



Transport Security Amendment (2008 Measures No.1) Bill 2008

Monica Biddington
Law and Bills Digest Section

Contents

Purpose	2
Background	2
Aviation Transport Security Act 2004	2
Maritime Transport and Offshore Security Act 2003	2
Review of the maritime security regime	3
Committee consideration	3
Financial implications	3
Key issues	3
Mapping standards	4
Main provisions	4
Schedule 1	4
Aviation Transport Security Act 2004	4
Maritime Transport and Offshore Facilities Security Act 2003	5
Concluding comments	8

Transport Security Amendment (2008 Measures No.1) Bill 2008

Date introduced: 25 September 2008

House: House of Representatives

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Commencement: Sections 1 to 3 of the Act will commence on the day the Act receives the Royal Assent. Schedule 1 will commence two months and one day after the Act receives the Royal Assent.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Bill is to amend the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA) and the *Aviation Transport Security Act 2004* (ATSA) to streamline some legal terms and conditions that will enhance the effectiveness of security outcomes.

Background

Aviation Transport Security Act 2004

One of the main purposes of the ATSA is to maintain and improve transport security in civil aviation by enhancing the structure of the aviation security regulatory framework and providing for adequate flexibility in order to reflect the rapidly changing threat environment.¹ This Bill is acting on that purpose and will assist industry participants in the way they are required to document their security arrangements.

Maritime Transport and Offshore Security Act 2003

In June 2005, the *Maritime Transport Security Act 2003* was amended to cover Australia's offshore oil and gas facilities and was renamed the *Maritime Transport and Offshore Facilities Security Act 2003*.

1. Explanatory Memorandum, Aviation Transport Security Bill 2003, p. 1. (Note that the bill became an Act in 2004).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The MTOFSA and the Maritime Transport and Offshore Facilities Security Regulations 2003 aim to safeguard against unlawful interference with maritime transport or offshore facilities, by establishing one security regulatory framework.

Review of the maritime security regime

The Explanatory Memorandum notes that the Office of Transport Security, a division of the Department of Infrastructure, Transport, Regional Development and Local Government, undertook a review of the maritime security regime in 2007. Being a departmental internal review, the outcomes of that review are not available for scrutiny. However, the Explanatory Memorandum states that ‘the outcomes of this review formed the basis for the development of a series of legislative and policy proposals. The legislative proposals form the basis of this Bill’.²

The Bill does not merge the security arrangements of the aviation, maritime and security sectors. Rather, the Bill seeks to ensure that a similar regulatory framework is in place for each industry to enhance the overall efficiency of transport security.

Committee consideration

At its meeting of 25 September 2008, the Selection of Bills Committee deferred consideration of the Bill until its next meeting.³

Financial implications

The Explanatory Memorandum states that there is no financial impact and that the Commonwealth will receive no direct financial benefit from the changes to the Acts.

Key issues

The ATSA and the MTOFSA contain measures and procedures for the security of the transport sector. The proposed amendments are not controversial and are intended to ‘deliver effective security outcomes now and into the future.’⁴

2. Explanatory Memorandum, Transport Security Amendment (2008 Measures No.1) Bill 2008, p. 2.

3. Selection of Bills Committee, *Report No. 12 of 2008*, 25 September, 2008, paragraph 4.

4. See the Hon Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, ‘Second Reading Speech: Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008’, House of Representatives, *Hansard*, 25 September 2008, p. 5. The full text of the Second Reading Speech can be found [here](#).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The Explanatory Memorandum states that the changes will provide flexibility to industry by expressly recognising that participants, (in aviation, maritime and offshore security), may have responsibility for multiple facilities.⁵ According to the Government, the measures in this Bill will enable industry participants to ‘more confidently interpret, implement and administer the legislation as it relates to their daily business practices and this will, in turn, strengthen Australia’s security regime’.⁶

Mapping standards

The existing provisions require that a maritime security plan must ‘be accompanied by’ maps showing various port security zones. The Explanatory Memorandum states that existing mapping requirements have resulted in inconsistency in formatting, quality and accuracy of the maps. The present statutory restrictions prevented the Secretary from imposing any requirements as to how the maps were to be presented and submitted. The amendments will allow, under **proposed paragraph 49(1)(b)**, a maritime security plan to be prepared in accordance with any requirements set out in the regulations. Thus, the regulations will be able to specify any methods of presentation and submission that the Secretary considers appropriate.

Main provisions

Schedule 1

Aviation Transport Security Act 2004

Items 1, 3-5, 7, 10 will make consequential technical amendments to the ATSA.

Item 2 will amend section 12 to add **proposed subsections 12(2) to 12(4)** which provide that the Secretary (of the Department of Infrastructure, Transport, Regional Development and Local Government), may permit an aviation industry participant to have more than one security program. This must be done by giving written notice to the participant. That notice must specify all of the participant’s programs as well as the operation or locations to be covered.

Item 6 will repeal existing section 22 of the ATSA. **Proposed subsections 22(1) to 22(4)** are directed towards participants who have more than one program. The amendments are not considerably different from the existing section 22 which allows a participant to request the approval for a revised program. **Proposed subsection 22(4)** explicitly states that if a revised program comes into force, it replaces the existing program.

5. Explanatory memorandum, op. cit., p. 7.

6. Second reading speech, op. cit., p. 6.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Item 8 inserts **proposed subsection 23(2A)**. Existing section 23 allows the Secretary to direct participants to revise their programs and the new subsection clarifies that existing sections 19 and 20 will apply in relation to the revised program. Section 19 outlines the consideration and approval period for a program and section 20 outlines the time period when a program comes into force.

In similar terms to the new subsection 22(4), **item 9** will add to the end of section 23 **proposed subsection 23(4)**, which provides that if the revised program comes into force, it replaces the existing program.

Item 11 inserts saving and transitional provisions for multiple programs. The savings provision in this bill will ensure that the ATSA does not prevent an aviation industry participant from holding more than one transport security program at the same time. This will apply prior to the commencement of the amendments and apply so long as those programs covered different operations or locations. The ATSA is taken to apply to each of the programs as if it were the sole program for the participant.

Transitionally, **item 11** clarifies that if a participant holds multiple programs, then the Secretary is taken to have given an approval notice (under **proposed subsection 12(2)**) to that participant.

Maritime Transport and Offshore Facilities Security Act 2003

Items 12-14 will make consequential technical amendments to the MTOFSA. **Item 12** will insert “Australia” as a new term under existing section 10, including the external territories. This will extend the operation of the MTOFSA to Australian external territories such as Norfolk Island. These consequential amendments also include a change to the definition of *port facility* by **item 13**. The port facility will be a place used, either wholly or partly in connection with, the loading or unloading of security regulated ships, rather than all ships.

Items 14–32 amend Part 3 of the MTOFSA which deals with *maritime security plans*.⁷

Item 15 will add **proposed subsections 42(2) to 42(4)** which will expressly permit the Secretary to approve multiple maritime security plans for a *maritime industry participant*.⁸ This must be done by giving written notice to the participant. That notice

7. Sections 47–49 of the MTOFSA provide for the content and form of *maritime security plans*.

8. Section 10 of the MTOFSA provides that *maritime industry participant* means:

- (a) a port operator; or
- (b) a port facility operator; or
- (c) the ship operator for a regulated Australian ship; or
- (d) the ship operator for a regulated foreign ship; or
- (da) an offshore industry participant; or

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

must specify all of the participant's programs as well as the operation or locations to be covered.

Items 16-19 are minor consequential amendments to the MTOFSA to ensure that maritime industry participants can hold multiple maritime security plans at the same time.

Item 20 will allow for mapping standards to be prescribed in the Maritime Transport and Offshore Facilities Security Regulations 2003.

Items 21-24 are consequential amendments arising out of the mapping requirements, established under the regulations.

Items 25-28 are also consequential amendments relating to the Secretary permitting maritime industry participants holding multiple security plans at the same time.

Item 29 inserts saving and transitional provisions for multiple plans. The savings provision in this bill will ensure that the MTOFSA does not prevent a maritime industry participant from holding more than one maritime security program at the same time. This will apply prior to the commencement of the amendments and apply so long as those programs covered different operations or locations. The MTOFSA is taken to apply to each of the programs as if it were the sole program for the participant.

Transitionally, **item 29** clarifies that if a participant holds multiple programs, then the Secretary is taken to have given an approval notice (under **proposed subsection 42(2)**) to that participant.

Items 30-33 are minor consequential amendments to ensure that **item 34** does not prevent an offshore industry participant from holding multiple offshore security plans.

Items 33-47 amend Part 5A of the MTOFSA which deals with *offshore security plans*.⁹

Item 34 clarifies that an *offshore industry participant*¹⁰ can have more than one offshore security plan. This item adds **proposed subsections 100B(2) to 100B(4)** which permit the

-
- (f) a contractor who provides services to a person mentioned in paragraphs (a) to (d); or
 - (g) a person who:
 - (i) conducts a maritime-related enterprise; and
 - (ii) is prescribed in the regulations.

9. Sections 100G-100I of the MTOFSA provide for the content and form of *offshore security plans*.

10. Section 10 of the MTOFSA provides that *offshore industry participant* means:

- (a) an offshore facility operator; or
- (b) a contractor who provides services to an offshore facility operator; or
- (c) a person who:

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Secretary to approve multiple offshore security plans for an industry participant. Similar to the aviation and maritime arrangements, this must be done by giving written notice to the participant. That notice must specify all of the participant's programs as well as the operation or locations to be covered.

Items 35 and 36 are minor technical amendments to sections 100C(1)(b) and 100D(1)(b) respectively. **Item 37** will insert **proposed paragraph 100G(1)(a)** which addresses the need for a requisite security assessment to address the operations or locations covered by each plan, in the case of multiple offshore security plans. **Items 38-43** are minor amendments relating to the approval notice and the validity of the notice. The offshore security plan will be approved for a period of five years or less, but no less than 12 months.

Item 43 repeals subsection 100N(1) and **substitutes proposed subsection 100N(1)** clarifying that an industry participant who holds an approved offshore security plan can request the Secretary to approve another plan in its place. **Item 44** amends **subsection 100N(4)** to clarify that if a revised plan comes into force, it replace the existing plan only (and not any other plans held by the participant). **Item 46** is a consequential amendment of **item 30**.

Item 47 inserts saving and transitional provisions for multiple plans. The savings provision in this bill will ensure that the MTOFSA does not prevent an offshore industry participant from holding more than one offshore security program at the same time. This will apply prior to the commencement of the amendments and apply so long as those programs covered different operations or locations. The MTOFSA is taken to apply to each of the programs as if it were the sole program for the participant.

Transitionally, **item 47** clarifies that if a participant hold multiple programs, then the Secretary is taken to have given an approval notice (under **item 34, proposed subsection 100B(2)**), to that participant.

Items 48-59 are consequential amendments that are necessary to ensure consistency with the more substantive items in this Bill.

-
- (i) conducts an enterprise connected with a security regulated offshore facility; and
 - (ii) is prescribed in the regulations.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Concluding comments

This Bill has arisen following a Department's internal review of its laws and procedures and aims to remove inconsistencies across the transport security sectors. That review is not available for consideration.

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2430.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.