Port Operator MSP

Guidance

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Purpose and Audience

The purpose of this document is to assist port operators (POs) in their application to the Department of Home Affairs (the Department) through the Aviation and Maritime Security Division (AMS) for a maritime security plan (MSP).

This document will assist you in understanding your obligations and the requirements when preparing an MSP under the *Maritime Transport and Offshore Facilities Security Act 2003* (the Act) and the *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Regulations).

What is a port operator?

A port means an area of water, or land and water (including any buildings, installations or equipment situated in or on that land or water), intended for use either wholly or partly in connection with the movement, loading, unloading, maintenance or provisioning of ships.
A port includes:

- areas of water, between the land of the port and the open waters outside the port, intended for use by ships to gain access to loading, unloading or other land-based facilities;

- areas of open water intended for anchoring or otherwise holding ships before they enter areas of water described above; and

- areas of open water in-between those described above.

When a port is intended to be used for security regulated ships, it can be declared as a security regulated port. If a port is a security regulated port, a PO is designated. In designating a PO, the Department will consider the following:

- the ability for the port to undertake the functions of a PO;

- the physical and operational features of the port; and

- the views of the person or persons, responsible for managing the operations of the port.

A PO is responsible for the day-to-day operations of the port, including: scheduling, general security, arranging and holding port-wide security committee meetings, berthage, anchorage and wharfage. Beyond their own operations, the PO is responsible for all waterside security measures within the port. In many ports, the PO will also be responsible for common-user berths within the security regulated port, effectively operating as the port facility operator.
This guidance is for POs who have been designated by the Secretary as a security regulated port operator. If you fit the definition of a PO in terms of responsibilities but for a non-security regulated port, you are not a PO for the purposes of the Act and this guidance does not apply to you.
The PO under the Act may also be the Harbour Master under state legislation.

What is a maritime security plan?

An MSP sets out the measures and procedures that a maritime industry participant, such as a PO, will implement to prevent acts of unlawful interference, and meet their obligations under the Act and the Regulations.

An MSP demonstrates that you:

- are aware of your responsibility to contribute to the maintenance of maritime security;

- have an integrated, responsible and proactive approach to managing maritime security;

- have the capacity to meet the specific obligations imposed under the Act and the Regulations; and

- have taken into account your security risk assessment in developing activities and strategies for managing maritime security.

Do I need a maritime security plan?

POs of a security regulated port must have and comply with an MSP that is approved by the Department. It is an offence for a security regulated PO to operate without an MSP in force. To comply with its approved plan, a PO must implement the measures set out within it for the port or the PO's operations, as required, for the current maritime security level.

POs can determine whether their port is a security regulated port by searching the *Gazette* (www.legislation.gov.au) for "Notice of Declaration of Security Regulated Port".
POs operating a non-security regulated port do not require an MSP.

What is a PO's maritime security plan required to contain?

As a PO, your MSP must reflect the specific security measures and procedures used by your organisation. In general, your MSP must cover all matters of ship/port interface that are conducted within the port, including the operations and activities of any other maritime industry participant not covered by another MSP. As such, you are encouraged to engage with other maritime industry participants operating within your port at an early stage, particularly when they are developing their MSP.

The PO MSP template, available on the Department's website, outlines all legal and regulatory requirements that your MSP must contain to be approved by the Department.

An MSP for a PO must include, but is not limited to, the following:

a. a security assessment for your operation(s);

b. the measures and procedures used to maintain maritime security and prevent unlawful interference, such as the establishment of maritime security zones, and the procedures for responding to security threats or breaches of security, including at different maritime security levels;

c. designate, by name or by reference to a position, all port security officers (PSO) or other officers with security responsibilities regarding the implementation and maintenance of your plan;

d. make provision for the use of declarations of security[1];

e. a map of the entire security regulated port and any proposed or established zones within it; and

f. consultation mechanisms between you and each of the maritime industry participants conducting operations within the security regulated port, and between the PO and its employees.

Your MSP should also:

- demonstrate that other maritime industry participants who may be affected by the plan, such as port facility operators, have been consulted during its development; and

- include a signed statement from an authorised signatory within your organisation to the effect that you believe that the MSP meets your obligations under the Act and Regulations.

What is a security assessment?

A security assessment identifies, analyses, evaluates, and details treatments of risks and/or threats to your operation(s). The Act requires that security assessments are undertaken of security regulated maritime,

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[1] A declaration of security is an agreement reached between a ship and another party (e.g. a PO) that identifies the security activities or measures that each party will undertake or implement in certain circumstances. A PFO may also enter into a declaration of security with a ship. Consultation with the PFO(s) operating within your port during the development of your maritime security plan will inform you about whether such agreements are in place.

shipping and offshore facility operations and is a critical part of a successful MSP. Security risks and vulnerabilities identified through this assessment will inform your security plan.

A security assessment for an MSP must include the following matters:

g. the date when the assessment was completed or reviewed;

h. the scope of the assessment, including assets, infrastructure and operations assessed;

i. a summary of how the assessment was conducted, including details of the risk management process adopted;

j. the skills and experience of the key persons who completed or participated in the assessment.

In addition, the security assessment for a port operator's MSP must include:

a.   a statement outlining the risk context or threat situation for the port;

b. identification and evaluation of strategically important assets, infrastructure and operations that need to be protected;

c. identification of possible risks or threats to assets, infrastructure and operations, and the likelihood and consequences of their occurrence;

d. identification of existing security measures, procedures and operations;

e. identification of gaps in port-wide security arrangements, including gaps arising from port infrastructure, human factors, policies and procedures; and

f. identification, selection and prioritisation of possible risk treatments (e.g. counter-measures and procedural changes that need to be implemented) and their effectiveness in reducing risk levels and vulnerabilities.

ASIO's Business and Government Liaison Unit (BGLU) produce a biannual assessment of the threat to Australia's ports and shipping sector, as well as regular updates on the threat environment. These assessments are available via the BGLU portal: https://www.bglu.asio.gov.au/.

Can a PO maritime security plan be a Port Facility Operator maritime security plan?

In some circumstances, POs may operate as a port facility operator (PFO). For example, when they operate common user berths, passenger or bulk cargo terminals. While the operations of a PO and PFO are treated as two separate functions under the Act and Regulations, POs may wish to include their port facility operations within their PO MSP. POs may also choose to have a separate PFO MSP that covers their port facility operations. POs choosing to include their port facility operations in their PO MSP must address the specific legislated requirements and obligations relevant to a port facility.

Covering plans

A covering plan is an MSP that covers the activities of another maritime industry participant, regardless of whether the second maritime industry participant has a requirement to hold their own security plan. A separate guidance paper on covering plans is available through the Department's website.

Note: the existence of a covering plan does *not* replace the requirement to have an MSP.

When preparing your MSP you must consult with other maritime industry participants who are impacted by the implementation of your plan. This may involve sharing your information with other industry participants to coordinate security related activities.

Other maritime industry partners who undertake activities in your facility have a responsibility to comply with, and to not obstruct compliance with your MSP. This means you need to make sure maritime industry

partners have access to the relevant parts of your MSP and have agreed in writing to any of their activities being covered by the plan, as required under the Act.

If a maritime industry participant engages in conduct that hinders or obstructs compliance with your plan they do not commit an offence under the Act but may be subject to an enforcement order or an injunction.

Should passenger ships be included in the PO maritime security plan?

No. The loading or unloading of security regulated passenger ships is a PFO role. Such operations must be included in the PFO's MSP. However, as the PO, you should be aware of the existence of a cleared zone, which is used for:

- screening and clearing persons and their baggage; and

- detecting weapons and prohibited items, and the surrender and management of surrendered items.

Should no screening point exist for the screening and clearing of persons boarding a security regulated passenger ship, arrangements must be made between the port facility operator and master of a ship that is moored at the facility for persons to be screened and cleared on board the ship immediately after they board.

What are maritime security zones?

Maritime security zones are specified areas in the maritime environment that are subject to higher security requirements than other areas. They are established by the Secretary to restrict general public access and prevent interference with ships, facilities, people, vehicles or vessels. All established maritime security zones must have appropriate access control mechanisms. Unauthorised entry into an established maritime security zone is an offence under the Act and financial penalties may apply.

Refer to the PO MSP template for full requirements regarding maritime security zones.

Port Security Zones

Port security zones are a type of maritime security zone that may be established in a port. There are three types of port security zones:

- land-side restricted zones;

- cleared zones; and

- waterside restricted zones.

You may write to the Department requesting that the Secretary establish a port security zone. Such requests are separate to, and not included in, your MSP. The Department will provide written notice of any established port security zone to the PO.

During the development of your MSP, you should consult early with other maritime industry participants (e.g. the PFO) who may operate or conduct activities within your proposed port security zone boundaries.

Should you request the Secretary establish several port security zones within the boundary of your port, you must include separate maps for each proposed zone. Each map must clearly illustrate the boundaries of the proposed zone. Your MSP must also contain specific details about each proposed zone.

Ship security zones

Ship security zones aim to protect ships within them from unlawful interference. They cover the area around, but not on board, the ship while it is within a security regulated port.

You may write to the Department requesting that the Secretary establish a ship security zone. Such requests are separate to, and not included in, your MSP. The Department will provide written notice of any established ship security zone to the PO and the master of a security regulated ship or the ship operator.

Measures to detect and deter unauthorised access to ship security zones must be included in your plan. These processes must be identified in your plan, even if you do not immediately plan to use ship security zones within your port.

On-board security zones

On-board security zones aim to subject parts of a ship to additional security requirements. They are only applicable to regulated Australian ships. Responsibility for monitoring and controlling access to on-board security zones rests with the relevant ship's operator.

Offshore security zones

Offshore security zones do not apply in ports. They aim to control the movement of people, ships and things within and around an offshore facility. There are two types of offshore security zones:

- offshore facility zones;
- offshore waterside zones.

Responsibility for monitoring and controlling access to offshore security zones rests with the relevant offshore facility's operator.

> **Note:** If you have security zones established for your port, you must inform others of their establishment. A simple description of maritime security zones can be used in public notices to raise awareness of additional security requirements in restricted areas. Maritime security zones on a map should be depicted as a series of lines that clearly depict the relevant boundaries. Referencing relevant coordinates is also very useful.

What are maritime security (MARSEC) levels?

The Act establishes three MARSEC levels (MARSEC level 1, 2 and 3), which are based on three security levels defined under the International Ship and Port Facility Security Code (ISPS) and supplied below:

- Security level 1 (MARSEC level 1 under the Act) means the level for which minimum appropriate protective security measures shall be maintained at all times;
- Security level 2 (MARSEC level 2 under the Act) means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident; and
- Security level 3 (MARSEC level 3 under the Act) means the level for which further specific protective security measures shall be maintained for limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target.

MARSEC level 1 is the default level, in force at all security regulated ports and applying to all maritime industry participants. If there is evidence or intelligence of a heightened risk to the security of maritime transport, the Department may declare that the maritime security level be raised from MARSEC level 1 to MARSEC level 2 or 3, depending on the nature and severity of the threat. In such a declaration, the Department will stipulate whether the increase in the MARSEC level applies to one or more of the following:

- a security regulated port;
- an area within a security regulated port;
- a maritime industry participant (such as a PO); or
- the operations of a maritime industry participant within, or in connection with a security regulated port.

You must give consideration to the definition of the MARSEC levels and your responsibilities to set out additional security measures to be implemented should MARSEC level 2 or 3 be declared. This information needs to be captured in your MSP.

Security directions

In special circumstances, the Secretary may direct that additional security measures be implemented within the boundaries of a security regulated port. Such directions may be given to any person within a port's boundary, including passengers. As part of giving the security direction, the Secretary may require a PO to communicate the security directions to specified maritime industry participants who operate within their port. Your MSP must include how you would respond to such a direction. You must take all reasonable steps to communicate such directions to the specified maritime industry participants as soon as practicable. Failure to do so without a reasonable excuse is an offence under the Act and financial penalties may apply.

Accompanying documents

Your MSP must be accompanied by a separate document setting out the following information:

a.   name of the PO;

b. contact details for the PO;

c. name of the Chief Executive Officer of the PO;

d. name of the port for which the PO has been designated;

e. name of the port's harbour master;

f. contact details for the harbour master;

g. name or position of the person who is to be the PSO for the facility; and

h. the contact details for the PSO.

This information is separate to an MSP allowing it to be updated as necessary, without triggering the formal processes associated with varying or revising a plan (outlined further in this document).
You must notify the Department, in writing, of any change to this information, as outlined above. You must issue the notification within two working days from the day you become aware of a change. It is an offence not to provide the Department with updates concerning this information stipulated within the timeframe and financial penalties may apply.

Using the maritime security plan template

In preparing your MSP, you are encouraged to use the PO template. You can choose to develop your own version, as long as your MSP addresses all the applicable legislative and regulatory requirements.

For administrative purposes, we ask that the covering page includes your organisation's legal name, trading/operating name, Australian Company Number (ACN), [or Australian Registered Body Number (ARBN) if applicable] and Australian Business Number (ABN) if issued.

Section headings and table of contents

We recommend that you do not alter the headings in the MSP template when completing it. However, if you remove certain sections of the template that do not apply to your organisation, you should also remember to update the table of contents to ensure it corresponds to the body of the document.

Coloured text within the template

Text provided in the guide and template is displayed in various colours.

- **Black text** does not need to be amended (unless it is inconsistent with your business' processes).
- **Purple text** is used to indicate where text appropriate to your business should be inserted. For example:

  [Organisation's name] has measures and procedures in place to control access to the port.

  Purple text should be amended to reflect your operation, and changed to black on completion.
- **Red text** is used for remarks or notes designed to assist in drafting your maritime security plan, for example *insert your procedures here*. Red text should be deleted before submitting your MSP.

Submitting your maritime security plan for assessment

Before you submit your MSP – whether for the first time, or to request approval of a variation or revision – you should ensure it addresses all the relevant regulatory requirements, and is appropriately authorised.

Your MSP can be submitted to the Department as an electronic or hard copy version. It can be emailed to national.coordinator@homeaffairs.gov.au or posted to:

National Coordinator

GPO Box 1966

Canberra, ACT 2601

Australia

Please ensure that plans are submitted in PDF format, and that any password protection has been removed.

Agents

If an agent is preparing or submitting an MSP on your organisation's behalf, an authorisation letter will need to be submitted to the Department. The authorisation letter must be signed by an authorised officer within the organisation and indicate that the agent is approved to prepare and submit the MSP on the maritime industry participant's behalf.

How is my maritime security plan approved?

Approval of an MSP can take up to 60 days from the day the Department receives the plan.

The Department may request additional information from you specific to the approval of the plan. Should this occur, you must provide this information within the timeframe specified in the notice from the Department, which will not exceed 45 days. Requests for additional information may extend the consideration period.

The Department will provide a written notice to you once a decision on your MSP has been made.

Refusal to approve an MSP is a reviewable decision. Applications can be made to the Administrative Appeals Tribunal.

How long is my maritime security plan valid for?

An MSP comes into force at the time determined in the Department's notice of approval. The plan remains in force for a period of five years unless a lesser period is specified by the Department. The minimum term a maritime security plan may be in force is 12 months.

All POs must ensure they have an approved MSP in place before their current plan expires. It is an offence for POs to operate without an approved MSP and financial penalties may apply.

Can I amend my approved maritime security plan?

You may write to the Department requesting amendments to your approved MSP, either by:

- varying it by writing to the Secretary with details of the proposed variations;

- revising it by writing to the Secretary and submitting a complete revised plan; or

- cancelling it by writing to the Secretary requesting cancellation.

Approval of any proposed amendments to an MSP can take up to 60 days from the day the Department receives your request to amend your plan. The Department may request additional information from you. Should this occur, you must provide this information within the timeframe specified in the notice from the Department, which will not exceed 45 days. Requests for additional information may extend the consideration period.

The Department will provide a written notice to you once a decision on your amendment has been made.

Refusal to approve an amendment to an MSP is a reviewable decision. Applications can be made to the Administrative Appeals Tribunal.

For further information

More information and guidance on Australia's maritime security regime is located on the Department's website, www.homeaffairs.gov.au, including links to the Act and associated regulations.