



Guidance Paper on Covering Plans for Maritime Industry Participants

Purpose

The purpose of this guidance paper is to assist industry participants understand their responsibilities and obligations under the *Maritime Transport and Offshore Facilities Security Act 2003* (the Act). In particular, it is intended to provide clarity to industry participants as to when and how a 'covering plan' as contained in sections 45 and 100E of the Act can be used. It also provides guidance on when a maritime industry participant may use a single security plan to cover multiple regulated functions.

Background

Under section 45 of the Act, a maritime security plan may be used to cover the activities of another maritime industry participant¹, regardless of whether the second maritime industry participant has a requirement to hold their own security plan. This type of plan is known as a 'covering plan'.

Under section 100E of the Act, an offshore security plan may be used to cover the activities of another offshore industry participant², regardless of whether the second offshore industry participant has a requirement to hold their own security plan. This type of plan is also known as a 'covering plan'.

Irrespective of whether or not a maritime industry participant is 'covered' by a plan, industry participants must not engage in conduct that hinders or obstructs compliance with a maritime or offshore security plan – their own or someone else's. If a maritime industry participant contravenes sections 45 or 100E of the Act, they may be subject to an enforcement order or an injunction under the Act.³

Where the covered industry participant is not required to hold a security plan

Where a maritime industry participant seeks to cover the activities of another industry participant who is not obligated under the Act to have its own security plan, it must provide that participant with the relevant parts

¹ A 'maritime industry participant' is defined in section 10 of the Act.

² An 'offshore industry participant' is defined in section 10 of the Act.

³ Enforcement orders are set out in Part 11 of the Act and injunctions are set out in section 197 of the Act.

of the covering plan related to its operations. The covered industry participant must then take all reasonable steps to comply with the covering plan.

The Office of Transport Security recommends that a maritime industry participant covering the activities of other industry participants obtains written agreement to this effect, given the potential legal consequences for non-compliance.

Example

The Alice Springs Cargo Company (ASCC) is a port user at the Port of Alice Springs. The Port of Alice Springs wishes to cover the operations of ASCC in its maritime security plan. The Port of Alice Springs would therefore need to provide ASCC with the sections of its maritime security plan relevant to ASCC's operations. The Port of Alice Springs' plan would become a covering plan.

Where the covered industry participant is required to hold a security plan

The Act requires the following industry participants to hold a security plan: a port operator, a port facility operator, a regulated Australian ship, an offshore facility operator or any other industry participant prescribed in the Maritime Transport and Offshore Facilities Security Regulations 2003 (the Regulations).

Being a party to a covering plan does not remove the requirement for an industry participant to hold its own security plan unless they have been granted an exemption from holding a plan by the Secretary.

Where an industry participant seeks to cover the activities of another industry participant, who is obligated under the Act to have its own security plan, it must:

- provide the relevant parts of its covering plan to the industry participant it wishes to cover prior to seeking approval of the plan; and
- obtain the written agreement of the industry participant to have those activities covered by the covering plan.

The written agreement between industry participants concerning a covering plan can be via letters, emails, contracts and/or memorandums of understanding etcetera. Agreement should be given by a person who is authorised by the organisation to enter into such arrangements; this is usually someone in senior management with responsibility to meet the requirements under the covering plan.

Example

Wagga Wagga Logistics is a port facility operator in the Port of Cobar. As part of its operations, Wagga Wagga Logistics also manages access to a ship security zone at the Port of Cobar. Accordingly, the Port of Cobar has provided Wagga Wagga Logistics with the parts of the Port of Cobar's maritime security plan that relate to managing security in that zone, and, as part of its tenant agreement with Wagga Wagga Logistics, Wagga Wagga Logistics has acknowledged its requirements under Port of Cobar's plan. The signatory of the agreement was the General Manager of Wagga Wagga Logistics. As a port facility operator, Wagga Wagga Logistics is still required to hold their own approved maritime security plan, as well as certain aspects of their operations being covered by Port of Cobar's plan, and having an obligation not to engage in conduct that hinders or obstructs compliance with any other part of the Port of Cobar – or anyone else's – security plan.

Offshore service providers

Under regulation 5A.110(1) of the Regulations, an offshore service provider is prescribed as an offshore industry participant who is required to have an offshore security plan under section 100B of the Act.

Offshore service providers may be exempt from this requirement if all of their activities are covered by:

- an offshore security plan, and the service provider has agreed in writing to their activities being covered by that covering plan; or
- a maritime security plan or transport security program (as defined in the *Aviation Transport Security Act 2004*), and the service provider has reviewed the plan and, if necessary, amended it to ensure that the plan will satisfy the relevant requirements for a plan for an offshore service provider under the Regulations.

Example

The Betoota Supply Boat Company is an offshore service provider carrying cargo to an offshore facility and therefore is required to have an offshore security plan under the Act. The Betoota Supply Boat Company operations are covered by the offshore facility's offshore security plan. To meet the Betoota Supply Boat Company's obligation to have an offshore security plan, the General Manager has agreed in writing to its operations being covered by the offshore facility's offshore security plan.

Single security plan for multiple functions

An industry participant who is required to have security plans for multiple functions, may have one security plan which covers all of their functions as long as it satisfies the regulatory requirements for all of their functions. This may lower costs and administrative burdens.