

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2005 No. 18**

Issued by Authority of the Minister for Transport and Regional Services

Subject:     *Aviation Transport Security Act 2004*  
              *Aviation Transport Security (Consequential Amendments and*  
              *Transitional Provisions) Act 2004*  
              *Aviation Transport Security Regulations 2005*

Subsection 133(1) of the Aviation Transport Security Act 2004 (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Item 1(1) of Schedule 3 to the Aviation Transport Security (Consequential Amendments and Transitional Provisions) Act 2004 (the Transitional Act) also provides a regulation making power in the same terms.

The Act establishes a regulatory framework to safeguard against unlawful interference with aviation. To achieve this purpose, the Act establishes minimum security requirements for civil aviation in Australia by imposing obligations on persons engaged in civil aviation related activities. The Transitional Act deals with consequential and transitional matters arising from the enactment of the Act.

The purpose of the Regulations is to provide the detail necessary for the regulatory framework established by the Act to operate as intended. They also provide for transitional arrangements. Where possible, the Regulations look to outcomes, rather than seeking to impose prescriptive measures. The Regulations are divided into 9 Parts:

- Part 1 provides definitions for a number of terms that are used throughout the Regulations and are not otherwise defined in the Act.
- Part 2 details some of the matters that are to be dealt with in a transport security program (TSP). The balance of the matters to be dealt with are set out in section 16 of the Act. The Act requires TSPs to be developed by certain aviation industry participants (including airport operators and aircraft operators). The TSPs must detail how the participant will manage aviation security related matters.
- Part 3 is concerned with the establishment and control of secure areas at airports. This includes detailing, for those secure areas, their boundaries and restrictions on entry, as well as when identification cards are to be worn by people.
- Part 4 deals with security screening and clearing requirements at airports including on-board security. It also provides for a series of exceptions to allow certain people to pass through a screening point without being screened (for

example, a screening officer who is engaged in the management of the screening point) or to have weapons and prohibited items in secure areas (for example, police officers). Part 4 also makes special provision for regulated air cargo agents and for transporting persons in custody including those in immigration detention.

- Part 5 deals with the training and qualifications that aviation security inspectors, security guards and screening officers are required to have.
- Part 6 makes rules about the use and issue of aviation security identification cards (ASICs) and visitor identification cards (VICs). Part 6 also covers matters relating to security designated authorisations (defined in regulation 1.08).
- Part 7 creates a system of infringement notices for certain offences against the Act and the Regulations as an alternative to prosecution. It is intended that a system of infringement notices will provide an effective and efficient mechanism to ensure compliance with aviation security requirements.
- Part 8 ensures that certain decisions, including decisions about ASICs made under the Regulations, can be reviewed by the Administrative Appeals Tribunal.
- Part 9 makes it an offence to engage in conduct that a reasonable person could interpret as a threat to commit an unlawful interference with aviation. It also expands the methods by which notices under the Regulations may be given.

A regulation impact statement (RIS) has been prepared. It concluded that ‘the only viable option is government regulation’ and that this ‘is implicitly supported by the industry’s general willingness to participate in the development of the Regulations and cooperate with the approach now being proposed by the Government’. The RIS emphasised that ‘the benefits stemming from the proposed Regulations appear at least to cover their costs’, but also noted that the Government is ‘open to future review of the Regulations in the light of experience’, particularly if more cost-effective alternatives become apparent.

#### Nature of consultation undertaken

The past few years have seen increasing resources devoted to security measures - in air transport as well as elsewhere. The Department has consulted thoroughly with many aviation industry participants including airport operators, aircraft operators and cargo agents as well as unions and Commonwealth and State government agencies. These consultations have been by letter, email and face to face meetings.

In developing the Regulations, a series of subject specific working groups were held with the aviation industry. Each working group essentially covered a particular part of the Act, i.e. - weapons and prohibited items; defining and identifying airside and landside areas and zones within those areas; screening and clearing; transport security programs; cargo and freight; on-board security; powers of officials; and enforcement and review.

Departmental officials met with representatives from the Australian Services Union, Transport Workers Union and Australian Federation of Pilots to discuss the proposed Regulations. All other affected unions were offered briefings.

Officials also met with members of State and Territory police forces and Premier's Departments on the enforcement aspects of the Act and Regulations and separately briefed a National Counter Terrorism Committee meeting.

Further, officials met with representatives of general aviation airports to discuss their specific concerns.

One of the major consultation processes undertaken involved firearms which is a particularly sensitive issue. In addition to aviation industry participants, officials met and consulted with representatives of the major security companies which provide armed escorts for high value goods.

It is intended that the extensive consultation engaged in for the development of the Regulations will be ongoing. Time and experience in operating these regulatory arrangements may well show that there are more effective or efficient ways of achieving their objectives. Those who will operate the transport security programs will be best placed to see opportunities for improvements. It is the Government's intention, therefore, that the Department will make sure that there is a continuing program of consultation, specifically directed to ensuring that the regulatory arrangements can be progressively improved. It is also expected that transport security programs made by aviation industry participants will be regularly updated to address new threats and to ensure that the plans are as effective and efficient as possible.

Details of the Regulations are set out in the Attachment.

The Regulations commence on the commencement of sections 3 to 133 of the Act. The effective commencement date is 10 March 2005.

Authority: Subsection 133(1) of the *Aviation Transport Security Act 2004*

Item 1(1) of Schedule 3 to the *Aviation Transport Security (Consequential Amendments and Transitional Provisions) Act 2004*

Details of the proposed *Aviation Transport Security Regulations 2005***PART 1 PRELIMINARY****Regulation 1.01 Name of Regulations**

Regulation 1.01 provides that the Regulations are to be cited as the *Aviation Transport Security Regulations 2005*.

**Regulation 1.02 Commencement**

Regulation 1.02 provides that the Regulations commence upon the commencement of sections 3 to 133 of the Act, which is on 10 March 2005.

**Regulation 1.03 Definitions**

Regulation 1.03 defines several terms that are used throughout the Regulations and are not otherwise defined in the Act.

They include: Act, ANA, ANR, ASIC, aviation security identification card, carry-on baggage, categorised airport, checked baggage, checked in, crew, DIMIA, domestic air service, grey ASIC, international air service, jet, Migration Act, officer of the Australian Customs Service, open charter operation, photograph, RACA, red ASIC, regular public transport operation, screened air service, screening authority, secure area, TSP, unauthorised person, unlawful non-citizen, VIC, and visitor identification card.

In addition, the following are also defined:

***air security officer***

An air security officer is a protective service officer or a special protective service officer (these officers are appointed under the *Australian Federal Police Act 1979*) who is directed by the Commissioner of Police to carry out the duties of a position of air security officer.

A person who is employed and trained by a foreign government to travel on aircraft to provide security for aircraft and their passengers and crew is also an air security officer, provided that they are operating in accordance with an arrangement between the foreign government and the Australian Government. For example, an air marshal trained and employed by the Government of the United States of America to carry out security duties on board an aircraft who is on an aircraft operating between Australia and the USA in accordance with an intergovernmental arrangement would be an air security officer. However, a person who is employed to provide exclusive personal protection for 1 or more individuals travelling on an aircraft (i.e. a bodyguard) would not be an air security officer.

### ***charter operation***

There are three categories of charter operation. Each category is broadly defined as being a service of providing air transportation of people or goods or both people and goods.

Under the first category of charter operation, persons using the service must pay a fee and the service must not be available to the general public. The presence of fixed schedules, fixed terminals or specific routes is irrelevant. An example of such a charter operation is a charter flight for the purpose of transporting Formula 1 cars. Another example is a charter flight for press staff who pay a fee to be transported to an event. This category of charter operation is also known as a ‘closed charter operation’ with either a fixed or non-fixed schedule.

Under the second category of charter operation, persons using the service must pay a fee, the service must be available to the general public, and the service must not be conducted in accordance with fixed schedules, to or from fixed terminals over specific routes. An example of such a charter operation would be an ad-hoc scenic flight service provided to tourists or any other members of the general public on an irregular basis from varying locations and over various routes, for a fee. This category of charter operation is known as an ‘open charter operation’.

Under the third category of charter operation, persons using the service must not pay a fee, the service must not be available to the general public, and the service must be conducted in accordance with fixed schedules to or from fixed terminals over specific routes. An example of such a charter operation is a regular flight arranged by a company to transport its workers to a mine in a remote location such as Mount Isa, Roxby Downs or Olympic Dam. This category of charter operation is known as a ‘closed charter operation with fixed schedules’.

### **Regulation 1.04 What *properly displaying* means**

Regulation 1.04 sets out what it means to properly display an aviation security identification card (ASIC) or visitor identification card (VIC). The meaning of ‘properly displaying’ is a key concept for the operation of Part 3 of the Regulations.

To be ‘properly displayed’, an ASIC or VIC must be attached to a person’s outer clothing above waist height at the front or side of their body and the whole of the front of the ASIC or VIC must be clearly visible.

For example, an ASIC or VIC would not be properly displayed if a person had the card attached to the front of their shirt but was wearing a jacket that covered or partially covered the ASIC or VIC.

The regulation also provides that an ASIC or VIC is not properly displayed if it is obscured in any way by anything adhering to it.

### **Regulation 1.05 Meaning of *valid ASIC* and *valid VIC***

Regulation 1.05 defines valid ASIC and valid VIC. These concepts are pivotal to the operation of Parts 3 and 6 of the Regulations.

To be valid an ASIC or VIC must:

- a) be issued in accordance with Part 6; and
- b) not have expired or been cancelled; and
- c) not have been altered or defaced (permanently or temporarily); and
- d) be issued to the person who shows or displays it. For example a card that was issued to Mary in accordance with Part 6 and which has not expired or been cancelled, altered or defaced will be valid when it is being shown or displayed by Mary. However the same card would not be valid if it was being shown or displayed by Jane.

The Regulations provide for two types of ASICs; grey ASICs and red ASICs. Subregulation 1.05(2) explains the relationship between these two types of ASIC, and the circumstances where the Regulations require a person to display an ASIC, but do not specify whether it must be a red ASIC or a grey ASIC.

Subregulation 1.05(2) specifies that where the Regulations require a person to display a valid ASIC in a place, without specifying whether the ASIC must be a red ASIC or a grey ASIC, a person who is properly displaying a valid red ASIC satisfies the requirement. Whether a person who is properly displaying a valid grey ASIC satisfies the requirement is to be decided in accordance with regulation 3.03. Regulation 3.03 provides that a red ASIC is required in an airside security zone of a security controlled airport but a red or grey ASIC is required in any other secure area of such an airport. Note that there are also certain exceptions and transitional arrangements, which are set out in subregulations 3.03(6) and (7).

### **Regulation 1.06 Prescribed air services**

Regulation 1.06 sets out the meaning of prescribed air service. An air service is a service of providing air transportation of people or goods, or both people and goods (section 9 of the Act). There are three kinds of prescribed air services. They are:

- a) a regular public transport operation (as defined in regulation 1.03);
- b) an air service in which a fixed-wing aircraft powered by gas-turbine engines (other than turbo-prop engines) is used; and

- c) an air service in which an aircraft with a certificated maximum take-off weight greater than 5 700 kilograms is used.

An air service is not a prescribed air service if the Secretary, by instrument in writing, so declares (subregulation 1.06(2)).

### **Regulation 1.07 Prohibited items**

There are a number of items that potentially pose a threat to aviation security and these are known as ‘prohibited items’. The Act and the Regulations limit where and by whom such articles may be carried. Different rules apply to things that are ‘prohibited items’ and things that are ‘weapons’. This regulation defines which things are ‘prohibited items’. Regulation 1.09 defines ‘weapons’. If a thing is both a weapon and a prohibited item it is deemed to be a weapon (subregulation 1.09(5)).

An item is a prohibited item if it is described in column 2 of table 1.07. This table does not exhaustively list every prohibited item. Rather, classes of items are given and common examples of the class are provided. An item is a prohibited item if it falls into the class described, even if it is not specifically mentioned in the list of examples. An item is also a prohibited item if it is a replica or imitation of an item described in the table.

It is important to note that nothing in this regulation implies that an article or thing not described in the table can be carried on an aircraft. Other legislation, such as the *Civil Aviation Act 1988*, also restricts which items may be carried by air transport.

In addition, there are a number of exceptions to the definition of a prohibited item:

Subregulation 1.07(5) creates an exception for safety razors.

Subregulation 1.07(6) creates an exception for corkscrews being used by an aircraft’s cabin crew (but not passengers) and for hypodermic needle that are necessary for medical reasons. To establish that a hypodermic needle is necessary for medical reasons, a person with a hypodermic needle passing through a screening point will need to show a medical certificate to a screening officer if requested. Similarly, a passenger with a hypodermic needle will need to show a medical certificate to a representative of the airline (including a crew member) if requested.

Subregulation 1.07(7) provides that, subject to subregulation (8) alcohol, perfume, matches, lighters, lighter fluid and aerosol containers (for personal or medical use) are not prohibited items.

Subregulation 1.07(8) puts a limit on the total volume or mass of an item covered by the exception in 1.07(7).

Subregulation 1.07(9) ensures that handcuffs and similar restraining devices may be carried by a person who is escorting a person in custody and may be carried on board an aircraft with the authority of the aircraft operator for the purposes of restraining a violent person.

Subregulation 1.07(10) provides that aircraft stores or emergency equipment and airline operator's or airport operator's emergency equipment that is not readily accessible to passengers or members of the public, are excluded from the definition of a prohibited item.

Subregulation 1.07(11) ensures that all knives or knife-like objects (not covered by an exception) are prohibited. Where a knife or knife-like object is designed to be used primarily to inflict injury or in self defence it will be covered by the definition of a weapon. However, other knives such as small pocket knives, which are not designed to be used to inflict injury or in self defence, will be prohibited items.

Subregulation 1.07(12) ensures that all scissors are prohibited items, except those that are blunt or round ended and have blades less than 6 cm long.

Subregulation 1.07(13) is intended to ensure that appropriate cutlery can be used. A fork is not a prohibited item if the tines have square or round ends and the handle is round-ended and is not detachable. There is also an exception for plastic knives, this is intended to cover the types of plastic knives usually provided to passengers or other persons to enable them to eat meals.

Subregulation 1.07(14) provides that aids that a person requires to assist their mobility such as a walking stick or crutches are not prohibited items. The effect of this subregulation is to ensure that such mobility aids can be used to assist a person to walk around in the sterile area and to or from an aircraft.

### **Regulation 1.08 Security designated authorisations**

Regulation 1.08 sets out which authorisations are security designated authorisations, as required by section 9 of the Act.

Both a flight crew licence and a special pilot licence (within the meaning of the *Civil Aviation Regulations 1988*) are security designated authorisations. Division 6.7 sets out the security check and identification requirements for security designated authorisations.

### **Regulation 1.09 Weapons**

The definition of a weapon in section 9 of the Act includes a thing prescribed by the Regulations to be a weapon. This regulation prescribes certain items as weapons.



An item is a weapon if it is described in column 2 of table 1.09. This table does not exhaustively list every weapon. Rather, classes of items are given and common examples of the class are provided. An item is a weapon if it falls into the class described, even if it is not specifically mentioned in the list of examples. An item is also a weapon if it is a replica or imitation of a firearm or any other weapon.

Firearms are weapons because they are included in the definition of a weapon in section 9 of the Act. Section 9 of the Act provides that a device that would be a firearm or would be an item in a class described by this regulation, but for an absence or defect in part of the device, is also taken to be a weapon. That definition of a weapon also includes a device capable of being converted into a firearm or an item described by this regulation.

It is important to note that nothing in this regulation implies that an article or thing not described in the table can be carried. Other legislation, such as the *Civil Aviation Act 1988*, also restricts which items may be carried by air transport.

Subregulation 1.09(5) explains the relationship between ‘prohibited items’ and ‘weapons’ in these Regulations. It provides that a thing that is both a prohibited item (see regulation 1.07) and a weapon is taken to be a weapon.

Subregulation 1.09(6) creates a general exception to the general definition of a weapon for aircraft stores or emergency equipment and airline operator’s or airport operator’s emergency equipment that is not readily accessible to passengers or members of the public.

Subregulation 1.09(7) makes it clear that a telescopic sight is not a weapon.

Subregulation 1.09(8) ensures that a defibrillator that is carried as part of an aircraft’s equipment or that is required for medical purposes is not taken to be a weapon.

## **PART 2      TRANSPORT SECURITY PROGRAMS**

Under Part 2 of the Act, various aviation industry participants are required to have transport security programs (TSPs). A TSP must be complied with by the participant concerned and by any other participants who are covered by it and have been given a copy of the TSP. Part 2 of the Regulations contains further provisions relating to TSPs.

## **Division 2.1 Preliminary**

### **Regulation 2.01 Definitions for Part**

This regulation defines the term “security contact officer” for the purposes of Part 2. In this Part, “security contact officer” means a person appointed by an aviation industry participant to carry out the responsibilities of a security contact officer for the participant. The appointment of security contact officers is provided for in regulation 2.02.

Regulation 2.01 also explains that in Part 2, a reference to “audit” is a reference to an examination by an aviation industry participant of security measures under the participant’s TSP to find out whether the measures have been implemented correctly. Also, a reference to “review of an aviation industry participant’s TSP” is a reference to an evaluation by the participant of security measures and procedures under its TSP to find out whether the measures and procedures are adequate.

### **Regulation 2.02 Security contact officers**

Subregulation 2.02(1) sets out the responsibilities of a security contact officer. These are to facilitate the development, implementation, review and maintenance of the participant’s TSP, and to undertake liaison with other aviation industry participants in relation to aviation security matters.

Subregulation 2.02(2) provides that an aviation industry participant that must have a TSP must provide in the TSP for the appointment of a security contact officer in accordance with its TSP. If the participant fails to appoint a security contact officer in accordance with its TSP, it is subject to a penalty of up to 10 penalty units. The person appointed must be either the participant itself, or an employee of the participant.

The security contact officer would be the first point of contact if an incident was to occur. They would be responsible for the co-ordination of action and response to the incident, passing on information to other relevant aviation industry participants as well as responding to any request by the Department for certain action to occur or information to be provided.

### **Regulation 2.03 Aviation industry participants that must have TSPs**

Section 12 of the Act requires the following aviation industry participants to have a transport security program: (a) an operator of a security controlled airport; (b) an operator of a prescribed air service; and (c) a participant of a kind prescribed in the regulations. Regulation 2.03 prescribes the kind of participants required to have a TSP, for the purposes of paragraph 12(c) of the Act. They are:

- a) a regulated air cargo agent (RACA) (ie a person designated as a RACA by the Regulations);

- b) an aviation industry participant that occupies or controls an area at a security controlled airport that has direct access to the airside of the airport (for example, the occupant or controller of a hangar, cargo facility, fuel storage area or other general aviation facility who is not an operator of a prescribed aircraft or a regulated air cargo agent); and
- c) Airservices Australia.

**Regulation 2.04 Aviation industry participants to which more than 1 Division applies**

Regulation 2.04 provides, to avoid doubt, that if 2 or more Divisions of Part 2 of the Regulations apply to an aviation industry participant that is required to have a TSP, the participant's TSP must comply with both or all of the applicable Divisions. An example would be an airline that operates both passenger flights and an air cargo service. It would have a TSP that complies with both Division 2.3 (operators of prescribed air services) and Division 2.4 (RACAs).

**Regulation 2.05 What all TSPs must contain**

Regulation 2.05 provides that a TSP for an aviation industry participant must contain a statement signed by the participant to the effect that the participant believes that the TSP gives effect to the participant's obligation in subsection 16(1) of the Act. Subsection 16(1) of the Act requires a TSP to demonstrate that the participant: is aware of its general responsibility to contribute to the maintenance of aviation security; has developed an integrated, responsible and proactive approach to managing aviation security; is aware of, and has the capacity to meet, the specific obligations imposed on the participant under the Act; and has taken into account relevant features of the participant's operation in developing activities and strategies for managing aviation security.

**Regulation 2.06 Offence — disclosing TSPs without consent**

Regulation 2.06 makes it an offence for a person to disclose information about the content of an aviation industry participant's TSP without that participant's consent. The maximum penalty for unauthorised disclosure is 50 penalty units. For example, an employee of an airside facility holder, such as a flying school who has a copy of part of, or all of, the TSP of an airport operator, participating in an interview on airport security must not discuss the contents of that TSP without the airport operator's consent.

**Division 2.2 Operators of security controlled airports**

**Regulation 2.07 What this Division does**

Regulation 2.07 gives a general description of the content of Division 2.2, which sets out the requirements for the content of a TSP for the operator of a security controlled airport.

### **Regulation 2.08 Application of this Division**

Regulation 2.08 provides that Division 2.2 applies to the operator of a security controlled airport. In Division 2.2, the term ‘airport operator’ refers to the operator of a security controlled airport.

### **Regulation 2.09 Scope of airport operator’s TSP**

Regulation 2.09 sets out the scope of an airport operator’s TSP. It provides that the TSP must cover any aviation-security-related activity on the airport that is not covered by the TSP of any other aviation industry participant.

In preparing their TSP the airport operator should identify those other aviation industry participants within their airport that are required to prepare a TSP. For example, prescribed air service operators and regulated air cargo agents must have their own TSPs. However, airside facility operators may seek to join the TSP of an operator of a security controlled airport at which they are located.

### **Regulation 2.10 What airport operator’s TSP must contain — outline**

Regulation 2.10 provides that an airport operator’s TSP must set out an outline of the objectives of the TSP. It must include, in an accompanying document: a statement outlining the local security risk context of the airport; a list of general threats and generic security risk events to people, assets, infrastructure and operations; and an outline of the people, assets, infrastructure and operations that need to be protected. This requirement may be satisfied by the operator attaching a copy of their security risk assessment to their TSP.

### **Regulation 2.11 What airport operator’s TSP must contain — procedures for managing security etc**

Regulation 2.11 prescribes the matters an airport operator’s TSP must deal with in relation to procedures for managing security.

Subregulation 2.11(1) requires the TSP to set out the procedures for managing security at the airport, including:

- a) organisational structures and security management arrangements; and
- b) roles and responsibilities of security contact officers, security staff, contractors and responding agencies; and
- c) roles and responsibilities of other staff who have been assigned security duties and responsibilities; and
- d) roles and responsibilities of other Commonwealth, State and Territory agencies, and local authorities, with security duties at the airport.

Subregulation 2.11(2) also requires the TSP to set out a mechanism for consultation for the purpose of coordinating security-related activities. The mechanism will apply to consultation between the operator and its employees, and also with third parties, such as police, aircraft operators, tenants and lessees.

It is envisaged that this mechanism may take the form of an airport security committee or some other consultative forum. The TSP is to set out, in an accompanying document, the terms of reference and membership of the security committee or other consultative arrangement (subregulation 2.11(3)).

Subregulation 2.11(4) requires the TSP to set out measures to ensure that the TSP and other security information is protected against unauthorised access, amendment and disclosure.

**Regulation 2.12 What airport operator’s TSP must contain — procedures for quality control**

Subregulation 2.12(1) requires the TSP to set out quality control procedures, notably, provision for audits and reviews, and subregulation 2.12(2) requires the records of audits and reviews to be kept for 7 and 3 years respectively. (Audits and reviews are defined in regulation 2.01.)

**Regulation 2.13 What airport operator’s TSP must contain — description of airport**

Regulation 2.13 requires the TSP to describe the airport and its operations, with particular regard to security considerations. It must identify all aviation industry participants within the airport that are required to have a TSP, and are covered by the airport operator’s TSP or another aviation industry participant’s TSP (i.e. that participant’s own TSP). Subregulation 2.13(3) provides that the operator must notify the Secretary in writing of any changes to this information within 7 working days.

Contact details for the operator must also be set out in an accompanying document. The Secretary must be notified in writing of changes to these details within 2 working days (subregulation 2.13(5)).

It is a strict liability offence with a maximum penalty of 20 penalty units to fail to notify changes to the airport description, identification of participants, or contact details.

Regulation 2.13 also deals with co-ordination with other aviation industry participants in the airport. Subregulation 2.13(7) requires the operator to give each other aviation industry participant within the airport:

- contact details for the operator, including its security contact officer;
- and

- details of the procedures to make known the location of airside areas, airside security zones and landside security zones, and to check the identity of persons authorised to have access to those areas and zones.

The TSP must also require the airport operator to maintain a system to enable all aviation industry participants located within the airport to be contacted if an aviation transport security incident occurs (subregulation 2.13(8)).

If the airport operator's TSP covers another aviation industry participant that is required to have a program or be covered by the operator's TSP, subregulation 2.13(9) requires the operator's TSP to be accompanied by a document that sets out contact information for each such participant.

**Regulation 2.14 What airport operator's TSP must contain — proposed security zones**

Subregulation 2.14(1) provides that if an airport operator wishes the Secretary to establish an airside security zone or a landside security zone at the airport, the operator's TSP must set out: the purpose of establishing the zone; the proposed boundaries of the zone; any period for which, or the circumstances in which, the zone will be in force; and the name or position of the person responsible for the security measures in relation to the zone. The TSP must set out security measures and procedures to monitor and control access to landside and airside security zones, including measures to detect and deter unauthorised access to those zones (subregulation 2.14(2)).

**Regulation 2.15 What airport operator's TSP must contain— maps**

Paragraph 17(2)(a) of the Act requires an airport operator's TSP to be accompanied by:

- a map showing the airside and landside areas, and any security zones for the airport, and
- a map showing any proposed changes to the areas and zones.

Subregulation 2.15(1) prescribes requirements as to the form of such maps.

Subregulation 2.15(2) also requires the TSP to include a map showing the location of regular and isolated aircraft parking positions.

In addition, if a screened air service operates from the airport, the TSP must include a map of the airport terminal showing the location of all screening points and landside security zones including sterile areas and a description and map of the airport's apron or aprons. 'Screened air service' is defined in regulation 4.02. An airport operator's TSP will define what an 'apron' for that airport is (subregulation 4.02(3)).

**Regulation 2.16 What airport operator’s TSP must contain — physical security and access control**

Subregulation 2.16(1) requires the TSP to set out the security measures and procedures to be used within the airport, and specifies the types of measures and procedures that are to be included. These include measures and procedures: to control airport access; to deter and detect unauthorised access into the airside area, airside or landside security zone; to be applied to unattended aircraft; to deal with unknown substances and unattended or suspect vehicles, baggage and cargo; and to ensure the security of passwords, keys, electronic access cards and other security privileges.

The TSP must specify which of the measures and procedures have been implemented, and must include a timetable for implementation of the others (subregulation 2.16(2)).

**Regulation 2.17 What airport operator’s TSP must contain — screening and clearing**

If a screened air service operates from the airport, the TSP must set out measures, equipment and procedures to carry out screening and clearing of persons and baggage, as well as the names of screening authorities that will undertake that function (subregulation 2.17(1)). Subregulation 2.17(2) sets out in more detail the matters that must be included in the TSP in relation to screening and clearing. ‘Screened air service’ is defined in regulation 4.02.

**Regulation 2.18 What airport operator’s TSP must contain — checked baggage screening**

Certain airports are required by regulation 4.29 to have specified domestic checked baggage screening (CBS) capability.

Only screened and cleared checked baggage may be loaded onto an aircraft operating international air screened services (see regulation 4.24).

Subdivision 4.1.2 sets out the requirements for checked baggage screening. After 1 August 2007, all checked baggage for domestic CBS air services at the airports for Alice Springs, Cairns, Coolangatta and the airports bearing the names of each capital city of each State and Territory must be screened. Up to 31 July 2007, only randomly selected checked baggage for domestic CBS air services is to be subject to screening.

Subregulation 2.18(1) provides that if the airport operator carries out checked baggage screening itself, its TSP must include: measures, equipment and procedures to carry out that screening; measures and procedures to ensure that checked baggage is protected against tampering and the introduction of explosives; procedures to treat unattended and suspect baggage; and measures and procedures to respond to the detection of explosives.

Subregulation 2.18(2) provides that if a screened air service operates from the airport, but the airport operator does not carry out checked baggage screening itself, its TSP must specify the screening authority that carries out that screening on its behalf. For example, the operator of an international open charter operation operating from any airport will be required to ensure that checked baggage screening is carried out on all checked baggage it intends to carry.

**Regulation 2.19 What airport operator’s TSP must contain — cargo facilities with direct access to airside**

This regulation provides that if a screened air service operates from the airport, the airport operator’s TSP must be accompanied by a document listing each facility that has direct access to the airside of the airport and is responsible for receiving, processing and clearing cargo.

**Regulation 2.20 What airport operator’s TSP must contain — control of firearms, other weapons and prohibited items**

The TSP must include measures and procedures relating to firearms, other weapons and prohibited items in the airport. This regulation provides that the airport operator must ensure that the procedures in the TSP to handle or transport firearms, other weapons and prohibited items are consistent with relevant Commonwealth, State and Territory laws.

**Regulation 2.21 What airport operator’s TSP must contain — measures for heightened security alert**

Subregulation 2.21(1) provides that the TSP must set out, in an accompanying document, additional security measures and procedures available in the event of a heightened security alert. Subregulation 2.21(2) specifies particular types of measures and procedures that must be included in that document. These include, for example, procedures for responding to threats and breaches of security, and procedures for evacuation and emergency management in case of an aviation security incident, such as a hijacking or a bomb threat.

**Regulation 2.22 What airport operator’s TSP must contain — personnel with particular security roles**

The TSP must set out the criteria for selecting the security contact officer and any training to be given to the person selected (subregulation 2.22(1)).

It must also specify the other personnel who have been assigned particular security duties and responsibilities, and set out their duties and responsibilities, relevant knowledge, skills and other requirements, and the training or qualifications that satisfy those requirements (subregulations 2.22(2) and (3)).



The TSP must also deal with security awareness training for those staff who require such training (subregulation 2.22(4)). Not all of an airport operator's staff may need to undergo security awareness training.

**Regulation 2.23 Content of TSPs for major airport operators — barriers**

Regulation 2.23 applies to the operators of the airports listed in the regulation, which are capital cities of each State and Territory, as well as the major regional airports at Alice Springs, Cairns and Coolangatta. Their TSPs must set out the specifications of a barrier sufficient to deter unauthorised access to the airside of the airport and require the operator to construct and maintain a barrier to those specifications.

**Regulation 2.24 Transitional arrangements — TSPs for airport operators**

This regulation sets out transitional arrangements for the 39 airports that were categorised under the *Air Navigation Act 1920* (the ANA). The purpose of the system of categorisation was to assist with the application of security measures to the airports. Providing for a categories of airport (ranging from category 1 to category 5) allowed for some variation of the security measures between the different categories. Section 22ZJ of the ANA obliged the operator of each categorised airport to ensure it had an approved airport security program and that it complied with that program.

Subregulation 2.24(1) provides that if an airport operator has an approved airport security program under the ANA, that program will continue in force, as if it were a TSP during a transitional period (until the end of 9 March 2007, when this regulation ceased to have effect). However, the operator must submit a draft TSP that complies with the Act and the Regulations before 9 March 2006 (subregulation 2.24(2)).

Subregulation 2.24(3) provides that for the purposes of the application of the transitional program, a reference to the security restricted area is taken to mean the airport security zone known as the security restricted area. The purpose of this subregulation is to ensure that the obligations for displaying an ASIC (see regulation 3.03) apply to that security restricted area.

**Division 2.3 Operators of prescribed air services**

**Regulation 2.25 What this Division does**

Regulation 2.25 gives a general description of the content of Division 2.3, which sets out the requirements for the content of a TSP for the operator of a prescribed air service. An air service is a prescribed air service if it is of a kind listed in regulation 1.06.

### **Regulation 2.26 Application of this Division**

Regulation 2.26 provides that Division 2.3 applies to the operator of a prescribed air service. In Division 2.3, the term ‘aircraft operator’ refers to the operator of a prescribed air service.

### **Regulation 2.27 Scope of aircraft operator’s TSP**

Regulation 2.27 sets out the scope of an aircraft operator’s TSP. It provides that the TSP must cover any aviation-security-related activity that is relevant to the aircraft operator’s operations, including significant facilities on security controlled airports.

### **Regulation 2.28 What aircraft operator’s TSP must contain - outline**

Regulation 2.28 provides that an aircraft operator’s TSP must set out an outline of the objectives of the TSP. It must include, in an accompanying document: a statement outlining the local security risk context of the operator; a list of general threats and generic security risk events to people, assets, infrastructure and operations; and an outline of the people, assets, infrastructure and operations that need to be protected.

### **Regulation 2.29 What the aircraft operator’s TSP must contain - procedures for managing security etc**

Regulation 2.29 prescribes the matters an aircraft operator’s TSP must deal with in relation to procedures for managing security.

Subregulation 2.29(1) requires the TSP to set out the procedures for managing security at the aircraft operator’s facilities, including:

- a) organisational structures and security management arrangements; and
- b) roles and responsibilities of security contact officers, security staff, contractors and responding agencies; and
- c) roles and responsibilities of other staff who have been assigned security duties and responsibilities; and
- d) roles and responsibilities of other Commonwealth, State and Territory agencies, and local authorities with security duties at the facility.

Subregulation 2.29(2) also requires the TSP to set out a mechanism for consultation for the purpose of coordinating security-related activities. The mechanism would apply to consultation between the operator and the operator of a relevant security controlled airport and its employees, and also with third parties, such as police, tenants and lessees.

Subregulation 2.29(3) requires the TSP to set out measures to ensure that the TSP and other security information is protected against unauthorised access, amendment and disclosure.

**Regulation 2.30 What aircraft operator's TSP must contain - procedures for quality control**

Subregulation 2.30(1) requires the TSP to set out quality control procedures, notably provision for audits and reviews, and subregulation 2.30(2) requires the records of audits and reviews to be kept for 7 and 3 years respectively. (Audits and reviews are defined in regulation 2.01.)

**Regulation 2.31 What aircraft operator's TSP must contain - details of operator's name and operations**

Subregulation 2.31(1) requires the TSP or an accompanying document to set out details relating to the operator's name; the location of its operational facilities located within a security-controlled airport as declared under subsection 28(2) of the Act; the types of aircraft operations it carries on (including, but not limited to, prescribed air services as defined in regulation 1.06 - for example, pilot training services); and details of its operational facilities.

Subregulation 2.31(2) requires the operator to notify the Secretary in writing of any changes to the details notified under subregulation 2.31(1). Changes must be notified within 7 working days.

Subregulation 2.31(3) requires that a document accompany the TSP that sets out certain contact details relating to the operator.

Subregulation 2.31(4) requires the operator to notify the Secretary in writing of any changes to the details notified under subregulation 2.31(3). Changes must be notified within 2 working days.

It is a strict liability offence with a maximum penalty of 20 penalty units to fail to notify changes as required by subregulations 2.31(2) and 2.31(4).

Regulation 2.31 also deals with co-ordination with each security controlled airport at which the aircraft operator has a facility. Subregulation 2.31(6) requires the operator of a prescribed air service to give the operator of each security controlled airport at which it has a facility:

- contact details for the facility, including its security contact officer; and
- details of the procedures to make known the location of airside areas, airside security zones and landside security zones within the boundaries of the airport and to check the identity of persons authorised to have access to those areas and zones.

**Regulation 2.32 What aircraft operator's TSP must contain - physical security and access control**

Subregulation 2.32(1) requires the TSP to set out the security measures and procedures to be used within the aircraft operator's facilities and specifies

types of measures and procedures that are to be included, for example, measures and procedures: to control access; to deter and detect unauthorised access into the airside area or an airside or landside security zone; to be applied to unattended aircraft; to deal with unknown substances and unattended or suspect vehicles, baggage and cargo; and to ensure the security of passwords, keys, electronic access cards and other security privileges.

The TSP must specify which of the measures and procedures have been implemented, and must include a timetable for implementation of the others (subregulation 2.32(2)).

**Regulation 2.33 What aircraft operator’s TSP must contain - control of firearms, other weapons and prohibited items**

The TSP must include measures and procedures relating to firearms, other weapons and prohibited items. This regulation provides that the aircraft operator must ensure that the procedures in the TSP to handle or transport firearms, other weapons and prohibited items are consistent with relevant Commonwealth, State and Territory laws.

**Regulation 2.34 What aircraft operator’s TSP must contain - check-in and boarding procedures**

The TSP must include details of the aircraft operator’s check-in and boarding procedures. This regulation provides that those details must include the procedures for dealing with anomalies in passenger reconciliation that arise during the check-in and boarding process, for example, two persons presenting themselves as the same passenger or a passenger who has checked in but does not board the aircraft.

**Regulation 2.35 What aircraft operator’s TSP must contain - screening and clearing**

If the aircraft operator carries out passenger or crew screening, then the TSP must set out a number of details relating to screening and clearing procedures (subregulation 2.35(1)). These details must include:

- measures, equipment and procedures for screening and clearing passengers or crew, and their carry-on baggage, including the locations, screening equipment and screening equipment operators involved;
- measures and equipment for screening transit passengers, including transit passengers who cannot leave the aircraft during transit;
- measures and procedures for controlling passenger movement, including ensuring screened departing passengers do not mix with unscreened arriving passengers;
- measures and procedures for handling diplomats and other VIPs, government couriers and diplomatic bags, passengers with reduced

mobility or a medical condition, persons in custody and transit passengers;

- measures and procedures for dealing with suspect passengers or carry-on baggage, and for handling suspect passenger behaviour, including the use of restraints; and
- measures and procedures for dealing with sterile area breaches, including recovery plans.

If an aircraft operator does not carry out its own screening of passengers or crew, its TSP must specify which screening authorities carry out the screening on its behalf (subregulation 2.35(2)). The Secretary specifies which persons can be screening authorities for a security controlled airport (regulation 4.03).

**Regulation 2.36 What aircraft operator’s TSP must contain - security of passenger and crew information**

This provides that the TSP must include measures to ensure that information about passenger and crew movements is protected.

**Regulation 2.37 What aircraft operator’s TSP must contain - checked baggage screening**

Certain airports are required by regulation 4.29 to have checked baggage screening.

Subregulation 2.37(1) provides that if the aircraft operator carries out the checked baggage screening itself, its TSP must include: measures, equipment and procedures to carry out that screening; measures and procedures for questioning of passengers, such as the questions asked and how the staff respond to an adverse or questionable answer; measures and procedures to ensure that checked baggage is protected against tampering and the introduction of explosives; procedures to treat unattended and suspect baggage; and measures and procedures to respond to the detection of explosives.

Where the aircraft operator does not carry out checked baggage screening itself, its TSP must specify the screening authorities that carry out this screening on its behalf (subregulation 2.37(2)). The Secretary specifies which persons can be screening authorities for a security controlled airport (regulation 4.03).

**Regulation 2.38 What aircraft operator’s TSP must contain - passenger and checked baggage reconciliation**

This regulation provides that the TSP must include measures and procedures to ensure that checked baggage transported on an aircraft belongs to the passengers on that flight. These measures and procedures include details of

the equipment used to reconcile passengers and baggage; procedures for removing a passenger's checked baggage from a flight where the passenger fails to board that flight; and procedures for clearing baggage that has been unloaded before it is reloaded onto the same or a different aircraft.

The TSP must also include details of procedures for identifying the unaccompanied baggage and any additional security measures, such as screening, applied to the unaccompanied baggage.

**Regulation 2.39 What aircraft operator's TSP must contain - security of aircraft**

Under regulation 2.39, the TSP must include measures and procedures for: preventing the unlawful carriage of a firearm, another weapon or a prohibited item on an aircraft; deterring unauthorised access to aircraft at all times; preventing unauthorised entry to an aircraft's flight deck at all times; assessing, identifying and responding to unknown substances on an aircraft; investigating, securing and removing unattended and suspect items on an aircraft, including baggage and cargo; and maintaining the security of operators' stores (for example, in-flight meals) taken on board the aircraft.

**Regulation 2.40 What aircraft operator's TSP must contain - security of aircraft cleaning operations and stores**

This regulation provides that the TSP must include measures and procedures for ensuring the security of aircraft cleaning operations. This includes ensuring the security of cleaning materials to be taken on board an aircraft that are stored at a facility controlled by the operator.

**Regulation 2.41 What aircraft operator's TSP must contain - security of cargo etc**

If the operator operates a screened air service and clears cargo itself, the TSP must set out details of the measures, equipment and procedures for clearing cargo; types of cargo exempt from these clearing measures and procedures; and the procedures and criteria for the receipt, acceptance and handling of courier articles, express parcels and mail (subregulation 2.41(1)).

If the operator does not clear cargo itself, the TSP must specify the aviation industry participant that clears cargo on its behalf (subregulation 2.41(2)).

The TSP must also set out measures and procedures for ensuring the security of cargo (including courier articles, express parcels and mail) at all times, including setting out measures and procedures relating to diplomatic mail. The TSP must also set out measures and procedures for dealing with suspect cargo.

**Regulation 2.42 What aircraft operator’s TSP must contain - security of documents**

This regulation provides that the TSP must include measures and procedures for controlling access to the aircraft operator’s operational documents, including electronic documents. Examples include baggage tags, boarding passes and tickets.

**Regulation 2.43 What aircraft operator’s TSP must contain - measures for heightened security alert**

Under subregulation 2.43(1), the TSP must set out, in an accompanying document, additional security measures and procedures available in the event of a heightened security alert.

Subregulation 2.43(2) sets out particular types of measures and procedures that must be included in that document. These include, for example, procedures for responding to threats and breaches of security, and procedures for evacuation and emergency management in case of an aviation security incident, such as a hijacking or a bomb threat.

**Regulation 2.44 What aircraft operator’s TSP must contain - control directions**

This regulation provides that the TSP must describe the procedures by which the aircraft operator will pass on compliance control directions to the pilot in command of the aircraft concerned. Compliance control directions are those directions issued by an aviation security inspector under section 74B of the Act. Similarly, the TSP must describe the procedures by which the aircraft operator will pass on incident control directions, issued by the Secretary under section 74D of the Act, to the pilot in command of an aircraft.

If another document sets out these procedures, it is sufficient for the TSP to refer to that document as containing the procedures (subregulation 2.44(3)).

**Regulation 2.45 What aircraft operator’s TSP must contain - personnel with particular security roles**

The TSP must set out the criteria for selecting the security contact officer and any training to be given to the person selected (subregulation 2.45(1)).

It must also specify the other personnel who have been assigned particular security duties and responsibilities, and set out their duties and responsibilities, relevant knowledge, skills and other requirements, and the training or qualifications that satisfy those requirements (subregulations 2.45(2) and (3)).

The TSP must also deal with security awareness training for operational staff (subregulation 2.45(4)).

### **Regulation 2.46 Transitional arrangements - TSPs for aircraft operators**

This provision sets out transitional arrangements. If an aircraft operator has an approved airport security program under the *Air Navigation Act 1920*, that program will continue in force, as if it were a TSP, during a transitional period (until the end of 9 March 2007, when this regulation ceases to have effect). However, the operator must submit a draft TSP that complies with the Act and the Regulations before 9 March 2006.

### **Division 2.4 Regulated air cargo agents**

#### **Regulation 2.47 What this Division does**

Regulation 2.47 gives a general description of the content of Division 2.4, which sets out the requirements for the content of a TSP for a regulated air cargo agent (or RACA). A person is a RACA if he or she carries on a business that includes the handling of cargo (or making arrangements for transport of cargo) to be carried on a prescribed air service, and his or her name appears on the Secretary's list of regulated air cargo agents (regulation 4.42).

#### **Regulation 2.48 Scope of RACA's TSP**

Regulation 2.48 sets out the scope of a RACA's TSP. It provides that the TSP must cover the measures and procedures the RACA will use to handle, store and transport cargo securely, or make arrangements for the secure movement of cargo. The TSP must cover these procedures from the time the RACA accepts the cargo until the time the cargo reaches the cleared area or zone of a security controlled airport, or a prescribed aircraft, or another RACA.

Where the RACA's TSP covers aviation-security-related activities on the airport, the airport operator's TSP does not need to cover those facilities (regulation 2.09).

#### **Regulation 2.49 What RACA's TSP must contain - outline**

Regulation 2.49 provides that a RACA's TSP must set out an outline of the objectives of the TSP. It must include, in an accompanying document: a statement outlining the local security risk context of the RACA; a list of general threats and generic security risk events to people, assets, infrastructure and operations; and an outline of the people, assets, infrastructure and operations that need to be protected.

#### **Regulation 2.50 Content of programs - RACAs**

Regulation 2.50 sets out further general matters that the RACA's TSP must deal with, including:



- a) measures and procedures for deterring and detecting unauthorised carriage of explosives to prevent unlawful interference with aviation;
- b) methods to prevent unauthorised persons from accessing cargo from the time it reaches the cleared area or zone of a security controlled airport, or a prescribed aircraft, or another RACA, until the time it is delivered to the operator of a prescribed aircraft or RACA; and
- c) the keeping of accurate records of cargo and the security measures adopted in relation to that cargo.

**Regulation 2.51 What RACA's TSP must contain - cargo security measures**

The TSP must include details of the methods, equipment and procedures that the RACA will use to deter and detect the unauthorised carriage, as cargo, of explosives that could potentially be used in the course of an act of unlawful interference with aviation. The procedures would allow for circumstances in which equipment that would usually be used is unavailable through failure or unserviceability.

The TSP must set out measures and procedures for ensuring the security of cargo at all times and for dealing with suspect cargo. The TSP must also provide information management measures, namely:

- a) measures preventing unauthorised disclosure of information about the air cargo security measures that apply to cargo the RACA deals with;
- b) procedures for informing customers of the circumstances in which specific security measures will not be applied to cargo (for example, that cargo moving within Australia will not be x-rayed with a machine strong enough to damage photographic film);
- c) measures to prevent aircraft operator and flight details being revealed, prior to the RACA receiving the cargo, to anyone not needing to know; and
- d) details of the persons who will be given such flight or carrier information (for example, courier services operating under a contract with the RACA) and how it will be communicated (for example, by facsimile).

**Regulation 2.52 What RACA's TSP must contain - procedures for managing security etc**

Regulation 2.52 prescribes the matters a RACA's TSP must deal with in relation to procedures for managing security at each of its facilities.

Subregulation 2.52(1) requires the TSP to set out the procedures for managing security at the RACA's facilities, including:

- a) organisational structures and security management arrangements; and

- b) roles and responsibilities of security contact officers, security staff, contractors and responding agencies; and
- c) roles and responsibilities of other staff who have been assigned security duties and responsibilities; and
- d) roles and responsibilities of other Commonwealth, State and Territory agencies, and local authorities, with security duties at the facility.

Subregulation 2.52(2) also requires the TSP to set out a mechanism for consultation for the purpose of coordinating security-related activities. The mechanism would apply to consultation within the RACA's organisation and each of its sites covered by the TSP; between the RACA and any security controlled airport at which it has a facility; between the RACA and its employees; and between the RACA and relevant third parties, such as aircraft operators.

Subregulation 2.52(3) requires the TSP to set out measures to ensure that the TSP and other security information is protected against unauthorised access, amendment and disclosure.

#### **Regulation 2.53 What RACA's TSP must contain - procedures for quality control**

Subregulation 2.53(1) requires the TSP to set out quality control procedures, notably, provision for audits and reviews, and subregulation 2.53(2) requires the records of audits and reviews to be kept for 7 and 3 years respectively. (Audits and reviews are defined in regulation 2.01.)

#### **Regulation 2.54 What RACA's TSP must contain - details of RACA's name and operations**

Subregulation 2.54(1) requires that an accompanying document to the TSP set out details relating to all sites that operate on the RACA's behalf (including, for example, sites operated by persons contracted to provide a service to RACA) as well as all sites covered by the TSP. Subregulation 2.54(2) specifies that the information required is: details of the name (if it has one) of each site or facility; each site's location; details of operations at those sites that may require security considerations; a map of the boundaries of any facility the RACA has at a security controlled airport, any airside or landside operations the RACA is responsible for; the hours of normal operation of each site; and details of the security procedures applying to each site outside its normal hours of operation.

Subregulation 2.54(3) requires the RACA to notify the Secretary in writing of any changes to the details notified under subregulations 2.54(1) or 2.54(2). Changes must be notified within 7 working days.

Subregulation 2.54(4) requires that a document accompany the TSP and set out certain contact details relating to the RACA.

Subregulation 2.54(5) requires the RACA to notify the Secretary in writing of any changes to the details notified under subregulation 2.54(4). Changes must be notified within 2 working days.

It is a strict liability offence with a maximum penalty of 20 penalty units to fail to notify changes as required by subregulations 2.54(3) and 2.54(5).

Regulation 2.54 also deals with co-ordination with each security controlled airport at which the RACA has a facility. Subregulation 2.54(7) requires the RACA to give the operator of each security controlled airport at which it has a facility:

- contact details for the RACA including its security contact officer; and
- details of the procedures to make known the location of airside areas, airside security zones and landside security zones within the boundaries of the airport, and the procedures to check the identity of persons authorised to have access to those areas and zones.

#### **Regulation 2.55 What RACA’s TSP must contain - physical security and access control**

Subregulation 2.55(1) requires the TSP to set out the security measures and procedures to be used within each of the RACA’s facilities, and specifies types of measures and procedures that are to be included. For example, measures and procedures: to control access; to deter and detect unauthorised access into the airside area, a security zone, or a RACA’s facilities; to deal with unknown substances and unattended or suspect vehicles, baggage and cargo; to ensure the security of passwords, keys, electronic access cards and other security privileges; to ensure the proper maintenance of security equipment; and for preparing cargo for clearance.

The TSP must specify which of the measures and procedures have been implemented, and must include a timetable for implementation of the others (subregulation 2.55(2)).

#### **Regulation 2.56 What RACA’s TSP must contain - control of firearms, other weapons and prohibited items**

This provides that the TSP must include methods for ensuring the RACA’s operational staff are aware of restrictions on the possession and use of firearms, other weapons and prohibited items. The RACA must ensure that the procedures in the TSP to handle or transport firearms, other weapons and prohibited items are consistent with relevant Commonwealth, State and Territory laws.

**Regulation 2.57 What RACA's TSP must contain - measures for heightened security alert**

Under subregulation 2.57(1), the TSP must set out, in an accompanying document, additional security measures and procedures available in the event of a heightened security alert.

Subregulation 2.57(2) sets out particular types of measures and procedures that must be included in that document. These include, for example, procedures for responding to threats and breaches of security, and procedures for evacuation and emergency management in case of an aviation security incident, such as a hijacking or a bomb threat.

**Regulation 2.58 What RACA's TSP must contain - personnel with particular security roles**

The TSP must set out the criteria for selecting the security contact officer and any training to be given to the person selected (subregulation 2.58(1)).

It must also specify the other personnel who have been assigned particular security duties and responsibilities, and set out their duties and responsibilities, relevant knowledge, skills and other requirements, and the training or qualifications that satisfy those requirements (subregulations 2.58(2) and (3)).

The TSP must also deal with security awareness training for operational staff (subregulation 2.58(4)).

**Regulation 2.59 What RACA's TSP must contain - obligations on franchisees etc**

Regulation 2.59 sets out the position of franchisees and subsidiaries of a RACA, and persons who have a contract with the RACA to provide the RACA with a service for the movement or handling, or the making of arrangements for the movement or handling, of cargo. Regulation 2.59 provides that if these bodies are aviation industry participants (as defined in the Act) then the RACA's TSP must cover them as well.

**Regulation 2.60 What RACA's TSP must contain - regular customers**

Regulation 2.60 provides for special procedures for a RACA's regular customers regarding cargo that is carried internationally. The TSP must contain procedures for receiving cargo from regular customers, as well as a form of undertaking required from regular customers that they will take appropriate security measures to prevent the unauthorised carriage of an explosive or an explosive device (paragraphs 2.60(b) and 2.60(c)).

Regular customers are not defined in the regulations. Instead, the RACA nominates who it considers its regular customers to be, and securely

maintains a list of those customers, including the reason why they were included on the list and the date they were included (paragraph 2.60(a)).

**Regulation 2.61 What RACA’s TSP must contain - informing consignors of certain matters**

This regulation provides that the TSP must include procedures to ensure consignors of cargo are made aware that the cargo they consign will be subject to security and clearing procedures, and that it is illegal to consign as cargo an explosive or an explosive device.

**Division 2.5 Airside facility operators**

**Regulation 2.62 Definition for Division - *airside facility operator***

Regulation 2.62 defines “air facility operator” for the purpose of Division 2.5. It adopts the definition in paragraph 2.03(b) of the Regulations, which refers to “an aviation industry participant that occupies or controls an area at a security controlled airport that has direct access to the airside of the airport”. An example would be the operator of a fuel storage area located on the airside boundary with direct airside access or an operator of an airport or air service that is situated on the airside boundary that has direct airside access.

However, an airside facility operator does not include the operator of a facility located on the airside boundary that does not have direct airside access via its facility.

**Regulation 2.63 What this Division does**

Regulation 2.63 gives a general description of the content of Division 2.5, which sets out the requirements for the content of a TSP for an airside facility operator.

**Regulation 2.64 Scope of airside facility operator’s TSP**

Regulation 2.64 sets out the scope of an airside facility operator’s TSP. It provides that the TSP must cover any aviation-security-related activities that is relevant to the airside facility operator’s operations.

Where the airside facility operator’s TSP covers aviation-security-related activities on the airport, the airport operator’s TSP does not need to cover those activities (regulation 2.09) unless requested to do so by the airside facility operator (subregulation 2.74(4)).

**Regulation 2.65 What airside facility operator’s TSP must contain - outline**

Regulation 2.65 provides that an airside facility operator’s TSP must set out an outline of the objectives of the TSP. It must include, in an accompanying document: a statement outlining the local security risk context of the

operator's facility; a list of general threats and generic security risk events to people, assets, infrastructure and operations; and an outline of the people, assets, infrastructure and operations that need to be protected.

**Regulation 2.66 What airside facility operator's TSP must contain - procedures for managing security etc**

Regulation 2.66 prescribes the matters an airside facility operator's TSP must deal with in relation to procedures for managing security at its facility.

Subregulation 2.66(1) requires the TSP to set out the procedures for managing security at the airside facility operator's facility, including:

- a) organisational structures and security management arrangements; and
- b) roles and responsibilities of security contact officers, security staff, contractors and responding agencies; and
- c) roles and responsibilities of other staff who have been assigned security duties and responsibilities; and
- d) roles and responsibilities of other Commonwealth, State and Territory agencies, and local authorities, with security duties at the facility.

Subregulation 2.66(2) also requires the TSP to set out a mechanism for consultation, for the purpose of coordinating security-related activities. The mechanism will apply to consultation between the airside facility operator and the operator of the airport at which the facility is located; between the airside facility operator and its employees; and between the airside facility operator and relevant third parties, such as police.

Subregulation 2.66(3) requires the TSP to set out measures to ensure that the TSP and other security information is protected against unauthorised access, amendment and disclosure.

**Regulation 2.67 What airside facility operator's TSP must contain - procedures for quality control**

Subregulation 2.67(1) requires the TSP to set out quality control procedures, notably, provision for audits and reviews, and subregulation 2.67(2) requires the records of audits and reviews to be kept for 7 and 3 years respectively. (Audits and reviews are defined in regulation 2.01.)

**Regulation 2.68 What airside facility operator's TSP must contain - details of operator's name and operations**

Subregulation 2.68(1) requires that the TSP set out details relating to the operator's airside facility, in particular the name (if it has one) of the facility; the facility's location; details of operations at the facility that may require security considerations; a map showing the boundaries of the facility on the airport, any airside or landside operations the airside facility operator

is responsible for; the facility's normal hours of operation; and details of the security procedures applying to the facility outside its normal hours of operation.

Subregulation 2.68(2) requires the airside facility operator to notify the Secretary in writing of any changes to the details notified under subregulation 2.67(1). Changes must be notified within 7 working days.

Subregulation 2.68(3) requires that a document accompany the TSP set out certain contact details relating to the airside facility provider.

Subregulation 2.68(4) requires the airside facility operator to notify the Secretary in writing of any changes to the details notified under subregulation 2.68(3). Changes must be notified within 2 working days.

It is a strict liability offence with a maximum penalty of 20 penalty units to fail to notify changes as required by subregulations 2.68(2) and 2.68(4).

Regulation 2.68 also deals with co-ordination with each security controlled airport at which the airside facility is located. Subregulation 2.68(6) requires the airside facility operator to give the airport operator:

- contact details for the airside facility operator, including its security contact officer; and
- details of the airside facility operator's procedures to make known the location of airside areas, airside security zones and landside security zones within the boundaries of the airport, and the procedures to check the identity of persons authorised to have access to those areas and zones.

### **Regulation 2.69 What airside facility operator's TSP must contain - physical security and access control**

Subregulation 2.69(1) requires the TSP to set out the security measures and procedures to be used within the airside facility operator's facility and specifies types of measures and procedures that are to be included. For example, measures and procedures: to control access; to deter and detect unauthorised access into the airside area or a security zone; to deal with unknown substances and unattended or suspect vehicles, baggage and cargo; and to ensure the security of passwords, keys, electronic access cards and other security privileges.

The TSP must specify which of the measures and procedures have been implemented, and must include a timetable for implementation of the others (subregulation 2.69(2)).

**Regulation 2.70 What airside facility operator's TSP must contain - control of firearms, other weapons and prohibited items**

This regulation provides that the TSP must include specified measures and procedures relating to firearms, other weapons and prohibited items. The airport operator must ensure that the procedures in the TSP to handle or transport firearms, other weapons and prohibited items are consistent with relevant Commonwealth, State and Territory laws.

**Regulation 2.71 What airside facility operator's TSP must contain - measures for heightened security alert**

Under subregulation 2.71(1), the TSP must set out, in an accompanying document, additional security measures and procedures available in the event of a heightened security alert. Subregulation 2.71(2) sets out particular types of measures and procedures that must be included in that document.

These include, for example, procedures for responding to threats and breaches of security, and procedures for evacuation and emergency management in case of an aviation security incident, such as a hijacking or a bomb threat.

**Regulation 2.72 What airside facility operator's TSP must contain - personnel with particular security roles**

The TSP must set out the criteria for selecting the security contact officer and any training to be given to the person selected (subregulation 2.72(1)).

It must also specify the other personnel who have been assigned particular security duties and responsibilities, and set out their duties and responsibilities, relevant knowledge, skills and other requirements, and the training or qualifications that satisfy those requirements (subregulations 2.72(2) and (3)).

The TSP must also deal with security awareness training for operational staff (subregulation 2.72(4)).

**Regulation 2.73 Transitional arrangements - TSPs for airside facility operators**

This provision sets out transitional arrangements. If an airside facility operator is located at an airport that had an approved airport security program under the *Air Navigation Act 1920*, as in force on 9 March 2005, then Division 2.5 does not begin to apply to the airside facility operator until the beginning of 10 March 2007 (subregulation 2.73(1)). The airside facility operator has until the end of 9 March 2006 to submit a draft TSP to the Secretary (subregulation 2.73(2)).



If an airside facility operator is located at an airport that did not have such an approved airport security program as in force on 9 March 2005, then Division 2.5 does not begin to apply to the airside facility operator until 1 September 2005 (subregulation 2.73(3)).

### **Regulation 2.74 Joint transport security programs**

Regulation 2.74 provides a mechanism for an airside facility operator to join the TSP of the operator of the security-controlled airport at which the airside facility operator's facility is located. If an airside facility operator uses this mechanism and joins an airport operator's TSP it is taken to have complied with its obligation to have a TSP (subregulation 2.74(1)).

Subregulation 2.74(2) sets out the particular requirements of a joint TSP. The joint TSP must set out the respective participants' security responsibilities; contain a statement from each participant accepting its responsibilities under the joint TSP; contain an acknowledgement that the joint TSP is in force for all the participants once it is approved; and set out the security measures and procedures to be used within each airside facility. These requirements are additional to the formal contract requirements of the airport operator's TSP.

If an airside facility operator asks in writing to join the TSP of the operator of the airport at which they are located, the airport operator cannot refuse to allow the airside facility operator to join their TSP (subregulation 2.74(4)). The airport operator must give all the relevant parts of the TSP to the airside facility operator (subregulation 2.74(5)), keeping a record of all parts of its TSP given to airside facility operators for themselves (subregulation 2.74(7)). The airport operator is not required to give the airside facility operator a copy of any part of its TSP that does not apply to that airside facility operator (for example, if the airside facility operator is not required to screen passengers then the sections relating to the screening of passengers departing from the airport will not be provided to them) (subregulation 2.74(6)).

Airside facility operators should be active in the development of parts of joint TSPs that will apply to their operations.

If they wish to join the airport operator's TSP, the airside facility operator must accept the relevant parts of the joint TSP, by notice in writing to the operator, within 14 days. Otherwise, there is no agreement (subregulations 2.74(8) and (9)) and the airside facility operator must prepare its own TSP. The airside operator joins the airport operator's TSP by being a party to the application for approval of the TSP (subregulation 2.74(3)). Once the Secretary approves the TSP it is in force in relation to all the participants who applied for approval of the TSP.

## **Division 2.6 Airservices Australia**

### **Regulation 2.75 Definition for Division - AA**

Regulation 2.75 explains that throughout Division 2.6 a reference to “AA” is a reference to Airservices Australia.

### **Regulation 2.76 What this Division does**

Regulation 2.76 gives a general description of the content of Division 2.6, which sets out the requirements about the content of a TSP for Airservices Australia.

### **Regulation 2.77 Scope of AA’s TSP**

Regulation 2.77 sets out the scope of Airservices Australia’s TSP. It provides that the TSP must set out the measures and procedures for managing the provision of protective security to minimise the risk of unlawful interference with aviation, including threats, as well as major security threats against critical air traffic, aeronautical navigation, telecommunications and surveillance facilities involved in aviation.

Where Airservices Australia’s TSP covers aviation-security-related activities on the airport, the airport operator’s TSP does not need to cover those activities (regulation 2.09).

### **Regulation 2.78 What AA’s TSP must contain - outline**

Regulation 2.78 provides that Airservices Australia’s TSP must set out an outline of the objectives of the TSP. It must include, in an accompanying document: a statement outlining the local security risk context of each of Airservices Australia’s facilities; a list of general threats and generic security risk events to people, assets, infrastructure and operations; and an outline of the people, assets, infrastructure and operations that need to be protected.

### **Regulation 2.79 What AA’s TSP must contain - procedures for managing security etc**

Regulation 2.79 prescribes the matters Airservices Australia’s TSP must deal with in relation to procedures for managing security at its facilities.

Subregulation 2.79(1) requires the TSP to set out the procedures for managing security at these facilities, including:

- a) organisational structures and security management arrangements; and
- b) roles and responsibilities of security contact officers, security staff, contractors and responding agencies; and

- c) roles and responsibilities of other staff who have been assigned security duties and responsibilities; and
- d) roles and responsibilities of other Commonwealth, State and Territory agencies, and local authorities, with security duties at the facility.

Subregulation 2.79(2) also requires the TSP to set out a mechanism for consultation for the purpose of coordinating security-related activities. The mechanism would apply to consultation between AA and the operator of the airport at which the facilities are located; between AA and its employees; and between AA and relevant third parties, such as police.

Subregulation 2.79(3) requires the TSP to set out measures to ensure that the TSP and other security information is protected against unauthorised access, amendment and disclosure.

#### **Regulation 2.80 What AA's TSP must contain - procedures for quality control**

Subregulation 2.80(1) requires the TSP to set out quality control procedures, notably, provision for audits and reviews, and subregulation 2.80(2) requires the records of audits and reviews to be kept for 7 and 3 years respectively. (Audits and reviews are defined in regulation 2.01.)

#### **Regulation 2.81 What AA's TSP must contain - details of AA's operations**

Subregulation 2.81(1) requires that the TSP be accompanied by a document that sets out details relating to each of Airservices Australia's aviation-related facilities that is covered by the TSP. Examples of aviation-related facilities include airport fire stations, air traffic control facilities, aeronautical navigation facilities, and telecommunications and surveillance facilities used in direct connection with aviation activities.

Subregulation 2.81(2) specifies that the information required is: the facility's location; whether the facility is located within a security controlled airport; if the facility is within a security controlled airport, a map showing the boundaries of the facility; details of the type of operations carried out by the facility, including joint-user facilities and other significant operations that may require security considerations; the facility's normal hours of operation; and details of the security procedures applying to the facility outside its normal hours of operation.

Subregulation 2.81(3) requires that the TSP set out certain contact details relating to Airservices Australia. If these contact details change, then Airservices Australia must notify the Secretary in writing within 2 working days (subregulation 2.81(4)).

In addition, subregulation 2.81(5) requires Airservices Australia to maintain a contact system for all facilities and other significant operations covered by

Airservices Australia's TSP. A contact phone list for each facility would be sufficient for this purpose.

Regulation 2.81 also deals with co-ordination with each security controlled airport at which Airservices Australia has a facility. Subregulation 2.81(6) requires Airservices Australia to give the airport operator contact details for Airservices Australia's facility, including either Airservices Australia's general security contact officer or the security contact officer for the specific Airservices Australia facility.

**Regulation 2.82 What AA's TSP must contain - physical security and access control**

Subregulation 2.82(1) requires the TSP to set out the security measures and procedures to be used within Airservices Australia's facilities and specifies types of measures and procedures that are to be included. For example, measures and procedures: to control access (including off-airport facilities such as navigational infrastructure;) to deter and detect unauthorised access into the airside area or a security zone; to deal with unknown substances and unattended or suspect vehicles, baggage and cargo; and to ensure the security of passwords, keys, electronic access cards and other security privileges.

The TSP must specify which of the measures and procedures have been implemented, and must include a timetable for implementation of the others (subregulation 2.82(2)).

**Regulation 2.83 What AA's TSP must contain - control of firearms, other weapons and prohibited items**

This provides for the TSP must include specified measures and procedures relating to firearms, other weapons and prohibited items. Airservices Australia must ensure that the procedures in the TSP to handle or transport firearms, other weapons and prohibited items are consistent with relevant Commonwealth, State and Territory laws.

**Regulation 2.84 What AA's TSP must contain - measures for heightened security alert**

Under subregulation 2.84(1), the TSP must set out, in an accompanying document, additional security measures and procedures available in the event of a heightened security alert. Subregulation 2.84(2) sets out particular types of measures and procedures that must be included in that document. These include:

- a) procedures for responding to and investigating aviation security incidents, including threats and breaches of security; and

- b) procedures for reporting aviation security incidents, or security breaches including occurrences that threaten the security of an AA facility within a security controlled airport; and
- c) procedures for evacuation and emergency management in case of an aviation security incident, security threat or breach of security, including bomb threats and critical security equipment failures; and
- d) procedures for responding to any special security directions given by the Secretary, including procedures to communicate directions within a security controlled airport; and
- e) procedures for raising the awareness and alertness of staff to security threats and responsibility to report aviation security incidents and breaches; and
- f) details of any other security contingency procedures and plans.

**Regulation 2.85 What AA's TSP must contain - control directions**

This regulation provides that the TSP must describe the procedures by which Airservices Australia will pass on compliance control directions to the pilot in command of the aircraft concerned. Compliance control directions are those directions issued by an aviation security inspector under section 74B of the Act. Similarly, the TSP must describe the procedures by which Airservices Australia will pass on incident control directions, issued by the Secretary under section 74D of the Act, to the pilot in command of an aircraft.

If another document sets out these procedures, it is sufficient for the TSP to refer to that document as containing the procedures (subregulation 2.85(3)).

**Regulation 2.86 What AA's TSP must contain - personnel with particular security roles**

The TSP must set out the criteria for selecting the security contact officer and any training to be given to the person selected (subregulation 2.86(1)).

It must also specify the other personnel who have been assigned particular security duties and responsibilities, and set out their duties and responsibilities, relevant knowledge, skills and other requirements and the training or qualifications that satisfy those requirements (subregulations 2.86(2) and (3)).

The TSP must also deal with security awareness training for operational staff (subregulation 2.86(4)).

## **PART 3 AIRPORT AREAS AND ZONES**

Part 3 deals with airport areas and zones. There are 5 Divisions within this Part. The system for management of security at security controlled airports is based on the division of those airports into an airside and a landside area. The purpose of specifying an airside area is to control access to operational areas of those airports. Airside and landside areas are further divided into security zones. The purpose of defining airside and landside security zones is to subject those zones to stricter or more specialised controls than those applying generally to the airside or landside areas.

A secure area of a security controlled airport is either the airside area (including airside security zone) or a landside security zone.

Access to the airside area (including airside security zone) and landside security zones is restricted to authorised persons displaying valid ASICs or VICs, unless exempt. There are also requirements relating to the physical delineation of the relevant areas and zones. Division 3.5 makes special provision for the counter-terrorist first response function.

### **Division 3.1 Establishment of areas and zones**

This Division establishes the areas and zones of security controlled airports.

#### **Regulation 3.01 and 3.02 Types of airside and landside security zones**

These regulations prescribe, in accordance with sections 31 and 33 of the Act, different types of airside and landside security zones. There is only one type of airside security zone, it is to be known as the security restricted area. There are four types of landside security zones: sterile area, fuel storage zone, air traffic control facilities zone and the navigational aids zone.

The airside security zone has been named the 'security restricted area' and one of the landside security zones has been named the 'sterile area', for the sake of consistency with terminology used in the *Air Navigation Act 1920* (ANA) and *Air Navigation Regulations 1947* (ANR).

A diagram of a typical security controlled airport is included in the Note to regulation 3.02.

### **Division 3.2 Control of secure areas - use of ASICs etc**

This Division deals with the control of access to secure areas by prescribing requirements concerning the display and use of ASICs and VICs.

### **Subdivision 3.2.1 Display and use of ASICs and VICs in secure areas**

#### **Regulation 3.03 Requirement to display ASICs in secure areas**

Subregulation 3.03(1) provides that subject to subregulations (4), (5) and (7), regulations 3.05 to 3.09 inclusive (providing for exceptions) and subregulations 3.18(2) and 3.26(2) (providing other exceptions), a person in the airside security zone of a security controlled airport must properly display a valid red ASIC. A person in a secure area other than the airside security zone must properly display either a valid red ASIC or a valid grey ASIC (see subregulations 6.33 and 6.37 for the form of ASICs). The obligations in subregulation (1) also apply to crew (defined in regulation 1.03). Contravention of subregulation (1) is an offence of strict liability attracting a maximum penalty of 5 penalty units.

Subregulation 3.03(4) provides that subregulation (1) does not apply in relation to a security controlled airport from or to which no regular public transport operation operates.

Subregulation 3.03(5) provides that subregulation (1) does not apply to a person who is in a part of the sterile area that is generally accessible to passengers or the public generally, or who is a passenger and:

- (i) is boarding or disembarking from an aircraft by means of an aerobridge; or
- (ii) is boarding or disembarking from an aircraft in the secure area (defined in regulation 1.03) and is moving reasonably directly between the aircraft and the terminal building.

Subregulation (1) does not apply until 1 January 2006. However, from 10 March 2005, a valid red ASIC must be properly displayed in the security restricted area of a categorised airport where the Secretary has established an airside security zone. Categorised airports are listed in Note 1 to subregulation 3.03(7).

#### **Regulation 3.04 Supervision and control while embarking and disembarking etc**

This regulation, made pursuant to paragraph 44(2)(l) of the Act, places the onus on the screening authority to have and employ 'supervision and control measures' adequate to ensure that persons, goods and vehicles in the sterile area that have received clearance remain cleared. The 'supervision and control measures' must also meet the terms of subregulation 3.04(3).

The regulation also places the onus on an aircraft operator to have and employ supervision and control measures (qualified by subregulation 3.04(3)) adequate to ensure that:

- a) persons in the airside area who have received clearance remain cleared while boarding or disembarking from a prescribed air service; and

- b) goods and vehicles in the airside area that have received clearance remain cleared while being loaded onto or unloaded from a prescribed air service.

Supervision and control measures will be 'adequate' if they achieve their objectives.

Subregulation 3.04(3) provides that the supervision and control measures must ensure that passengers moving between the sterile area and an aircraft do not have access to a weapon or prohibited item if the aircraft is to operate a screened air service (defined in regulation 4.02).

### **Regulation 3.05 Crew of foreign and state aircraft etc**

This regulation describes which crew of foreign and state aircraft are exempt from displaying an ASIC in the secure area (defined in regulation 1.03). They are:

- (i) a person who is either crew member of a foreign aircraft engaged in a regular public transport operation or charter operation; or crew member of a state aircraft and who is in uniform and displays appropriate identification issued by the aircraft operator or defence force or service; and
- (ii) a person who is a member of a foreign defence force or service; is undergoing flight training; is in uniform; displays appropriate identification issued or authorised by the defence force or service of which he or she is a member; and is supervised by the holder of an ASIC.

### **Regulation 3.06 ADF members on duty**

This regulation provides that an Australian Defence Force member who is on duty guarding an aircraft; is in uniform; and displays appropriate identification as a member of the Defence Force is not required to display an ASIC in a secure area (defined in regulation 1.03).

### **Regulation 3.07 Persons facilitating movement of cargo or passengers**

This regulation provides that a cargo facilitator or passenger facilitator, as defined, is not required to display an ASIC in a secure area if he or she is escorted by an employee or officer of the operator of the aircraft on which the relevant cargo or passenger is or will be carried, or somebody else the facilitator has reason to believe is authorised to supervise facilitators in the secure area.

An aircraft operator must ensure that, as far as practicable, a facilitator does not enter, or stay in, a secure area unless the facilitator holds, and properly displays, an ASIC or is directed to enter the area and is escorted by a person



referred to in paragraph (2)(a) or (b). A contravention by the aircraft operator is an offence of strict liability attracting a maximum penalty of 10 penalty units.

### **Regulation 3.08 Persons exempted by Secretary from requirement to display ASIC**

This regulation provides that a person given exemption under this regulation need not display an ASIC in a secure area.

The Secretary may give a person or persons in a specified class an exemption either upon that person's written application or on the Secretary's own initiative. A 'class exemption' is required to be published in the *Gazette*.

The Secretary must, before giving or refusing an exemption, consider:

- a) why the exemption is necessary; and
- b) the likely effect of the proposed exemption on aviation security at the airport; and
- c) how long the proposed exemption will last, if it is given; and
- d) anything else relevant that the Secretary knows about.

The Secretary may give an exemption for a set period and subject to condition(s) set out in the exemption. The exemption may be limited to a part of a secure area. An example of a possible condition may be a requirement that the person is only entitled to the exemption when he or she is carrying out particular duties or discharging particular functions.

An exemption does not authorise the person to pass through a screening point without being screened, or enter a secure area or prescribed aircraft other than through a screening point.

### **Regulation 3.09 Persons who display valid VICs**

This regulation provides a person who is properly displaying a valid VIC need not display an ASIC in the secure area to which the VIC allows access. A person displaying a VIC needs to be supervised by the holder of a valid ASIC while in a secure area.

Subregulation 3.09(2) obliges the holder of a valid ASIC who supervised the holder of the VIC into the secure area to which the VIC allows access not to leave the holder of the VIC unsupervised in the secure area (unless the supervision of the VIC holder is taken over by another ASIC holder). A contravention of this subregulation is an offence of strict liability attracting a maximum penalty of 5 penalty units.

The holder of the VIC must leave the secure area if no holder of an ASIC is supervising him or her in the area. Contravention attracts a maximum penalty of 5 penalty units.

**Regulation 3.10 Other cards not to be used as ASICs or VICs**

This regulation prohibits a person from intentionally using an identity card, or another type of card, to be in a secure area if he or she knows or believes that the card is not a valid ASIC or VIC. A person who has an identity card (other than an ASIC or a VIC) and uses that card to access their work place, for example, cannot intentionally use that card as an alternative to an ASIC or VIC in the secure area.

Contravention attracts a maximum penalty of 10 penalty units. This regulation does not apply to a person who is not required to properly display a valid ASIC in the secure area.

**Regulation 3.11 Entry to a secure area to be for lawful purposes only**

This regulation prohibits the holder of an ASIC or VIC from entering or staying in a secure area other than for a lawful purpose. Lawful purposes would include the purpose for which the ASIC or VIC was issued, for example, in the case of an ASIC, a purpose connected with the operational need for frequent access to the secure area. Contravention attracts a maximum penalty of 5 penalty units.

**Subdivision 3.2.2 Display and use of ASICs and VICs outside secure areas**

**Regulation 3.12 Persons facilitating passenger check-in or baggage handling outside secure areas**

This regulation requires a person who facilitates passenger check-in or the handling of checked baggage at a security controlled airport to properly display a valid ASIC at all times while doing so regardless of whether the person is in a secure area or not. Contravention is an offence of strict liability attracting a maximum penalty of 5 penalty units.

**Division 3.3 Control of airside areas and zones - physical security**

This Division sets out requirements in relation to the control of airside areas and zones (see sections 35 and 36 of the Act).

**Regulation 3.13 Definitions for Division**

This regulation defines *exempt person* to mean a law enforcement officer; a member of the Australian Defence Force who is responding to an event or threat of unlawful interference with aviation, or an ambulance, rescue or fire service officer who is responding to an emergency. (Note this definition is repeated in regulation 3.19 of the purposes of Division 3.4 and there is a separate definition of exempt person for the purposes of regulation 6.53).

This regulation defines *responsible aviation industry participant* in relation to an area or a zone, to mean:

- a) in the case of an area or a zone that is covered by the TSP of an aviation industry participant - that aviation industry participant; or
- b) in any other case— the operator of the security controlled airport at which the area or zone is located.

Aviation industry participant is defined in section 9 of the Act. Certain aviation industry participants are required, by section 12 of the Act, to have a TSP. This includes participants prescribed in regulation 2.03.

### **Regulation 3.14 Common boundaries of 2 kinds of area or zone**

This regulation provides that in the case of where a boundary is both an airside area boundary and a security restricted area boundary, only the requirements for signs applicable to a security restricted area apply. As such, a painted sign on the ground along the boundary of the security restricted area would be acceptable.

### **Regulation 3.15 Requirements for airside generally**

This regulation is made pursuant to paragraph 35(2)(c) of the Act.

A notice published in the *Gazette* under section 28 of the Act must establish an *airside area* for the security controlled airport and show the boundaries of the airside area (subsection 29(1)).

This regulation prescribes the requirements for the fencing of and the provision of other physical barriers to entry to the airside area of a security controlled airport. These require:

- a) subject to subregulation 3.15(2), a barrier sufficient to delineate the airside area. Note that by subregulation 3.15(2), these requirements do not apply to the airports for Alice Springs, Cairns, Coolangatta and the capital cities of each State and Territory (see subregulation 2.23 (1)).
- b) effective access control points to permit authorised access to the airside area; and
- c) patrolling, electronic surveillance or any other suitable measures to inspect the barriers for damage and to deter and detect unauthorised access to the airside area; and
- d) if possible, illumination of the aircraft parking area, while a prescribed aircraft is parked there at night; and
- e) signs, each at least 0.4 m wide by 0.3 m high, and otherwise complying with subregulation (4), and in the number required by subregulation (5), fixed to the barrier. (Subregulation (4) sets out the

requirements for the sign. Subregulation (5) requires there to be as many signs as are necessary to ensure that a person approaching the barrier and looking towards the airside is able to see at least 1 of the signs no matter where he or she stands); and

- f) a sign at least 0.4 m wide by 0.3 m high, and otherwise complying with subregulation (6), at every entrance to the airside area. (Subregulation 3.15(6) sets out the requirements for the sign).

By subregulations 3.15(8) and (9) until 9 March 2007, an airport operator need not comply with paragraphs (1)(e) and (f) if the operator displays signs in the airside area that comply with Part 7 of the ANR (as in force on 9 March 2005).

Subregulation 3.15(3) prescribes the obligations of the responsible aviation industry participant for the airside area of the airport. The participant must ensure that the area can be entered only by:

- a person authorised to enter who is displaying a valid ASIC, or a person who is displaying a valid VIC who is under the supervision of a valid ASIC holder; or
- an exempt person; or
- a vehicle driven by an exempt person, or a person who is authorised to enter who is displaying a valid ASIC, or a person who is displaying a valid VIC who is under the supervision of a valid ASIC holder; or
- a person who holds a ticket for carriage on an aircraft that will take its passengers on board through the airside area; who is moving reasonably directly from the terminal exit to the aircraft, under the supervision of the aircraft or airport operator, for the purpose of boarding; or
- a person who arrived on board an aircraft that disembarked its passengers into the airside area, and is moving reasonably directly, under the supervision of the aircraft or airport operator, from the aircraft to the terminal entry.

Contravention of subregulations 3.15(1), (3), (4), (5) or (6) by the responsible aviation participant attracts a maximum penalty of 200 units where the offender is an airport operator or an aircraft operator, and in any other case a maximum penalty of 100 units penalty units.

### **Regulation 3.16 Additional security requirements for security restricted area**

This regulation takes effect when the Secretary establishes the security restricted area for the airport. It prescribes the additional security requirements applicable to a security restricted area.

Subregulation 3.16(3) obliges a responsible aviation industry participant to ensure that the security restricted area can only be entered by:

- a person authorised to enter who is displaying a valid red ASIC, or a person who is displaying a valid VIC or a valid grey ASIC who is under the supervision of a valid red ASIC holder; or
- an exempt person; or
- a vehicle driven by an exempt person or a person, who is authorised to enter and who is displaying a valid red ASIC, or a person displaying a valid VIC or a valid grey ASIC who is under the supervision of a valid red ASIC holder; or
- a person who holds a ticket for carriage on an aircraft that will take its passengers on board through the security restricted area who is moving reasonably directly from the terminal exit to the aircraft, under the supervision of the aircraft or airport operator, for the purpose of boarding; or
- a person who arrived on board an aircraft that disembarked its passengers into the security restricted area, and is moving reasonably directly, under the supervision of the aircraft or airport operator, from the aircraft to the terminal entry.

The subregulation also obliges the responsible aviation industry participant to ensure that:

- if access to the security restricted area or any part of it is not continuously controlled, the security restricted area or part is inspected before it is used;
- signs at least 0.4m wide by 0.3m high and otherwise complying with subregulation (4) are permanently fixed at the boundary of the security restricted area so that the warnings and statement on at least 1 sign can be seen from every entrance to the security restricted area; and
- if there is no security barrier the warning signs are placed in such a way that anybody entering the security restricted area knows that it is a security restricted area.

Subregulation 3.16(4) sets out the form of the signs required by paragraph 3.16(3)(c).

Until 9 March 2007, an airport operator is not required to comply with paragraph (3)(c) if the operator displays signs in the security restricted area of the airport that comply with Part 7 of the ANR (as in force on 9 March 2005).

Contravention of subregulation 3.16(3) is an offence attracting, in the case of an airport operator or an aircraft operator, a maximum penalty of 200 units and in any other case a maximum penalty of 100 units.

### **Regulation 3.17 Offences relating to entry to airside areas and airside security zones of security controlled airports**

This regulation prohibits a person (other than a *regulatory officer* as defined) from:

- a) entering an airside area or an airside security zone without the permission of the responsible aviation participant;
- b) staying in an airside area or an airside security zone after being asked by the responsible aviation industry participant to leave;
- c) taking a vehicle into an airside area or an airside security zone without the permission of the responsible aviation industry participant;
- d) leaving a vehicle in an airside area or an airside security zone of a security controlled airport after being asked by the responsible aviation industry participant to remove the vehicle.

Contravention attracts a maximum penalty of 50 units.

Subregulation 3.17(6) clarifies that nothing in the regulation is taken to affect any right of access or privilege granted by or under any other Commonwealth law.

### **Regulation 3.18 Access by emergency personnel**

This regulation clarifies that an aviation industry participant is not to prevent any of the following having access to the airside area or security restricted zone:

- a) members of the Australian Defence Force who are responding to an event or threat of unlawful interference with aviation; or
- b) ambulance, rescue or fire services officers who are responding to an emergency.

A requirement to display an ASIC or VIC does not apply to a person referred to in paragraphs 3.18(1)(a) and (b).

### **Division 3.4 Control of landside areas and zones - physical security**

These regulations are made pursuant to subsections 37(1) and (2) and subsections 38(1) and (2) of the Act. The Division sets out the requirements in relation to the control of landside areas and zones.

### **Regulation 3.19 Definition for Division**

This regulation repeats, for the purposes of this Division dealing with control of landside areas and zones, the definitions of *exempt person* and of *responsible aviation industry participant* set out in regulation 3.13. Note

also there is a separate definition of exempt person for the purposes of regulation 6.53.

### **Regulation 3.20 Security requirements for sterile areas**

This regulation prescribes the physical security requirements for sterile areas. It has effect in relation to an airport when the Secretary establishes a sterile area for an airport. The responsible aviation industry participant for a sterile area must ensure that:

- a) at least 1 screening point (defined by section 9 of the Act as a ‘point where screening occurs’) is established and maintained; and
- b) the sterile area is enclosed in a barrier sufficient to prevent cleared persons in the sterile area coming into contact with persons who are not cleared, and to prevent cleared persons getting access to anything from outside the sterile area that has not received clearance; and
- c) appropriate measures are taken to deter and detect unauthorised access to the sterile area; and
- d) a person entering the sterile area through the screening point is screened and cleared unless the person is of a class that is permitted to pass through a screening point without being screened (see regulations 4.09 and 4.10); and
- e) a person entering the sterile area otherwise than through a screening point may only do so if he or she is of a class of persons permitted to do so under regulation 4.11; and
- f) a vehicle that enters the sterile area is screened and cleared; and
- g) goods that enter the sterile area are screened and cleared; and
- h) a cleared vehicle is able to enter the sterile area only if it is authorised to do so and it is driven by a person who is authorised to enter the area who:
  - properly displays a valid ASIC; or properly displays a valid VIC and is supervised by somebody who properly displays a valid ASIC; and
- i) if the sterile area is not continuously used as a sterile area it is inspected before it is so used; and
- j) signs at least 0.4m wide by 0.3m high, and otherwise complying with subregulation (4), are placed in such a way that anyone entering the sterile area knows that it is a sterile area.

Subregulation 3.20(4) sets out the requirements for the form of the sign required by paragraph 3.20(3)(j).

Until 9 March 2007, an airport operator is not required to comply with paragraph (2)(j) if the operator displays signs in the airside area of the airport that comply with Part 7 of the ANR (as in force on 9 March 2005).

Contravention of subregulation 3.20(3) attracts a maximum penalty of 200 penalty units.

**Regulation 3.21 Security requirements for landside security zones other than sterile areas**

This regulation, made pursuant to subsections 38(1) and (2) of the Act, prescribes the security requirements for all landside security zones other than a sterile area. Other requirements in relation to signage are prescribed by regulations 3.22, 3.23 and 3.24.

The responsible aviation industry participant for each zone must take precautions (for example, barriers patrolling or surveillance) that are reasonably sufficient to ensure that:

- a) only an authorised person can enter the zone who
  - properly displays a valid ASIC, or properly display a valid VIC and is supervised by someone authorised to enter the zone who properly displays a valid ASIC; and
- b) only an authorised vehicle can enter the zone and that the vehicle is driven by an authorised person who properly displays a valid ASIC, or properly displays a valid VIC and is supervised by someone who is authorised to enter the zone who properly displays a valid ASIC.

Contravention of this regulation attracts a maximum penalty of 200 penalty units.

**Regulation 3.22, 3.23 and 3.24 Security requirements for landside fuel storage zones, air traffic control facilities zones and navigational aid zones**

These regulations prescribe additional physical security requirements for fuel storage zones, air traffic control facilities zones and navigational aid zones. The regulations take effect in relation to an airport when the Secretary establishes the relevant zone for the airport.

The responsible aviation industry participant for a fuel storage zone or an air traffic control facilities zone must ensure that signs, each at least 0.4m wide by 0.3 m high and complying with subregulation (4) (of each regulation) are permanently fixed at the boundary of the zone so that the warning and statement on at least 1 sign can be seen from every point on the boundary (subregulation (3)). The responsible aviation industry participant for a navigational aid zone must ensure that signs, each at least 0.4m wide by 0.3



m high and complying with subregulation 3.24 (4), are placed in such a way that anyone who enters the zone knows that it is a navigational aids zone.

Contravention of subregulation (3) of regulations 3.22, 3.23 or 3.24 attracts a maximum penalty of 200 penalty units.

### **Regulation 3.25 Offences relating to entry to landside security zones**

The definition of *regulatory officer* set out in regulation 3.17 is repeated here.

This regulation prohibits a person other than a regulatory officer from:

- a) entering a landside security zone without the permission of the responsible aviation participant;
- b) staying in a landside security zone after being asked by the responsible aviation industry participant to leave;
- c) taking a vehicle into a landside security zone without the permission of the responsible aviation industry participant; or
- d) leaving a vehicle in a landside security zone of a security controlled airport after being asked by the responsible aviation industry participant to remove the vehicle.

Contravention attracts a maximum penalty of 50 penalty units. Nothing in the regulation is taken to affect any right of access or privilege granted by or under any other Commonwealth law.

### **Regulation 3.26 Access by emergency personnel**

This provides that an aviation industry participant is not to prevent any of the following having access to any part of the landside area:

- a) members of the Defence Force who are responding to an event or threat of unlawful interference with aviation;
- b) ambulance, rescue or fire services officers who are responding to an emergency in the landside area.

A requirement to display an ASIC or VIC does not apply to a person referred to in paragraphs 3.26(1)(a) and (b).

### **Division 3.5 Counter-terrorist first response function**

This Division sets out the requirements for a counter-terrorist first response function. The operators of designated airports (the airports of Alice Springs, Cairns, Coolangatta and those bearing the name of the capital cities of each State and Territory) must enter into an agreement with a counter-terrorist first response service provider for the provision of a counter-terrorist first response force for the airport. Counter terrorism first response is defined by

regulation 3.28. The qualifications of a counter-terrorist first response force are set out in regulation 3.30.

**Regulation 3.27 Definition - *designated airport***

This regulation prescribes the airports of Alice Springs, Cairns, Coolangatta and the capital cities of each State and Territory as designated airports for the purposes of the Division.

**Regulation 3.28 Definition - *counter-terrorist first response***

This regulation defines counter-terrorist first response. It means providing: deterrence measures designed to deny information to terrorists or deny acts of terrorism. (this includes continuous patrolling at key locations of a security controlled airport); a response capability (including an initial response to acts of terrorism and other acts of unlawful interference with aviation); and the transfer of responsibility for command and control after completion of the initial response.

**Regulation 3.29 Provision of counter-terrorist first response force**

This regulation requires the operator of a designated airport to enter into an agreement with a counter-terrorist first response service provider, in accordance with this Division, for the provision of a counter-terrorist first response force for the airport. The counter-terrorist first response service provider is responsible for the counter-terrorist first response function. The regulation clarifies that nothing in this Division requires the service provider to give an airport operator or aircraft operator information the disclosure of which would constitute an offence under an Act or the law of a State or Territory.

**Regulation 3.30 Qualifications of members of counter-terrorist first response force**

Subregulation 3.30(1) sets out the qualifications necessary to be a member of a counter-terrorist first response force for a designated airport. Subregulation 3.30(2) sets out the qualifications necessary to be a member of a counter-terrorist first response force at a designated airport.

**Regulation 3.31 Dogs at certain airports**

This provides that at each of Brisbane, Melbourne and Sydney airports the service provider is required to keep available at least 2 dogs that are trained to detect explosives, and a handler for each dog.

## **PART 4 OTHER SECURITY MEASURES**

This Part deals with a broad range of security measures. There are 6 Divisions. The first deals with screening and clearing including specifying the persons who may carry out screening, checked baggage screening and regulation of RACAs. The second and third Divisions deal with requirements in relation to weapons and prohibited items. Division 4.4 deals with on-board security and Division 4.5 deals with the carriage of persons in custody including persons in custody under the *Migration Act 1958* (Migration Act). Finally, Division 4.6 deals with control directions.

### **Division 4.1 Screening and clearing**

This Division deals with screening and clearing including specifying the persons who may carry out screening, checked baggage screening and regulation of RACAs.

#### **Subdivision 4.1.1 Screening and clearing generally**

This Subdivision makes general provision in relation to screening and clearing, including specifying the persons who may carry out screening, things to be detected during screening, and the circumstances in which persons, goods and vehicles must receive clearance.

#### **Regulation 4.01 Definitions**

This regulation defines *operational period* of an aircraft to mean:

- a) for a departing aircraft:
  - (i) if the aircraft is at Adelaide, Brisbane, Melbourne, Perth, Sydney, Cairns, Canberra, Coolangatta Airport, or Darwin Airport — the period beginning 2 hours before the aircraft's scheduled departure time (or; if it is known in advance that its departure will be delayed, 2 hours before its re-scheduled departure time) and ending 30 minutes after its actual departure time; or
  - (ii) if the aircraft is at any other security controlled airport — the period beginning 30 minutes before the aircraft's scheduled departure time (or, if it is known in advance that its departure will be delayed, 30 minutes before its re-scheduled departure time) and ending 30 minutes after its actual departure time; and
- b) for an arriving aircraft, the period beginning 30 minutes before its scheduled arrival time (or, if it is known in advance that its arrival will be delayed, 30 minutes before its re-scheduled arrival time) and ending 30 minutes after its actual arrival time.

#### **Regulation 4.02 Meaning of screened air service**

This regulation sets out the meaning of screened air service, a concept pivotal to the operation of Part 4 of the regulations. Subregulation 4.02(4)

provides that a screened air service is an air service operated by an aircraft described in subregulations 4.02(1) or (2).

Subregulation 4.02(1) provides that an aircraft that is operating an international air service that is a regular public transport operation or open charter operation or jet aircraft operating a domestic air service that is a regular public transport operation, must be a cleared aircraft before departure. Jet, regular public transport operation and open charter operation are defined in regulation 1.03. Cleared aircraft is defined in section 9 of the Act.

Subregulation 4.02(2) provides that an aircraft not covered by subregulation 4.02(1) that departs from the same airport apron as an aircraft described in that subregulation, and is scheduled to depart within the operational period of the latter aircraft (see regulation 4.01 for the definition of operational period), must be a cleared aircraft. Apron has the same meaning given by the airport operator's TSP. In accordance with subregulation 2.15(4), the TSP for an airport must include a description and map of the apron or aprons for that airport if it operates a screened air service.

#### **Regulation 4.03 Specification of persons to carry out screening**

This regulation gives a meaning to 'screening authority' for the purposes of the regulations. By subregulation 4.03(2) the Secretary is required to specify by a written notice in accordance with subsection 44 (3) of the Act, a person, or persons jointly, who are authorised or required to carry out screening at a security controlled airport or part of a security controlled airport. The Secretary must specify sufficient persons under subregulation 4.03(2) for an airport or part of an airport to ensure that at all times there is at least 1 screening authority for the whole of the sterile area of the airport; and if 1 or more screening authorities are specified for part of the area, there is at least 1 screening authority for the remainder of the area.

#### **Regulation 4.04 Things to be detected by screening**

This regulation sets out the things that are to be detected by screening: weapons and prohibited items on a person, or in a person's belongings, or in stores entering a sterile area and explosives in checked baggage. (Checked baggage is defined in regulation 1.03). A person is not to be allowed by a screening officer to pass through a screening point with these things in his or her possession. Subregulation 4.04(3) clarifies that a screening authority is not obliged to detect weapons, prohibited items or explosives if it is not technically possible to do so with the screening methods, techniques and equipment approved by the Secretary under regulation 4.17. For example, there are some technological limitations on detecting ceramics.

#### **Regulation 4.05 Dealing with weapons detected during screening**

This regulation requires that a weapon detected during screening be stored and handled in accordance with any applicable Commonwealth, State or

Territory law. For example, if a firearm is detected it must be stored appropriately. Where a permit is required to possess an item, such as a firearm, it is intended that arrangements be made to hand the item to the relevant authority as soon as possible.

**Regulation 4.06 Dealing with prohibited items detected during screening**

This regulation requires that a prohibited item detected during screening be stored and handled in accordance with any applicable Commonwealth, State or Territory law.

**Regulation 4.07 Use of hand-held metal detectors**

Subregulation 4.07(2) prohibits the use of a hand held metal detector as a screening tool at a security controlled airport from which a screened air service does not operate unless its use is required by a written notice or a section 67 special security direction. The metal detector must be used in accordance with the requirements of the notice or direction. A contravention attracts a maximum penalty of 50 units. (Subregulation 5.03(5) requires the operator of a security controlled airport from which screened air services do not operate to ensure that the operator has access to the services of at least 1 airport security guard who meets the qualifications set out in subregulation 5.03(3). These qualifications include the completion of training approved by the Secretary that is designed to ensure competency in the use of hand held metal detector.)

**Regulation 4.08 Circumstances in which persons must be screened and cleared in order to board an aircraft**

This regulation obliges a passenger or member of the crew of an aircraft to be screened and cleared before boarding the aircraft if that aircraft is to operate a screened air service. Subregulation 4.08(3) provides that a member of an aircraft's crew is taken to continue to screened and cleared if he or she, since he or she was last screened, has continuously been in the airside of an airport at which there is a sterile area (while the area was in operation); or the sterile area of an airport; or on board an aircraft that operates a screened air service. This is designed to avoid the need for re-screening of, say, a member of flight crew for an aircraft operating from Brisbane to Sydney who subsequently joins the flight crew for a different aircraft operating from Sydney to Melbourne and who, in the process of changing aircraft, remains airside at Sydney airport. The Note sets out the various requirements for screening of different classes of person.

**Regulation 4.09 Circumstances in which person may enter sterile area without being screened**

This regulation requires a person to be screened before entering a sterile area unless he or she has entered the sterile area from the airside after disembarking from a screened air service, or he or she is taken to have been

cleared under regulation 4.10 or 4.11. The sterile area is, by the operation of the definition of 'cleared zone' in section 9 of the Act and this regulation, a cleared zone.

**Regulation 4.10 Persons taken to be cleared at screening point without being screened**

The following persons may pass through a screening point without being screened (and are therefore, by the operation of paragraph 41(2)(b) of the Act, taken to have received clearance):

- a) a law enforcement officer who produces his or her identity card as a law enforcement officer;
- b) a screening officer who is engaged in the management of the screening point;
- c) an ambulance, rescue or fire service officer who is responding to an emergency on the landside of the airport;
- d) a member of the Defence Force who is responding to an event or threat of unlawful interference with aviation.

This regulation says nothing about the lawfulness of possession of prohibited items or weapons by the listed persons (see Divisions 4.2 and 4.3).

**Regulation 4.11 Persons taken to be cleared to enter sterile area other than through a screening point**

This regulation provides that a person in a class listed in subregulation 4.11(2) may enter a sterile area other than through a screening point (and will therefore, by the operation of paragraph 41(2)(c) of the Act, be taken to have received clearance) provided that he or she is authorised to do so and properly displays a valid ASIC or is authorised to do so, properly displays a valid VIC and is supervised by somebody who may enter the sterile area other than through a screening point and properly displays a valid ASIC.

The classes of person set out in subregulation 4.11(2) are:

- a) aviation security inspectors;
- b) officers of Customs;
- c) screening officers;
- d) employees of the operator of the airport in which the sterile area is located;
- e) employees of the operator of a screened air service aircraft;
- f) contractors, and employees of contractors, to the operator of the airport in which the sterile area is located who are engaged in the loading of cargo, stores or checked baggage, or the boarding of

passengers, onto a cleared aircraft that is operating a screened air service, or who are otherwise authorised to access the aircraft;

- g) contractors, and employees of contractors, to the operator of a screened air service aircraft who are engaged in the loading of cargo, stores or checked baggage, or the boarding of passengers, onto a cleared aircraft that is operating a screened air service, or who are otherwise authorised to access the aircraft

By subregulation 4.11(3) the following persons may enter a sterile area other than through a screening point:

- a) ambulance, rescue or fire service officers who are responding to an emergency; and
- b) members of the Defence Force who are responding to an event or threat of unlawful interference with aviation; and
- c) air security officers.

These classes of person are not required to have or properly display a valid ASIC or VIC in the sterile area (see subregulation 3.26(2)).

By subregulation 4.11(4) a law enforcement officer who produces his or her identity card as a law enforcement officer may enter a sterile area other than through a screening point and is taken to be cleared.

Like regulation 4.10, this regulation says nothing about the lawfulness of possession of prohibited items or weapons by the listed persons (see Divisions 4.2 and 4.3)

#### **Regulation 4.12 Screening and clearing of VIPs etc**

This regulation sets out in tabular form the persons who may board an aircraft or enter a sterile area without being screened if the relevant entry in the relevant table indicates that, in the circumstances, screening is not required. If no screening is required the carry on baggage of that person is also not required to be screened.

#### **Regulation 4.13 Certain international transit passengers - screening of passengers and their carry-on baggage**

This regulation sets out the circumstances in which:

- an aircraft operating an international air service that is a screened air service and lands in Australia must be inspected before it continues its journey;
- every passenger on that aircraft must disembark with his or her carry on baggage; and then must be re-screened before he or she re-boards the aircraft.

The regulation does not apply if the landing is an unscheduled stop and no passenger boards the aircraft. It also sets out the requirements of an aircraft inspection. Failure to comply is an offence of strict liability by the aircraft operator attracting a maximum penalty of 50 penalty units.

**Regulation 4.14 Circumstances in which goods must be cleared before being taken on to an aircraft**

This regulation sets out the circumstances in which an item of stores (defined in section 9 of the Act) provided to an aircraft operator by a 'regular provider' (as defined) may enter a cleared area, a cleared zone or a cleared aircraft otherwise than through a screening point.

An operator of a screened air service must ensure its stores are not accessible to unauthorised persons until the start of the screened air service. In the case of an item provided by a regular provider of similar items this obligation begins from the time of acceptance. In any other case the obligation begins from the time clearance is received. Contravention is an offence attracting a maximum penalty of 100 penalty units. The aircraft operator must keep (until the end of the service) a record of the provider of each item of stores loaded onto an aircraft operating a screened air service. Contravention is an offence attracting a maximum penalty of 100 penalty units.

**Regulation 4.15 When carry on baggage must be cleared**

This regulation requires all carry-on baggage (defined in regulation 1.03) to be cleared before being taken onto an aircraft that is to operate a screened air service.

**Regulation 4.16 Circumstances in which vehicles must be cleared in order to be taken onto aircraft**

This regulation requires that a vehicle that is to be loaded onto aircraft that is to operate a screened air service is to be treated as cargo. (See regulation 4.45).

**Regulation 4.17 Methods, techniques and equipment to be used in screening**

Pursuant to paragraph 44(2)(j) and subsection 44(3) of the Act, this regulation enables the Secretary to specify, by written notice, methods, techniques and equipment to be used for screening. A person is required to comply with a notice served on him or her (see paragraph 44(2)(j) of the Act.) (Regulation 9.02 provides that a notice may be served by facsimile or email. This is in addition to the methods of service provided for by section 28A of the *Acts Interpretation Act 1901*.) Contravention is an offence of strict liability and attracts a maximum penalty of 100 penalty units.



### **Regulation 4.18 Notices to be displayed at places of screening of passengers and carry-on baggage**

Subregulation 4.18(2) effectively obliges a screening authority to visibly display a specified sign at an operating screening point. Contravention is an offence attracting a maximum penalty of 50 penalty units.

Until 9 March 2007, (despite subregulation 4.18(2)) a screening authority may display signs in the landside area of the airport that comply with Part 7 of the ANR (as in force on 9 March 2005).

### **Regulation 4.19 Supervision etc of baggage**

This regulation requires the operator of a prescribed aircraft to ensure that checked baggage is not accessible to an unauthorised person between the time it is checked in ('checked in' is defined in regulation 1.03) and collected. Contravention attracts a maximum penalty of 50 penalty units.

Reasonable precautions must be taken by the operator to ensure that a passenger's baggage, which it knows contains a firearm, is not retrieved by any person other than the passenger. Contravention attracts a maximum penalty of 50 penalty units.

### **Regulation 4.20 Unaccompanied baggage**

This regulation provides that for the purposes of screening and clearing, unaccompanied baggage is to be treated as cargo (see regulation 4.45).

### **Regulation 4.21 Control etc of baggage loading**

This regulation provides that a tag that identifies the relevant flight must be (before the start of the flight) attached to each checked baggage item carried on board an aircraft operating a domestic or international regular public transport operation or domestic or international open charter operation ('checked baggage', 'regular public transport operation' and 'open charter operation' are defined in regulation 1.03).

A record, identifying the passenger checking in the item, recording the flight number and connecting the baggage to a passenger on board the aircraft or specifying the circumstances of its carriage if the person checking in the item is not on board when it departs, must be created for each item of checked baggage. The record must be kept until at least 2 days after the end of the flight. Contravention attracts a maximum penalty of 50 penalty units.

The regulation creates an obligation on the operator of a prescribed air service to inspect the record before loading items. It also creates an obligation for the matching of each item of checked baggage with either a passenger who is on the flight or a passenger who was properly checked in for a flight that has departed. If any item of checked baggage cannot be

matched to a passenger as required (by subregulation 4.21(7)) the operator of a prescribed air service is obliged either to ensure that the item is not loaded or it is removed before the aircraft departs. Contravention attracts a maximum penalty of 50 penalty units.

**Regulation 4.22 Clearance of checked baggage removed from prescribed air service aircraft**

This regulation provides that checked baggage removed from an aircraft operating a prescribed air service must be cleared before it is re-loaded on board an aircraft unless the removal was because of ‘operational requirement’. An example of an operational requirement would be where the checked baggage was removed and then reloaded to ensure more efficient packing of all baggage.

**Subdivision 4.1.2 Checked baggage screening**

This subdivision deals separately with the requirements for screening of checked baggage to be loaded onto international aircraft and the screening of checked baggage to be loaded onto certain domestic flights. There is to be a new system, to be fully operational by 1 August 2007, for screening of checked baggage to be loaded onto certain domestic flights.

**Regulation 4.23 Definition for Subdivision - *domestic CBS air service***

This regulation defines *domestic CBS air service* to mean a domestic air service (defined in regulation 1.03) that operates as a screened air service (defined in regulation 4.02) from an airport at which checked baggage screening is required. Those airports are set out in regulation 4.29. An air service that is not operated by a jet aircraft is a screened air service only if it departs from the same airport apron as such a service and is scheduled to depart within the operational period of that service (see subregulation 4.02(3)). *Apron* has the meaning given by the airport operator’s TSP (see subregulations 4.02(3) and 2.15(4)).

**Regulation 4.24 Aircraft operators not to permit checked baggage to be loaded - international air service**

This regulation obliges the operator of an international screened air service to only load checked baggage that has received clearance. Contravention is an offence of strict liability attracting a maximum penalty of 50 penalty units.

**Regulation 4.25 International air services transiting Australia - inbound**

This regulation sets out the circumstances in which an item of checked baggage on an inbound international air service that becomes a screened air service by transiting through an airport in Australia (see regulation 4.02)

must be screened at the aircraft's first port of call in Australia. In effect, the obligation falls on the aircraft operator.

**Regulation 4.26 International air services transferring passengers in Australia - inbound**

This regulation sets out the circumstances in which an item of checked baggage on an inbound international air service must be screened before it is transferred to another air service if some or all of the passengers are to be transferred to another screened air service in Australia. In effect, the obligation falls on the aircraft operator.

**Regulation 4.27 International air services transiting Australia - outbound**

This regulation sets out the circumstances in which an item of checked baggage on an outbound international air service that becomes a screened air service by transiting through an airport in Australia (see regulation 4.02) must be screened at the aircraft's last port of call in Australia. In effect, the obligation falls on the aircraft operator.

**Regulation 4.28 International air services transferring passengers in Australia - outbound**

This regulation sets out the circumstances in which an item of checked baggage on an outbound international air service on which some or all of the passengers are to be transferred to another screened air service in Australia must be screened before it is transferred to the other air service. In effect, the obligation falls on the aircraft operator.

**Regulation 4.29 Checked baggage screening - domestic CBS air services**

The regulation applies in relation to checked baggage that is to be loaded on board a domestic CBS air service (defined in regulation 4.23) except baggage that is or is to be taken into a sterile area before being loaded on board the aircraft. Subregulation 4.29(2) requires:

- a) the airports at Adelaide, Brisbane, Melbourne, Perth and Sydney to have at least 1 checked baggage screening line continuously handling checked baggage for domestic CBS air services; and
- b) the airports at Cairns, Canberra, Coolangatta and Darwin to have 1 checked baggage screening unit at each terminal handling domestic CBS air services.

From 1 August 2007, the abovementioned airports as well as Alice Springs and Hobart Airports are required to screen all checked baggage for domestic CBS air services.

If a person other than an authorised person has access to an item of checked baggage that has been screened, the item must be screened again.

**Regulation 4.30 Aircraft operators not to permit certain checked baggage to be loaded - domestic CBS air services**

This regulation applies in relation to the airports at Adelaide, Brisbane, Melbourne, Perth, Sydney, Cairns, Canberra, Coolangatta, Darwin, Alice Springs and Hobart. On and after 1 August 2007, the operator of a domestic CBS air service departing from one of these airports is prohibited from permitting an item of checked baggage to be loaded on board the service unless the item has been screened and cleared (see regulation 4.31 for what applies at all of the abovementioned airports except Alice Springs and Hobart until the end of 31 July 2007). Contravention is an offence of strict liability and attracts a maximum penalty of 50 penalty units.

If a person other than an authorised person has access to an item of checked baggage that has been screened, the item must be screened again.

**Regulation 4.31 Random selection of checked baggage to be loaded - domestic CBS air services**

This regulation applies in relation to the airports at Adelaide, Brisbane, Melbourne, Perth, Sydney, Cairns, Canberra, Coolangatta and Darwin and it ceases to have effect at the end of 31 July 2007.

Subregulation 4.31(2) obliges the operator of a domestic CBS air service departing from one of these airports to randomly select, or cause to be randomly selected, a percentage, in accordance with subregulation 4.31(3), of items of checked baggage to undergo checked baggage screening before any baggage is loaded onto the aircraft that is to operate the service. Subregulation 4.31(3) prescribes the percentage of items selected for screening at any particular time must be the highest percentage that the checked baggage line (for Adelaide, Brisbane, Melbourne, Perth and Sydney) or unit (for Cairns, Canberra, Coolangatta and Darwin) operating at the airport can screen at the time.

Subregulation 4.31(3) means that an item that has been randomly selected for screening must be screened before it is loaded on board an aircraft operating a domestic CBS screened air service. Contravention of subregulations (2) and (3) is an offence and attracts a maximum penalty of 50 penalty units.

If a person other than an authorised person has access to an item of checked baggage that has been screened, the item must be screened again.

**Regulation 4.32 Domestic CBS air services - transit baggage - interim arrangement**

This regulation sets out the circumstances in which, up to the end of 31 July 2007, checked baggage on board a domestic CBS air service

transiting through an airport listed in subregulation 4.29(2) must be screened.

**Regulation 4.33 Domestic CBS air services - transit baggage**

This regulation sets out the circumstances in which, on and after 1 August 2007, checked baggage on board a domestic CBS air service transiting through an airport listed in subregulation 4.29(2) or (3) must be screened.

**Regulation 4.34 Domestic CBS air services transferring passengers - interim arrangement for checked baggage screening**

This regulation sets out the circumstances in which, up to the end of 31 July 2007, checked baggage on board a domestic CBS air service must be screened before it is transferred to a second domestic airtservice if some or all of the passengers are to be transferred to that domestic CBS air service.

**Regulation 4.35 Domestic CBS air services transferring passengers - checked baggage screening**

This regulation sets out the circumstances in which, on and after 1 August 2007, checked baggage on board a domestic CBS air service must be screened before it is transferred to a second domestic CBS air service if some or all of the passengers are to be transferred to that domestic CBS air service.

**Regulation 4.36 Screening and clearing of VIPs' checked baggage etc**

Checked baggage of a person or person in a class mentioned in column 2 of the table set out in this regulation need not be screened if the table so indicates.

**Regulation 4.37 Requirement to notify intending passengers about checked baggage screening**

This regulation obliges a screening authority (see regulation 4.03) to display a specified sign, indicating that checked baggage screening may occur, at a screening point. Contravention attracts a maximum penalty of 10 penalty units.

Until 9 March 2007, (despite subregulation 4.37(1)) a screening authority may display signs in the landside area of the airport that comply with regulation 10 of the *Air Navigation (Checked Baggage) Regulations 2005*.

**Regulation 4.38 Explosives not to be loaded on board aircraft**

This regulation obliges the screening authority to ensure a detected explosive (other than an explosive the carriage of which is permitted by or

under the *Civil Aviation Safety Regulations 1998*) in checked baggage is not loaded on board aircraft. Contravention is an offence of strict liability attracting a maximum penalty of 50 penalty units.

### **Regulation 4.39 Opening of checked baggage**

The regulations are not to be taken to authorise a screening authority or screening officer to open an item of checked baggage without the consent of a person who is entitled to possession of the item or the person who checked the item in unless the screening authority first makes a reasonable attempt to find a person who is entitled to possession of the item or the person who checked the item in and no such person is found.

### **Subdivision 4.1.3 Regulated air cargo agents**

The regulations in this subdivision deal with regulated air cargo agents.

### **Regulation 4.40 Definitions for Subdivision**

Subregulation 4.40(1) defines domestic cargo, handling and international cargo.

‘Cargo’ is defined by section 9 of the Act to mean ‘goods, other than baggage or stores, that are transported or intended to be transported, by aircraft’.

Subregulation 4.40(2) provides a person consigns cargo to an aviation industry participant if the person hands the cargo over to the participant for handling.

### **Regulation 4.41 Regulated air cargo agents**

This regulation sets out the meaning of regulated air cargo agent for the purposes of paragraph 44(2)(n) of the Act as a person that carries on a business that includes the handling, or making arrangements for transport of cargo to be carried on a prescribed air service, and whose name appears on the Secretary’s list (see regulation 4.42 for meaning of Secretary’s list). Also see regulation 4.50.

### **Regulation 4.42 Secretary’s list of regulated air cargo agents**

Subregulation 4.42(1) requires the Secretary to maintain a list of persons designated as RACAs (RACA is defined by regulation 1.03 to mean regulated air cargo agent). The Secretary may publish the list.

### **Regulation 4.43 How to become a RACA**

By subregulation 4.43(1) a person may apply, in writing, to the Secretary to be designated as a RACA. Subregulation (2) sets out the information the applicant must provide.

Subregulation 4.43(3) requires the applicant to undertake, in its application, to inform the Secretary within 7 days of a material change to any information in the application.

Subregulation 4.43(4) provides the Secretary may designate the applicant as a RACA if the Secretary is reasonably satisfied that:

- a) the applicant has provided the information required by subregulation (2); and
- b) the applicant's business includes handling or making arrangements for transporting cargo.

Subregulation (5) sets out the circumstances in which the Secretary may revoke the designation of a person as an RACA.

The Secretary is required to notify a person whose designation as a RACA has been revoked in writing of the revocation and the reasons for it, within 14 days.

#### **Regulation 4.44 Circumstances in which cargo must be cleared**

This regulation is made for subparagraph 44(2)(g)(i) of the Act. Subregulation 4.44(2) requires cargo to be cleared before being taken on to an aircraft that is to operate a prescribed air service.

#### **Regulation 4.45 Clearing of cargo**

This regulation sets out the three circumstances in which cargo may be accepted into the cleared area or zone of a security controlled airport or onto a prescribed aircraft. The first case is where, from the time the cargo is accepted it is accompanied by a security declaration stating that the cargo has been subject to security measures and procedures required under an approved TSP and has been handled by a RACA or an aviation industry participant (defined in section 9 of the Act and includes contractor to a RACA) who has been given the appropriate sections of the RACA's TSP.

The second case is that of domestic cargo (defined in regulation 4.40) to which Subdivision 4.1.4 applies (see in particular regulation 4.51) that has been handled by a RACA or an aviation industry participant (defined in section 9 of the Act and includes contractor to a RACA) who has been given the appropriate sections of the domestic cargo security measures document.

Thirdly, cargo is also taken to be cleared if it is given directly to the operator of a prescribed air service and the operator handles it in accordance with the operator's TSP.

### **Regulation 4.46 Explosives on a prescribed aircraft**

Subregulation 4.46(1) obliges a RACA to have, and to put into effect, measures and procedures to deter and detect the unauthorised carriage of explosives as cargo on a prescribed air service. (Regulation 4.49 requires, up to 9 March 2007, these measures in relation to domestic cargo to be set out in a domestic cargo security measures document.) Contravention is an offence of strict liability attracting a maximum penalty of 50 penalty units.

By subregulation 4.46(2), where a RACA detects an explosive or explosive device in an item of cargo, and the RACA knows or suspects that the carriage of the explosive or device on board an aircraft is not authorised under the *Civil Aviation Safety Regulations 1998*, the RACA must not load the item of cargo on the aircraft or deliver it to another aviation industry participant. Contravention is an offence of strict liability attracting a maximum penalty of 50 units.

### **Regulation 4.47 Clearance of cargo removed from prescribed aircraft**

This regulation requires cargo removed from a prescribed aircraft, to be cleared in accordance with the aircraft operator's TSP before it is re-loaded on the aircraft. (Regulation 2.41 deals with the requirements of an aircraft operator's TSP in relation to screening of air cargo).

### **Regulation 4.48 Disclosure of information**

Subregulation 4.48(1) prohibits a RACA from, subject to subregulation (2), notifying a person about security measures and procedures to be applied to cargo. Contravention is an offence attracting a maximum penalty of 50 penalty units. By subregulation 4.48(2) a RACA may notify a cargo consignor or aircraft operator about measures that will not be applied to particular cargo if the consignor or operator has a lawful reason to know.

Subregulation 4.48(3) prohibits a RACA from disclosing details about the airline or flight on which particular cargo is to be carried, except in accordance with the RACA's TSP. Contravention is an offence attracting a maximum penalty of 50 penalty units.

Subregulations 4.48(4) and (5) require a RACA to maintain a record of persons to whom airline or flight information has been given under subregulation (3) and to keep that record for 3 years. Contravention attracts a maximum penalty of 20 penalty units.

### **Subdivision 4.1.4 Regulated air cargo agents — transitional arrangements**

This subdivision sets out transitional arrangements for RACAs.



#### **Regulation 4.49 Approved air cargo security programs**

This regulation provides an international air cargo security program approved under the ANA is taken to be an approved TSP for the purposes of Part 2 of the Act. Subregulation 4.49(2) clarifies that, for subregulation (1), a reference to an international air cargo security program includes such a program that is in the form of:

- a) the *International Air Cargo Security Program — Regulated Agent Model Security Program — version 2*, published by the Department; or
- b) the *International Air Cargo Security Program — Regulated Agent Model Security Program — Variation — version 2*, published by the Department.

These programs are used by many RACAs and the purpose of this regulation is to allow time for TSPs to be developed.

Subregulation 4.49(3) provides for the meaning of screening in a program referred to in subregulation (1) so that it is to be taken, for the purposes of these Regulations, to be a reference to clearing.

This regulation is transitional and ceases to have effect on 9 March 2007.

#### **Regulation 4.50 Regulated agents under ANR**

This provides that a person that was a regulated agent under Division 3 of Part 7 of the ANR immediately before 10 March 2005 is taken to be a RACA. Such persons do not need to apply under regulation 4.43 but will appear on the Secretary's list kept under regulation 4.42.

#### **Regulation 4.51 Arrangements for carriage of domestic cargo**

RACAs are expected to have a domestic security measures document as an interim measure before having a TSP approved by 9 March 2007.

Subregulation 4.51(1) requires a RACA to maintain a domestic cargo security measures document setting out the measures and procedures for handling domestic cargo in accordance with subregulation (2).

Contravention attracts a maximum penalty of 50 penalty units.

Subregulation 4.51(2) sets out what a domestic cargo security measures document must contain: measures and procedures to deter and detect the unauthorised carriage of explosives or explosive devices as domestic air cargo on prescribed air services. Failure by the RACA to comply with a domestic cargo security measures document attracts a maximum penalty of 20 penalty units.

Subregulation 4.51(4) obliges a RACA to provide the appropriate sections of its domestic cargo security measures document to a contractor who handles domestic air cargo on its behalf. Contravention attracts a maximum

penalty of 20 penalty units. Subregulation 4.51(5) requires the contractor to a RACA that has been given a section or sections of the RACA's domestic cargo security measures document to comply with that section or those sections. Contravention attracts a maximum penalty of 20 penalty units.

By subregulation 4.51(6) a RACA is obliged to maintain a list of aviation industry participants, (including the name and contact details of each) to which sections of its domestic cargo security measures document have been given. Contravention attracts a maximum penalty of 20 penalty units.

Subregulation 4.51(7) requires a RACA, and a contractor to a RACA, to have measures and procedures to protect cargo in its custody. Contravention attracts a maximum penalty of 20 penalty units.

Subregulation 4.51(8) obliges a RACA to ensure that its domestic cargo security measures document is protected against unauthorised access, amendment and disclosure. Contravention attracts a maximum penalty of 20 penalty units. Subregulation 4.51(9) also obliges a contractor to a RACA that has been given a section or sections of the RACA's domestic cargo security measures document to ensure that that section is, or those sections are, protected against unauthorised access, amendment and disclosure. Contravention attracts a maximum penalty of 20 penalty units.

This regulation ceases to have effect at the end of 9 March 2007.

## **Division 4.2 Weapons**

Section 46 of the Act makes it an offence for a person other than a law enforcement officer or a member of the Australian Defence Force who is on duty to have a weapon in their possession in an airside area or a landside security zone unless that person is authorised by the Regulations (or permitted in writing by the Secretary) to have the weapon. This Division authorises certain classes of people to have a weapon in their possession in an airside area or a landside security zone.

### **Regulation 4.52 Aviation industry participants authorised to have weapons (not firearms) in possession in secure areas**

Regulation 4.52 authorises an aviation industry participant (see the definition of an aviation industry participant in section 9 of the Act) to have weapons (but not firearms) in their possession in an airside area or a landside security zone if:

- a) the weapon is a tool of trade; and
- b) the aviation industry participant takes reasonable precautions to ensure that the weapon remains under its control.

Something is a tool of trade for the purpose of this regulation if the relevant aviation industry participant requires it for a lawful purpose. For example a

contractor undertaking earthworks at an airport may need to use explosives to break up rocks. This regulation will ensure that they do not commit an offence by carrying the required explosives into an airside area or a landside security zone provided that they take reasonable precautions to ensure that it remains under their control. For example, they should ensure that only the required amount is on-site and that it is kept secured at all times. This regulation also allows an aviation industry participant to store tools of trade that fall under the definition of a weapon in regulation 1.09 in an airside area or a landside security zone for future use provided that they take reasonable precautions to ensure that the tools remain under their control by, for example, ensuring that the tools are locked in a secure manner.

**Regulation 4.53 Persons authorised to have weapons (not firearms) in possession in secure areas**

Subregulation 4.53(1) authorises the following persons (note that aviation industry participants are covered by regulation 4.52) to have weapons (but not firearms) in their possession in a secure area (an airside area or a landside security zone):

- a) an officer of Customs;
- b) an air security officer;
- c) a screening officer who is carrying the weapon to or from an aircraft because the weapon has been accepted for carriage by the aircraft's operator, or is being removed from the aircraft.

Subregulation 4.53(2) allows other persons to have a weapon (other than a firearm) in their possession in a secure area provided that:

- a) the weapon is a tool of trade; and
- b) the person keeps control of the weapon at all times.

For the purpose of subregulation 4.53(2) a person ceases to have control of the weapon if he or she gives possession of it to, or allows it to be accessible to, a person for whom it is not a tool of trade. This is a stricter test than the requirement to take reasonable precautions to ensure that the weapon remains under their control which applies under regulation 4.52.

For the purpose of subregulation 4.53(4) something is a tool of trade if:

- a) the individual whose possession it is in requires it for the purpose for which he or she is in the relevant area or zone; and
- b) the purpose is lawful.

This is a narrower definition than that which applies to regulation 4.50 because the individual must require the weapon for the purpose for which he or she is in the relevant area or zone. For example, an individual could not

take a tool with them that they did not require for the job that they were doing in the relevant area or zone.

**Regulation 4.54 Persons authorised to have firearms in possession in airside areas**

Regulation 4.54 authorises certain people to have a firearm (but not another type of weapon) in their possession in an airside area of an airport (but not a landside security zone). Note that these people may also have another type of weapon in the airside area if it is a tool of trade and they are covered by regulation 4.52 or 4.53.

Paragraph 4.54(1)(a) provides an authorisation for persons who, with the consent of the airport operator, are engaged in controlling wildlife or other animals on the airport. This would, for example, cover a contractor who has been engaged to cull kangaroos at an airport. However, the authorisation only applies if the person:

- (i) properly displays a valid ASIC (this requirement only applies at an airport from which a regular public transport operation operates); and
- (ii) holds, and has on his or her person, a firearms licence, validly issued under the law of the State or Territory in which the airport is located, for the firearm; and
- (iii) if a licence or permission is required under the law of the State or Territory for the person to shoot wildlife or animals on the airport, holds, and has on his or her person, such a licence or permission.

Paragraph 4.54(1)(b) provides an authorisation for persons who are uniformed members of the staff of a private security contractor who, with the consent of the airport operator, are in, or are facilitating the movement of, an armoured vehicle that displays the contractor's livery, or a vehicle that is accompanying such a vehicle and also displays the contractor's livery. This would, for example, cover the guards in or accompanying an armoured vehicle that is transporting cash or other valuables. However, the authorisation only applies if the person:

- (i) properly displays a valid ASIC (this requirement only applies at an airport from which a regular public transport operation operates); and
- (ii) holds, and has on his or her person, a firearms licence, validly issued under the law of the State or Territory in which the airport is located, for the firearm; and
- (iii) if required by the relevant State or Territory legislation holds, and has on his or her person, a valid 1A Security Guard licence issued under the law of the State or Territory; and
- (iv) stays close to at least 1 other uniformed member of the staff of the contractor.

Paragraph 4.54(1)(c) provides an authorisation for persons who are screening officers but only when they are carrying the firearm to or from an aircraft because the firearm:

- (i) has been accepted for carriage by the aircraft's operator; or
- (ii) is being removed from the aircraft.

Paragraph 4.54(1)(d) provides an authorisation for persons who are authorised representatives of an airline operator but only when they are carrying the weapon to or from an aircraft because the weapon:

- (i) has been accepted for carriage by the aircraft's operator; or
- (ii) is being removed from the aircraft.

Paragraph 4.54(1)(e) provides an authorisation for officers of the Australian Customs Service. Such officers may be required by the Australian Customs Service to carry a firearm as part of their duties in certain circumstances.

Paragraph 4.54(1)(f) provides an authorisation for air security officers.

A person covered by paragraph (a) or (b) who is carrying a firearm, or has a firearm close by and under his or her control, must, on demand by a law enforcement officer, an aviation security inspector or a representative of the airport operator or an airline operator, immediately show the law enforcement officer, aviation security inspector or representative:

- a) the person's firearms licence; and
- b) if the person is a person referred to in paragraph (1) (b), the person's security guard licence; and
- c) if the person is a person referred to in paragraph (1) (a), and the law of the State or Territory requires the person to hold a licence or permission referred to in subparagraph (1) (a) (iv) —that licence or permission.

Failure to do so may result in a penalty of up to 20 penalty units.

An offence against subregulation (2) is an offence of strict liability.

The note to this regulation highlights that the sterile area is part of the landside area of an airport. As such this regulation does not authorise a person to have a firearm in his or her possession in the sterile area (for the carriage of firearms in the sterile area, see section 46 of the Act)

#### **Regulation 4.55 Persons authorised to carry weapons through screening points**

Section 47 of the Act makes it an offence for a person (other than a law enforcement officer) to carry a weapon through a screening point unless

they are authorised by the regulations or are permitted in writing by the Secretary to do so.

Note that an authority to carry a weapon through a screening point does not give the person authority to possess the weapon in an airside area or a landside security zone (see section 46 of the Act and regulations 4.52 and 4.53)

The following persons are authorised by regulation 4.55 to carry a weapon through a screening point:

- a) a screening officer on duty, or an employee or contractor of the airport operator or the operator of a screened aircraft operator (being an employee or contractor who is on duty), but only if:
  - (i) the weapon has been detected during screening; and
  - (ii) the weapon is to be stored in accordance with applicable State and Territory laws (regulation 4.57) until it is handed over; and
  - (iii) to reach the place where the weapon is to be stored or released, the weapon must be carried through the screening point; and
  - (iv) the weapon is carried in such a way that its presence is not apparent to members of the public (for example the weapon is carried in an unmarked case);
- b) a screening officer on duty, or an employee or a contractor of the airport operator or the operator of a screened aircraft (being an employee or contractor who is on duty), if:
  - (i) the weapon has been surrendered for the purpose of being carried in the hold of the aircraft;
  - (ii) the aircraft operator has agreed to carry the weapon in the hold of the aircraft; and
  - (iii) to reach the place where the weapon is to be checked in, the weapon must be carried through the screening point; and
  - (iv) the weapon is carried in such a way that its presence is not apparent to members of the public (for example the weapon is carried in an unmarked case);
  - (v) an aviation security inspector on duty, or a representative of the screening authority, who is lawfully testing the screening system.

Note 1 draws attention to the fact that this regulation does not authorise the carrying of a weapon through a sterile area.

Note 2 draws attention to the point that if a weapon has been surrendered for the purpose of being carried on an international aircraft as checked baggage, and the airline operator is not sure whether carriage of the weapon constitutes an offence of unlawful export under the *Customs Act 1901*, the

airline operator should refer the matter to the Australian Customs Service before loading the weapon on the aircraft.

**Regulation 4.56 Persons authorised to have firearms in possession in sterile areas**

This regulation provides that air security officers are authorised to have firearms in their possession in a sterile areas.

**Regulation 4.57 Dealing with weapons surrendered at security controlled airports**

This regulation sets out how to deal with a weapon surrendered by a person at a security controlled airport.

A weapon surrendered at a security controlled airport is to be stored and handled in accordance with any other applicable Commonwealth law or any applicable State or Territory law.

The purpose of this regulation is to ensure that where there is an applicable Commonwealth, State or Territory Law the weapon will be handled in accordance with the law. For example firearms must be stored in accordance with any prescribed requirements. Where it is illegal to possess a weapon without a particular licence it is intended that arrangements should be made for the weapon to be given to the relevant authority (such as the police) for disposal.

**Regulation 4.58 Dealing with weapons surrendered etc on aircraft**

This regulation sets out how to deal with a weapon surrendered by a person on a prescribed aircraft. For example a weapon may be surrendered to a member of the flight crew.

If the person to whom the weapon is surrendered knows or suspects that the carriage of the weapon is an offence, he or she must cause the weapon to be handed over to a law enforcement officer as soon as practicable after the end of the flight. Until the weapon is handed over to the police it must be stored in such a way that its presence is not apparent to passengers. For example the weapon may be placed in a locked compartment.

**Regulation 4.59 Persons authorised to have weapons in possession on prescribed aircraft**

Sections 48 and 49 of the Act make it an offence to carry or have possession of a weapon on a prescribed aircraft (with certain exceptions for weapons that form part of the equipment of the aircraft or are to control an animal). However, it is not an offence to carry or have possession of a weapon on an aircraft if the person is a law enforcement officer or is authorised to carry or have possession of the weapon by the regulations or in writing by the Secretary.

The purpose of subregulation 4.59(1) is to authorise air security officers to have a weapons in their possession on board a prescribed aircraft.

The purpose of subregulation 4.59(2) is to authorise a representative of the operator of a prescribed aircraft to possess a weapon on board the aircraft but only if:

- a) the weapon has been surrendered on board the aircraft (see regulation 4.58); and
- b) the weapon is to be handed over to a law enforcement officer in accordance with the law of the Commonwealth or a State or Territory as soon as possible after the aircraft lands; and
- c) the weapon is to be stored until it is handed over; and
- d) the weapon is stored in such a way that its presence is not apparent to passengers (for example in a locked compartment).

This is to ensure that if, for example, a weapon is surrendered to the captain of a prescribed aircraft that the captain does not commit an offence by taking possession of the weapon for the purpose of surrendering it to the police when the aircraft lands.

This regulation does not authorise a person to have possession of the weapon in an airside area or a landside security zone (see section 46 of the Act).

Subregulation 4.59(3) allows a person to have a weapon (other than a firearm) in his or her possession provided that the weapon is a tool of trade and they keep control of it at all times. A person ceases to have control of the weapon if he or she gives possession of it, or allows it to be accessible to, a person for whom it is not a tool of trade. Subregulation 4.59(5) defines what a tool of trade is.

### **Division 4.3 Prohibited items**

Prohibited items are items defined by regulation 1.07.

### **Regulation 4.60 Prescription of sterile area**

The sterile area of a security controlled airport is prescribed for the purposes of paragraphs 54(1)(aa) and (3)(aa) of the Act. This means that it is an offence under section 54 for a person (other than a law enforcement officer, an airport security guard, an aviation security inspector or an on duty member of the Australian Defence Force) to have a prohibited item in a sterile area unless they have been authorised by the Regulations or permitted by the Secretary to do so.



**Regulation 4.61 Aviation industry participants authorised to have prohibited items in possession in sterile areas**

The practical effect of regulation 4.60 (read with section 54 of the Act) is to make it an offence to have a wide range of items in a sterile area. However, many of these items are tools that need to be used in the sterile area. The purpose of regulation 4.61 is to create exceptions to ensure aviation industry participants can have appropriate tools in sterile areas provided that they are kept under control.

Subregulation 4.61(1) authorises an aviation industry participant to have a prohibited item in a sterile area if:

- a) the item is a tool of trade; and
- b) the aviation industry participant takes reasonable precautions to ensure that the item remains under its control.

For the purpose of this subregulation, something is a tool of trade if the relevant aviation industry participant requires it for a lawful purpose.

**Regulation 4.62 Persons authorised to have prohibited items that are tools of trade in possession in sterile areas**

Persons other than aviation security participants (who are covered by regulation 4.61) may also have legitimate reasons for requiring tools in a sterile areas. The purpose of this regulation is to create exceptions to ensure people can have appropriate tools in sterile areas provided that they are kept under their control.

A person described in the table in subregulation 4.62(1) is authorised to have a prohibited item in his or her possession in the sterile area but only if:

- a) any limitations specified in column 3 of the table are met; and
- b) the item is a tool of trade in relation to the person; and
- c) the person keeps control of the item at all times.

For example, a paramedic who is treating a person in a sterile area may need to bring with them medical supplies that fall within the definition of a prohibited item. This regulation will ensure that it is not an offence for the paramedic to have those medical supplies with them (and under their control) in the sterile area while they are attending the person.

For the purpose of this regulation an individual ceases to have control of the prohibited item if he or she gives possession of it to, or allows it to be accessible to, a person for whom it is not a tool of trade. This is a stricter test than the requirement to take reasonable precautions to ensure that the prohibited remains under control which applies under regulation 4.61.

For the purpose of this regulation something is a tool of trade if:

- a) the individual whose possession it is in requires it for the purpose for which he or she is in the sterile area; and
- b) the purpose is lawful.

This is a narrower definition than that which applies to regulation 4.61 because the individual must require the item for the purpose for which he or she is in the relevant area or zone. For example an individual could not take a tool with them that they did not require at that time.

Subregulation 4.62(4) and (5) ensure that a person who suffers from a medical condition, or a person caring for them, is authorised to have a prohibited item in his or her possession in the sterile area if the item is medically necessary for the purpose of treating the condition, and the person (or the person caring for them) shows a screening officer a medical certificate to that effect. For example, the parent of an insulin dependent diabetic child may need to carry hypodermic needles to administer insulin to the child.

#### **Regulation 4.63 Persons authorised to have prohibited items in possession in sterile areas**

Subregulation 4.63(1) allows an air security officer to have a prohibited item in his or her possession in a sterile area.

Subregulation 4.63(2) ensures that a person escorting a person in custody is authorised to have a prohibited item in his or her possession in a sterile area if the item is reasonably necessary in connection with the escort.

#### **Regulation 4.64 Persons authorised to carry prohibited items through screening point**

Section 55 of the Act makes it an offence for a person (other than an law enforcement officer, an airport security guard or an aviation security inspector) to carry a prohibited item through a screening point unless they are authorised by the regulations, or are permitted in writing by the Secretary to do so.

The following persons are authorised by regulation 4.64 to carry a prohibited item through a screening point: a screening officer on duty, or an employee of, or a contractor to, the operator of a screened aircraft (being an employee or contractor who is on duty) but only if either:

- a) the item has been detected during screening; and
- b) the item is to be stored until it is disposed of; and
- c) to reach the place where the item is to be stored, it must be carried through the screening point; and
- d) the item is carried in such a way that its presence is not apparent to members of the public

Or:

- a) the item has been surrendered for the purpose of being carried in the hold of the aircraft; and
- b) the aircraft operator has agreed to carry the item in the hold of the aircraft; and
- c) to reach the place where the item is to be loaded onto the aircraft, it must be carried through the screening point; and
- d) the item is carried in such a way that its presence is not apparent to members of the public (for example in an unmarked case).

In addition, a person who suffers from a medical condition or person caring for that person is authorised to carry a prohibited item through a screening point if the item is medically necessary for the purpose of treating the condition and the person shows a screening officer, or a representative of a screening authority, a medical certificate to that effect (subregulations 4.64(4) and (5)).

A person escorting a person in custody is authorised to carry a prohibited item through a screening point if the item is reasonably necessary in connection with the escort (also see subregulation 4.63(2)).

#### **Regulation 4.65 Persons authorised to have prohibited items in possession on prescribed aircraft**

Sections 56 and 57 of the Act make it an offence to carry or have possession of a prohibited item on a prescribed aircraft (with certain exceptions for weapons that form part of the equipment of the aircraft or are to control an animal). However, it is not an offence to carry or have possession of a prohibited item on an aircraft if the person is a law enforcement officer, an airport security guard or an aviation security inspector or is authorised to carry or have possession of the weapon by the Regulations or in writing by the Secretary.

Subregulation 4.65(1) authorises air security officers to have a prohibited item in his or her possession on board a prescribed aircraft.

Subregulation 4.65(2) authorises an officer of Customs to have a prohibited item in his or her possession when undertaking his or her duties.

Subregulation 4.65(3) authorises a representative of the operator of a prescribed aircraft to possess a prohibited item on board the aircraft but only if:

- a) the item has been surrendered on board the aircraft;
- b) the item is to be stored; and

- c) the item is stored in such a way that its presence is not apparent to passengers.

The purpose of this subregulation is to ensure that if, for example, a prohibited item is surrendered to the captain of a prescribed aircraft, the captain will not commit an offence by taking possession of the item and storing it securely for the duration of the flight.

Subregulation 4.65(4) authorises a person to have a tool of trade on an aircraft. But only if they need it for a lawful purpose on that particular aircraft, and if they must keep control of the item at all times.

For the purpose of subregulation 4.65(4), a person ceases to have control of the item if he or she gives possession of it to, or allows it to be accessible to, a person for whom it is not a tool of trade.

For the purpose of subregulation 4.65(4) something is a tool of trade if:

- a) the individual whose possession it is in requires it for the purpose for which he or she is on the aircraft; and
- b) the purpose is lawful.

Subregulations 4.62(7) and (8) ensure that a person who suffers from a medical condition, or a person caring for them, is authorised to have a prohibited item in his or her possession in the sterile area if the item is medically necessary for the purpose of treating the condition and the person (or the person caring for them) shows a representative of the aircraft operator a medical certificate to that effect. For example, the parent of an insulin dependent diabetic child may need to carry hypodermic needles to administer insulin to the child.

#### **Division 4.4 On-board security**

The regulations in this Division are made pursuant to section 62 of the Act and deal with on board security including the management and control of passengers and the security of the flight crew compartment.

#### **Regulation 4.66 Management and control of passengers**

It may be necessary for members of the crew of an aircraft to restrain a person who is violent or otherwise dangerous.

Subregulation 4.66(1) requires the operator of a domestic regular public transport operation or domestic open charter operation or international regular public transport operation or international open charter operation to carry on board the aircraft enough restraining devices to permit the restraint of at least 2 passengers. Subregulation 4.66(2) requires the restraining devices to be stored on the aircraft in a place that is readily accessible to the aircraft's crew and not visible nor readily accessible to the aircraft's

passengers. Contravention of either subregulation attracts a maximum penalty of 5 penalty units.

#### **Regulation 4.67 Security of flight crew compartment — all aircraft**

This regulation is intended to increase the security of cockpits as a measure to reduce the likelihood of hijacking. It applies to all aircraft. Regulation 4.68 deals with additional requirements for the security of the flight crew compartment for aircraft with a seating capacity of 30 or more.

Regulation 4.67 sets out the requirements in relation to the security of the flight crew compartment of an aircraft that is used to operate a prescribed air service. Subregulation 4.67(2) requires an aircraft that has a cockpit door to have a cockpit door that is able to be locked and a means for the cabin crew to communicate with the flight crew while the door is locked. The means of communicating may, for example, be a small hatch or an electronic intercom.

By subregulation 4.67(3) the cockpit door of such an aircraft must remain locked from the time the aircraft's passenger doors are closed and secured for departure until they are unlocked to allow the passengers to disembark, except when necessary to allow a person to enter or leave the cockpit or when otherwise necessary for safety reasons. The door may, for example, need to be opened to allow a pilot to use the restroom.

Subregulation 4.67(4) prohibits a person entering the cockpit after the aircraft has taken off unless he or she is authorised to do so by the aircraft's pilot in command or the aircraft's operator and is a member of the aircraft's crew or is an employee of the aircraft's operator or is authorised or required by the *Civil Aviation Regulations 1988* or the *Civil Aviation Safety Regulations 1998* to enter the cockpit and he or she holds appropriate identification as such a person.

Subregulation 4.67(5) makes contravention of subregulations 4.67(2), (3) or (4) an offence committed by the aircraft operator and attracts a maximum penalty of 200 penalty units. By subregulation (6) a contravention of subregulation (5) is an offence of strict liability. This places emphasis on the aircraft operator to ensure the cockpit is secure.

Subregulation 4.67(7) makes it a defence to a charge of contravening subregulations 4.67(2) or (3) that the aircraft concerned had a faulty door lock, or that the door lock became faulty during flight and was being returned to a place at which the lock could be repaired. Subregulation 4.67(8) requires the aircraft operator who is returning an aircraft with a faulty door lock to a place at which the lock can be repaired, to inform the Secretary, as soon as practicable, of the flight and the measures taken to ensure that the cockpit of the aircraft is secure during the flight. Contravention attracts a maximum penalty of 50 penalty units.

**Regulation 4.68 Additional requirements for security of flight crew compartment — aircraft with seating capacity 30 or more**

This regulation prescribes additional requirements for an aircraft operating a regular public transport operation or an open charter operation that has a certificated maximum passenger seating capacity of 30 or more.

Subregulation 4.68(2) provides that the operator of an aircraft with seating capacity of 30 to 59 is prohibited from operating the aircraft unless the aircraft is equipped with a cockpit door that is:

- a) designed to resist forcible intrusion by unauthorised persons; and
- b) capable of withstanding impacts of at least 300 joules at critical locations; and
- c) capable of withstanding at least 1113 newtons constant tensile load on the knob or handle and
- d) designed to resist penetration by small arms fire and fragmentation devices to a level equivalent to level IIIa of the United States National Institute of Justice Standard (NIJ) 0101.04 Revision A as in force on 15 January 2002.

A copy of the Standard referred to in paragraph 4.68(2)(d) can be obtained from the website of the National Institute of Justice using the following link: <http://www.ojp.usdoj.gov/nij/pubs-sum/183651.htm>.

Another way to locate the document is via the following link from the website of the National Law Enforcement Corrections Technology Center (NLECTC) (a program of the NIJ): <http://www.nlectc.org/BatPro/batSearch.asp>

Subregulation 4.68(3) provides that the operator of an aircraft with seating capacity of 60 or more is prohibited from operating the aircraft unless it is equipped with a cockpit door that complies with section 13.2.2 of Annex 6, *Operation of Aircraft*, to the Chicago Convention, as in effect on 28 November 2002. The Note to subregulation (3) sets out the text of section 13. In effect, this subregulation means that aircraft with a seating capacity of 60 or more must be equipped with a cockpit door that is designed to resist penetration by small-arms fire and grenade shrapnel, and to resist forcible intrusions by unauthorized persons. This door is to be capable of being locked and unlocked from either pilot's station.

Non compliance is an offence of strict liability by the aircraft operator attracting a maximum penalty of 50 penalty units.

The Secretary may, by instrument in writing, exempt an operator of a specified aircraft from compliance with subregulation 4.68(2) or (3).

### **Regulation 4.69 Pre-flight security checks**

Subregulation 4.69(1) requires the operator of an aircraft operating a prescribed air service to ensure that before operating the service a pre-flight security check of the aircraft is carried out in accordance with subregulations 4.69(2), (3), (4) and (5):

- a) if the flight is the aircraft's first flight since returning to service after maintenance carried out outside the airside area of a security controlled airport; or
- b) unless, since the aircraft's previous flight, it has been continuously protected, in the way set out in the operator's TSP, from unauthorised access.

Contravention attracts a maximum penalty of 50 penalty units.

Subregulation 4.69(2) prescribes the checks required by subregulation 4.69(1) must include:

- a) a comprehensive inspection of the interior of the aircraft, including the passenger cabin, seats, overhead baggage lockers, toilets, catering and food preparation areas, flight deck and crew rest stations, and cargo hold; and
- b) an inspection of any unlocked storage facilities in a part of the aircraft mentioned in paragraph (a); and
- c) an inspection of the parts of the aircraft's exterior that are reasonably accessible.

Subregulations 4.69(3), (4) and (5) (respectively) require the check of the cargo holds to be done before any cargo is loaded, the check of the passenger cabin to be done before any passenger boards the aircraft and the check of the baggage compartments to be done before any baggage is loaded.

### **Regulation 4.70 Training programs**

This regulation requires the operator of a prescribed air service to establish and maintain a training program for crew that provides training in:

- a) deciding the seriousness of an occurrence; and
- b) crew communication and coordination; and
- c) appropriate self-defence; and
- d) the use of non-lethal protective devices, to the extent permitted by law; and
- e) understanding the behaviour of terrorists; and
- f) exercises simulating threatening situations; and

- g) flight deck procedures to protect the aircraft; and
- h) procedures for searching the aircraft; and
- i) least-risk bomb locations for aircraft.

Contravention attracts a maximum penalty of 50 penalty units.

**Regulation 4.71 Unattended aircraft — aircraft operating prescribed air service**

If an aircraft that is operated for the purposes of a prescribed air service is not under the continuous supervision of a person authorised by its operator for that purpose, its operator must take reasonable measures to prevent an unauthorised person having access to the aircraft. For example, the aircraft may be kept inside a locked hangar. Contravention attracts a maximum penalty of 50 penalty units.

**Regulation 4.72 Unattended aircraft**

This regulation requires reasonable measures to be taken to protect an Australian aircraft, defined in the *Civil Aviation Act 1988*, that is a powered aircraft (other than an aircraft to which regulation 4.71 applies) against being flown by an unauthorised person. Contravention attracts a maximum penalty of 50 penalty units. Subregulation 4.72(2) gives examples of reasonable measures as:

- a) wheel locks or clamps; or
- b) lockable control locks; or
- c) the aircraft being chained or padlocked to a permanent tie down point; or
- d) the aircraft being inside a locked hangar.

These examples are not intended to preclude other suitable measures being taken.

Subregulation 4.72(4) specifies that the measures taken must be reasonably effective to prevent the aircraft being flown by an unauthorised person, must be discernible from outside the aircraft and must not compromise the aircraft's safety.

By subregulation 4.72(5) a contravention of subregulation 4.72(2) or (4) means the registered operator (within the meaning given by the *Civil Aviation Safety Regulations 1998*) of the aircraft concerned is guilty of an offence, attracting a maximum penalty of 50 penalty units.

**Division 4.5 Persons in Custody**

These regulations are made for the purposes of section 65 of the Act which provides for the making of regulations prescribing requirements in relation



to persons in custody on a prescribed aircraft or at a security controlled airport. The Division deals with persons in custody under the Migration Act or other law (which includes a law of a State or Territory). ‘Person in custody’ is defined by section 64 of the Act. In broad terms, a person is ‘in custody’ when he or she is not free, and is subject to restraint or control.

The Division has three subdivisions. Subdivision 4.5.1 deals with preliminary matters. Subdivision 4.5.2 sets out the requirements for persons in custody under the Migration Act and Subdivision 4.5.3 sets out the requirements for persons in custody otherwise than under the Migration Act.

### **Subdivision 4.5.1 Preliminary**

#### **Regulation 4.73 Definition for Division**

This regulation defines Form 1 for this Division as Form 1 in Schedule 1. Form 1 is a combined notification and risk assessment form which must be used by all enforcement agencies including DIMIA to notify aircraft operators (and in certain circumstances airport operators) of the proposed movement of persons in custody.

### **Subdivision 4.5.2 Persons in custody under Migration Act**

This subdivision sets out the notification requirements and escort requirements for the travel of persons in custody under the Migration Act.

#### **Regulation 4.74 Application of this Subdivision**

This regulation makes it clear that Subdivision 4.5.2 applies in relation to the travel on prescribed aircraft of persons in custody under the Migration Act.

### **Regulation 4.75 Definitions for Subdivision**

This provides that:

*DIMIA* means the Department administered by the Minister who at the relevant time administers the Migration Act.

A person in custody is *dangerous* if DIMIA has assessed him or her as being likely to attempt to commit an unlawful interference with aviation (defined by section 10 of the Act) or likely to attempt to escape, or if DIMIA is aware the person has been charged with, or convicted of, a crime involving violence against a person or serious damage to property. Whether a person meets the description of being dangerous depends on DIMIA’s assessment or state of awareness.

**Regulation 4.76 Persons to whom and situations in which this Subdivision does not apply**

This regulation provides this Subdivision does not apply to or in relation to a person who has been taken into custody (otherwise than under the Migration Act) at a security controlled airport or on a prescribed aircraft.

The Subdivision does not apply to or in relation to a turnaround departure (as defined) or a monitored departure (as defined).

**Regulation 4.77 Provision of information to operator of a prescribed air service — person in custody undertaking supervised departure**

For the purposes of this regulation *supervised departure* means the unescorted departure from Australia of a person who is a non-citizen (for the meaning of which see sections 5 and 14 of the Migration Act), who cooperates in the departure process, and is in immigration detention (defined in section 5 of the Migration Act) and under the supervision of an officer under the Migration Act until he or she departs from Australia.

The regulation applies in relation to the supervised departure from Australia, on a prescribed aircraft, of a person in custody and travel on a prescribed air service that is a domestic air service, for the purpose of a supervised departure, by such a person.

Broadly, escorted domestic travel by non-dangerous persons in immigration detention is the subject of regulation 4.78, escorted international travel by non-dangerous persons in custody is the subject of regulation 4.79 and escorted travel by dangerous persons in custody is the subject of regulation 4.80.

Subregulation 4.77(3) obliges DIMIA to give a Form 1 (defined in regulation 4.73), with Part A about the relevant person in custody completed, to the operator of a prescribed air service on which the person will travel, at least 6 hours before the intended start of the relevant flight, unless the operator agrees otherwise.

Subregulation 4.77(4) applies where DIMIA has complied with subregulation (3). If the operator requires more information, or wants to raise concerns about the proposed travel it must do so, in writing, at least 3 hours before the intended start of the relevant flight.

Subregulation 4.77(5) obliges DIMIA to give information correcting previously incorrect information or completing previously missing information to the operator as soon as practicable.

Subregulation 4.77(6) makes clear that nothing in this regulation requires DIMIA to give an operator of a prescribed air service any information the

disclosure of which would constitute an offence under any Act or under the law of a State or Territory.

**Regulation 4.78 Provision of information to operator of a prescribed air service  
— escorted domestic travel maintaining immigration detention**

This regulation applies in relation to the escorted travel, on a prescribed aircraft operating a domestic air service, of a person in custody who is in immigration detention and is not dangerous (see subregulation 4.75(2) for the meaning of dangerous). For example it would apply to the escorted travel on a prescribed aircraft from Adelaide to Melbourne of someone who is not dangerous and is in immigration detention.

Subregulation 4.78(2) obliges DIMIA to give the operator of a prescribed air service a Form 1, with Parts A and B completed except for any necessary approval by the Secretary, at least 24 hours before the intended start of the relevant flight, unless the operator agrees otherwise.

Subregulation 4.78(3) applies where DIMIA has complied with subregulation (2). If the operator requires more information, or wants to raise concerns about the proposed travel it must do so, in writing, at least 12 hours before the intended start of the relevant flight.

Subregulation 4.78(4) obliges DIMIA to give information correcting previously incorrect information or completing previously missing information to the operator as soon as practicable.

Subregulation 4.78(5) makes clear that nothing in this regulation requires DIMIA to give an operator of a prescribed air service any information the disclosure of which would constitute an offence under any Act or under the law of a State or Territory.

**Regulation 4.79 Provision of information to operator of a prescribed air service  
— escorted international travel by non-dangerous persons**

This regulation applies in relation to the escorted travel, on a prescribed aircraft operating an international air service, of a person in custody who is not dangerous. ‘Dangerous’ is defined in subregulation 4.75(2). For example it would apply to the escorted travel from Perth to Singapore on a prescribed aircraft of a non-dangerous person in custody.

Subregulation 4.79(2) obliges DIMIA to give the operator of a prescribed air service Form 1 with Parts A and B, completed except for any necessary approval by the Secretary, at least 48 hours before the intended start of the relevant flight, unless the operator agrees otherwise.

Subregulation 4.79(3) applies where DIMIA has complied with subregulation (2). If the operator requires more information, or wants to

raise concerns about the proposed travel it must do so, in writing, at least 24 hours before the intended start of the relevant flight.

Subregulation 4.79(4) obliges DIMIA to give information correcting previously incorrect information or completing previously missing information to the operator as soon as practicable.

Subregulation 4.79(5) makes clear that nothing in this regulation requires DIMIA to give the operator of a prescribed air service any information the disclosure of which would constitute an offence under any Act or under the law of a State or Territory.

**Regulation 4.80 Provision of information to operator of a prescribed air service and operator of security controlled airport — escorted travel by dangerous persons**

This regulation applies in relation to the escorted travel, on a prescribed aircraft, of a person in custody who is dangerous or otherwise presents a risk to aviation security. ‘Dangerous’ is defined in subregulation 4.75(2). For example it would apply to the escorted travel from Perth to Singapore or from Adelaide to Melbourne on a prescribed aircraft of a dangerous person in custody.

Subregulation 4.80(2) obliges DIMIA to give the operator of a prescribed air service a Form 1, with Parts A and B completed except for any necessary approval by the Secretary, at least 48 hours before the intended start of the relevant flight, unless the operator agrees otherwise.

Subregulation 4.80(3) applies where DIMIA has complied with subregulation (2). If the operator requires more information, or wants to raise concerns about the proposed travel it must do so, in writing, at least 24 hours before the intended start of the relevant flight.

Subregulation 4.80(4) obliges DIMIA to give information correcting previously incorrect information or completing previously missing information to the operator as soon as practicable.

By subregulation 4.80(5) DIMIA must ensure a copy of the relevant Form 1 endorsed by the operator of the prescribed air service is sent to the operator of each security controlled airport through which the person will travel. DIMIA is obliged to ensure the copy is sent at least 12 hours before the person’s arrival at the relevant airport (unless the airport operator agrees otherwise).

Subregulation 4.80(7) clarifies that nothing in this regulation requires DIMIA to give an operator of a prescribed air service or airport operator any information the disclosure of which would constitute an offence under any Act or under the law of a State or Territory.

**Regulation 4.81 Escort arrangements for dangerous persons in custody**

This regulation sets out the requirements in relation to travel on a prescribed aircraft by a dangerous person in custody. The person travelling in custody must be escorted at all times when on a prescribed aircraft or at a security controlled airport by at least 2 escorts. At least one of the escorts must be the same sex as him or her. Unless approved by the Secretary in writing, the escorts are not to be responsible for any other person in custody. The escorts cannot be crew members and must be either law enforcement officers or persons of a kind agreed to by the operator of the prescribed air service and DIMIA. DIMIA must provide the escorts unless the operator of a prescribed air service and DIMIA agree that the operator will provide the escorts.

**Regulation 4.82 Escort arrangements for non-dangerous persons in custody**

This regulation sets out the requirements in relation to travel on a prescribed aircraft by a person in custody who is not dangerous. There is no set number of escorts required for such a person.

**Regulation 4.83 Limits on number of persons in custody undertaking escorted travel on prescribed aircraft**

In this regulation a reference to person in custody includes both a person in custody to whom this Subdivision applies and a person in custody to whom Subdivision 4.5.3 applies. With a limited exception, no more than 2 escorted persons in custody, no more than 1 of whom is dangerous, are to be carried on the same flight without the Secretary's written approval. The exception applies if 3 or more escorted persons in custody who are travelling are all members of the same family unit and are undertaking escorted travel (see regulation 4.84).

If the operator is notified of the proposed travel arrangements that would mean 3 or more escorted persons in custody (who are not all covered by regulation 4.84) would be on the same flight, then the operator must limit the number of escorted persons in custody to be taken onto the flight to 2 or may apply for the Secretary's written approval to allow the extra person or persons. DIMIA may apply on the operator's behalf if DIMIA and the operator agree.

The Secretary may impose, on an approval, any condition reasonably necessary in the interests of aviation security. For example, a condition may be that the parents of the children are not to sit together but that one of the parents may sit with the children.

**Regulation 4.84 Exception for members of family unit**

This regulation sets out an exception to allow members of a family unit (none of whom is dangerous) undertaking escorted travel to all be on the same flight if DIMIA and the operator of a prescribed air service agree.

### **Regulation 4.85 Information to be provided to aircraft's pilot in command**

This regulation makes it the responsibility of the operator of a prescribed air service to notify the aircraft's pilot in command that a person in custody is to be carried on his or her flight and the conditions under which the person is being carried before the aircraft's departure.

### **Subdivision 4.5.3 Persons in custody otherwise than under the Migration Act**

#### **Regulation 4.86 Application of this Subdivision**

This Subdivision applies in relation to the travel, on a prescribed aircraft, of persons in custody under a law other than the Migration Act.

#### **Regulation 4.87 Definitions for Subdivision**

Subregulation 4.87(1) sets out, for the purposes of the subdivision, the meaning of *enforcement agency*:

- a) in the case of a person being moved from one custodial facility to another the agency responsible for the custodial facility from which the person is being moved; or
- b) in the case of a person in custody under the *Fisheries Management Act 1991* — the Australian Fisheries Management Authority; or
- c) in the case of a person (other than a person described in paragraph (a)) in custody under an Act other than the *Fisheries Management Act 1991* — the Australian Federal Police or the police force or police service of a State or Territory; or
- d) in the case of a person (other than a person described in paragraph (a)) in custody under a law of a State or Territory — the police force or police service of the State or Territory.

Subregulation 4.87(2) provides that a person in custody is *dangerous* if:

- a) the relevant enforcement agency has assessed him or her as being likely to attempt to commit an unlawful interference with aviation, or to attempt to escape (the onus is on the enforcement agency to make such an assessment); or
- b) he or she has been charged with, or convicted of, an offence:
  - (i) against a person or persons; or
  - (ii) involving actual or threatened damage to property; punishable by imprisonment for 5 years or more.

#### **Regulation 4.88 Persons to whom Subdivision does not apply**

This regulation provides the Subdivision does not apply to or in relation to a person who is in custody because he or she has been taken into custody at a security controlled airport, or on a prescribed aircraft.

**Regulation 4.89 Provision of information to operator of a prescribed air service and operator of a security controlled airport — escorted travel**

The regulation sets out the requirements in relation to the escorted travel, on a prescribed aircraft, of a person in custody.

Subregulation 4.89(2) requires the relevant enforcement agency in relation to the person to give the operator of a prescribed air service a Form 1 (in Schedule 1) with Parts A and B completed except for any necessary approval by the Secretary, at least 48 hours before the intended start of the relevant flight, unless the operator agrees otherwise.

Subregulation 4.89(3) applies where the relevant enforcement agency has complied with subregulation (2). If the operator requires more information, or wants to raise concerns about the proposed travel it must do so, in writing, at least 24 hours before the intended start of the relevant flight.

Subregulation 4.89(4) obliges the relevant enforcement agency to give information correcting previously incorrect information or completing previously missing information to the operator as soon as practicable.

By subregulation 4.89(5) if the person in custody is dangerous the relevant enforcement agency must ensure a copy of the operator of a prescribed air service endorsed Form 1 is sent to the operator of each security controlled airport through which the person will travel. The enforcement agency must ensure the form is sent at least 12 hours before the person's arrival at the airport (unless the airport operator agrees otherwise).

Subregulation 4.89(7) clarifies that nothing in this regulation requires the enforcement agency to give an aircraft operator or airport operator any information the disclosure of which would constitute an offence under any Act or under the law of a State or Territory.

**Regulation 4.90 Escort arrangements for dangerous persons in custody**

This regulation sets out the requirements in relation to travel on a prescribed aircraft by a dangerous person in custody (defined in subregulation 4.87(2)): he or she must be escorted at all times, when on a prescribed aircraft or at a security controlled airport, by at least 2 escorts; at least 1 of the escorts must be of the same sex as him or her; unless the Secretary approves otherwise in writing, the escorts are not to be responsible for any other person in custody; the escorts must be law enforcement officers or persons of a kind agreed to between the operator of a prescribed air service and the relevant enforcement agency, must not be crew members of the aircraft on which the person is travelling; and the enforcement agency must provide the escorts unless the enforcement agency and the operator of a prescribed air service agree that the operator will provide the escorts.

**Regulation 4.91 Escort arrangements for non-dangerous persons in custody**

This regulation applies in relation to travel on a prescribed aircraft by a person or persons in custody who is or are not dangerous. There is no set number of escorts for such person(s) but they must be escorted unless the Secretary approves otherwise in writing.

**Regulation 4.92 Limits on number of persons in custody undertaking escorted travel on prescribed aircraft**

This regulation sets out restrictions on the numbers of escorted persons in custody (defined to include a person in custody to whom this Subdivision applies, and a person in custody to whom Subdivision 4.5.2 applies) to be carried on the same flight. It is in similar terms to regulation 4.83.

**Regulation 4.93 Exception for members of family unit**

This regulation sets out an exception to the restriction on numbers of escorted persons in custody to be carried on the same flight. It is in similar terms to regulation 4.84.

**Regulation 4.94 Information to be provided to aircraft's pilot in command**

This provides that the operator of a prescribed air service on which a person in custody is to be carried must notify the aircraft's pilot in command before the aircraft's departure that a person in custody is being carried on the aircraft and the conditions under which the person is being carried.

**Division 4.6 Control Directions****Regulation 4.95 Compliance control directions**

This regulation is made pursuant to subsection 74B(5) of the Act. Compliance control direction has the meaning given by subsection 74B(2); that is, a direction given by an aviation security inspector to the aircraft operator for, or the pilot in command of, a prescribed aircraft that is in Australian territory and not in flight, to take specified action. Such a direction may be given by an aviation security inspector.

By subregulation 4.95(1) an aviation security inspector may give a compliance control direction orally or in writing. Where the direction is given orally he or she must, as soon as practicable, confirm it in writing by identifying the direction and setting out the reasons for giving it. Subregulation 4.95(4) allows the aviation security inspector to give the written confirmation of an oral direction to either the pilot or to the aircraft's operator. Subregulation 4.95(5) requires an aviation security inspector who has given a compliance control direction to notify the Secretary in writing, as soon as practicable, that he or she has given the direction and its content.



## **PART 5 POWERS OF OFFICIALS**

This Part deals with some of the powers of aviation security inspectors, airport security guards and screening officers.

### **Division 5.1 Aviation security inspectors**

#### **Regulation 5.01 Identity cards**

Subsection 78(1) of the Act requires the Secretary to issue each aviation security inspector with an identity card.

In accordance with subsection 78(2) of the Act, regulation 5.01 sets out requirements in relation to the form, issue and use of such identity cards.

In accordance with subregulation 5.01(1) an identity card issued to an aviation security inspector must:

- a) show the holder's full name;
- b) bear a recent photograph of the holder;
- c) bear a statement to the effect that the holder is an aviation security inspector for the purposes of Part 5 of the Act and Part 5 of the Regulations; and
- d) bear the signatures of the holder and the Secretary.

Subregulation 5.01(2) operates to require an aviation security inspector to show their identity card to an aviation industry participant (including a person apparently representing an aviation industry participant) if the participant (or their apparent representative) asks the inspector to show the card. An aviation security inspector who does not show their security card when requested by an aviation industry participant (or their apparent representative) may be subject to a penalty of up to 5 penalty units.

Subregulation 5.01(3) requires a person who ceases to be an aviation security inspector to return his or her identity card to the Secretary within 7 days of him or her ceasing to be an authorised officer. A person who does not return the card within the required 7 days may be subject to a penalty of up to 5 penalty units.

Subregulation 5.01(4) requires an aviation security inspector to show his or her identity card before exercising any power in relation to a person under these Regulations. For example, an aviation security inspector can issue infringement notices under Part 7 of the Regulations. Before issuing an infringement notice an inspector is required to show his or her identity card to the person that they are issuing the notice to. However the requirement to show an identity card does not apply when an inspector is granting an extension of time to pay a penalty (regulation 7.08).

### **Regulation 5.02 Identity cards - transitional arrangements**

Subregulation 5.20(1) provides that if a person was an authorised officer under Part 7 of the ANR immediately before the Regulations commenced and they are appointed as an aviation security inspector then the identity card that they had as an authorised officer is taken to be an identity card issued under sub regulation 5.01(1).

Subregulation 5.02(2) provides that this regulation ceases to have effect at the end of 9 March 2006.

The purpose of this regulation is to allow time for new identity cards to be issued and to ensure that during transitional period existing cards can be used.

### **Division 5.2 Airport security guards**

Security guards undertake security duties at airports and may exercise certain statutory powers.

### **Regulation 5.03 Training and qualifications of airport security guards**

Paragraph 91(2)(a) of the Act requires the regulations to prescribe the training and security requirements for airport security guards. Regulation 5.03 sets out these requirements. The requirements are different for security guards at airports from which screened air services operate and airports from which screened air services do not operate.

A person is not an airport security guard for the purpose of the Act unless they meet the prescribed training and qualification requirements and are on duty and are not a law enforcement officer (see subsection 91(1) of the Act).

#### **Airports from which screened air services operate**

Under subregulation 5.03(1), to be a security guard at an airport from which screened air services operate a person must:

- a) hold a Certificate II in Security Operations; or a qualification that, in the Secretary's opinion, is equivalent to a Certificate II in Security Operations; or have undergone training and acquired experience while working as a security guard, for the purpose of obtaining a Certificate II in Security Operations (this third option is intended to allow those security guards who are currently working at airports but who do not have a Certificate II (or equivalent) to continue to work as security guards while they take the necessary steps to obtain an appropriate qualification);
- b) be licensed as a security guard in the State or Territory in which the airport is located, but only if the State or Territory legislation requires security guards to be licensed; and

- c) have completed training (approved by the Secretary) that is designed to ensure the person is familiar with the Act and in particular the power of an airport security guard under section 92 and these Regulations.

Subregulation 5.03(2) is a transitional provision that means paragraph 5.03(1)(a)(iii) ceases to operate at the end of 9 March 2007. By that time it is expected that all airport security guards will hold a Certificate II in Security Operations (or equivalent). Those who do not will no longer be airport security guards for the purpose of the Act and will therefore not be able to exercise the statutory powers of an airport security guard.

#### Airports from which screened air services do not operate

Under subregulation 5.03(3), to be a security guard at an airport from which screened air services do not operate a person must:

- a) hold a Certificate II in Security Operations; or a qualification that, in the Secretary's opinion, is equivalent to a Certificate II in Security Operations; or have undergone training and acquired experience while working as a security guard, for the purpose of obtaining a Certificate II in Security Operations (this third option is intended to allow those security guards who are currently working at airports but who do not have a Certificate II (or equivalent) to continue to work as security guards while they take the necessary steps to obtain an appropriate qualification);
- b) be licensed as a security guard in the State or Territory in which the airport is located, but only if the State or Territory has legislation about the licensing of security guards;
- c) have complete training (approved by the Secretary) that is designed to ensure the person is familiar with the Act and in particular the power of an airport security guard under section 92) and these Regulations; and
- d) have completed training (approved by the Secretary) that is designed to ensure that the person is competent in the use of a hand held metal detector. Security guards at airports from which screened air services do not operate are not routinely required to use a hand-held metal detector for screening people (see regulation 4.07). However, it is important that they be trained in the use of hand-held metal detectors in case the Secretary gives a notice under a regulation made for the purpose of subsection 44(2) of the Act or a special security direction under section 67 of the Act. Such a direction may be given in circumstances where additional security measures such as the use of hand-held metal detectors are required and it is important that airports

are able to implement the required measures quickly using appropriately trained personnel.

Subregulation 5.03(4) is a transitional provision that means subparagraph 5.03(3)(a)(iii) ceases to operate at the end of 9 March 2007. By that time it is expected that all airport security guards will hold a Certificate II in Security Operations (or equivalent). Those who do not will no longer be airport security guards for the purpose of the Act and will therefore not be able to exercise the statutory powers of an airport security guard.

Subregulation 5.03(5) together with 5.03(6) mean that from 10 March 2006 security controlled airports from which screened air services do not operate must ensure that they have access to at least one appropriately trained security guard. Many security controlled airports from which screened air services do not operate are small airports and the cost of having full time security guards at the airport to perform duties such as screening is prohibitive. However, it is important that such airports have arrangements in place to ensure that they are able to access the services of one or more appropriately trained security guards when required. For example, if the Secretary gives a direction under subsection 44(3) or section 67 of the Act small airports may be required to have a security guard available to conduct screening with a hand-held metal detector for certain flights. A small airport could enter into a contractual arrangement to have a security guard 'on-call' as required. This would satisfy the requirement of subregulation 5.03(5).

#### **Regulation 5.04 Identity cards for airport security guards**

Paragraph 91(2)(b) of the Act requires the regulations to prescribe requirements in relation to the form, issue and use of identity cards for airport security guards. Regulation 5.04 requires a security guard to have been issued and to properly display a valid ASIC while they are working at an airport from which a regular public transport operation operates. Part 6 of the Regulations deals with the issue of ASICs.

#### **Regulation 5.05 Uniforms for airport security guards**

Paragraph 91(3)(a) of the Act allows for regulations to prescribe requirements in relation to uniforms for airport security guards.

Regulation 5.05 specifies that an airport security guards must wear a distinctive and recognisable uniform.

#### **Division 5.3 Screening Officers**

Screening officers conduct screening at airports and may exercise certain statutory powers.

### **Regulation 5.06 Training and qualifications of screening officers**

Subsection 94(1) of the Act provides that a screening officer is a person who is authorised or required to conduct screening. Paragraph 94(2)(a) of the Act requires the regulations to prescribe the training and security requirements for screening officers. Regulation 5.06 sets out these requirements.

The training and qualification requirements for a screening officer are that the officer:

- a) hold a Certificate II in Security Operations; or a qualification that, in the Secretary's opinion, is equivalent to a Certificate II in Security Operations; or have undergone training and acquired experience while working as a security guard for the purpose of obtaining a Certificate II in Security Operations (this third option is intended to allow those security guards who are currently working at airports but who do not have a Certificate II (or equivalent) to continue to work as security guards while they take the necessary steps to obtain an appropriate qualification);
- b) be licensed as a security guard in the State or Territory in which the airport is located, but only if the State or Territory legislation requires security guards to be licensed;
- c) be supervised by an experienced screening officer and not make any independent screening decisions until a supervisor is satisfied that they are competent;
- d) have completed training (approved by the Secretary) that is designed to ensure the person is competent in maintaining the integrity of a sterile area, the use of screening equipment, methods and techniques for screening and dealing with weapons, and prohibited items that are detected or surrendered; and
- e) have completed training (approved by the Secretary) that is designed to ensure the person is familiar with the Act and in particular the power of an airport screening officer under section 95 and 96 and these Regulations.

Subregulation 5.06(2) is a transitional provision that means subparagraph 5.06(1)(a)(iii) ceases to operate at the end of 9 March 2007. By that time it is expected that all screening officers will hold a Certificate II in Security Operations (or equivalent). Those who do not will no longer be screening officers for the purpose of the Act and will therefore not be able to exercise the statutory powers of a screening officer.

### **Regulation 5.07 Identity cards for screening officers**

Paragraph 94(2)(b) of the Act requires the regulations to prescribe requirements in relation to the form, issued and use of identity cards for

screening officers. Regulation 5.07 requires a screening officer to have been issued and to properly display a valid ASIC while on duty. Part 6 of the Regulations deals with the issue of ASICs.

### **Regulation 5.08 Uniforms for screening officers**

Paragraph 94(3)(a) of the Act allows for regulations to prescribe requirements in relation to uniforms for airport screening officers. Regulation 5.08 specifies that an airport security guard must wear a distinctive and recognisable uniform.

## **PART 6 SECURITY IDENTIFICATION**

Part 6 of the regulations deals with various aspects of aviation security identification documents. The two documents are the ASIC (aviation security identification card) and the VIC (visitor identification card). Part 6 creates rules regarding the authorisation and regulation of issuing bodies, which are bodies authorised to issue ASICs and VICs. It also creates rules in relation to ASIC programs, which are documents that set out procedures in relation to how issuing bodies must issue, and generally regulate ASICs and VICs. Part 6 also covers the issue of and obligations in relation to security designated authorisations (defined in regulation 1.08).

### **Division 6.1 Preliminary**

#### **Regulation 6.01 Definitions for Part 6.1**

Regulation 6.01 defines a number of terms that are used within Part 6. In particular, the following terms are defined: AFP, ASIC program, ASIO, conviction (the notes at the end of regulation 6.01 draw attention to certain aspects of the definition of a conviction under the *Crimes Act 1914*), holder (of an ASIC or VIC), issuing body (see Division 6.3 for the key regulations concerning issuing bodies), program purposes, security assessment and sentence.

In addition, *aviation-security-relevant offence* is defined to mean an offence of a kind mentioned in the following list against a law of the Commonwealth, or of a State or Territory, or of any other country or part of a country.

- An offence involving dishonesty (for example fraud)
- An offence involving violence or a threat of violence (for example assault or battery)
- An offence involving intentional damage to property or a threat of damage to property (for example arson)

- An offence constituted by the production, possession, supply, import or export of a substance that is:
  - a) a narcotic substance within the meaning of the *Customs Act 1901*; or
  - b) a drug, within the meaning of:
    - (i) regulation 10 of the *Customs (Prohibited Exports) Regulations 1958*; or
    - (ii) regulation 5 of the *Customs (Prohibited Imports) Regulations 1956*
- An offence, of a kind dealt with in Part II of the *Crimes Act 1914*, against the Government of:
  - a) the Commonwealth or a State or Territory; or
  - b) a country or part of a country other than Australia
- An offence against Part 2 of the *Crimes (Aviation) Act 1991*
- An offence against Part 5.3 of the *Criminal Code*
- An offence constituted by the production, possession, supply, import or export of explosives or explosive devices.

The four notes at the end of regulation 6.01 draw attention to certain aspects of the definition of a conviction under the *Crimes Act 1914*, where quashed and spent convictions need not be disclosed, and where certain convictions do not become spent for the purposes of an authority assessing whether to issue the convicted person with an ASIC.

### **Regulation 6.02 Background checking**

Regulation 6.02 provides that a reference in Part 6 to background checking is a reference to a process which involves the following components:

- a) a criminal records check conducted by the AFP; and
- b) a security assessment conducted by ASIO; and
- c) if the person is not an Australian citizen, a check conducted by DIMIA as to whether he or she is an unlawful non-citizen. (Unlawful non-citizen is defined by regulation 1.03 to have the same meaning as in the Migration Act).

### **Regulation 6.03 Kinds of ASICs**

Regulation 6.03 defines the different types of ASICs. As a consequence of the regulation, each ASIC must be either red or grey (see subregulation 1.03(1) for definitions of ASIC, red ASIC and grey ASIC), AND either Australia-wide or airport-specific AND either permanent or temporary.

Subregulation 6.03(3) states that an Australia-wide ASIC has effect for the purposes of entry to a secure area at any security controlled airport in Australia.

Subregulation 6.03(4) provides that an airport-specific ASIC has effect for the purposes of entry to a secure area at only the airport specified on it.

#### **Regulation 6.04 Kinds of identification document**

Subregulation 6.04(1) sets out the criteria that a document must meet to qualify as a primary, secondary or tertiary identification document for somebody. These categories of documents are relevant as criteria for the issuing of ASICs and flight crew or special pilot licenses (see respectively regulations 6.28 and 6.57).

Subregulation 6.04(2) provides that a document is a *primary identification document* for somebody if it is:

- a) a certified copy (that is, a copy certified by a Registrar of Births or similar officer to be a correct copy) of the entry, in a register of births, of his or her birth; or
- b) a copy (certified under section 44 of the *Australian Citizenship Act 1948*) of a citizenship certificate granted to him or her; or
- c) a document issued to him or her under the law of another country that is evidence, under that law, that he or she is a citizen of that country; or
- d) a passport issued to him or her.

Subregulation 6.04(3) specifies that a document is a *secondary identification document* for somebody if:

- a) it has on it a recent photograph of him or her, or his or her signature; and
- b) it is:
  - (i) a licence (for example, a driver's licence) issued to him or her under a law of the Commonwealth or a State or Territory; or
  - (ii) a government employee identification document issued to him or her (see subregulation (4) for definition); or
  - (iii) an Australian student identification document issued to him or her (see subregulation (4) for definition); or
  - (iv) a verifiable reference (see subregulation (4) for definition).

Subregulation 6.04(4) provides definitions for the following terms used in subregulation 6.04(3): Australian student identification document, government employee identification document, and verifiable reference



Subregulation 6.04(5) provides that a document is a *tertiary identification document* for somebody if:

- a) it sets out his or her name and address; and
- b) it is:
  - (i) a signed statement by his or her employer or former employer about that employment; or
  - (ii) a copy (certified by a Registrar of Titles or similar officer to be a correct copy) of a record issued under a law about land titles; or
  - (iii) a document issued by a rating authority from its records about land ownership or occupation; or
  - (iv) a document issued by a bank or similar financial institution from its records about a mortgage or other security that he or she gave to the bank or institution; or
  - (v) an extract from the electoral roll compiled by the Australian Electoral Commission; or
  - (vi) a record issued under a law in force in Australia other than a law about land titles.

### **Regulation 6.05 Authentication of certain foreign documents**

Regulation 6.05 concerns the process by which certain foreign documents such as birth certificates may be authenticated. When a person presents to an issuing body, as an identification document, a document that is a public document for the purposes of the Hague Convention and was issued in a country (other than Australia) that is a Contracting State to that Convention, the issuing body may require the person to have the authenticity of the document certified in accordance with the Hague Convention.

Subregulation 6.05(1) defines the meaning of the Hague Convention as used within regulation 6.05 to be the *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents*, done at the Hague on 5 October 1966. A copy of this convention is included in the Schedule to the *Foreign Evidence Act 1994*.

The note explains that the authentication procedure involves the endorsement on, or attachment to, the document of a certificate in a standard form. Details of the procedure and any fee payable should be available from the embassy of the country in which the document was issued.

## **Division 6.2 ASIC programs**

### **Regulation 6.06 What an ASIC program is**

Regulation 6.06 defines an ASIC program as a program that sets out procedures to be followed for the following purposes:

- a) the issue and production of ASICs and VICs;
- b) the issue and production of temporary ASICs and VICs that are designed to be used on a single occasion and then destroyed, if the issuing body proposes to issue such ASICs or VICs;
- c) the design, distribution and storage of sample ASICs or VICs for training purposes, if the issuing body proposes to issue such ASICs or VICs;
- d) the safekeeping, secure transport and disposal of ASICs and VICs and associated equipment;
- e) the recovery and secure destruction of issued ASICs or VICs that are no longer required;
- f) the security of records in relation to applicants for ASICs and VICs;
- g) ensuring that persons properly display ASICs and VICs;
- h) lost ASICs and VICs; and
- i) ensuring that ASICs and VICs are returned to issuing bodies when they are no longer required.

The note highlights that an applicant for authorisation as an issuing body must provide with its application a statement of its proposed ASIC program (see regulation 6.15).

### **Regulation 6.07 Issuing body to give effect to ASIC program**

Subregulation 6.07(1) makes it an offence for an issuing body to fail to give effect to its ASIC program and provides a maximum penalty of 50 penalty units.

Subregulation 6.07(2) provides further guidance as to what it means for an issuing body to fail to give effect to its ASIC program, that is if it:

- a) fails to do something that its ASIC program requires that it do; or
- b) does something that its ASIC program requires that it not do; or
- c) does something that its ASIC program requires that it do, but does so in a way that contravenes the program.

Under subregulation 6.07(3), contravention of subregulation (1) is an offence of strict liability. However, subregulation 6.07(4) states that an issuing body may nonetheless apply in writing to the Secretary for

exemption from giving effect to its ASIC program in a particular case or respect. Subregulation 6.07(5) provides that if the Secretary needs more information to deal with an application made under subregulation 6.07(4), the Secretary may ask the applicant, in writing, to provide the information.

Subregulation 6.07(6) specifies actions that the Secretary must take within 30 days after receiving an application (or, if the Secretary asks for more information under subregulation (5), within 30 days after receiving the information). The Secretary must:

- a) grant or refuse the exemption; and
- b) notify the body in writing of the decision and, if the decision is a refusal, the reasons for the decision. (The note highlights that under the *Administrative Appeals Tribunal Act 1975*, notice of the decision and the rights to review of the decision must be given to a person whose interests are affected by a reviewable decision).

Subregulation 6.07(7) provides that the Secretary is taken to have refused to approve an exemption if he or she has not approved, and has not refused to approve, the exemption within the 30 day period allowed by subregulation (6).

Subregulation 6.07(8) provides that the Secretary may also grant, on his or her own initiative, an issuing body a written exemption from giving effect to its ASIC program in a particular case or respect. Consequently, an exemption may be granted without any application from the relevant issuing body.

Subregulation 6.07(9) specifies certain matters that the Secretary must consider before granting or refusing an exemption under regulation 6.07:

- a) the justification for the proposed exemption; and
- b) the likely effect of the proposed exemption on each of the program purposes; and
- c) how long the proposed exemption will be for, if it is granted; and
- d) anything else relevant that the Secretary knows about.

Subregulation 6.07(10) allows the Secretary some flexibility and discretion in granting exemptions. The Secretary may grant an exemption for a particular period and subject to a condition that is mentioned in the exemption.

### **Regulation 6.08 Agents of issuing bodies**

Subregulations 6.08(1) and (2) allow an issuing body to authorise, by instrument in writing, an agent or agents to issue VICs on its behalf, after it has specified in its ASIC program that it may do so.

Subregulation 6.08(3) states that such an agent must be an appropriate person to issue VICs. Without limiting subregulation 6.08(3), subregulation 6.08(4) gives guidance on when a person is an ‘appropriate person’ to issue VICs, that is if:

- a) the person controls a secure area or part of a secure area, or reasonably needs access to such an area; and
- b) VICs cannot more appropriately be issued by the issuing body; and
- c) the issuing body’s ASIC program is adequate and the agent is able to give effect to it; and
- d) the issuing body determines that the agent is not likely to be a threat to aviation security. Whether an agent is likely to be a threat to aviation security is a question for the issuing body to determine.

Subregulation 6.08(5) provides that the issuing body must revoke the authorisation if it is not satisfied that the conditions outlined in subregulation (4) are being met.

Subregulation 6.08(6) provides that an issuing body is responsible for the actions of a person it appoints as its agent.

### **Regulation 6.09 Direction to vary ASIC program**

Subregulation 6.09(1) sets out the circumstances under which the Secretary may direct an issuing body (in writing) to vary its program. These circumstances are when the body’s ASIC program is not adequate to give effect, in all circumstances, to any one or more of the program purposes. Note that program purposes are defined in regulation 6.01 as being those set out in regulation 6.06.

Subregulation 6.09(2) states that the Secretary must not give a direction to an issuing body to vary its program in relation to a program purpose unless the Secretary is satisfied that the variation is appropriate to make the program adequate for that purpose.

Subregulation 6.09(3) sets out items that must be included in a direction made under subregulation (1):

- a) an indication of the variation needed; and
- b) a statement regarding the time within which the issuing body must submit an appropriately varied program to the Secretary.

Subregulation 6.09(4) provides that an issuing body must comply with a direction made under subregulation (1).

The note highlights that provision is made by regulation 6.19 for the revocation of the authorisation of an issuing body that does not comply with a direction under regulation 6.09.

### **Regulation 6.10 Variation of ASIC program by issuing body**

Subregulation 6.10(1) provides that an issuing body may review its ASIC program at any time, and may submit a written proposed variation of the program to the Secretary for approval.

Subregulation 6.10(2) provides that if the Secretary needs more information to deal with an application under subregulation (1), the Secretary may ask the applicant, in writing, to provide the information.

Subregulation 6.10(3) sets out actions that the Secretary must take within 30 days of receiving the proposed variation (or, if the Secretary asks for more information under subregulation (2), before the end of 30 days after receiving the information). These actions are:

- a) to approve or refuse to approve the variation; and
- b) to notify the body in writing of the decision and, if the decision is a refusal, the reasons for the decision. (The note highlights that under the *Administrative Appeals Tribunal Act 1975*, notice of the decision and the rights to review of the decision must be given to a person whose interests are affected by a reviewable decision).

Subregulation 6.10(4) provides that the Secretary is taken to have refused to approve the program if he or she has neither approved nor refused to approve the program within the 30 day period allowed by subregulation (3).

Subregulation 6.10(5) provides that the Secretary must approve the variation if the program, as varied, will give effect to the program purposes.

### **Regulation 6.11 Transitional arrangements — ASIC programs approved under Air Navigation Regulations**

Regulation 6.11 together with regulation 6.13 makes transitional arrangements for ASIC programs that were approved under the ANR. The transitional arrangements apply to bodies that were issuing bodies for the purposes of Division 7 of Part 7 of the ANR immediately before 10 March 2005. These bodies continue to be issuing bodies and their old ASIC program is taken to continue to have effect until a new ASIC program is approved or, at the latest, the end of 31 December 2005.

### **Division 6.3 Issuing bodies**

#### **Regulation 6.12 ACS to be issuing body**

Regulation 6.12 deems the Australian Customs Service to be an issuing body. This means that the Australian Customs Service does not have to apply to be an issuing body. However, Customs can only issue ASICs or VICs in accordance with its ASIC program (regulation 6.27).

#### **Regulation 6.13 Transitional — issuing bodies under old Regulations**

Regulation 6.13 together with regulation 6.11 makes transitional arrangements for bodies that were issuing bodies for the purposes of Division 7 of Part 7 of the ANR immediately before 10 March 2005. These bodies continue to be issuing bodies. However, they are required to submit a new ASIC program to the Secretary by 30 November 2005. The Secretary is to decide whether to approve the new program or not by 31 December 2005. If the program is refused the operator can submit another program under subregulation 6.14(5). A body that does not have a new ASIC program approved by 31 December 2005 will not be able to continue to issue ASIC cards.

#### **Regulation 6.14 Certain operators of security controlled airports authorised to issue ASICs and VICs**

Regulation 6.14 deems each operator of a security controlled airport from which a regular public transport operation operates to be an issuing body. Such operators need therefore not apply to become an issuing body under regulation 6.15. However, under subregulation 6.14(2), they must have an ASIC program approved by the Secretary before they can perform the functions or exercise the powers of an issuing body. Transitional arrangements for those airports that were issuing bodies under the old regulations are detailed in regulations 6.11 and 6.13. Operators of security controlled airports that were not issuing bodies for the purposes of Division 7 of Part 7 of the ANR immediately before 10 March 2005 but who have been declared to be a security controlled airport must submit an ASIC program for the Secretary's approval on or before 24 March 2005.

#### **Regulation 6.15 Application for authorisation to issue ASICs and VICs**

Subregulation 6.15(1) states that all aviation industry participants (other than the operator of a security controlled airport from which a regular public transport operation operates) may apply, in writing, to the Secretary for authorisation as an issuing body.

The note draws attention to the fact that knowingly making a false or misleading statement in an application is an offence punishable by imprisonment for 12 months under section 136.1 of the *Criminal Code*.

Subregulation 6.15(2) provides that an application for authorisation to issue ASICs and VICs must be accompanied by a statement setting out the applicant's proposed ASIC program.

### **Regulation 6.16 Decision on application**

Subregulation 6.16(1) provides that if the Secretary needs more information to deal with an application under regulation 6.15, the Secretary may ask the applicant, in writing, to provide further information.

Subregulation 6.16(2) sets out actions that the Secretary must take within 30 days of receiving the application (or, if the Secretary asks for more information under subregulation (1), before the end of 30 days after receiving the information). These actions are:

- a) to authorise or refuse to authorise the applicant as an issuing body; and
- b) to notify the applicant in writing of the decision and, if the decision is a refusal, the reasons for the decision. (The note highlights that under the *Administrative Appeals Tribunal Act 1975*, notice of the decision and the rights to review of the decision must be given to a person whose interests are affected by a reviewable decision.)

Subregulation 6.16(3) provides that if the Secretary has not approved and has not refused to approve the authorisation within the period allowed by subregulation (2), the Secretary is taken to have refused to approve the authorisation of the applicant as an issuing body.

Subregulation 6.16(4) states that if the applicant is the operator of a security controlled airport from which a regular public transport operation does not operate, the Secretary must authorise the applicant as an issuing body if the Secretary is satisfied that:

- a) the applicant's proposed ASIC program is apparently adequate to give effect to the program purposes (these are defined in regulation 6.06); and
- b) authorising the applicant as an issuing body would not be likely to be a threat to aviation security.

Subregulation 6.16(5) states that if the applicant is not the operator of a security controlled airport, the Secretary must not authorise the applicant as an issuing body unless:

- a) the applicant is the operator of a prescribed air service, or another person that may (in the opinion of the Secretary) appropriately be authorised as an issuing body; and
- b) the applicant controls a secure area, or reasonably needs on-going access to such an area; and

- c) the Secretary is satisfied that the ASICs and VICs that the applicant proposes to issue cannot more appropriately be issued by the operator of a security controlled airport; and
- d) the Secretary is satisfied that the applicant's proposed ASIC program is apparently adequate to give effect to the program purposes; and
- e) the Secretary is satisfied that authorising the applicant as an issuing body would not be likely to be a threat to aviation security.

Subregulation 6.16(6) provides that the Secretary must take certain issues into account when considering the matter referred to in paragraph 6.16(5)(c). These issues are: how many ASICs and VICs the applicant proposes to issue, and the respective resources of the applicant and the operator of the relevant security controlled airport.

Subregulation 6.16(7) allows the Secretary to place a condition on the authorisation of a person as an issuing body. The condition must be set out in the instrument of authorisation.

Subregulation 6.16(8) states that unless an authorisation explicitly states otherwise, the authorisation of a person as an issuing body authorises the body to issue both ASICs and VICs.

### **Regulation 6.17 Issuing bodies' staff etc**

Subregulations 6.17(1) and (2) place restrictions on issuing bodies in relation to persons that they may allow to be directly involved in the issue of ASICs. Issuing bodies must not allow a person to be directly involved in the issue of ASICs if he or she would not be eligible for the issue of an ASIC. However, the person need not have an operational requirement for the ASIC.

A maximum penalty of 20 penalty units applies for contravention of this subregulation by issuing bodies other than Commonwealth agencies.

Subregulation 6.17(3) sets out particular circumstances under which the Secretary may approve the involvement of a person in the issue of ASICs, despite subregulations (1) and (2). These circumstances are where a security assessment of the person is qualified, but the Secretary is satisfied that the involvement of the person in the issue of ASICs would not constitute a threat to aviation security.

### **Regulation 6.18 Copies of ASIC program to be made available**

Regulation 6.18 provides that an issuing body must make a copy of its ASIC program available to another issuing body if the requesting issuing body can demonstrate that making the program available to it will assist it to avoid hindering or obstructing compliance with the program.



### **Regulation 6.19 Revocation of authorisation for cause**

Subregulation 6.19(1) specifies the circumstances under which the Secretary must revoke the authorisation of a security controlled airport to be an issuing body. These circumstances are where, in the opinion of the Secretary:

- a) no airport operated by the body has a secure area; or
- b) the body's ASIC program is apparently no longer adequate to give effect to a program purpose, and it is unlikely that a direction under regulation 6.09 will make the program adequate for that purpose; or
- c) allowing the body's authorisation to continue would be likely to be a significant threat to aviation security; or
- d) the body does not comply with a direction of the Secretary under regulation 6.09 (a direction to vary its ASIC program).

Subregulation 6.19(2) specifies the circumstances under which the Secretary must revoke the authorisation of a body that is not the operator of a security controlled airport. These circumstances are where, in the opinion of the Secretary:

- a) the body is no longer a person that may appropriately be authorised to issue ASICs and VICs; or
- b) the body no longer controls a secure area, or part of a secure area, of a security controlled airport, nor reasonably requires on-going access to such an area or part of an area; or
- c) the ASICs and VICs being issued by the body can more appropriately be issued by an airport operator; or
- d) allowing the body's authorisation to continue would be likely to be a significant threat to aviation security; or
- e) the body's ASIC program is apparently no longer adequate to give effect to a program purpose, and it is unlikely that a direction under regulation 6.09 will make the program adequate for that purpose; or
- f) the body does not comply with a direction of the Secretary under regulation 6.09 (a direction to vary its ASIC program).

Subregulation 6.19(3) sets out the circumstances under which the Secretary may revoke the authorisation of an issuing body. These circumstances are where the body contravenes:

- a) Part 6 of the Regulations; or
- b) a condition of its authorisation; or
- c) its ASIC program.

Subregulation 6.19(4) provides that when deciding whether to revoke an authorisation of an issuing body under subregulation (3), the Secretary must consider the following matters:

- a) the kind and seriousness of the contravention; and
- b) whether the issuing body has previously contravened Part 6 of the regulations or a condition of its authorisation or has contravened its own ASIC program.

Subregulation 6.19(5) provides that if the Secretary revokes an authorisation under subregulation (3), the Secretary must notify the body in writing of the revocation and the reasons for the revocation as soon as practicable. (The note highlights that under the *Administrative Appeals Tribunal Act 1975*, notice of the decision and the rights to review of the decision must be given to a person whose interests are affected by a reviewable decision.)

Subregulation 6.19(6) states that a revocation under subregulation (3) takes effect when written notice of the revocation is given to the body.

### **Regulation 6.20 Revocation of authorisation at request of issuing body**

Under regulation 6.20, the Secretary must revoke the authorisation of a body as an issuing body if the body asks the Secretary (in writing) to do so, unless the body is the operator of a security controlled airport. The revocation takes effect when the request was made.

### **Regulation 6.21 Re-applying for authorisation**

Regulation 6.21 provides that a body whose authorisation is revoked may apply under regulation 6.15 for a new authorisation.

### **Regulation 6.22 What happens if issuing body ceases to exist etc**

Regulation 6.22 applies in circumstances where:

- a) the authorisation of an issuing body (the original issuing body) is revoked; or
- b) the body ceases to exist; or
- c) for any other reason, the body no longer performs the functions or exercises the powers of an issuing body.

In these circumstances, the Secretary may authorise, in writing, another person to perform the functions, and exercise the powers, of the original issuing body in relation to ASICs and VICs issued by that body. For example, a second issuing body could be authorised to issue ASICs and VICs that would otherwise have been issued by the original body.

Subregulation 6.22(2) provides that an ASIC or VIC issued by the original issuing body that is in force at the time of such an authorisation is not affected by the body having ceased to exist or the new authorisation.

Subregulation 6.22(3) provides that the body authorised under subregulation (1) is taken to be the issuing body for the ASIC or VIC, but is not responsible for the actions of the original issuing body in relation to the ASIC or VIC before the authorisation.

Subregulation 6.22(4) states that the authorisation may be subject to a condition specified in it.

## **Division 6.4 Record-keeping**

### **Regulation 6.23 Register of ASICs and VICs**

Regulation 6.23 provides that all issuing bodies must keep a register, and sets out the details and required procedures for keeping the register.

Subregulation 6.23(2) states that the register must contain certain details regarding each ASIC issued by the body. The details that must be included are: the name and address of the ASIC holder; their operational requirements; beginning date of the current ASIC-holding period; whether the card is red, grey, permanent, temporary, Australia wide or airport specific; ASIC number, dates of issue and expiry and if applicable, the dates on which the card was cancelled, or reported as lost, stolen or destroyed.

Subregulation 6.23(3) states that despite being required to do so by subregulation (2)(b), the register need not contain the residential address of an ASIC holder who is a law enforcement officer, an officer or employee of ASIO or an Australian Public Service employee.

Subregulation 6.23(4) states that the register must contain certain details regarding each VIC issued by the body. The details that must be included are: the name of the holder; the general reason that he or she has an operational requirement to hold a VIC, VIC number, dates of issue and expiry; whether the card is Australia wide or airport specific and if applicable, the dates on which the card was cancelled, or reported as lost, stolen or destroyed.

Subregulation 6.23(5) provides that the register may be kept by means of a computer or in any other form that can be conveniently audited.

Subregulation 6.23(6) provides that the issuing body must hold the register at its office. So for example, if the register is kept by means of a computer, that computer system must be accessible at the office of the issuing body. However, this regulation is not intended to require that the computer server on which information is stored necessarily be physically located at the office of the issuing body.

Subregulation 6.23(7) provides that the issuing body must allow an aviation security inspector to inspect the register on request during normal business hours.

### **Regulation 6.24 Other records**

Subregulation 6.24(1) requires an issuing body to maintain records that are sufficient to demonstrate that it has complied with its ASIC program.

Subregulation 6.19(3) allows the Secretary to revoke an authorisation if an issuing body does not comply with its ASIC program.

Subregulation 6.24(2) requires an issuing body to retain the record of issue of an ASIC or VIC whichever is the later of:

- a) at least 6 months after the creation of the record; or
- b) until the expiry of the ASIC or VIC.

An issuing body must keep the records by means of a computer or in any other form that can be conveniently audited, and must hold the records at his office. So for example, if the records are kept by means of a computer, that computer system must be accessible at the office of the issuing body. The issuing body must allow an aviation security inspector to inspect the records on request during normal business hours.

### **Regulation 6.25 Annual reporting**

Regulation 6.25 specifies two items that an issuing body must report to the Secretary in writing, within 1 month after the end of each financial year:

- a) the total number of ASICs issued by the body that have not expired and have not been cancelled; and
- b) the number of ASICs issued by the body that have expired or been cancelled but have not been returned to the body.

Contravention attracts a maximum penalty of 20 penalty units.

## **Division 6.5 ASICs and VICs: issue, expiry and cancellation**

### **Regulation 6.26 ASICs — application for issue**

Subregulation 6.26(1) specifies that a person may apply to an issuing body for the issue of an ASIC if that person has an operational need for frequent access to a secure area at an airport.

Subregulation 6.26(2) provides that an application for issue of an ASIC must be in writing and, except in the case of a person who is under 18, must be accompanied by:

- a) a signed form of consent to a criminal records check; and

- b) a signed consent to personal information being passed between the Secretary, AFP, ASIO and DIMIA; and
- c) an acknowledgement that a security assessment will be carried out (except if a security assessment has already been made in relation to the issue of an ASIC to the applicant).

Note that other special conditions related to persons under the age of 18 can be found in subregulation 6.28(3).

### **Regulation 6.27 Issue of ASICs and VICs**

Regulation 6.27 states that an issuing body may issue ASICs and VICs only in accordance with its ASIC program. Notes 1 and 2 indicate where and from what date ASICs are required to be worn. Note 3 indicates that it is open to an airport operator to issue ASICs and VICs in accordance with an approved ASIC program between 10 March 2005 and 31 December 2005.

### **Regulation 6.28 ASICs — issue**

Subregulation 6.28(1) sets out the conditions that must be satisfied before an issuing body may issue an ASIC to a person. However, these conditions are subject to subregulations (3) and (4) and regulations 6.29 and 6.31.

It is a strict liability offence to issue an ASIC where the conditions are not satisfied, with a maximum penalty of 50 penalty units.

The conditions that must be satisfied before the issuing of an ASIC are as follows:

- a) the person must have an operational need for frequent access to all or part of 1 or more areas at an airport, or at more than one airport, being areas where persons are required to display an ASIC; and
- b) the person has verified his or her identity (the types of acceptable documentation are specified by the regulation); and
- c) either:
  - (i) the person must have shown the issuing body his or her Australian birth certificate, Australian passport or Australian naturalisation certificate; or
  - (ii) the issuing body is satisfied that he or she is not an unlawful non-citizen; and
- d) subject to subregulation (7), the person does not have an adverse criminal record (see subregulation (5) for the definition of adverse criminal record); and
- e) the issuing body has been notified in writing that a security assessment of the person has been made, and:

- (i) the assessment was not adverse; or
  - (ii) if the assessment was qualified - the issuing body has not been directed by the Secretary not to issue the person an ASIC (see subregulation 6.31(2)); and
- f) the person must not be disqualified under regulation 6.48 from holding an ASIC.

Subregulation 6.28(3) provides for a modified set of conditions for persons under the age of 18. This allows an issuing body to issue an ASIC to a person under the age of 18 without a criminal record check or security assessment being conducted provided that the person meets the criteria in paragraphs (1)(a), (b), (c) and (f).

Subregulation 6.28(4) allows an issuing body to issue an ASIC to a person who holds a security designated authorisation that is less than 2 years old, regardless of the fact that they may not have met the conditions specified by subregulation (1).

Subregulation 6.28(5) defines what it means for a person to have an adverse criminal record, for the purpose of paragraph (1)(d).

Subregulation 6.28(6) defines the following terms that are used in subregulation (5): imprisonment, security identification card and superseded card.

The notes quote sections of the ANR that are referred to in definition of the above terms.

Subregulation 6.28(7) outlines circumstances in which a person may be issued with an ASIC despite having an adverse criminal record (without subregulation (7), paragraph (1)(d) would prevent this from occurring).

Subregulation 6.28(8) states that an issuing body may place a condition on the issue of an ASIC, but that they must notify the holder in writing what the condition is.

Subregulation 6.28(9) highlights a particular example of a potential condition on the issue of an ASIC, being that background checking of the holder is carried out more frequently than required by the Regulations. However, this does not limit the other types of conditions that may be imposed.

### **Regulation 6.29 ASICs — Secretary’s approval of issue in certain cases**

Regulation 6.29 relates to persons who are not eligible to be issued an ASIC only because of paragraph 6.28(1)(d) or (f) .

Under subregulations 6.28(1) and (2), an issuing body may apply to the Secretary, in writing, for approval to issue an ASIC to such a person, and on receiving an application, the Secretary may ask the issuing body, in writing, to provide any further information that the Secretary requires.

The note draws attention to the effects of paragraphs 6.28(1)(d) and (f). It states that paragraph (d) otherwise prevents the issue of an ASIC to somebody who has been convicted of certain offences and that paragraph (f) otherwise prevents the issue of an ASIC to a person who has become disqualified (under regulation 6.48) from holding an ASIC by repeatedly contravening the display requirements.

Subregulation 6.29(3) specifies actions that the Secretary must take within 30 days after receiving an application (or, if the Secretary asks for more information under subregulation (2), within 30 days after receiving the information). These actions are to:

- a) approve, or refuse to approve, in writing, the issuing of the ASIC; and
- b) notify the body in writing of the decision and, if the decision is a refusal, the reasons for it. (The note highlights that under the *Administrative Appeals Tribunal Act 1975*, notice of the decision and the rights to review of the decision must be given to a person whose interests are affected by a reviewable decision).

Subregulation 6.29(4) provides that the Secretary is taken to have refused to approve the issue of an ASIC if he or she has neither approved, nor refused to approve, the issue within the period allowed by subregulation (3) (30 days).

Subregulation 6.29(5) sets out the issues that the Secretary must consider before approving or refusing to approve the issue of the ASIC to a person who is not eligible to be issued an ASIC only because of paragraph 6.28(1)(d).

Subregulation 6.29(6) allows the Secretary to put a condition on approval, but the Secretary must notify the issuing body in writing what the condition is.

### **Regulation 6.30 Report to Secretary of refusal to issue ASICs in certain cases**

Subregulation 6.30(1) provides that an issuing body must give the Secretary a written report if it refuses to issue an ASIC to an applicant because the applicant fails to satisfy any of the criteria in paragraph 6.28(1)(c), (d), or (f). It also states that the issuing body must give the Secretary this report within 7 days of the decision, and that the report must contain details of the applicant's name, address and date of birth, and the reasons for the refusal.

Subregulation 6.30(2) states that the Secretary may pass on the information provided in a report under subregulation (1) to other issuing bodies or to

CASA if he or she thinks that doing so will help to prevent unlawful interference with aviation.

### **Regulation 6.31 Persons the subject of adverse or qualified security assessments**

Subregulation 6.31(1) provides that if a security assessment of a person is an adverse security assessment, the Secretary must direct an issuing body that proposes to issue an ASIC to the person that the ASIC is not to be issued.

Subregulation 6.31(2) provides that the Secretary may direct an issuing body not to issue an ASIC to a person if on the basis of a security assessment of the person that is a qualified security assessment, the Secretary is satisfied that the holding of an ASIC by the person would constitute a threat to aviation security. That is, the Secretary has discretion and can choose whether to make a direction. If the Secretary does not issue such a direction then, provided they meet the other requirements, the person can be issued with an ASIC (see subregulation 6.28(e)).

Subregulation 6.31(3) provides that a direction under subregulation (1) or (2) must be in writing.

Subregulation 6.31(4) provides that it is an offence (with a maximum penalty of 20 penalty units) for an issuing body to issue an ASIC to a person in contravention of a direction under subregulation (1) or (2).

The note draws attention to the fact that if an adverse or qualified security assessment about a person is provided to a Commonwealth body, the body must notify the person in writing within 14 days (including a copy of the assessment) and must notify him or her how to apply to the Administrative Appeals Tribunal for review of the assessment – see the *Australian Security Intelligence Organisation Act 1979*, section 38.

### **Regulation 6.32 ASICs — period of issue and expiry**

Regulation 6.32 sets out when an ASIC card expires.

A card which is cancelled expires when it is cancelled. Subregulation 6.32(1) provides that a card that is not cancelled expires at the end of the last day of the month specified on it as its month of expiry. So for example a card which expires in December 2005, expires at the end of 31 December 2005.

Subregulation 6.32(2) provides that subject to subregulation (3), an ASIC card must have an expiry date not later than 2 years after the day on which the relevant background checks of the holder were completed. Regulation 6.02 explains what is meant by background checks.

In accordance with subregulation 6.32(3), the expiry date of an ASIC issued to a person under 18 years of age in reliance on subregulation 6.28(3),



which allows the issue of an ASIC to a person under 18 without a criminal record check or a security assessment being conducted, must not be later than 6 months after the person's 18th birthday.

### **Regulation 6.33 Form of ASICs other than temporary ASICs**

Regulation 6.33 describes what a permanent ASIC is to look like. The regulation includes diagrams of both red and grey permanent ASICs. A permanent ASIC must comply with the requirements described in the diagrams and subregulations including as to dimensions, colours, typeface, type size, codes and identification numbers. This regulation also specifies how a photograph and name must be displayed on the card, and how the card must show the month and year in which it expires. The name of the holder of a permanent ASIC may be on the back of the card if the holder is a law enforcement officer, an officer or employee of ASIO, or another person approved by the Secretary. The image on the card must be protected against tampering by means of a Kinegram© Hot Stamped Parch Optically Variable Device or another means directed by the Secretary by notice in the *Gazette*. The discretionary information area at the bottom of an ASIC may be used by the issuing body for its own purposes.

It is a strict liability offence with a maximum penalty of 50 penalty units to issue an ASIC that does not comply with regulation 6.33.

### **Regulation 6.34 Production of sample ASICs and VICs for training purposes**

Regulation 6.34 allows issuing bodies to create mock ASICs or VICs, for training purposes. These mock cards may bear the name of a fictitious person, and may have a form and content as decided by the issuing body. However, they must be clearly distinguishable from a genuine ASIC or VIC.

### **Regulation 6.35 Issue of replacement ASICs**

Regulation 6.35 sets out when an issuing body can issue a person with a replacement permanent ASIC. A replacement ASIC can be issued without the need to undertake the checks in regulation 6.28.

In accordance with subregulation 6.35(1) an issuing body may issue a replacement permanent ASIC to the holder of another permanent ASIC issued by the issuing body if a temporary ASIC has been issued to him or her and:

- a) he or she has lost the other ASIC, or it has been stolen or destroyed, and he or she has made a statutory declaration setting out the circumstances of the loss or theft; or
- b) where the other permanent ASIC has been stolen, he or she has given the issuing body a copy of a police report, or other information issued by the police, regarding the theft.

Subregulation 6.35(2) allows an issuing body to issue a replacement permanent ASIC to the holder of another permanent ASIC issued by the issuing body if the holder has changed his or her name.

In accordance with subregulation 6.35(3) any replacement permanent ASIC must expire no later than the earlier permanent ASIC would have expired.

Subregulation 6.35(4) provides that an issuing body may replace a permanent ASIC with a permanent ASIC of a different type. That is, a permanent red ASIC may be substituted for a permanent grey ASIC (and vice versa) and a permanent airport-specific ASIC may be substituted for a permanent Australia-wide ASIC. Also, an ASIC specific to one airport may be substituted for an ASIC specific to another airport.

In accordance with subregulation 6.35(5) either:

- a) the replacement permanent ASIC must bear a number indicating how many times a permanent ASIC has been issued to the person with that expiry date (this would be in the white section at the bottom of the card); or
- b) the issuing body must keep a record of how many times it has issued a permanent ASIC to the person with that expiry date.

Subregulation 6.35(6) makes it clear that issue of a replacement permanent ASIC to a person under this regulation cancels any temporary ASIC issued to the person under regulation 6.36.

### **Regulation 6.36 Issue of temporary ASICs**

Regulation 6.36 enables an issuing body to issue temporary ASICs in some circumstances.

Subregulation 6.36(1) allows an issuing body to issue a temporary ASIC to the holder of another ASIC in the following situations:

- a) where he or she has lost the other ASIC, or it has been stolen or destroyed, and he or she makes a statutory declaration setting out the circumstances of the loss or theft; and
- b) where the ASIC has been destroyed, he or she returns any remains of the ASIC to the issuing body; and
- c) where the other ASIC has been stolen, he or she gives the issuing body a copy of his or her report of the theft to the police of the place where the ASIC was stolen.

Subregulation 6.36(2) allows an issuing body to issue a temporary ASIC to a person to whom the issue of an ASIC has been approved if the issuing body cannot produce that ASIC for some technical reason.

Subregulation 6.36(3) allows an issuing body to issue a temporary airport-specific ASIC to a person who holds a valid permanent airport-specific ASIC for another airport.

Subregulation 6.36(4) allows an issuing body to issue a temporary ASIC to a person who lives and normally works outside Australia if:

- a) the person is:
  - (i) a station manager or duty manager of an aircraft operator; or
  - (ii) an engineer employed by a foreign aircraft operator, or a contractor to such an operator, and is in Australia to carry out maintenance on an aircraft; and
- b) he or she has been issued with a security identification card for his or her overseas employment; and
- c) the issuing body is satisfied that the security identification card was issued on the basis of background checks that are equivalent to those carried out for the issue of an ASIC; and
- d) unless the issuing body is the person's employer, the person's employer requests the issuing body, in writing, to issue the temporary ASIC.

Subregulation 6.36(5) allows an issuing body to issue a temporary ASIC to a person who holds a valid ASIC if:

- a) the person has inadvertently left his or her permanent ASIC at home, or misplaced it; and
- b) it is impracticable because of work commitments for him or her to recover it immediately.

Subregulation 6.36(6) specifies the length of time for which a temporary ASIC can be issued. A temporary ASIC must not be issued for a period longer than:

- a) in the case of a temporary ASIC issued to a person under subregulation (5):
  - (i) if his or her duties will not permit him or her to return within 24 hours to the place where the ASIC was left — as long as is reasonably necessary to recover the ASIC; or
  - (ii) 24 hours; or
- b) in any other case — 3 months or the remaining period of validity of any permanent ASIC issued to that person, whichever is shorter.

Subregulation 6.36(7) provides that an issuing body may issue a second temporary ASIC to a person immediately after a temporary ASIC issued to

him or her expires, but must not issue a third temporary ASIC to him or her immediately after the second temporary ASIC expires.

### **Regulation 6.37 Form of temporary ASICs**

Regulation 6.37 describes what a temporary ASIC is to look like. The regulation includes diagrams of both red and grey temporary ASICs. A temporary ASIC must comply with the requirements described in the diagrams and subregulations including as to dimensions, colours, typeface, type size, codes and identification numbers. The inclusion of a photograph, expiry date and the name of the holder of the temporary ASIC is optional. However, if any or all of these are included they must be in the format specified. The discretionary information area at the bottom of an ASIC may be used by the issuing body for its own purposes.

It is a strict liability offence with a maximum penalty of 50 penalty units to issue a temporary ASIC that does not comply with this regulation.

### **Regulation 6.38 VICs**

Regulation 6.38 sets out when a VIC can be issued to a person.

In accordance with subregulation 6.38(1), an issuing body or its agent may issue a VIC to a person if and only if:

- a) he or she needs to enter the secure area of a security controlled airport for a lawful purpose; and
- b) he or she will be supervised by the holder of a valid ASIC while in the area.

It is the responsibility of the issuing body to ensure that the holder of a VIC is supervised by the holder of a valid ASIC for the whole of the time that they are in the secure area of a security controlled airport.

Subregulation 6.38(2) explains what is required by means of supervision. To meet the supervision requirement in subregulation 6.38(1)(b):

- a) the ASIC holder must escort or accompany the VIC holder at all times when the VIC holder is in the secure area; or
- b) the ASIC holder must watch the VIC holder at all times when the VIC holder is in the area; or
- c) the ASIC holder must ensure that the VIC holder stays within a particular part of the area, and:
  - (i) the ASIC holder is able to see if the person leaves the particular part of the area; and
  - (ii) except in the case of a VIC holder described in subregulation (3) the VIC holder has no access, while in that particular part, to:

- (A) an aircraft engaged in a prescribed air service; or
- (B) passengers boarding, or intending to board, such an aircraft; or
- (C) anything being loaded, or to be loaded, on board such an aircraft.

By subregulation (3) a VIC holder who is supervised by a representative of a prescribed air service being a representative who holds an ASIC may access:

- a) an aircraft engaged in a prescribed air service; or
- b) passengers boarding or intending to board such an aircraft; or
- c) anything being loaded, or to be loaded, on board such a aircraft.

Subregulation 6.38(4) makes it an offence for an issuing body or agent to issue a VIC in contravention of subregulation (1). The maximum penalty is 50 penalty units. Under subregulation 6.38(5) this is a strict liability offence.

Subregulation 6.36(6) makes it an offence for an issuing body or agent to issue a VIC to a person they know has been refused an ASIC. The maximum penalty is 50 penalty units.

Subregulation 6.36(7) allows a VIC to be subject to a condition notified (including notified orally) by the issuing body or agent to the holder.

Subregulation 6.36(8) sets out how long a VIC can be valid for. An issuing body or agent must not issue a VIC that is valid for longer than:

- a) 1 month; or
- b) if a longer period than 1 month is permitted by the issuing body's ASIC program, the longer period.

Subregulation 6.36(9) provides that an issuing body's ASIC program must not permit VICs to be issued for a period longer than 3 months.

### **Regulation 6.39 Form of VICs**

Regulation 6.39 describes what a VIC is to look like. The regulation includes a diagram. A VIC must comply with the requirements described in the diagram and subregulations including as to dimensions, colours, typeface, type size, codes and identification numbers. The inclusion of a photograph, expiry date and the name of the holder of the temporary ASIC is optional. However, if any or all of these are included they must be in the format specified. The discretionary information area at the bottom of an ASIC may be used by the issuing body for its own purposes.

It is a strict liability offence with a maximum penalty of 50 penalty units to issue a VIC that does not comply with regulation 6.39.

**Regulation 6.40 Offence — unauthorised issue of ASICs or VICs**

Subregulation 6.40(1) makes it an offence for a person who is not an issuing body to issue an ASIC, or a card resembling, or apparently intended to be taken to be, an ASIC. This is a strict liability offence with a maximum penalty of 50 penalty units.

Subregulation 6.40(2) makes it an offence for a person who is not an issuing body or the agent of an issuing body to issue a VIC, or a card resembling, or apparently intended to be taken to be, a VIC. This is a strict liability offence with a maximum penalty of 50 penalty units.

**Regulation 6.41 Obligation of ASIC holders — conviction of aviation-security-relevant offence**

Regulation 6.41 obliges the holder of an ASIC who is convicted of an aviation-security-relevant offence, to notify the issuing body in writing of the conviction and any sentence within 7 days. The maximum penalty for failure to do so is 20 penalty units.

For the meaning of aviation-security-relevant offence, see regulation 6.01.

**Regulation 6.42 Obligation of ASIC holders — change of name**

Regulation 6.42 obliges the holder of an ASIC who changes his or her name to notify the issuing body that issued the ASIC of the change by means of a statutory declaration within 30 days after the change. The failure to do so is a strict liability offence with a maximum penalty of 5 penalty units.

When notified of a change of name under this regulation the issuing body must notify the AFP and ASIO of the change of name within 7 days. Note that the issuing body is authorised to issue a replacement ASIC: see regulation 6.35.

**Regulation 6.43 Cancellation of ASICs and VICs**

Regulation 6.43 sets out when an ASIC or VIC is to be cancelled. Note that for the purposes of this regulation, a VIC issued by an issuing body's agent is taken to have been issued by the issuing body.

Subregulation 6.43(2) sets out the circumstances under which an issuing body must immediately cancel an ASIC or VIC issued by the body. These circumstances are if:

- a) the body finds out that the ASIC or VIC was not issued in accordance with the body's ASIC program or this Division; or

- b) the Secretary has notified the issuing body in writing that a security assessment of the holder was adverse; or
- c) the body finds out that the holder is or has become an unlawful non-citizen; or
- d) the issuing body finds out that the holder has been convicted of an aviation-security-relevant offence (defined in regulation 6.01) (other than an offence against Part 2 of the *Crimes (Aviation) Act 1991*) for which he or she was sentenced to a term of imprisonment; or
- e) the issuing body finds out that the holder has been convicted of an offence against Part 2 of the *Crimes (Aviation) Act 1991*; or
- f) the holder no longer needs to enter a secure area for operational purposes.

Subregulation 6.43(3) requires an issuing body to cancel an ASIC issued by the body to a person who was, at the time of issue, under 18, if, by 3 months after the person's 18th birthday, he or she has not given the issuing body a signed consent to a criminal records check and a security assessment.

Subregulation 6.43(4) allows an issuing body to cancel an ASIC or VIC issued by the body if:

- a) the holder contravenes Subdivision 3.2.1 (Display and use of ASICs and VICs in secure areas), or a condition of the ASIC or VIC; or
- b) the ASIC or VIC is altered or defaced (permanently or temporarily).

Subregulation 6.43(5) provides that if an issuing body is considering cancelling an ASIC because a person has contravened paragraph (4)(a), the issuing body must consider:

- a) the kind and seriousness of each contravention; and
- b) whether the holder has previously contravened Subdivision 3.2.1 or a condition of the ASIC or VIC.

Subregulation 6.43(6) requires that as soon as practicable after an issuing body cancels an ASIC or VIC under subregulation (2), (3) or (4), the body must notify the holder, in writing, that the card has been cancelled and why. The cancellation takes effect when the holder is notified of it in writing. (The note highlights that under the *Administrative Appeals Tribunal Act 1975*, notice of the decision and the rights to review of the decision must be given to a person whose interests are affected by a reviewable decision).

#### **Regulation 6.44 Report to Secretary of cancellation of ASICs and VICs in certain cases**

Subregulation 6.44(1) requires an issuing body that cancels an ASIC or VIC on the basis of paragraph 6.43(2)(c), (d), or (e), to, within 7 days of the

decision, give the Secretary a written report that sets out the holder's name, address and date of birth and the reasons for the cancellation.

Subregulation 6.44(2) allows the Secretary to pass the information referred to in subregulation (1) on to other issuing bodies or to CASA if he or she thinks that doing so will help to prevent unlawful interference with aviation.

#### **Regulation 6.45 Return of ASICs and VICs that have expired etc**

Regulation 6.45 requires the holder of an ASIC or VIC to return it to the issuing body that issued it within 1 month if:

- a) the ASIC or VIC expires; or
- b) the holder is notified that it has been cancelled; or
- c) the ASIC or VIC has been damaged, altered or defaced (permanently or temporarily); or
- d) the holder no longer needs to enter the relevant secure area for an operational requirement.

Failure to do so is a strict liability offence with a maximum penalty of 10 penalty units.

#### **Regulation 6.46 Notification of lost etc ASICs and VICs**

Regulation 6.46 requires the holder of an ASIC or VIC who is aware that the card is lost, stolen or destroyed to notify the issuing body that issued it by way of a statutory declaration within 7 days. Failure to do so is a strict liability offence with a maximum penalty of 10 penalty units. This regulation does not apply if the card was destroyed by the issuing body.

#### **Regulation 6.47 Cancellation of ASICs or VICs at holder's request**

Under regulation 6.47 an ASIC or VIC must be cancelled by the issuing body at the request of the holder. The cancellation takes effect when the ASIC or VIC is returned to the issuing body. For the purposes of this regulation, a VIC issued by an issuing body's agent is taken to have been issued by the issuing body.

#### **Regulation 6.48 Disqualification from holding ASICs for contravening display requirements**

Regulation 6.48 describes the consequences of repeated contravention of regulation 3.03 (requirement to display ASICs in secure areas).

If regulation 3.03 is contravened by the holder of an ASIC 3 times or more within a period of 2 years, he or she is disqualified from holding an ASIC for the longer of:

- a) the remaining period of validity of the ASIC; or



- b) 1 year.

The holder must return the ASIC to the issuing body within 1 month, and the maximum penalty for failing to do so is 5 penalty units.

#### **Regulation 6.49 Minister may recall ASICs and VICs**

Regulation 6.49 allows the Minister to direct that all ASICs or VICs are cancelled or that certain classes of ASICs or VICs are cancelled. A class of ASICs or VICs can be defined in any way including by reference to the issuing body that issued them.

Under subregulation (3), direction given by the Minister under this regulation must be published:

- a) in the *Gazette*; and
- b) on 2 separate occasions at least 1 week apart in a daily newspaper that circulates throughout Australia, or in 2 or more daily newspapers that together circulate throughout Australia.

The direction takes effect 1 month after the second or last publication required by paragraph (3)(b).

#### **Regulation 6.50 Transitional — design of ASICs etc**

Regulation 6.50 makes transitional arrangements for bodies that were issuing bodies for the purposes of Division 7 of Part 7 of the ANR, and continued as an issuing body for this Part. Such bodies may continue, despite regulations 6.33, 6.37 and 6.39, to issue ASICs and VICs in the form provided for in their respective ASIC programs. See regulations 6.11 and 6.13 for related transitional arrangements.

This transitional provision ceases to have effect at the end of 31 December 2005, after which time all ASIC and VIC cards are to be issued in the prescribed form.

An ASIC or VIC issued in accordance with this transitional arrangement ceases to be valid at the end of 31 August 2006, unless it expires sooner or is cancelled.

#### **Regulation 6.51 Transitional — effect of cards issued before 10 March 2005**

Regulation 6.51 deals with the effect of ASIC cards issued before these Regulations commenced, and ceases to have effect at the end of 31 August 2006.

Subregulation 6.51(1) defines, for the purpose for this regulation, the term 'superseded ASIC' to mean an ASIC issued under Division 7 of Part 7 of the ANR.

Subregulation 6.51(2) provides that if, immediately before 10 March 2005, a person was the holder of a superseded ASIC that has not expired nor been cancelled, that ASIC is taken:

- a) to continue to be a valid ASIC; and
- b) to continue in effect (unless sooner cancelled) until:
  - (i) when, except for this regulation, it would have ceased to have effect; or
  - (ii) the holder is issued an ASIC under Part 6; and
- c) to continue to be subject to any condition to which it was subject immediately before this regulation commenced.

Subregulation 6.51(3) allows a superseded ASIC to be cancelled by either the Secretary or an issuing body that could issue an ASIC to the holder of the superseded ASIC. Cancellation may be for any reason that, and in the same way as, the issuing body could cancel an ASIC.

Subregulation 6.51(4) provides that if the Minister gives a direction that all ASICs are cancelled, the direction is also taken to cancel any superseded ASIC that is in effect immediately before the direction is given (see regulation 6.49 which allows the Minister to direct that ASICs and VICS are cancelled).

### **Division 6.6 Powers of security officers in relation to ASICs and VICS**

Division 6.6 deals with powers of security officers in relation to ASICs and VICS and, in particular, the power to require a person to show their ASIC, VIC or other identification.

#### **Regulation 6.52 Definition — security officer**

Regulation 6.52 defines the term ‘security officer’ for this Division. A security officer is a law enforcement officer (see section 82 of the Act), an airport security guard (see section 91 of the Act) or an aviation security inspector (see section 77 of the Act).

#### **Regulation 6.53 Directions to show valid ASICs and valid VICS**

Regulation 6.53 sets out when a security officer can require a person to show their valid ASIC or valid VIC.

Subregulation 6.53(1) defines an *exempt person* for the purpose of this regulation. An *exempt person* in relation to a part of the secure area of a security controlled airport, means somebody who, under the Act or these Regulations, is not required to properly display a valid ASIC or valid VIC in that part of that area.

Subregulation 6.53(2) allows a security officer to require a person to show him or her a valid ASIC or valid VIC if:

- the security officer knows, or has reason to believe, that the person is in a part of a security controlled airport where they are required under these Regulations to properly display a valid ASIC or valid VIC; and
- the person is apparently not properly displaying a valid ASIC or valid VIC; and
- the security officer does not know that the person is an exempt person in relation to that part of the airport.

Subregulation 6.53(3) requires a security officer to show the person the officer's identity card or another appropriate form of identification before giving the direction. So, for example, an officer of a State police force who is on duty at an airport (who is a security officer because of regulation 6.52 and subparagraph 82(a)(ii) of the Act) should show the person the identity card that he or she has been issued by the State police force. An aviation security inspector (who is a security officer because of regulation 6.52 and section 77 of the Act) will have been issued an identity card under section 78 of the Act. He or she should show the person that card.

Subregulation 6.53(4) makes it an offence for a person (other than a person who is an exempt person for the area or part) to fail to show their ASIC when given a direction to do so. The maximum penalty for failure to do so is 10 penalty units.

Subregulation 6.53(5) makes it an offence for an exempt person (defined in subregulation (1)) to fail to show the security officer identification that establishes that he or she is an exempt person when given a direction under subregulation (2). The maximum penalty for failure to do so is 10 penalty units.

### **Division 6.7 Security designated authorisations**

A security designated authorisation is defined in regulation 1.08 as a flight crew licence or a special pilot licence. Those terms have the meaning given to them by the *Civil Aviation Regulations 1988*.

Division 9 of Part 4 of the Act (inserted by the *Aviation Security Amendment Act 2004*) deals with security status checking, and empowers the Secretary to determine whether a person has an adverse aviation security status. If a person has an adverse aviation security status then, despite the *Civil Aviation Act 1988*, CASA is not to issue that person with a security designated authorisation and, if the person already has such an authorisation, must suspend or cancel it.

A flight crew licence means a licence of a kind referred to in regulation 5.08 and issued under regulation 5.09 of the *Civil Aviation Regulations 1988* as any of the following licences:

- a) a flight radiotelephone operator licence;
- b) a student pilot licence;
- c) a private pilot (aeroplane) licence;
- d) a private pilot (helicopter) licence;
- e) a private pilot (gyroplane) licence;
- f) a commercial pilot (aeroplane) licence;
- g) a commercial pilot (helicopter) licence;
- h) a commercial pilot (gyroplane) licence;
- i) a commercial pilot (balloon) licence;
- j) a commercial pilot (airship) licence;
- k) an air transport pilot (aeroplane) licence;
- l) an air transport pilot (helicopter) licence;
- m) a student flight engineer licence;
- n) a flight engineer licence; or
- o) a restricted flight engineer licence.

CASA can issue a special pilot licence to a person who holds a valid overseas pilot licence that is current and that is not suspended or cancelled; and that is the equivalent of the pilot licence for which the applicant has applied (see regulation 5.198 of the *Civil Aviation Regulations 1988*).

#### **Regulation 6.54 Definitions for Division**

Regulation 6.54 defines particular terms used in Division 6.7.

Under subregulation (1), *issue*, used in relation to a security designated authorisation, includes grant.

Under subregulation (2), an *aviation security status check* of a person includes:

- a) if the person is not an Australian citizen, a check as to whether the person is an unlawful non-citizen (as defined in the *Migration Act 1958*); and
- b) a check of police records to find out whether the person has a criminal record; and
- c) a security assessment of the person.

Under subregulation (3), unless the contrary intention appears:

- a) an expression used in this Division that is also used in Division 9 of Part 4 of the Act has the same meaning in this Division as in that Division of the Act; and
- b) an expression used in this Division that is also used in regulations made under the *Civil Aviation Act 1988* has the same meaning in this Division as in those regulations.

The note to this section draws attention to the fact that the holder of a flight crew licence must hold an ASIC (and therefore must have a background check done under this Part) to enter the secure area of a security controlled airport — see regulation 3.03.

### **Regulation 6.55 Obligations of holders of flight crew licences etc**

Regulation 6.55 makes it an offence for a person who holds a security designated authorisation to perform a duty that is essential to the operation of an aircraft while the aircraft is in Australian territory after 31 December 2005, if:

- a) the Secretary has determined that the person has an adverse aviation security status, and has given a copy of the determination to the person; or
- b) if the person is over 18, the person's aviation security status check is not current; or
- c) if the person is over 18, he or she has not requested an aviation security status check.

The maximum penalty for contravening this regulation is 20 penalty units.

The note draws attention to the fact that a pilot licence, a flight engineer licence and a special pilot licence are security designated authorisations under regulation 1.08 and section 74G of the Act.

Subregulations 6.55(2) and (3) explain what is meant by a security status check being current. A security status check is current if it was carried out less than 5 years ago unless the person has requested that a new check be carried out. However, if at a particular time a person has had a background check within the previous 2 years for the issue of an ASIC, the person's aviation security status check is taken to be current at that time.

### **Regulation 6.56 Request for aviation security status check**

Regulation 6.56 allows the holder of a security designated authorisation, or an applicant for such an authorisation, who is over 18, to request that an aviation security status check be carried out.

The request must be made in writing and, except in the case of a person who is under 18, must be accompanied by:

- a) a signed form of consent to a criminal records check; and
- b) a signed consent to personal information being passed between the Secretary, AFP, ASIO, CASA and DIMIA; and
- c) an acknowledgement that a security assessment will be carried out (except if a security assessment has been made in relation to the issue of an ASIC to the applicant).

**Regulation 6.57 Flight crew licences etc — requirements in relation to issue**

Regulation 6.57 limits the ability of CASA to issue a security designated authorisation.

Subregulation 6.57(1) provides that despite anything in regulations under the *Civil Aviation Act 1988*, and subject to subregulation (2) and (3), CASA is not to issue a security designated authorisation to a person unless:

- a) the person has verified his or her identity by showing CASA the types of identification documents specified in the regulation; and
- b) either he or she has shown CASA his or her Australian birth certificate, Australian passport or Australian naturalisation certificate or CASA is satisfied that he or she is not an unlawful non-citizen; and
- c) an aviation security status check has shown that the person does not have an adverse criminal record; and
- d) CASA has been notified in writing that a security assessment of the person has been made, and is not adverse or qualified.

The note draws attention to the fact that if the Secretary has determined that the person has an adverse aviation security status, CASA must refuse the application (see section 74G of the Act).

Subregulation 6.57(2) makes an exception for a person who is under 18. CASA may issue the authorisation to a person under 18 despite paragraphs (1)(c) and (d) if he or she meets the criteria in paragraphs (1)(a) and (b).

Subregulation 6.57(3) makes an exception for a person who holds an ASIC that is less than 2 years old. In the case of a person who holds an ASIC that was issued less than 2 years ago, CASA may issue the authorisation to him or her despite anything in subregulation (1).

Subregulation 6.57(4) explains what is meant by an adverse criminal record in paragraph (1)(c).

**Regulation 6.58 Secretary’s determination whether a person has adverse aviation security status**

Regulation 6.58 sets out what the Secretary must consider in determining that a person has, or does not have, an adverse aviation security status.

The Secretary must determine that the person has an adverse aviation security status if the person is an unlawful non-citizen or if the person is the subject of an adverse security assessment.

The Secretary may determine that a person has an adverse aviation security status if the person is the subject of a qualified security assessment or has an adverse criminal record.

If a security assessment of the person was qualified, the Secretary must consider the reasons for the assessment being qualified, and whether the holding of a security designated authorisation by the person would constitute a threat to aviation security.

If the person has an adverse criminal record (within the meaning given by subregulation 6.57(4)), the Secretary must consider:

- a) the nature of the offence the person was convicted of; and
- b) the length of the term of imprisonment imposed on him or her; and
- c) if he or she has served the term, or part of the term—how long it is, and his or her conduct and employment history, since he or she did so; and
- d) if the whole of the sentence was suspended — how long the sentence is, and his or her conduct and employment history, since the sentence was imposed; and
- e) anything else relevant that the Secretary knows about.

The note draws attention to the fact that if an adverse or qualified security assessment about a person is provided to a Commonwealth body, the body must notify the person in writing within 14 days (including a copy of the assessment) and must notify him or her how to apply to the Administrative Appeals Tribunal for review of the assessment— see section 38 of the *Australian Security Intelligence Organisation Act 1979*.

**Regulation 6.59 Conviction of holders of security designated authorisation of aviation-security-relevant offences**

Regulation 6.59 obliges the holder of a security designated authorisation who is convicted of an aviation-security-relevant offence (defined in regulation 6.01), to notify CASA in writing of the conviction and any sentence within 7 days. Failure to do so is an offence with a maximum penalty of 20 penalty units.

## **PART 7 ENFORCEMENT**

### **Regulation 7.01 Purpose and effect of Part**

Regulation 7.01 sets out the purpose and effect of Part 7.

The purpose of Part 7 is to create a system of infringement notices for certain offences against the Act and the Regulations as an alternative to prosecution. It is intended that a system of infringement notices will provide an effective and efficient mechanism to ensure compliance with aviation security requirements.

Importantly, the system of infringements notices does not require that an infringement notice be issued to a person for an offence or preclude a person being prosecuted for an offence if an infringement notice is not issued or is withdrawn.

More than one infringement notice can be issued to a person for an offence.

If a person does not comply with an infringement notice for an offence they may be prosecuted for that offence.

Nothing in the infringement notice scheme is intended to limit or otherwise affect the penalty that may be imposed by a court on a person convicted of an offence.

### **Regulation 7.02 Definition for Part – authorised person**

Regulation 7.02 contains a definition of an authorised person for the purpose of this Part. This definition is important because only an authorised person can issue an infringement notice.

*Authorised person* means:

- a) a law enforcement officer (defined in section 82 of the Act); or
- b) an airport security guard (defined in section 91 of the Act); or
- c) an aviation security inspector (appointed under section 77 of the Act).

### **Regulation 7.03 Amount of penalty if infringement notice issued**

The amount of the penalty that is payable under an infringement notice is one-fifth of the maximum penalty that a court could impose for the offence.

### **Regulation 7.04 Authorised persons may issue infringement notices**

Regulation 7.04 gives an authorised person (defined in regulation 7.02) the power to issue an infringement notice to a person if they have reasonable



grounds to believe that a person has committed an ‘infringement notice offence’.

An ‘infringement notice offence’ is an offence against the Act or the Regulations that is a strict liability offence. Except that offences against subsection 13(1), 46(1), 47(1), 48(1), 54(1), 55(1) and 56(1) of the Act are not infringement notice offences.

### **Regulation 7.05 Contents of infringement notice**

Regulation 7.05 sets out the minimum information that is to be contained in an infringement notice. An infringement notice can contain other information if the person issuing the notice thinks it necessary.

Every infringement notice is to contain the following information:

- a) a unique number; and
- b) the name of the authorised person who issued it, and:
  - (i) if he or she is a law enforcement officer the name of the police force or police service of which he or she is a member, protective service officer or special protective service officer; or
  - (ii) if he or she is an airport security guard or an aviation security inspector — that fact; and
- c) its date of issue; and
- d) the full name, or the surname and initials, and the address, of the person to whom it is issued (where the person is a company the name and address of the company will be included); and
- e) brief details of the offence for which it is issued, including:
  - (i) the date and time of the offence; and
  - (ii) where the offence happened; and
  - (iii) the provision of the Act or Regulations contravened; and
- f) the penalty for the offence payable under the notice (this is one fifth of the maximum penalty); and
- g) where and how that penalty can be paid (including, if the penalty can be paid by posting the payment, the place to which it should be posted); and
- h) a statement to the effect that if the person to whom it is issued (the recipient) pays the penalty within 28 days after the day when the notice is served (or any longer time allowed in writing by an aviation security inspector), then (unless the infringement notice is subsequently withdrawn and any penalty paid refunded):
  - (i) any liability of the recipient for the offence will be discharged; and

- (ii) the recipient will not be prosecuted in a court for the offence; and
- (iii) the recipient will not be taken to have been convicted of the offence; and
- i) the maximum penalty that a court could impose on the recipient for the offence; and
- j) a statement to the effect that if the recipient is prosecuted in court and found guilty of the offence, the recipient may be convicted of the offence and ordered to pay a penalty and costs, and be subject to any other order that the court makes; and
- k) how and to whom the recipient can apply to be allowed more time to pay the penalty (note that only an aviation security inspector can provide an extension of time); and
- l) the signature of the authorised person who issued it.

### **Regulation 7.06 Service of infringement notices**

Regulation 7.06 sets out how an infringement notice is to be served on a natural person or a corporation.

Subregulation 7.06 (1) provides that an infringement notice must be served on the person to whom it is issued.

An infringement notice can be served on an individual in any of the following ways:

- a) by giving it to the individual; or
- b) by leaving it at, or by sending it by post, telex, fax or similar facility to the address of the place of residence or business (the relevant place) of the individual last known to the authorised person who issues it; or
- c) by giving it, at the relevant place (that is, the place of residence or business), to someone who:
  - (i) lives or is employed, or apparently lives or is employed, there; and
  - (ii) is, or the authorised person who issues it has reason to believe is, over 16 years.

An infringement notice may be served on a corporation in any of the following ways:

- a) by leaving it at, or by sending it by post, telex, fax or similar facility to the address of the head office, a registered office or a principal office of the corporation; or
- b) by giving it, at an office mentioned in paragraph (a), to someone who is, or the authorised person who issues it has reason to believe is, an officer or employee of the corporation.

### **Regulation 7.07 Time for payment of penalty**

Regulation 7.07 provides that the penalty stated in an infringement notice must be paid within 28 days after the day on which the notice is served on the person to whom it is issued unless the person has applied for a further period of time in which to pay the penalty or has applied for the notice to be withdrawn.

If the person applies for a further period of time in which to pay the penalty, and that application is granted then they must pay the penalty within the further period granted. The maximum further period that can be granted is 28 days (see regulation 7.08).

If the person applies for a further period of time in which to pay the penalty, and that application is refused then they must pay the penalty within 7 days after the notice of the refusal has been served on them.

If a person applies for the notice to be withdrawn and it is withdrawn then they do not have to pay the penalty. However, if the application for the notice to be withdrawn is refused they must pay the penalty within 28 days after the notice of the refusal has been served on them.

### **Regulation 7.08 Extension of time to pay penalty**

Regulation 7.08 sets out the process by which a person can seek a further period of time in which to pay a penalty, than the time stated in the infringement notice.

In order to seek a further period of up to 28 days in which to pay a penalty the person to whom an infringement notice is issued (the recipient) must make a written application to an aviation security inspector.

When an aviation security inspector receives such a request they must, within 14 days:

- a) grant or refuse a further period not longer than the period sought; and
- b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for it. That notice can be given in any way in which the infringement notice could have been served on the recipient (see regulation 7.06).

### **Regulation 7.09 Effect of payment of penalty**

Regulation 7.09 sets out the effect of paying an infringement notice.

If an infringement notice is not withdrawn, and the person to whom it is issued for an offence pays the penalty stated in the notice then:

- a) any liability of the person for the offence is discharged; and

- b) the person may not be prosecuted in a court for the offence; and
- c) the person is not taken to have been convicted of the offence.

If the infringement notice is withdrawn after the person has paid the penalty (see regulations 7.10, 7.11 and 7.12) and the amount paid has been refunded then the liability of the person for the offence is no longer discharged and they may be prosecuted and convicted for the offence.

If 2 or more infringement notices are issued to a person for the same offence, the person's liability to be prosecuted for the offence ceases (subject to the notices later being withdrawn) if the person pays the penalty stated in any one of the notices.

### **Regulation 7.10 Withdrawal of infringement notice**

Regulation 7.10 states that an infringement notice can be withdrawn after it has been issued. If a person who has received an infringement notice wants it withdrawn they can, before the end of 28 days after receiving the infringement notice, apply, in writing, to the Secretary for the infringement notice to be withdrawn.

If the Secretary receives an application to have an infringement notice withdrawn the Secretary has 14 days to:

- a) withdraw or refuse to withdraw the notice; and
- b) notify the person in writing of the decision and, if the decision is a refusal, the reasons for it.

If the Secretary has not approved, or refused to approve, the withdrawal of the notice within 14 days, the Secretary is taken to have refused to approve the withdrawal of the notice.

When deciding whether to withdraw or refuse to withdraw a notice, the Secretary must consider:

- a) whether the person has been convicted previously of an offence against the Act or these Regulations (note that Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them); and
- b) the circumstances of the offence stated in the notice; and
- c) whether the person has previously paid a penalty under an infringement notice issued to the person for an offence of the same type as the offence mentioned in the notice; and
- d) any other relevant matter.

The Secretary may also withdraw an infringement notice without an application having been made.

### **Regulation 7.11 Notice of withdrawal of infringement notices**

Regulation 7.11 provides that the Secretary must give notice of a decision to withdraw an infringement notice. That notice may be served on a person in any way in which the infringement notice could have been served on the person (see regulation 7.06).

A notice withdrawing an infringement notice served on a person for an offence:

- a) must include the following information:
  - (i) the full name, or surname and initials, and address of the person;
  - (ii) the number of the infringement notice;
  - (iii) the date of issue of the infringement notice; and
- b) must state that the notice is withdrawn; and
- c) if the Secretary intends to prosecute the person in a court for the offence, must state that the person may be prosecuted in a court for the offence.

### **Regulation 7.12 Refund of penalty**

Regulation 7.12 provides that if an infringement notice is withdrawn after the penalty stated in it has been paid, the Commonwealth must refund the amount of the penalty to the person who paid it.

## **PART 8 REVIEW OF DECISIONS**

### **Regulation 8.01 Definitions**

Regulation 8.01 states that in Part 8, the following definitions apply:

*AAT Act* means the *Administrative Appeals Tribunal Act 1975*.

*decision* has the same meaning as in the AAT Act.

*Tribunal* means the Administrative Appeals Tribunal.

**Regulation 8.02 Review of decisions in relation to ASICs and related matters — decisions of Secretary**

***Decisions in relation to issuing bodies***

Subregulation 8.02(1) gives persons or bodies the right to apply under the AAT Act to the Administrative Appeals Tribunal for review of a decision of the Secretary:

- a) to refuse to authorise a person as an issuing body (see regulation 6.16); or
- b) to impose a condition on an issuing body (see regulation 6.16); or
- c) to direct an issuing body to vary its ASIC program (see regulation 6.09); or
- d) to refuse to approve a variation of an issuing body's ASIC program (see regulation 6.10); or
- e) to refuse to exempt an issuing body from giving effect to its ASIC program in a particular case or respect (see regulation 6.07); or
- f) to impose a condition on an exemption (see regulation 6.07); or
- g) to revoke an issuing body's authorisation (see regulations 6.19 and 6.20).

***Decisions in relation to adverse aviation security status***

Under subregulation 8.02(2) application may be made under the AAT Act to the Tribunal for review of a decision of the Secretary that on the basis of a qualified security assessment, a person has an adverse aviation security status (see regulation 6.58).

For review of a decision not to issue a security designated authorisation on grounds other than a person's adverse aviation security status, see Part 16 of the *Civil Aviation Regulations 1988*.

***Decisions in relation to issue and cancellation of ASICs***

Subregulation 8.02(3) states that application may be made under the AAT Act to the Tribunal for review of a decision of the Secretary:

- a) to refuse to authorise the issue of an ASIC (see regulation 6.29); or
- b) to impose a condition on an ASIC (see regulation 6.29).

***Decisions in relation to wearing and use of ASICs***

Under subregulation 8.02(4) application may be made under the AAT Act to the Tribunal for review of a decision of the Secretary:

- a) to refuse to exempt somebody from displaying a valid ASIC in a secure area, or part of such an area (see regulation 3.08); or

- b) to impose a condition on such an exemption (see regulation 3.08).

***Decisions in relation to the substituted exercise of the powers of an issuing body***

Subregulation 8.02(5) states that application may be made under the AAT Act to the Tribunal for review of a decision of the Secretary:

- a) to authorise, or refuse to authorise, a person to perform the functions, or exercise the powers, of an issuing body (see regulation 6.22); or
- b) to authorise a person to perform the functions or exercise the powers of an issuing body subject to a condition (see regulation 6.22).

**Regulation 8.03 Review of decisions in relation to ASICs and related matters — decisions of issuing bodies**

Regulation 8.03 provides that application may be made under the AAT Act to the Tribunal for review of a decision of an issuing body:

- a) to refuse to issue an ASIC to somebody (see regulations 6.28, 6.35, 6.36); or
- b) to issue an ASIC subject to a condition (see regulations 6.28 and 6.36); or
- c) to cancel an ASIC (see regulations 6.43 and 6.47).

**Regulation 8.04 Review of decisions in relation to regulated air cargo agents**

Regulation 8.04 specifies that application may be made to the Administrative Appeals Tribunal for review of a decision by the Secretary:

- a) to refuse to designate an applicant as a RACA (see regulation 4.43); or
- b) to revoke the designation of a person as a RACA (see regulation 4.43).

**PART 9 MISCELLANEOUS**

**Regulation 9.01 Threats regarding aviation security**

Subregulation 9.01(1) prohibits particular conduct and specifies a maximum penalty of 50 penalty units for non-compliance. The prohibited conduct is behaviour that could be interpreted by a reasonable person as either a threat to commit an act of unlawful interference with aviation; or a statement that an act of unlawful interference with aviation has been committed. Unlawful interference with aviation is defined by section 10 of the Act.

Examples of such behaviour are the delivery of a note that contains a threat to hijack an aircraft, or the making of a telephone call in which it is stated that a bomb has been placed on a plane.

Subregulation 9.01(2) states that in relation to the conduct referred to in subregulation (1), it is an irrelevant factor that the conduct was carried out in jest or was expressed to be a jest. For example, the penalty would still apply to a person who made a statement that a bomb is on an aircraft, notwithstanding that they made that statement as a joke. However, note that the joke must have been made so that a reasonable person could interpret it as a threat or statement in earnest.

An offence against subregulation (1) is an offence of strict liability.

### **Regulation 9.02 Service of notices**

Regulation 9.02 makes it clear that a notice required to be served under these regulations can be served by facsimile or email.

### **SCHEDULE 1**

Schedule 1 sets out Form 1 (defined in regulation 4.73), being the form to be used for the purposes of notification about the travel of persons in custody. It includes details about the passenger, including, whether he or she is dangerous (as defined in subregulations 4.75(2) and 4.87(2)), and the relevant flight on which the person will travel.