the ship operator is included in a class of ship operators  
16                  specified in the regulations.

### 17                  *Periodic report*

- 18                  (2) The ship operator must, within 90 days after the end of the  
19                  applicable reporting period, give the Secretary a report that:  
20                  (a) relates to the applicable reporting period; and  
21                  (b) sets out such matters (if any) as are specified in the  
22                  regulations; and  
23                  (c) if the ship operator has a board, council or other governing  
24                  body—includes whichever of the following statements is  
25                  applicable:  
26                          (i) if the ship security plan was up to date immediately  
27                          before the end of the applicable reporting period—a  
28                          statement by the board, council or other governing body  
29                          to that effect;  
30                          (ii) if the ship security plan was not up to date immediately  
31                          before the end of the applicable reporting period—a  
32                          statement by the board, council or other governing body  
33                          to that effect; and

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (d) if the ship operator has a board, council or other governing  
2 body—includes whichever of the following statements is  
3 applicable:  
4 (i) if the ship security plan adequately addressed the  
5 relevant requirements under Division 4 of Part 4 at the  
6 end of the applicable reporting period—a statement by  
7 the board, council or other governing body to that  
8 effect;  
9 (ii) if the ship security plan did not adequately address the  
10 relevant requirements under Division 4 of Part 4 at the  
11 end of the applicable reporting period—a statement by  
12 the board, council or other governing body to that  
13 effect; and  
14 (e) is in the form approved, in writing, by the Secretary.
- 15 Civil penalty: 150 penalty units.
- 16 (3) A matter must not be specified in regulations made for the  
17 purposes of paragraph (2)(b) unless the matter relates to:  
18 (a) unlawful interference with maritime transport or offshore  
19 facilities; or  
20 (b) safeguarding against unlawful interference with maritime  
21 transport or offshore facilities.
- 22 (4) A report given by a person under subsection (2) is not admissible  
23 in evidence against the person in:  
24 (a) criminal proceedings for an offence against this Act; or  
25 (b) civil proceedings relating to a contravention of a civil penalty  
26 provision of this Act (other than this section).
- 27 *Applicable reporting period for a ship security plan*
- 28 (5) For the purposes of this section, an ***applicable reporting period for***  
29 ***a ship security plan*** is:  
30 (a) if the ship security plan has been in force for at least 30  
31 months:  
32 (i) the 30-month period that began when the plan came into  
33 force; or  
34 (ii) the remainder of the period for which the plan was in  
35 force; or
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1 (b) in any other case—the period when the ship security plan  
2 was in force.

3 (6) However, an *applicable reporting period for a ship security plan*  
4 does not include a day that occurred before the commencement of  
5 this section.

## 6 **182D Certain offshore industry participants must submit periodic** 7 **reports**

### 8 *Scope*

- 9 (1) This section applies if:
- 10 (a) an offshore security plan was, or is, in force for an offshore  
11 industry participant; and
  - 12 (b) an applicable reporting period for the offshore security plan  
13 has ended; and
  - 14 (c) the offshore security plan was not given to the participant  
15 under section 100TA; and
  - 16 (d) the offshore security plan included, or includes, a security  
17 assessment; and
  - 18 (e) the participant is included in a class of offshore industry  
19 participants specified in the regulations.

### 20 *Periodic report*

- 21 (2) The participant must, within 90 days after the end of the applicable  
22 reporting period, give the Secretary a report that:
- 23 (a) relates to the applicable reporting period; and
  - 24 (b) sets out such matters (if any) as are specified in the  
25 regulations; and
  - 26 (c) if the participant has a board, council or other governing  
27 body—includes whichever of the following statements is  
28 applicable:
    - 29 (i) if the offshore security plan was up to date immediately  
30 before the end of the applicable reporting period—a  
31 statement by the board, council or other governing body  
32 to that effect;

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (ii) if the offshore security plan was not up to date  
2 immediately before the end of the applicable reporting  
3 period—a statement by the board, council or other  
4 governing body to that effect; and
- 5 (d) if the participant has a board, council or other governing  
6 body—includes whichever of the following statements is  
7 applicable:
- 8 (i) if the offshore security plan adequately addressed the  
9 relevant requirements under Division 4 of Part 5A at the  
10 end of the applicable reporting period—a statement by  
11 the board, council or other governing body to that  
12 effect;
- 13 (ii) if the offshore security plan did not adequately address  
14 the relevant requirements under Division 4 of Part 5A at  
15 the end of the applicable reporting period—a statement  
16 by the board, council or other governing body to that  
17 effect; and
- 18 (e) is in the form approved, in writing, by the Secretary.
- 19 Civil penalty: 150 penalty units.
- 20 (3) A matter must not be specified in regulations made for the  
21 purposes of paragraph (2)(b) unless the matter relates to:
- 22 (a) unlawful interference with maritime transport or offshore  
23 facilities; or
- 24 (b) safeguarding against unlawful interference with maritime  
25 transport or offshore facilities.
- 26 (4) A report given by a person under subsection (2) is not admissible  
27 in evidence against the person in:
- 28 (a) criminal proceedings for an offence against this Act; or  
29 (b) civil proceedings relating to a contravention of a civil penalty  
30 provision of this Act (other than this section).

31 *Applicable reporting period for a maritime security plan*

- 32 (5) For the purposes of this section, an ***applicable reporting period for***  
33 ***an offshore security plan*** is:
- 34 (a) if the offshore security plan has been in force for at least 30  
35 months:

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1 (i) the 30-month period that began when the plan came into  
2 force; or  
3 (ii) the remainder of the period for which the plan was in  
4 force; or  
5 (b) in any other case—the period when the offshore security plan  
6 was in force.
- 7 (6) However, an *applicable reporting period for an offshore security*  
8 *plan* does not include a day that occurred before the  
9 commencement of this section.

## 10 **182E Secretary may require a maritime industry participant to** 11 **submit report**

### 12 *Scope*

- 13 (1) This section applies if:  
14 (a) a maritime security plan was, or is, in force for a maritime  
15 industry participant; and  
16 (b) the maritime security plan was given to the participant under  
17 section 59A.

### 18 *Notice*

- 19 (2) The Secretary may, by written notice given to the participant,  
20 require the participant to:  
21 (a) give the Secretary a report that:  
22 (i) relates to the period specified in the notice; and  
23 (ii) sets out such matters (if any) as are specified in the  
24 regulations; and  
25 (iii) is in the form approved, in writing, by the Secretary;  
26 and  
27 (b) do so within 90 days after the notice is given.
- 28 (3) The period specified in the notice:  
29 (a) must consist of, or be included in, the period for which the  
30 maritime security plan was, or is, in force; and  
31 (b) must end before the notice is given; and  
32 (c) must begin after the commencement of this section.



# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (4) A matter must not be specified in regulations made for the  
2 purposes of subparagraph (2)(a)(ii) unless the matter relates to:  
3 (a) unlawful interference with maritime transport or offshore  
4 facilities; or  
5 (b) safeguarding against unlawful interference with maritime  
6 transport or offshore facilities.

7 *Compliance*

- 8 (5) A person must comply with a notice under subsection (2).

9 Civil penalty: 150 penalty units.

- 10 (6) A report given by a person in compliance with a notice under  
11 subsection (2) is not admissible in evidence against the person in:  
12 (a) criminal proceedings for an offence against this Act; or  
13 (b) civil proceedings relating to a contravention of a civil penalty  
14 provision of this Act (other than this section).

15 **182F Secretary may require a ship operator to submit report**

16 *Scope*

- 17 (1) This section applies if:  
18 (a) a ship security plan was, or is, in force for a ship operator for  
19 a regulated Australian ship; and  
20 (b) the ship security plan was given to the ship operator under  
21 section 78A.

22 *Notice*

- 23 (2) The Secretary may, by written notice given to the ship operator,  
24 require the ship operator to:  
25 (a) give the Secretary a report that:  
26 (i) relates to the period specified in the notice; and  
27 (ii) sets out such matters (if any) as are specified in the  
28 regulations; and  
29 (iii) is in the form approved, in writing, by the Secretary;  
30 and  
31 (b) do so within 90 days after the notice is given.
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1 (3) The period specified in the notice:  
2 (a) must consist of, or be included in, the period for which the  
3 ship security plan was, or is, in force; and  
4 (b) must end before the notice is given; and  
5 (c) must begin after the commencement of this section.
- 6 (4) A matter must not be specified in regulations made for the  
7 purposes of subparagraph (2)(a)(ii) unless the matter relates to:  
8 (a) unlawful interference with maritime transport or offshore  
9 facilities; or  
10 (b) safeguarding against unlawful interference with maritime  
11 transport or offshore facilities.
- 12 *Compliance*
- 13 (5) A person must comply with a notice under subsection (2).  
14 Civil penalty: 150 penalty units.
- 15 (6) A report given by a person in compliance with a notice under  
16 subsection (2) is not admissible in evidence against the person in:  
17 (a) criminal proceedings for an offence against this Act; or  
18 (b) civil proceedings relating to a contravention of a civil penalty  
19 provision of this Act (other than this section).

## 20 **182G Secretary may require an offshore industry participant to** 21 **submit report**

### 22 *Scope*

- 23 (1) This section applies if:  
24 (a) an offshore security plan was, or is, in force for an offshore  
25 industry participant; and  
26 (b) the offshore security plan was given to the participant under  
27 section 100TA.

### 28 *Notice*

- 29 (2) The Secretary may, by written notice given to the participant,  
30 require the participant to:
-

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Schedule 2**

General amendments **Part 1**

---

- 1 (a) give the Secretary a report that:  
2 (i) relates to the period specified in the notice; and  
3 (ii) sets out such matters (if any) as are specified in the  
4 regulations; and  
5 (iii) is in the form approved, in writing, by the Secretary;  
6 and  
7 (b) do so within 90 days after the notice is given.
- 8 (3) The period specified in the notice:  
9 (a) must consist of, or be included in, the period for which the  
10 offshore security plan was, or is, in force; and  
11 (b) must end before the notice is given; and  
12 (c) must begin after the commencement of this section.
- 13 (4) A matter must not be specified in regulations made for the  
14 purposes of subparagraph (2)(a)(ii) unless the matter relates to:  
15 (a) unlawful interference with maritime transport or offshore  
16 facilities; or  
17 (b) safeguarding against unlawful interference with maritime  
18 transport or offshore facilities.

## 19 *Compliance*

- 20 (5) A person must comply with a notice under subsection (2).  
21 Civil penalty: 150 penalty units.
- 22 (6) A report given by a person in compliance with a notice under  
23 subsection (2) is not admissible in evidence against the person in:  
24 (a) criminal proceedings for an offence against this Act; or  
25 (b) civil proceedings relating to a contravention of a civil penalty  
26 provision of this Act (other than this section).

## 27 **91 Subsection 184(2)**

28 After “has”, insert “, or is capable of obtaining.”.

## 29 **92 After Part 10**

30 Insert:

---

# EXPOSURE DRAFT

Schedule 2 Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Part 1 General amendments

---

1 **Part 10A—Use and disclosure of protected**  
2 **information**

3 **Division 1—Simplified outline of this Part**

4 **185A Simplified outline of this Part**

5 

<p>6 The making of a record, or the use or disclosure, of protected 7 information is authorised in particular circumstances but is otherwise an offence.</p>
--

8 **Division 2—Authorised use and disclosure**

9 **185B Authorised use and disclosure—performing functions etc.**

10 (1) A person may make a record of, use or disclose protected  
11 information if the person makes the record, or uses or discloses the  
12 information, for the purposes of:

- 13 (a) exercising the person's powers, or performing the person's  
14 functions or duties, under this Act; or  
15 (b) otherwise ensuring compliance with a provision of this Act.

16 Note: This subsection is an authorisation for the purposes of other laws,  
17 including the Australian Privacy Principles.

18 (2) A person may make a record of, use or disclose protected  
19 information if the person makes the record, or uses or discloses the  
20 information, for purposes in connection with the administration or  
21 execution of this Act.

22 Note: This subsection is an authorisation for the purposes of other laws,  
23 including the Australian Privacy Principles.

24 **185C Authorised use and disclosure—other person's functions etc.**

- 25 (1) The Secretary may:  
26 (a) disclose protected information to a person mentioned in  
27 subsection (2); and  
28 (b) make a record of or use protected information for the purpose  
29 of that disclosure;
-

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Schedule 2**

General amendments **Part 1**

---

1 for the purposes of enabling or assisting the person to exercise the  
2 person's powers or perform the person's functions or duties.

3 Note: This subsection is an authorisation for the purposes of other laws,  
4 including the Australian Privacy Principles.

5 (2) The persons to whom the Secretary may disclose protected  
6 information are the following:

7 (a) a Minister of the Commonwealth who has responsibility for  
8 any of the following:

- 9 (i) national security;  
10 (ii) law enforcement;  
11 (iii) foreign investment in Australia;  
12 (iv) taxation policy;  
13 (v) industry policy;  
14 (vi) promoting investment in Australia;  
15 (vii) defence;  
16 (viii) customs;  
17 (ix) immigration;  
18 (x) transport;  
19 (xi) health;  
20 (xii) biosecurity;  
21 (xiii) emergency management;  
22 (xiv) the regulation or oversight of maritime safety;  
23 (xv) the regulation or oversight of safety in relation to  
24 offshore facilities;  
25 (xvi) a matter specified in an instrument made under  
26 subsection (3);

27 (b) a Minister of a State, the Australian Capital Territory, or the  
28 Northern Territory, who has responsibility for any of the  
29 following:

- 30 (i) emergency management;  
31 (ii) transport;  
32 (iii) health;  
33 (iv) law enforcement;  
34 (v) a matter specified in an instrument made under  
35 subsection (4);
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1 (c) a person employed as a member of staff of a Minister  
2 mentioned in paragraph (a) or (b);  
3 (d) the head of an agency (including a Department) administered  
4 by a Minister mentioned in paragraph (a) or (b), or an officer  
5 or employee of that agency.
- 6 (3) The Minister may, by legislative instrument, specify one or more  
7 matters for the purposes of subparagraph (2)(a)(xvi).
- 8 (4) The Minister may, by legislative instrument, specify one or more  
9 matters for the purposes of subparagraph (2)(b)(v).

## 10 **185D Authorised disclosure relating to law enforcement**

11 The Secretary may disclose protected information to an  
12 enforcement body (within the meaning of the *Privacy Act 1988*) for  
13 the purposes of one or more enforcement related activities (within  
14 the meaning of that Act) conducted by or on behalf of the  
15 enforcement body.

16 Note: This section is an authorisation for the purposes of other laws,  
17 including the Australian Privacy Principles.

## 18 **185E Authorised disclosure—instrument made by Secretary**

- 19 (1) A person may disclose protected information to another person for  
20 a particular purpose if:  
21 (a) the other person is specified in an instrument under  
22 subsection (2); and  
23 (b) the purpose is specified in the instrument in relation to the  
24 other person.

25 Note 1: This subsection is an authorisation for the purposes of other laws,  
26 including the Australian Privacy Principles.

27 Note 2: For record-keeping requirements, see section 185K.

- 28 (2) The Secretary may, by legislative instrument, specify:  
29 (a) one or more persons for the purposes of subsection (1); and  
30 (b) for each of those persons—one or more purposes in relation  
31 to the person concerned.

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 **185F Secondary use and disclosure of protected information**

2 A person may make a record of, use or disclose protected  
3 information if:

- 4 (a) the person obtains the information under this Division  
5 (including this section); and  
6 (b) the person makes the record, or uses or discloses the  
7 information, for the purposes for which the information was  
8 disclosed to the person.

9 Note: This section is an authorisation for the purposes of other laws,  
10 including the Australian Privacy Principles.

11 **Division 3—Offence for unauthorised use or disclosure**

12 **185G Offence for unauthorised use or disclosure of protected**  
13 **information**

14 A person commits an offence if:

- 15 (a) the person obtains information; and  
16 (b) the information is protected information; and  
17 (c) the person:  
18 (i) makes a record of the information; or  
19 (ii) discloses the information to another person; or  
20 (iii) otherwise uses the information; and  
21 (d) the making of the record, or the disclosure or use, is not  
22 authorised by this Act.

23 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

24 **185H Exceptions to offence for unauthorised use or disclosure**

25 *Required or authorised by law*

- 26 (1) Section 185G does not apply if the making of the record, or the  
27 disclosure or use, of the protected information is required or  
28 authorised by or under:  
29 (a) a law of the Commonwealth; or  
30 (b) a law of a State or Territory prescribed by the regulations.

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1

*Good faith*

2

- (2) Section 185G does not apply to a person to the extent that the person makes a record of, discloses or otherwise uses protected information in good faith and in purported compliance with this Act.

5

6

*Person to whom the protected information relates*

7

- (3) Section 185G does not apply to a person if:
- (a) the person discloses protected information to the person to whom the information relates; or
  - (b) the person is the person to whom the protected information relates; or
  - (c) the making of the record, or the disclosure or use, of the protected information is in accordance with the express or implied consent of the person to whom the information relates.

8

9

10

11

12

13

14

15

16

17

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

18

## **185J No requirement to provide information**

19

- (1) A person is not (subject to subsections (2) and (3)) to be required to disclose protected information, or produce a document containing protected information, to:

20

21

22

23

24

- (a) a court; or
- (b) a tribunal, authority or person that has the power to require the answering of questions or the production of documents.

25

26

27

28

- (2) Subsection (1) does not prevent a person from being required to disclose protected information, or to produce a document containing protected information, if it is necessary to do so for the purposes of giving effect to this Act.

29

30

31

32

33

- (3) Subsection (1) does not prevent a person from being required to disclose protected information, or to produce a document containing protected information, in a judicial review proceeding before:
- (a) the High Court of Australia; or



# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

- 
- 1 (b) the Federal Court; or  
2 (c) the Federal Circuit and Family Court of Australia  
3 (Division 2).

## 4 **Division 4—Record-keeping**

### 5 **185K Record-keeping requirements**

- 6 (1) If:  
7 (a) a person (the *first person*) discloses protected information to  
8 another person (the *recipient*); and  
9 (b) the disclosure is covered by section 185E;  
10 the first person must:  
11 (c) make a record of:  
12 (i) the disclosure; and  
13 (ii) the identity of the recipient; and  
14 (d) keep the record for 90 days.
- 15 (2) A person commits an offence if:  
16 (a) the person is subject to a requirement under subsection (1);  
17 and  
18 (b) the person engages in conduct; and  
19 (c) the conduct breaches the requirement.

20 Penalty for contravention of this subsection: 50 penalty units.

### 21 **93 Section 186 (paragraph beginning “To ensure”)**

22 After “criminal offences”, insert “or civil penalties”.

### 23 **94 Section 186 (paragraph beginning “To ensure”)**

24 After “criminal prosecution”, insert “or civil penalty proceedings”.

### 25 **95 Section 186 (paragraph beginning “The enforcement 26 options”)**

27 Repeal the paragraph, substitute:

28 

The enforcement options (and the relevant Divisions) are as 29 follows:
--

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

- 
- |   |   |
|---|---|
| 1 | (a) infringement notices (Division 2);    |
| 2 | (b) improvement notices (Division 2A);    |
| 3 | (c) enforcement orders (Division 3);      |
| 4 | (d) ship enforcement orders (Division 4); |
| 5 | (e) injunctions (Division 5);             |
| 6 | (f) demerit points system (Division 6).   |

7 **96 After Division 2 of Part 11**

8 Insert:

9 **Division 2A—Improvement notices**

10 **187A Improvement notices**

11 *Scope*

- 12 (1) This section applies if a maritime security inspector reasonably  
13 believes that a maritime industry participant:
- 14 (a) is contravening a provision of this Act; or
  - 15 (b) has contravened a provision of this Act in circumstances that  
16 make it likely that the contravention will continue or be  
17 repeated; or
  - 18 (c) is likely to contravene a provision of this Act.

19 *Improvement notice*

- 20 (2) The maritime security inspector may give the maritime industry  
21 participant a written notice requiring the participant to:
- 22 (a) remedy the contravention; or
  - 23 (b) prevent the likely contravention from occurring; or
  - 24 (c) remedy the things or operations causing the contravention or  
25 likely contravention.
- 26 (3) A notice under subsection (2) is to be known as an *improvement*  
27 *notice*.

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

## 1 187B Contents of improvement notices

- 2 (1) An improvement notice given to a maritime industry participant by  
3 a maritime security inspector must state:
- 4 (a) that the inspector reasonably believes that the participant:
- 5 (i) is contravening a provision of this Act; or  
6 (ii) has contravened a provision of this Act in circumstances  
7 that make it likely that the contravention will continue  
8 or be repeated; or  
9 (iii) is likely to contravene a provision of this Act; and
- 10 (b) the provision the inspector believes is being, has been, or is  
11 likely to be, contravened; and
- 12 (c) briefly, how the provision is being, has been, or is likely to  
13 be, contravened; and
- 14 (d) the period within which the participant must comply with the  
15 notice.
- 16 (2) The improvement notice may include directions concerning the  
17 measures to be taken to:
- 18 (a) remedy the contravention; or  
19 (b) prevent the likely contravention from occurring; or  
20 (c) remedy the things or operations causing the contravention or  
21 likely contravention.
- 22 (3) The period stated for compliance with the improvement notice  
23 must be reasonable in all the circumstances.

## 24 187C Compliance with improvement notice

- 25 (1) A person commits an offence if:
- 26 (a) the person is:
- 27 (i) a port operator; or  
28 (ii) a port facility operator; or  
29 (iii) the ship operator for a regulated Australian ship; or  
30 (iv) an offshore facility operator; and
- 31 (b) the person is given an improvement notice; and  
32 (c) the person engages in conduct; and  
33 (d) the person's conduct breaches the improvement notice.
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1                   Penalty: 200 penalty units.
- 2                   (2) Subsection (1) is an offence of strict liability.
- 3                   (3) A person commits an offence if:
- 4                   (a) the person is a maritime industry participant other than:
- 5                   (i) a port operator; or
- 6                   (ii) a port facility operator; or
- 7                   (iii) the ship operator for a regulated Australian ship; or
- 8                   (iv) an offshore facility operator; and
- 9                   (b) the person is given an improvement notice; and
- 10                  (c) the person engages in conduct; and
- 11                  (d) the person's conduct breaches the improvement notice.
- 12                  Penalty: 100 penalty units.
- 13                  (4) Subsection (3) is an offence of strict liability.

## 14   **187D Extension of time for compliance with improvement notices**

### 15                   *Scope*

- 16                  (1) This section applies if a person has been given an improvement  
17                  notice.

### 18                   *Extension of compliance period*

- 19                  (2) A maritime security inspector may, by written notice given to the  
20                  person, extend the compliance period for the improvement notice.
- 21                  (3) However, the maritime security inspector may extend the  
22                  compliance period only if the period has not ended.
- 23                  (4) In this section, ***compliance period*** means the period stated in the  
24                  improvement notice under section 187B, and includes that period  
25                  as extended under this section.

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 **187E Variation of improvement notices**

2 *Scope*

3 (1) This section applies if a person has been given an improvement  
4 notice.

5 *Changes*

6 (2) A maritime security inspector may, by written notice given to the  
7 person, vary the notice.

8 (3) A maritime security inspector may also, in accordance with  
9 section 187D, extend the compliance period for an improvement  
10 notice.

11 **187F Revocation of improvement notices**

12 (1) If:

13 (a) a person has been given an improvement notice; and  
14 (b) at a time during the compliance period for the notice, a  
15 maritime security inspector forms a reasonable belief that the  
16 notice is no longer required for the purposes of requiring the  
17 person to:

18 (i) remedy a contravention of this Act; or

19 (ii) prevent a likely contravention of this Act from  
20 occurring; or

21 (iii) remedy the things or operations causing a contravention,  
22 or likely contravention, of this Act;

23 the inspector must, by written notice given to the person, revoke  
24 the notice.

25 (2) In this section, *compliance period* means the period stated in the  
26 improvement notice under section 187B, and includes that period  
27 as extended under section 187D.

28 **187G Formal irregularities or defects in improvement notices**

29 An improvement notice is not invalid only because of:

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1 (a) a formal defect or irregularity in the notice unless the defect  
2 or irregularity causes or is likely to cause substantial  
3 injustice; or  
4 (b) a failure to use the correct name of the person to whom the  
5 notice is issued if the notice sufficiently identifies the person.

6 **97 At the end of Part 11**

7 Add:

8 **Division 7—Civil penalties**

9 **200B Civil penalty provision**

10 *Enforceable civil penalty provision*

- 11 (1) A civil penalty provision in this Act is enforceable under Part 4 of  
12 the *Regulatory Powers (Standard Provisions) Act 2014*.

13 Note: Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*  
14 allows a civil penalty provision to be enforced by obtaining an order  
15 for a person to pay a pecuniary penalty for the contravention of the  
16 provision.

17 *Authorised applicant*

- 18 (2) For the purposes of Part 4 of the *Regulatory Powers (Standard*  
19 *Provisions) Act 2014*, the Secretary is an authorised applicant in  
20 relation to a civil penalty provision in this Act.

21 *Relevant court*

- 22 (3) For the purposes of Part 4 of the *Regulatory Powers (Standard*  
23 *Provisions) Act 2014*, the Federal Court of Australia and the  
24 Federal Circuit and Family Court of Australia (Division 2) are  
25 relevant courts in relation to a civil penalty provision in this Act.

26 *Extension to external Territories etc.*

- 27 (4) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*,  
28 as it applies in relation to a civil penalty provision in this Act,  
29 extends to every external Territory.

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

1 **98 Before section 201**

2 Insert:

3 **Division 1—External review**

4 **99 After paragraph 201(d)**

5 Insert:

6 (daa) to give a maritime industry participant a maritime security  
7 plan under section 59A (including a revised maritime  
8 security plan as referred to in section 59E); or

9 (dab) to cancel a maritime security plan under section 59E; or

10 (dac) to refuse to cancel a maritime security plan under  
11 section 59G; or

12 (dad) to give a ship operator a ship security plan under section 78A  
13 (including a revised ship security plan as referred to in  
14 section 78D); or

15 (dae) to cancel a ship security plan under section 78D; or

16 (daf) to refuse to cancel a ship security plan under section 78F; or

17 (dag) to give an offshore industry participant an offshore security  
18 plan under section 100TA (including a revised offshore  
19 security plan as referred to in section 100TE); or

20 (dah) to cancel an offshore security plan under section 100TE; or

21 (dai) to refuse to cancel an offshore security plan under  
22 section 100TG; or

23 **100 At the end of section 201**

24 Add:

25 ; or (l) under section 201D (internal review).

26 **101 At the end of Part 12**

27 Add:

28 **Division 2—Internal review**

29 **201B Which decisions are internally reviewable**

30 The following table sets out:

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

- 1 (a) decisions made under this Act that are internally reviewable  
2 in accordance with this Division (*internally reviewable*  
3 *decisions*); and  
4 (b) who is eligible to apply for review of an internally  
5 reviewable decision (the *eligible person*).  
6

---

## Internally reviewable decisions

---

Item	Provision under which internally reviewable decision is made	Eligible person in relation to internally reviewable decision
1	Section 187A (giving an improvement notice).	The person to whom the notice was given.
2	Section 187D (extension of time for compliance with improvement notice).	The person to whom the notice was given.
3	Section 187E (variation of improvement notice).	The person to whom the notice was given.

---

### 201C Application for internal review

- 7  
8 (1) An eligible person in relation to an internally reviewable decision  
9 may apply to the Secretary for review (an *internal review*) of the  
10 decision within:  
11 (a) the prescribed time after the day on which the decision first  
12 came to the eligible person's notice; or  
13 (b) such longer period as the Secretary allows.  
14 (2) The application must be made in the manner and form required by  
15 the Secretary.  
16 (3) For the purposes of this section, the *prescribed time* is:  
17 (a) in the case of a decision to give an improvement notice—the  
18 period specified in the notice for compliance with the notice  
19 or 14 days, whichever is the lesser; and  
20 (b) in any other case—14 days.

### 201D Decision on internal review

- 21  
22 (1) The Secretary must:  
23 (a) review the internally reviewable decision; and
-



# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Schedule 2**

General amendments **Part 1**

---

- 1 (b) make a decision:  
2 (i) as soon as is reasonably practicable; and  
3 (ii) in any event, within 14 days after the application for  
4 internal review is received.
- 5 (2) The decision may be:  
6 (a) to confirm or vary the internally reviewable decision; or  
7 (b) to set aside the internally reviewable decision and substitute  
8 another decision that the Secretary considers appropriate.
- 9 (3) If the Secretary seeks further information from the applicant, the  
10 14-day period ceases to run until the applicant provides the  
11 information to the Secretary.
- 12 (4) The applicant must provide the further information within the time  
13 (being not less than 7 days) specified by the Secretary in the  
14 request for information.
- 15 (5) If the applicant does not provide the further information within the  
16 required time, the decision is taken to have been confirmed by the  
17 Secretary at the end of that time.
- 18 (6) If the internally reviewable decision is not varied or set aside  
19 within the 14-day period, the decision is taken to have been  
20 confirmed by the Secretary.

## 21 **201E Notification of decision on internal review**

- 22 As soon as practicable after reviewing the decision, the Secretary  
23 must give the applicant in writing:  
24 (a) the decision on the internal review; and  
25 (b) the reasons for the decision.

## 26 **201F Stays of internally reviewable decisions**

- 27 (1) If an application is made for an internal review of a decision to  
28 issue an improvement notice, the Secretary may stay the operation  
29 of the decision pending a decision on the internal review.

# EXPOSURE DRAFT

## Schedule 2 Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

### Part 1 General amendments

---

- 1 (2) A stay of the operation of a decision pending a decision on an  
2 internal review continues until whichever of the following is the  
3 earlier:
- 4 (a) the end of the period for applying to the Administrative  
5 Appeals Tribunal for review of the decision made on the  
6 internal review;
- 7 (b) an application is made to the Administrative Appeals  
8 Tribunal for review of the decision made on the internal  
9 review.

#### 10 **102 Subsection 202(1)**

11 After “this Act”, insert “(other than powers or functions under  
12 Division 2 of Part 12)”.

#### 13 **103 Paragraph 202(1)(c)**

14 Omit “that carries on activities that relate to national security”.

#### 15 **104 Subsection 202(1A)**

16 After “the delegation”, insert “in writing”.

#### 17 **105 Subsection 202(2)**

18 After “Part 11”, insert “or Division 2 of Part 12”.

#### 19 **106 After subsection 202(2)**

20 Insert:

- 21 (2A) The Secretary may, by writing, delegate all or any of the  
22 Secretary’s powers and functions under Division 2 of Part 12 to an  
23 SES employee who holds, or performs the duties of, an SES Band  
24 2 position, or an SES Band 3 position, in the Department.

#### 25 **107 After subsection 208(2)**

26 Insert:

- 27 (2A) This Act also has the effect that it would have if:
- 28 (a) each reference to a maritime industry participant were  
29 expressly confined to a maritime industry participant that is a  
30 corporation to which paragraph 51(xx) of the Constitution  
31 applies; and
-

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (b) each reference to a port operator were expressly confined to a  
2 port operator that is a corporation to which paragraph 51(xx)  
3 of the Constitution applies; and  
4 (c) each reference to a port facility operator were expressly  
5 confined to a port facility operator that is a corporation to  
6 which paragraph 51(xx) of the Constitution applies; and  
7 (d) each reference to a ship operator were expressly confined to a  
8 ship operator that is a corporation to which paragraph 51(xx)  
9 of the Constitution applies; and  
10 (e) each reference to an offshore industry participant were  
11 expressly confined to an offshore industry participant that is  
12 a corporation to which paragraph 51(xx) of the Constitution  
13 applies.

## 14 Division 2—Application provisions

### 15 108 Application—security directions

16 The amendments of section 33 of the *Maritime Transport and Offshore*  
17 *Facilities Security Act 2003* made by this Part apply in relation to a  
18 security direction given after the commencement of this item.

### 19 109 Application—maritime security plans

- 20 (1) The amendments of section 47 of the *Maritime Transport and Offshore*  
21 *Facilities Security Act 2003* made by this Part apply in relation to a  
22 maritime security plan for a maritime industry participant if:  
23 (a) the participant gives the plan to the Secretary under  
24 section 50 of that Act after the commencement of this item;  
25 or  
26 (b) the participant gives a copy of the plan to the Secretary under  
27 section 54 of that Act after the commencement of this item;  
28 or  
29 (c) the participant gives the program to the Secretary in  
30 compliance with a notice that was given under section 55 of  
31 that Act after the commencement of this item.
- 32 (2) Despite subitem (1), in determining, for the purposes of sections 53, 55  
33 and 57 of the *Maritime Transport and Offshore Facilities Security Act*  
34 *2003*, whether a maritime security plan adequately addresses the  
35 relevant requirements under Division 4 of Part 3 of that Act, assume
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

1           that the amendment of section 47 of that Act made by this Part applies  
2           in relation to the plan.

## 3   **110 Application—ship security plans**

- 4   (1)    The amendments of section 66 of the *Maritime Transport and Offshore*  
5           *Facilities Security Act 2003* made by this Part apply in relation to a ship  
6           security plan for a regulated Australian ship if:
- 7           (a) the ship operator gives the plan to the Secretary under  
8                section 69 of that Act after the commencement of this item;  
9                or  
10           (b) the ship operator gives a copy of the plan to the Secretary  
11                under section 73 of that Act after the commencement of this  
12                item; or  
13           (c) the ship operator gives the plan to the Secretary in  
14                compliance with a notice that was given under section 74 of  
15                that Act after the commencement of this item.
- 16   (2)    Despite subitem (1), in determining, for the purposes of sections 72, 74  
17           and 76 of the *Maritime Transport and Offshore Facilities Security Act*  
18           *2003*, whether a ship security plan adequately addresses the relevant  
19           requirements under Division 4 of Part 4 of that Act, assume that the  
20           amendment of section 66 of that Act made by this Part applies in  
21           relation to the plan.

## 22   **111 Application—offshore security plans**

- 23   (1)    The amendments of section 100G of the *Maritime Transport and*  
24           *Offshore Facilities Security Act 2003* made by this Part apply in relation  
25           to an offshore security plan for an offshore industry participant if:
- 26           (a) the participant gives the plan to the Secretary under  
27                section 100J of that Act after the commencement of this item;  
28                or  
29           (b) the participant gives a copy of the plan to the Secretary under  
30                section 100N of that Act after the commencement of this  
31                item; or  
32           (c) the participant gives the program to the Secretary in  
33                compliance with a notice that was given under section 100O  
34                of that Act after the commencement of this item.

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

General amendments Part 1

---

- 1 (2) Despite subitem (1), in determining, for the purposes of sections 100M,  
2 100O and 100Q of the *Maritime Transport and Offshore Facilities*  
3 *Security Act 2003*, whether an offshore security plan adequately  
4 addresses the relevant requirements under Division 4 of Part 5A of that  
5 Act, assume that the amendment of section 100G of that Act made by  
6 this Part applies in relation to the plan.

## 7 **112 Application—security incidents**

- 8 The amendments of Part 9 of the *Maritime Transport and Offshore*  
9 *Facilities Security Act 2003* made by this Part apply in relation to a  
10 security incident that occurs after the commencement of this item.

## 11 **112A Application—requests for further information**

- 12 (1) The amendments of section 51 of the *Maritime Transport and Offshore*  
13 *Facilities Security Act 2003* made by this Part apply in relation to a  
14 notice given under subsection 51(5) of that Act after the commencement  
15 of this item.
- 16 (2) The amendments of section 52A of the *Maritime Transport and*  
17 *Offshore Facilities Security Act 2003* made by this Part apply in relation  
18 to a notice given under subsection 52A(8) of that Act after the  
19 commencement of this item.
- 20 (3) The amendments of section 70 of the *Maritime Transport and Offshore*  
21 *Facilities Security Act 2003* made by this Part apply in relation to a  
22 notice given under subsection 70(5) of that Act after the commencement  
23 of this item.
- 24 (4) The amendments of section 71A of the *Maritime Transport and*  
25 *Offshore Facilities Security Act 2003* made by this Part apply in relation  
26 to a notice given under subsection 71A(7) of that Act after the  
27 commencement of this item.
- 28 (5) The amendments of section 100K of the *Maritime Transport and*  
29 *Offshore Facilities Security Act 2003* made by this Part apply in relation  
30 to a notice given under subsection 100K(5) of that Act after the  
31 commencement of this item.
- 32 (6) The amendments of section 100LA of the *Maritime Transport and*  
33 *Offshore Facilities Security Act 2003* made by this Part apply in relation

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 1** General amendments

---

- 1 to a notice given under subsection 100LA(8) of that Act after the  
2 commencement of this item.

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

Other amendments Part 2

---

1 **Part 2—Other amendments**

2 **Division 1—Amendments**

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

5 **113 Subsection 3(1)**

6 After “facilities”, insert “or operational interference with maritime  
7 transport or offshore facilities”.

8 **114 Section 4 (paragraph beginning “This Act establishes”)**

9 After “facilities”, insert “and operational interference with maritime  
10 transport or offshore facilities”.

11 **115 Section 10**

12 Insert:

13 *critical maritime industry participant* has the meaning given by  
14 section 17CA.

15 *critical offshore industry participant* has the meaning given by  
16 section 17CB.

17 *operational interference with maritime transport or offshore*  
18 *facilities* has the meaning given by section 11A.

19 *relevant interference* has the meaning given by section 10D.

20 **116 After Division 4A of Part 1**

21 Insert:

22 **Division 4B—Relevant interference**

23 **10D Meaning of relevant interference**

24 (1) Each of the following is a *relevant interference* with an asset:

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 2** Other amendments

---

- 1 (a) interference (whether direct or indirect) with the availability  
2 of the asset;
- 3 (b) interference (whether direct or indirect) with the integrity of  
4 the asset;
- 5 (c) interference (whether direct or indirect) with the reliability of  
6 the asset;
- 7 (d) interference (whether direct or indirect) with the  
8 confidentiality of:
- 9 (i) information about the asset; or  
10 (ii) if information is stored in the asset—the information; or  
11 (iii) if the asset is computer data—the computer data.
- 12 (2) Each of the following is a *relevant interference* with the operation  
13 of a maritime industry participant:
- 14 (a) interference (whether direct or indirect) with the availability  
15 of the operation of the participant;
- 16 (b) interference (whether direct or indirect) with the integrity of  
17 the operation of the participant;
- 18 (c) interference (whether direct or indirect) with the reliability of  
19 the operation of the participant;
- 20 (d) interference (whether direct or indirect) with the  
21 confidentiality of information relating to the operation of the  
22 participant.

## 117 After Division 5 of Part 1

23 Insert:

### 24 **Division 5A—Operational interference with maritime** 25 **transport or offshore facilities**

#### 26 **11A Meaning of operational interference with maritime transport or** 27 **offshore facilities**

- 28
- 29 (1) For the purposes of this Act, *operational interference with*  
30 *maritime transport or offshore facilities* means:
- 31 (a) committing, or attempting to commit, an act that results in a  
32 relevant interference with the operation of a maritime  
33 industry participant; or



# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

Other amendments Part 2

---

- 1 (b) committing, or attempting to commit, an act that results in a  
2 relevant interference with an asset that is:  
3 (i) used in connection with the operation of a maritime  
4 industry participant; and  
5 (ii) owned or operated by a maritime industry participant; or  
6 (c) the occurrence of a hazard that results in a relevant  
7 interference with the operation of a maritime industry  
8 participant; or  
9 (d) the occurrence of a hazard that results in a relevant  
10 interference with an asset that is:  
11 (i) used in connection with the operation of a maritime  
12 industry participant; and  
13 (ii) owned or operated by a maritime industry participant.
- 14 (2) However, *operational interference with maritime transport or*  
15 *offshore facilities* does not include any of the following:  
16 (a) unlawful interference with maritime transport or offshore  
17 facilities;  
18 (b) lawful advocacy, protest, dissent or industrial action.

## 19 118 After Division 7A of Part 1

20 Insert:

## 21 Division 7AA—Critical maritime industry participants

### 22 17CA Minister may declare critical maritime industry participants

- 23 (1) The Minister may, by writing, declare that a specified maritime  
24 industry participant is a critical maritime industry participant for  
25 the purposes of this Act.
- 26 (2) A declaration under subsection (1) is not a legislative instrument.
- 27 (3) Subsection 33(3AB) of the *Acts Interpretation Act 1901* does not  
28 apply to subsection (1) of this section.
- 29 Note: Subsection 33(3AB) of the *Acts Interpretation Act 1901* deals with  
30 specification by class.
- 31 (4) The Minister must not specify a maritime industry participant  
32 under subsection (1) unless the Minister is satisfied that:
-

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 2** Other amendments

---

- 1 (a) the participant is critical to:  
2 (i) the social or economic stability of Australia or its  
3 people; or  
4 (ii) the defence of Australia; or  
5 (iii) national security (within the meaning of the *Security of*  
6 *Critical Infrastructure Act 2018*); and  
7 (b) there is a risk, in relation to the participant, that may be  
8 prejudicial to security (within the meaning of the *Australian*  
9 *Security Intelligence Organisation Act 1979*).
- 10 (5) In making a declaration under subsection (1), the Minister must  
11 have regard to:  
12 (a) such matters (if any) as are specified in the regulations; and  
13 (b) such other matters (if any) as the Minister considers relevant.
- 14 *Class of maritime industry participants*
- 15 (6) The Minister may, by legislative instrument, declare that each  
16 maritime industry participant included in a specified class of  
17 maritime industry participants is a critical maritime industry  
18 participant for the purposes of this Act.
- 19 (7) The Minister must not specify a class of maritime industry  
20 participants under subsection (6) unless the Minister is satisfied  
21 that:  
22 (a) each maritime industry participant in the class is critical to:  
23 (i) the social or economic stability of Australia or its  
24 people; or  
25 (ii) the defence of Australia; or  
26 (iii) national security (within the meaning of the *Security of*  
27 *Critical Infrastructure Act 2018*); and  
28 (b) there is a risk, in relation to each maritime industry  
29 participant in the class, that may be prejudicial to security  
30 (within the meaning of the *Australian Security Intelligence*  
31 *Organisation Act 1979*).
- 32 (8) In making a declaration under subsection (6), the Minister must  
33 have regard to:  
34 (a) such matters (if any) as are specified in the regulations; and
-

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

Other amendments Part 2

---

1 (b) such other matters (if any) as the Minister considers relevant.

## 2 **Division 7AB—Critical offshore industry participants**

### 3 **17CB Minister may declare critical offshore industry participants**

4 (1) The Minister may, by writing, declare that a specified offshore  
5 industry participant is a critical offshore industry participant for the  
6 purposes of this Act.

7 (2) A declaration under subsection (1) is not a legislative instrument.

8 (3) Subsection 33(3AB) of the *Acts Interpretation Act 1901* does not  
9 apply to subsection (1) of this section.

10 Note: Subsection 33(3AB) of the *Acts Interpretation Act 1901* deals with  
11 specification by class.

12 (4) The Minister must not specify an offshore industry participant  
13 under subsection (1) unless the Minister is satisfied that:

14 (a) the participant is critical to:

15 (i) the social or economic stability of Australia or its  
16 people; or

17 (ii) the defence of Australia; or

18 (iii) national security (within the meaning of the *Security of*  
19 *Critical Infrastructure Act 2018*); and

20 (b) there is a risk, in relation to the participant, that may be  
21 prejudicial to security (within the meaning of the *Australian*  
22 *Security Intelligence Organisation Act 1979*).

23 (5) In making a declaration under subsection (1), the Minister must  
24 have regard to:

25 (a) such matters (if any) as are specified in the regulations; and

26 (b) such other matters (if any) as the Minister considers relevant.

#### 27 *Class of offshore industry participants*

28 (6) The Minister may, by legislative instrument, declare that each  
29 offshore industry participant included in a specified class of  
30 offshore industry participants is a critical offshore industry  
31 participant for the purposes of this Act.

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 2** Other amendments

---

- 1 (7) The Minister must not specify a class of offshore industry  
2 participants under subsection (6) unless the Minister is satisfied  
3 that:  
4 (a) each offshore industry participant in the class is critical to:  
5 (i) the social or economic stability of Australia or its  
6 people; or  
7 (ii) the defence of Australia; or  
8 (iii) national security (within the meaning of the *Security of*  
9 *Critical Infrastructure Act 2018*); and  
10 (b) there is a risk, in relation to each offshore industry participant  
11 in the class, that may be prejudicial to security (within the  
12 meaning of the *Australian Security Intelligence Organisation*  
13 *Act 1979*).
- 14 (8) In making a declaration under subsection (6), the Minister must  
15 have regard to:  
16 (a) such matters (if any) as are specified in the regulations; and  
17 (b) such other matters (if any) as the Minister considers relevant.

## 119 After paragraph 33(1)(b)

18 Insert:

- 19 (ba) both of the following apply:  
20 (i) a specific threat of operational interference with  
21 maritime transport or offshore facilities is made or  
22 exists;  
23 (ii) the Secretary is satisfied that giving a direction under  
24 this subsection is an appropriate response to the threat;  
25 or  
26 (bb) both of the following apply:  
27 (i) there is a change in the nature of an existing general  
28 threat of operational interference with maritime  
29 transport or offshore facilities;  
30 (ii) the Secretary is satisfied that giving a direction under  
31 this subsection is an appropriate response to the threat;  
32 or  
33

## 120 After subsection 38(1A)

34 Insert:  
35

---

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

Other amendments Part 2

---

1 (1B) A security direction covered by paragraph 33(1)(ba) must be  
2 revoked when the specific threat no longer exists.

## 3 **121 Section 48**

4 Before “The regulations”, insert “(1)”.

## 5 **122 At the end of section 48**

6 Add:

7 (2) The regulations may prescribe matters that:

8 (a) relate to safeguarding against operational interference with  
9 maritime transport or offshore facilities; and

10 (b) must be dealt with in each maritime security plan for a  
11 critical maritime industry participant.

12 (3) Subsection (2) does not limit subsection (1).

## 13 **123 After subsection 59B(2)**

14 Insert:

15 (2A) A maritime security plan that is given to a maritime industry  
16 participant under section 59A may set out the activities or  
17 measures to be undertaken or implemented by the participant under  
18 the plan for the purposes of safeguarding against operational  
19 interference with maritime transport or offshore facilities.

## 20 **124 Section 67**

21 Before “The regulations”, insert “(1)”.

## 22 **125 At the end of section 67**

23 Add:

24 (2) The regulations may prescribe matters that:

25 (a) relate to safeguarding against operational interference with  
26 maritime transport or offshore facilities; and

27 (b) must be dealt with in each ship security plan for a regulated  
28 Australian ship where the ship operator is a critical maritime  
29 industry participant.

30 (3) Subsection (2) does not limit subsection (1).

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 2** Other amendments

---

1 **126 After subsection 78B(1A)**

2 Insert:

3 (1B) A ship security plan that is given to a ship operator under  
4 section 78A may set out the activities or measures to be undertaken  
5 or implemented by the ship operator under the plan for the  
6 purposes of safeguarding against operational interference with  
7 maritime transport or offshore facilities.

8 **127 Section 100H**

9 Before “The regulations”, insert “(1)”.

10 **128 At the end of section 100H**

11 Add:

12 (2) The regulations may prescribe matters that:  
13 (a) relate to safeguarding against operational interference with  
14 maritime transport or offshore facilities; and  
15 (b) must be dealt with in each offshore security plan for a critical  
16 offshore industry participant.

17 (3) Subsection (2) does not limit subsection (1).

18 **129 After subsection 100TB(1A)**

19 Insert:

20 (1B) An offshore security plan that is given to an offshore industry  
21 participant under section 100TA may set out the activities or  
22 measures to be undertaken or implemented by the participant under  
23 the plan for the purposes of safeguarding against operational  
24 interference with maritime transport or offshore facilities.

25 **130 Subsection 105(1)**

26 After “facilities”, insert “or safeguarding against operational  
27 interference with maritime transport or offshore facilities”.

28 **131 Subsection 106(2)**

29 After “facilities”, insert “or from operational interference with maritime  
30 transport or offshore facilities”.

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

Other amendments Part 2

---

1 **132 Subsection 109(1)**

2 After “facilities”, insert “or safeguarding against operational  
3 interference with maritime transport or offshore facilities”.

4 **133 Subsection 113(1)**

5 After “facilities”, insert “or safeguarding against operational  
6 interference with maritime transport or offshore facilities”.

7 **134 Subsection 113D(1)**

8 After “facilities”, insert “or safeguarding against operational  
9 interference with maritime transport or offshore facilities”.

10 **135 Section 182A (before paragraph beginning “Certain”)**

11 Insert:

12 

Critical maritime industry participants and critical offshore 13 industry participants are required to submit periodic reports.
--

14 **136 After section 182A**

15 Insert:

16 **182AA Critical maritime industry participants must submit periodic**  
17 **reports**

18 *Scope*

19 (1) This section applies if:

- 20 (a) a maritime security plan was, or is, in force for a critical  
21 maritime industry participant; and  
22 (b) an applicable reporting period for the maritime security plan  
23 has ended.

24 *Periodic report*

25 (2) The participant must, within 90 days after the end of the applicable  
26 reporting period, give the Secretary a report that:

- 27 (a) relates to the applicable reporting period; and

# EXPOSURE DRAFT

## Schedule 2 Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

### Part 2 Other amendments

---

- 1 (b) sets out such matters (if any) as are specified in the  
2 regulations; and
- 3 (c) if the participant has a board, council or other governing  
4 body—includes whichever of the following statements is  
5 applicable:
- 6 (i) if the maritime security plan was up to date immediately  
7 before the end of the applicable reporting period—a  
8 statement by the board, council or other governing body  
9 to that effect;
- 10 (ii) if the maritime security plan was not up to date  
11 immediately before the end of the applicable reporting  
12 period—a statement by the board, council or other  
13 governing body to that effect; and
- 14 (d) if the participant has a board, council or other governing  
15 body—includes whichever of the following statements is  
16 applicable:
- 17 (i) if the maritime security plan adequately addressed the  
18 relevant requirements under Division 4 of Part 3 at the  
19 end of the applicable reporting period—a statement by  
20 the board, council or other governing body to that  
21 effect;
- 22 (ii) if the maritime security plan did not adequately address  
23 the relevant requirements under Division 4 of Part 3 at  
24 the end of the applicable reporting period—a statement  
25 by the board, council or other governing body to that  
26 effect; and
- 27 (e) is in the form approved, in writing, by the Secretary.
- 28 Civil penalty: 150 penalty units.
- 29 (3) A matter must not be specified in regulations made for the  
30 purposes of paragraph (2)(b) unless the matter relates to:
- 31 (a) unlawful interference with maritime transport or offshore  
32 facilities; or
- 33 (b) safeguarding against unlawful interference with maritime  
34 transport or offshore facilities; or
- 35 (c) operational interference with maritime transport or offshore  
36 facilities; or
-



# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

Other amendments Part 2

---

1 (d) safeguarding against operational interference with maritime  
2 transport or offshore facilities.

3 (4) A report given by a person under subsection (2) is not admissible  
4 in evidence against the person in:

5 (a) criminal proceedings for an offence against this Act; or

6 (b) civil proceedings relating to a contravention of a civil penalty  
7 provision of this Act (other than this section).

8 *Applicable reporting period for a maritime security plan*

9 (5) For the purposes of this section, an *applicable reporting period for*  
10 *a maritime security plan* is:

11 (a) if the maritime security plan was in force for the whole of a  
12 financial year—the financial year; or

13 (b) if the maritime security plan was in force for a part of a  
14 financial year—the part of the financial year.

15 (6) However, an *applicable reporting period for a maritime security*  
16 *plan* does not include a day that occurred before the  
17 commencement of this section.

## 18 **182AB Critical offshore industry participants must submit periodic** 19 **reports**

20 *Scope*

21 (1) This section applies if:

22 (a) an offshore security plan was, or is, in force for a critical  
23 offshore industry participant; and

24 (b) an applicable reporting period for the offshore security plan  
25 has ended.

26 *Periodic report*

27 (2) The participant must, within 90 days after the end of the applicable  
28 reporting period, give the Secretary a report that:

29 (a) relates to the applicable reporting period; and

30 (b) sets out such matters (if any) as are specified in the  
31 regulations; and

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 2** Other amendments

---

- 1 (c) if the participant has a board, council or other governing  
2 body—includes whichever of the following statements is  
3 applicable:  
4 (i) if the offshore security plan was up to date immediately  
5 before the end of the applicable reporting period—a  
6 statement by the board, council or other governing body  
7 to that effect;  
8 (ii) if the offshore security plan was not up to date  
9 immediately before the end of the applicable reporting  
10 period—a statement by the board, council or other  
11 governing body to that effect; and  
12 (d) if the participant has a board, council or other governing  
13 body—includes whichever of the following statements is  
14 applicable:  
15 (i) if the offshore security plan adequately addressed the  
16 relevant requirements under Division 4 of Part 5A at the  
17 end of the applicable reporting period—a statement by  
18 the board, council or other governing body to that  
19 effect;  
20 (ii) if the offshore security plan did not adequately address  
21 the relevant requirements under Division 4 of Part 5A at  
22 the end of the applicable reporting period—a statement  
23 by the board, council or other governing body to that  
24 effect; and  
25 (e) is in the form approved, in writing, by the Secretary.
- 26 Civil penalty: 150 penalty units.
- 27 (3) A matter must not be specified in regulations made for the  
28 purposes of paragraph (2)(b) unless the matter relates to:  
29 (a) unlawful interference with maritime transport or offshore  
30 facilities; or  
31 (b) safeguarding against unlawful interference with maritime  
32 transport or offshore facilities; or  
33 (c) operational interference with maritime transport or offshore  
34 facilities; or  
35 (d) safeguarding against operational interference with maritime  
36 transport or offshore facilities.
-

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

Other amendments Part 2

---

- 1 (4) A report given by a person under subsection (2) is not admissible  
2 in evidence against the person in:  
3 (a) criminal proceedings for an offence against this Act; or  
4 (b) civil proceedings relating to a contravention of a civil penalty  
5 provision of this Act (other than this section).

6 *Applicable reporting period for an offshore security plan*

- 7 (5) For the purposes of this section, an *applicable reporting period for*  
8 *an offshore security plan* is:  
9 (a) if the offshore security plan was in force for the whole of a  
10 financial year—the financial year; or  
11 (b) if the offshore security plan was in force for a part of a  
12 financial year—the part of the financial year.  
13 (6) However, an *applicable reporting period for an offshore security*  
14 *plan* does not include a day that occurred before the  
15 commencement of this section.

## 16 **137 Section 182B (heading)**

17 After “participants”, insert “(other than critical maritime industry  
18 participants)”.

## 19 **138 Paragraph 182B(1)(a)**

20 After “participant”, insert “(other than a critical maritime industry  
21 participant)”.

## 22 **139 At the end of subsection 182B(3)**

23 Add:  
24 ; or (c) operational interference with maritime transport or offshore  
25 facilities; or  
26 (d) safeguarding against operational interference with maritime  
27 transport or offshore facilities.

## 28 **140 At the end of subsection 182C(3)**

29 Add:  
30 ; or (c) operational interference with maritime transport or offshore  
31 facilities; or

---

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 2** Other amendments

---

1 (d) safeguarding against operational interference with maritime  
2 transport or offshore facilities.

3 **141 Section 182D (heading)**

4 After “participants”, insert “(other than critical offshore industry  
5 participants)”.

6 **142 Paragraph 182D(1)(a)**

7 After “participant”, insert “(other than a critical offshore industry  
8 participant)”.

9 **143 At the end of subsection 182D(3)**

10 Add:  
11 ; or (c) operational interference with maritime transport or offshore  
12 facilities; or  
13 (d) safeguarding against operational interference with maritime  
14 transport or offshore facilities.

15 **144 At the end of subsection 182E(4)**

16 Add:  
17 ; or (c) operational interference with maritime transport or offshore  
18 facilities; or  
19 (d) safeguarding against operational interference with maritime  
20 transport or offshore facilities.

21 **145 At the end of subsection 182F(4)**

22 Add:  
23 ; or (c) operational interference with maritime transport or offshore  
24 facilities; or  
25 (d) safeguarding against operational interference with maritime  
26 transport or offshore facilities.

27 **146 At the end of subsection 182G(4)**

28 Add:  
29 ; or (c) operational interference with maritime transport or offshore  
30 facilities; or

# EXPOSURE DRAFT

Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

Schedule 2

Other amendments Part 2

---

- 1 (d) safeguarding against operational interference with maritime  
2 transport or offshore facilities.

## 3 **147 Paragraph 189(2)(b)**

4 Repeal the paragraph, substitute:

- 5 (b) it is necessary to make the order to:  
6 (i) safeguard against unlawful interference with maritime  
7 transport or offshore facilities; or  
8 (ii) safeguard against operational interference with maritime  
9 transport or offshore facilities.

## 10 **148 Subsection 191(2)**

11 After “facilities”, insert “or safeguard against operational interference  
12 with maritime transport or offshore facilities”.

## 13 **149 Paragraph 191(3)(a)**

14 After “facilities”, insert “or adequately safeguards against operational  
15 interference with maritime transport or offshore facilities”.

## 16 **150 Paragraph 195(3)(b)**

17 Repeal the paragraph, substitute:

- 18 (b) the ship enforcement order is necessary to:  
19 (i) safeguard against unlawful interference with maritime  
20 transport or offshore facilities; or  
21 (ii) safeguard against operational interference with maritime  
22 transport or offshore facilities.

## 23 **Division 2—Application provisions**

### 24 **151 Application—maritime security plans**

25 The amendments of section 48 of the *Maritime Transport and Offshore*  
26 *Facilities Security Act 2003* made by this Part apply in relation to a  
27 maritime security plan for a maritime industry participant if:

- 28 (a) the participant gives the plan to the Secretary under  
29 section 50 of that Act after the commencement of this item;  
30 or

# EXPOSURE DRAFT

**Schedule 2** Amendment of the Maritime Transport and Offshore Facilities Security Act 2003

**Part 2** Other amendments

---

- 1 (b) the participant gives a copy of the plan to the Secretary under  
2 section 54 of that Act after the commencement of this item;  
3 or  
4 (c) the participant gives the program to the Secretary in  
5 compliance with a notice that was given under section 55 of  
6 that Act after the commencement of this item.

## 7 **152 Application—ship security plans**

8 The amendments of section 67 of the *Maritime Transport and Offshore*  
9 *Facilities Security Act 2003* made by this Part apply in relation to a  
10 maritime security plan for a regulated Australian ship if:

- 11 (a) the ship operator gives the plan to the Secretary under  
12 section 69 of that Act after the commencement of this item;  
13 or  
14 (b) the ship operator gives a copy of the plan to the Secretary  
15 under section 73 of that Act after the commencement of this  
16 item; or  
17 (c) the ship operator gives the plan to the Secretary in  
18 compliance with a notice that was given under section 74 of  
19 that Act after the commencement of this item.

## 20 **153 Application—offshore security plans**

21 The amendments of section 100H of the *Maritime Transport and*  
22 *Offshore Facilities Security Act 2003* made by this Part apply in relation  
23 to an offshore security plan for an offshore industry participant if:

- 24 (a) the participant gives the plan to the Secretary under  
25 section 100J of that Act after the commencement of this item;  
26 or  
27 (b) the participant gives a copy of the plan to the Secretary under  
28 section 100N of that Act after the commencement of this  
29 item; or  
30 (c) the participant gives the plan to the Secretary in compliance  
31 with a notice that was given under section 100O of that Act  
32 after the commencement of this item.