



GUIDANCE PAPER ON THE ROLE AND POWERS OF MARITIME SECURITY GUARDS

Purpose

The purpose of this guidance paper is to assist employers, and individuals appointed as Maritime Security Guards (MSGs) under the *Maritime Transport and Offshore Facilities Security Act 2003* (the Act), to understand when and where MSG powers may be applied.

Background

The Department of Infrastructure and Regional Development provides guidance through its website regarding the:

- training and competency requirements for MSGs as outlined in the Maritime Transport and Offshore Facilities Security Regulations 2003 (the Regulations); and
- role and powers of MSGs as outlined in the Act.

This guidance is intended to replace all previous guidance regarding the role and powers of MSGs.

Regulatory Requirements

The role of a maritime security guard

The Act was introduced to enhance the security of Australia's maritime environment against the threat and subsequent conduct of unlawful acts. To achieve this, the Act provides regulated maritime industry participants with a number of mitigation measures, including the employment of MSGs.

Under the Regulations, MSGs are individuals who have met the training and qualification requirements of Regulation 8.50, in that they:

- hold at least a Certificate II in Security Operations or equivalent;
- hold a licence to work as a security guard in the State or Territory; and
- have a working knowledge of the Act and Regulations, including knowledge about how to restrain and detain individuals.

For further information, please refer to the *Guidance on Baseline Competencies for Maritime Security Guards* available on the Department's web site.

MSGs may perform a range of security roles including:

- access control;

- controlling embarkation/disembarkation of people, baggage and cargo onto a security regulated ship;
- monitoring of maritime security zones;
- provision of security services including patrols;
- supervision of cargo and ship stores;
- checking of documentation (including identity documents); and
- monitoring of closed circuit television.

The primary role of an MSG is to maintain the integrity of an active maritime security zone established under the Act and as such all powers can be used within the zone. A 'maritime security zone' is defined in Section 10 of the Act to include:

- port security zones (eg. landside-restricted zones, waterside-restricted zones and cleared zones)
- Ship security zones
- On-board security zones, or
- Offshore security zones.

These zones are required by the Act to be clearly sign posted and protected through a means of access control.

A security regulated port boundary is different from a maritime security zone, they are not the same and nor are they interchangeable. While some MSG powers may be used outside of a maritime security zone in order to protect the zone, it is important to understand the act triggering the use of that power can only occur when there is an active zone in place.

The powers of a maritime security guard

The powers of a MSG can only be exercised by individuals meeting the requirements set out in s162(1) of the Act. In summary, an individual must fulfil all the requirements listed below when exercising powers:

- the individual fulfils the regulatory and other requirements of a MSG; and
- the individual is on duty as a MSG at a security regulated port, ship or offshore facility; and
- there is an active maritime security zone established.

Section 163: Physically restraining persons

Power	Physically restrain an individual or individuals.
Restrictions on the use of the power:	<p>The MSG must:</p> <ul style="list-style-type: none"> • reasonably suspect an individual is committing or has committed an offence against the Act, and • believe physical restraint is necessary to maintain the integrity of an active maritime security zone or a cleared zone.

Once the individual is restrained, the MSG may detain that individual until a law enforcement officer, which includes a member of the Australian Federal Police or State or Territory police force, is available to take appropriate action.

In exercising these powers, the MSG must not use more force, or subject the individual to greater indignity than is necessary and reasonable under prevailing circumstances.

Where the power can be used: The MSG must be in a maritime security zone or the security regulated port area to use this power.

The forming of a reasonable belief or suspicion must be evidence based. This is more likely where the MSG is in close proximity to the individual and/or within a maritime security zone.

Where there is no maritime security zone currently in force, a MSG cannot use this power.

Example:

A MSG is conducting a perimeter security patrol outside an active landside-restricted zone. An individual is seen within that zone tampering with pipelines on a refuelling berth; the individual flees the zone to escape the MSG. The MSG catches up with the individual as they reach their car parked outside the zone. A MSG has the power to physically restrain that individual until police arrive.

Section 163A: Requesting information

Power Request individuals found in a maritime security zone to produce identification or provide a reason for being in the zone.

Restrictions on the use of the power: A MSG must identify themselves and inform the individual of the MSG's authority to make the request; and the individual's obligation to comply with the request.

To request a reason for being in a maritime security zone a MSG must believe the individual is not in a category listed in s163A(4)(b) of the Act.

Where the power can be used: While the individual must be found (that is, detected or discovered) within a maritime security zone, neither the MSG nor the individual need to be present in the maritime security zone when the request is made.

If the request occurs outside the zone then it should be made within a reasonable time and distance of the MSG finding the individual.

Example:

A MSG detects an individual on closed circuit television, acting suspiciously within a landside-restricted zone; however, when the MSG reaches the area the individual has left the zone. The MSG follows the individual outside the zone and into a nearby office building. The MSG has the power to request the individual provide identification and provide a reason for having been in the zone.

Section 163B: Request a person to leave a maritime security zone

Power: Request an individual leave a maritime security zone.

Restrictions on the use of the power: A MSG must have a reasonable suspicion the individual does not have property authorisation to be in the maritime security zone.
A MSG must identify themselves and inform the individual of the MSG's authority to make the request; and the individual's obligation to comply with the request.

Where the power can be used: The MSG does not have to be present in the maritime security zone to make this request; however, the forming of a reasonable suspicion must be evidence-based. This is more likely where the MSG is in close proximity to the individual and/or within a maritime security zone.

Example:

A MSG detects an individual in an unauthorised small vessel that has breached a ship security zone. The MSG has the power to use a bullhorn from a berth outside the ship security zone to request the individual leave the zone.

Section 163C: Removal of persons from an MSZ

Power: Remove an individual from a maritime security zone.

Restrictions on the use of the power: For a MSG to remove an individual, they must have identified themselves, requested the individual leave the maritime security

zone, advised that failure to leave is an offence and that request to the individual have been ignored.

In exercising these powers, the MSG must not use more force; or subject the individual to greater indignity, than is necessary and reasonable in the circumstances.

Where the power can be used: This power does not extend to removing an individual from the security-regulated port boundary.

To remove an individual from a security-regulated port, a MSG or their employer would have to consider relevant State or Territory laws.

Example:

An individual, without a maritime security identity card or an escort, is seen in a landside restricted zone by a MSG. The individual ignores the MSG's request to produce identification claiming to know the port facility's security manager and have permission to be in the zone. The individual then ignores the request from the MSG to leave the zone and as the MSG moves closer to remove the individual, they flee and leave the zone. The MSG does not have the power to pursue the individual and then remove them from the security regulated port area. The MSG may have the power to restrain the individual until the police arrive under s163 of the Act

Sections 163D and 163E: Removal of vehicles or vessels from an MSZ

Power: Remove or cause to be removed a vehicle or vessel from a maritime security zone to the closest safe location.

Restrictions on the use of the power: A MSG must have a reasonable suspicion the vehicle or vessel does not have proper authorisation to be in the maritime security zone.

When determining the closest safe location a MSG is to consider s163D(2)-(4) and s163E(2)-(4).

There is a wide range of legal obligations that could apply to a MSG or their employer when a vehicle or vessel is moved and it would be appropriate to refer to standard operating procedures or seek legal advice before moving the object.

Where the power can be used: The closest safe location may include moving the vehicle or vessel outside the security regulated port.

This power does not extend to removing vehicles or vessels found in security regulated port areas that are not maritime security zones.

Example:

A MSG identifies a car parked in a landside-restricted zone without authorisation, the owner cannot be found and the car has been parked in the position for several hours. Given the nature of port operations there is no public parking available within the security regulated port boundary. The MSG has the power to hire a tow truck to move the vehicle to the public parking area at the fishing wharf 100m from the security regulated port boundary.

Other limitations to exercising maritime security guard powers

Exercise of MSG powers is discretionary and should be in line with the legislation and standard operating procedures as specified by the port operator or port facility operator. The Department encourages maritime industry participants to use standard operating procedures to clarify how a MSG's powers are to be used in specific situations.

It is a requirement that an individual working as a MSG has a working knowledge of the Act, regulations and knowledge about how to restrain and detain an individual. While not prescribed, regular opportunities to refresh this knowledge would be viewed as good practice.