

Aviation Transport Security Amendment Regulations 2005 (No. 2)

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 222

Issued by the Authority of the Minister of Transport and Regional Services

Subject - *Aviation Transport Security Act 2004*
Civil Aviation Act 1988

Aviation Transport Security Amendment Regulations 2005 (No. 2)
Civil Aviation (Fees) Amendment Regulations 2005 (No. 1)

Section 133 of the *Aviation Transport Security Act 2004* (the Security Act) provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for giving effect to that Act and prescribe fees in respect of matters under that Act (including the regulations).

Section 98 of the *Civil Aviation Act 1988* (the Civil Aviation Act) provides that the Governor-General may make regulations, not inconsistent with that Act. In particular, paragraph 98(3)(v) of that Act specifically allows the Governor-General to make regulations prescribing fees (either by specifying amounts or by prescribing a method of calculation) in relation to services, applications or requests, or the doing of anything by the Civil Aviation Safety Authority (CASA) under the Security Act.

The purpose of the proposed Regulations is to:

- allow airport operators who do not provide passenger screening to apply to vary the display requirements of Aviation Security Identification Cards (ASICs) around the operation of regular public transport (RPT) services;
- enable CASA to become an ASIC issuing body with costs to be recovered from the aviation industry;
- align the timing for the submission of transitioning ASIC programs with the submission of transitioning Transport Security Programs (TSPs); and
- strengthen the primary document identification requirements when applying for an ASIC.

Attachment A outlines the scope of the proposed Regulations.

Further details of the proposed Regulations are set out in Attachment B.

Neither the Security Act nor the Civil Aviation Act specify any conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The proposed Regulations would be legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulations would both commence on the day after they are registered.

The Minute recommends that Regulations be made in the form proposed.

Authority:

Section 133 of the *Aviation Transport Security Act 2004* and section 98 of the *Civil Aviation Act 1988*.

The proposed Regulations would specify that:

- operators at regional airports who do not have passenger screening will be able to limit ASIC display requirements. Display of an ASIC would be limited to coincide with either side of departure and arrival of Regular Passenger Transport (RPT) services. This is required to enable operators to switch off their ASIC program to allow other community and business activities to occur, for example drag races, football games and other events.
- CASA may obtain checks by the Australian Federal Police (AFP) and the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA), and Australian Security Intelligence Organisation (ASIO) security assessments in relation to holders of, or applicants for, security designated authorisations and assess the results of those checks and assessments;
- CASA may determine that a person has an adverse security status in relation to holders of, or applicants for, security designated authorisations;
- the Director of CASA may delegate any or all of CASA's functions and powers under Division 9 of Part 4 of the Security Act (which deals with security status checking) to a person holding or performing the duties of a position within CASA that is equivalent to that of an SES employee;
- the application for an aviation security status check must be in writing and in the form approved by CASA;
- CASA and the Department of Transport and Regional Services (DOTARS) are authorised to disclose and receive personal information about a person from the AFP, DIMIA and the ASIO for the purposes of carrying out an aviation security status check and determining a person's aviation security status;
- the AFP and the police force of each State and Territory are authorised to disclose personal information about the person to each other for the purposes of carrying out an aviation security status check and determining a person's aviation security status;
- CASA may recover the cost of an aviation security status check from the applicant in accordance with the fee structure at Schedule 1 to the proposed Civil Aviation (Fees) Amendment Regulations;
- CASA is eligible to apply to the Secretary of DOTARS to become an ASIC issuing body;
- submission timeframes for transitioning ASIC Programs are changed to 9 March 2006 to align with transitioning Transport Security Programs (TSPs); and,
- the primary documentation identification requirements are strengthened by requiring that a passport that is used as a primary identification must be valid.

Details of the proposed Aviation Transport Security Amendment Regulations 2005 (No. 2)**Regulation 1 - Name of Regulation**

This regulation provides that the title of the Regulations is the *Aviation Transport Security Amendment Regulations 2005 (No. 2)*.

Regulation 2 - Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 - Amendment of the Aviation Transport Security Regulations 2005

This regulation provides that the *Aviation Transport Security Regulations 2005* ('the Principal Regulations') are amended as set out in Schedule 1.

Schedule 1 - Amendments**Allow airport operators that do not have passenger screening to apply to vary the display requirements of ASICs around the operation of regular public transport (RPT) services****Item [1] – regulation 1.03**

Amendments to the regulations are required to allow airport operators to seek a variation approval from the Secretary of DOTARS to turn their Aviation Security Identification Card (ASIC) Programs on and off 2 hours before and after their scheduled regular public transport (RPT) services to allow community and business activities to occur. For example, an airport operator that operates 1 RPT service each day at 1:00pm would turn their ASIC Program on at 11:00am each day and turn it off 3:00pm each day, requiring compliance with the ASIC Program to be for a period of 4 hours per day.

The proposed amendment to regulation 1.03 inserts the definition of **traffic period**. At a security controlled airport, **traffic period** would mean a period that begins 2 hours before the scheduled time of arrival, and ends 2 hours after the actual time of departure, of a scheduled air service that operates to or from the airport. This would allow small airport operators to turn their ASIC programs on and off around regular public transport services. It would also limit the number of ASICs that they have to issue. The new definition would require the following consequential amendments:

- Items [2] & [3] – regulation 3.03 – Requirement to Display ASICs in secure areas

- Item [4] – regulation 3.12 – Persons facilitating passenger check-in and baggage handling outside secure areas
- Item [5] – regulation 3.15 – Requirements for airside generally
- Item [6] – regulation 3.16 – Additional security requirements for security restricted areas
- Item [7] – regulation 3.20 – Security requirements for sterile areas
- Item [8] – regulation 3.21 – Security requirements for landside security zones other than sterile areas
- Item [19] & [20] – regulation 6.53 – Directions to show valid ASICs and VICs

Enable the Civil Aviation Safety Authority (CASA) to become an ASIC issuing body with costs to be recovered from the aviation industry

Item [11] – new regulation 6.12A

The proposed amendment would insert new regulation 6.12A which would allow CASA to issue ASICs to General Aviation pilots.

Item [21] – new regulation 6.55A

The proposed new subregulation 6.55A (1) would allow CASA to collect, on behalf of the Commonwealth, any fee payable to the Secretary of the Department of Transport and Regional Services (the Department) for the determination of the aviation security status of an applicant for, or the holder of, a security designated authorisation.

The proposed new subregulation 6.55A (2) would grant CASA the ability to determine that a person has an adverse aviation security status. This function is in addition to, but not instead of, the Secretary determining that a person has an adverse security status.

The proposed new subregulation 6.55A (3) would empower the Director of CASA to delegate any or all of CASA's functions and powers under Division 9 of the Security Act to a person holding, or performing the duties of, an office or position within CASA that is equivalent to an SES employee.

The proposed new subregulation 6.55A (4) would confer upon CASA functions incidental to the purposes of determining that a person has an adverse security status and in relation to any other matter related to the operation of Division 9 of the Security Act. This includes obtaining checks by the Australian Federal Police (AFP) and the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) and security assessments in relation to holders of, or applicants for, security designated authorisations and to assess the results of those checks and assessments.

Item [22] - regulation 6.56

The proposed amendment would substitute subregulation 6.56(2) to prescribe that the application for an aviation security status check must be in writing and in the form approved by CASA for the purpose.

Item [23] – new regulation 6.56A

The proposed new subregulation 6.56A (1) would authorise CASA and the Department, for the purposes of carrying out an aviation security status check, to disclose personal information in relation to a person to the AFP, DIMIA and the Australian Security Intelligence Organisation (ASIO).

The proposed new subregulation 6.56A(2) would authorise the AFP to disclose personal information relating to a person to the police force or police services of each State and Territory for the purpose of carrying out an aviation security status check.

The proposed new paragraph 6.56A(3)(a) would authorise the AFP, DIMIA and ASIO to disclose personal information about a person to CASA and the Department to enable CASA or the Secretary of the Department to determine a person's aviation security status.

The proposed new paragraph 6.56(3)(b) would authorise the police force or police service of each State and Territory to disclose personal information about a person to the AFP to enable CASA or the Secretary of the Department to determine a person's aviation security status.

Item [24] – new regulations 6.58A and 6.58B

The proposed new subregulation 6.58A(1) would clarify that each reference in regulation 6.58 to the Secretary is also a reference to CASA in relation to what must be considered when determining that a person has, or does not have, an adverse aviation security status.

The proposed new subregulation 6.58A(2) would provide that the Secretary may give advice or directions in writing regarding the principles or policies to be followed in determining whether a person who has an adverse criminal record, or is the subject of a qualified security assessment, has an adverse aviation security status to ensure consistency in the decision making process.

The proposed new subregulation 6.58A(3) would clarify that CASA must have regard to any such advice or directions of the Secretary in determining whether a person who has an adverse criminal record, or is the subject of a qualified security assessment, has an adverse aviation security status.

The proposed new regulation 6.58B would specify that if CASA determines that a person has an adverse aviation security status, CASA must inform the Secretary of the Department of the person's name, the determination and the reasons for the determination.

Align the timing for the submission of transitioning ASIC programs with the submission of transitioning Transport Security Programs (TSPs)

Items [10],[12], [13] & [18] – regulation 6.11, 6.13 and 6.50

The proposed amendment to regulation 6.13 would align the timing of the submission of ASIC programs with Transport Security Programs (TSPs). Under the Security Act, transitional provisions were provided for both TSPs and ASIC Programs. However, there is a disparity in the timings for industry to submit a TSP and an ASIC Program to the Secretary for approval. TSPs must be submitted before 9 March 2006 with ASIC Programs required to be submitted by 30 November 2005. To bring the submission of these two regulatory requirements into line, it is proposed to also amend regulations 6.11 and 6.50 to give effect to the new dates and require that the transitional provisions for ASIC programs also have to be submitted to the Secretary of DOTARS for approval by 9 March 2006. DOTARS would still have 30 days to approve the ASIC program.

Item [14] – regulation 6.15

The proposed amendment to regulation 6.15 rectifies a minor typographical error in the regulation by replacing ‘which regular’ with ‘which a regular’.

Strengthen the primary document identification requirements when applying for an ASIC

Item [9] – regulation 6.04

The proposed amendment to regulation 6.04 would strengthen the identification requirement that a passport be current and valid, as opposed to ‘a passport issued to him or her’ which could mean a passport that has expired.

Item [15], [16] & [17] – regulation 6.28

The principal amendment to regulation 6.28 would remove the ‘grandfathering’ provisions of the Principal Regulations. When ASICs were first introduced in 1998, all applicants were subject to a police records check, but only new employees were denied an ASIC on the basis of a previous criminal record. These ‘grandfathering’ provisions (subregulations 6.28(5) & (7)) in relation to criminal offences were carried over to the reissue of ASICs with the additional criminal checks and the politically motivated violence security check in 2002. It is proposed to remove the ‘grandfathering’ provisions in the *Aviation Transport Security Regulations 2005* to provide that persons can be denied an ASIC on the basis of a previous criminal record.

Item [25]

The proposed amendments under this item rectify an error in the note to each applicable subregulation by changing the word ‘notice’ to ‘decision’. The proposed amendment applies to the each of the subregulations listed below.

- subregulation 6.07(6)
- subregulation 6.10(3)
- subregulation 6.14(7)
- subregulation 6.16(2)
- subregulation 6.19(5)
- subregulation 6.29(3)
- subregulation 6.43(6)

Details of the proposed *Civil Aviation (Fees) Amendment Regulations 2005 (No. 1)*

Regulation 1 - Name of Regulations

This regulation provides that the title of the Regulations is the *Civil Aviation (Fees) Amendment Regulations 2005 (No. 1)*.

Regulation 2 - Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 - Amendment of the *Civil Aviation (Fees) Regulations 2005*

This regulation provides that the *Civil Aviation (Fees) Regulations 2005* (the Principal Regulations) are amended as set out in the Schedule.

Schedule - Amendments

Item [1] - regulation 4

The proposed amendment to regulation 4 omits each reference to the Schedule, and replaces it with a reference to Schedule 1 to provide for more than one Schedule to the Principal Regulations.

Item [2] – new regulation 5

The proposed amendment inserts a new regulation 5 to provide for the fees payable to CASA for undertaking functions under the *Aviation Transport Security Act 2004* and *Aviation Transport Security Regulations 2005*.

Subregulation 5(1) is an interpretive provision which specifies that expressions used in proposed regulation 5 has the same meaning as those used in Division 6.7 of the *Aviation Transport Security Regulations 2005*.

Subregulation 5(2) sets out the fees for various activities carried out by CASA related to security designated authorisations. CASA processes requests for aviation security status checks under regulation 6.58 of the *Aviation Transport Security Regulations 2005*, and under regulation 6.57 of those regulations cannot issue a security designated authorisation unless it has also verified the person's identity. Depending on the particular circumstances, CASA may be required to perform a full aviation security status check and verification of identity, a partial aviation security status check (involving only a criminal records check) and verification of identity, or only a verification of identity. CASA will also charge a fee for the replacement of a security designated authorisation which has been lost, stolen or destroyed. The fees have been determined by CASA on a cost recovery basis, in accordance with Department of Finance and Administration guidelines.

Subregulation 5(3) makes it clear that any fee payable by a person under subregulation 5(2) is in addition to the fee payable by that person under regulation 4 and Schedule 1. Regulation 4 and Schedule 1 provide for the fees payable by people for various services provided by CASA under the *Civil Aviation Act 1988* and regulations under that Act. Thus, for example, a person applying for a private pilot licence and requesting a full aviation security status check must pay the fee for the issue of the private pilot licence under item 10.1 of Schedule 1 (i.e. \$50) and the fee for the aviation security status check and identity verification under item 1 of the table in subregulation 5(2) (i.e. \$145), or a total of \$195.

Subregulation 5(4) provides for the fees for CASA activities in relation to the issue and replacement of ASICs. As the checks which need to be undertaken for the issue of an ASIC are similar to those for security designated authorisations, the fees for those checks by CASA are the same in subregulation 5(4) as they are in subregulation 5(2). The fees have been determined by CASA on a cost recovery basis, in accordance with Department of Finance and Administration guidelines.

It is estimated that some 95% of the 36,000 pilots who currently hold a medical certificate will be eligible to apply for an ASIC. The amount raised from the initial application for an ASIC is expected to be about \$5 million. ASICs are required to be renewed every 2 years at a cost of \$135 as no ASIO check is required.

Item [3] - Schedule Heading

The proposed amendment to the Schedule heading omits the reference to Schedule and replaces it with a reference to Schedule 1 Regulatory Service Fees, to provide for more than one Schedule to the Principal Regulations.