



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

Select Legislative Instrument 2005 No. 222

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Aviation Transport Security Act 2004*.

Dated 6 October 2005

P. M. JEFFERY
Governor-General

By His Excellency's Command

WARREN TRUSS
Minister for Transport and Regional Services

1 Name of Regulations

These Regulations are the *Aviation Transport Security Amendment Regulations 2005 (No. 2)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Aviation Transport Security Regulations 2005*

Schedule 1 amends the *Aviation Transport Security Regulations 2005*.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 1.03, after definition of *secure area*, including the note

insert

traffic period, for a security controlled airport, means 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.

[2] Subregulation 3.03 (1)

after

(4),

insert

(4A),

[3] After subregulation 3.03 (4)

insert

- (4A) At a security controlled airport from or to which no screened air service operates, paragraphs (1) (a) and (b) apply only during traffic periods.
- (4B) To avoid doubt, there is no requirement that a person display a VIC in the secure area of an airport referred to in subregulation (4A) other than during traffic periods.

[4] After subregulation 3.12 (2)

insert

- (3) In relation to a security controlled airport from or to which no screened air service operates, subregulation (1) has effect only during traffic periods.

[5] After subregulation 3.15 (9)

insert

- (10) If the secure area of a security controlled airport from or to which no screened air service operates is entered, during a period that is not a traffic period for the airport, by a person, or a vehicle driven by a person, not displaying a valid ASIC or VIC, that entry does not constitute a contravention by the airport operator of paragraph (3) (a) or (c).

[6] After subregulation 3.16 (6)

insert

- (7) If the secure area of a security controlled airport from or to which no screened air service operates is entered, during a period that is not a traffic period for the airport, by a person, or a vehicle driven by a person, not displaying a valid ASIC or VIC, that entry does not constitute a contravention by the airport operator of subparagraph (3) (a) (i) or (iii).

[7] After subregulation 3.20 (7)

insert

- (8) If the secure area of a security controlled airport from or to which no screened air service operates is entered, during a period that is not a traffic period for the airport, by a person, or a vehicle driven by a person, not displaying a valid ASIC or VIC, that entry does not constitute a contravention by the airport operator of paragraph (3) (h).

[8] After subregulation 3.21 (2), including the note

insert

- (3) If the secure area of a security controlled airport from or to which no screened air service operates is entered, during a period that is not a traffic period for the airport, by a person, or a vehicle driven by a person, not displaying a valid ASIC or VIC, that entry does not constitute a contravention by the airport operator of subregulation (2).

[9] Paragraph 6.04 (2) (d)

substitute

- (d) a current, valid passport issued to him or her (whether by Australia or by another country).

[10] Paragraph 6.11 (4) (b)

substitute

- (b) the end of 8 April 2006.

[11] After regulation 6.12

insert

6.12A CASA to be issuing body

The Civil Aviation Safety Authority is an issuing body.

[12] Subregulation 6.13 (3)

omit

30 November 2005,

insert

9 March 2006,

[13] Subregulations 6.13 (5) and (6)

substitute

- (5) The Secretary must, within 1 month after an ASIC program is submitted for approval:
- (a) approve or refuse to approve the ASIC program; and
 - (b) notify the issuing body in writing of the decision and, if the decision is a refusal, the reasons for the decision.

Note Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are affected by the decision notice of the making of the decision and of the person's right to have the decision reviewed.

- (6) If the Secretary does not approve, or refuse to approve, the program within the period allowed by subregulation (5), the Secretary is taken, at the end of that period, to have refused to approve the program.

[14] Subregulation 6.15 (1)

omit

which regular

insert

which a regular

[15] Paragraph 6.28 (1) (d)

omit

subject to subregulation (7),

[16] After subregulation 6.28 (2)

insert

- (2A) For paragraph (1) (d), a person has an *adverse criminal record* if he or she has been convicted of an aviation-security-relevant offence and sentenced to imprisonment (including periodic detention, home-based detention and detention until the rising of the court, but not community service).

[17] Subregulations 6.28 (5) to (9)

substitute

- (5) An issuing body may issue an ASIC subject to a condition, but must notify the holder in writing what the condition is.
- (6) In particular, a condition may be that background checking of the holder is carried out more frequently than required by these Regulations.

[18] Subregulation 6.50 (2)

omit

31 December 2005.

insert

8 April 2006.

[19] Subregulation 6.53 (2)

substitute

- (2) Subject to subregulation (2A), if:
- (a) a security officer knows, or has reason to believe, that a person who is in a part of a security controlled airport is required under these Regulations to properly display a valid ASIC or valid VIC; but

(b) the person is apparently not properly displaying a valid ASIC or valid VIC;

the security officer may (unless the security officer knows the person to be an exempt person in relation to that part of the airport) direct the person to show him or her a valid ASIC or valid VIC.

(2A) At a security controlled airport from or to which no screened air service operates, subregulation (2) applies only during a traffic period for the airport.

[20] Subregulation 6.53 (3)

omit

Before directing the person to do so, the security officer

insert

Before giving a person a direction under subregulation (2), a security officer

[21] After regulation 6.55

insert

6.55A Functions of CASA

- (1) For paragraph 74H (1) (j) of the Act, CASA may collect, on behalf of the Commonwealth, any fee payable for the determination by the Secretary of the aviation security status of an applicant for, or the holder of, a security designated authorisation.
- (2) For paragraph 74H (1) (k) of the Act, the function is conferred upon CASA of determining, under subsection 74G (1) of the Act, that a person has an adverse aviation security status.
- (3) For paragraph 74H (1) (l) of the Act, the Director of CASA may delegate any or all of CASA's functions and powers under this Division to a person holding, or performing the duties of, an office or position within CASA that is at a level equivalent to that of an SES employee.

- (4) For paragraphs 74H (1) (k) and (m) of the Act, the following functions, incidental to the function referred to in subregulation (2), are conferred upon CASA:
- (a) obtaining checks by the Australian Federal Police and DIMIA, and security assessments, in relation to holders of, or applicants for, security designated authorisations;
 - (b) assessing the results of those checks and assessments.

[22] Subregulation 6.56 (2)

substitute

- (2) The application:
- (a) must be in writing on the form approved by CASA for the purpose; and
 - (b) must be accompanied by the applicable fee prescribed by the *Civil Aviation (Fees) Regulations 1995*.

[23] After regulation 6.56

insert

6.56A Authorisation of certain disclosures of personal information

- (1) For the purpose of carrying out an aviation security status check in relation to a person, CASA and the Department are authorised to disclose personal information about the person to the following:
- (a) the Australian Federal Police;
 - (b) DIMIA;
 - (c) the Australian Security Intelligence Organisation.
- (2) For that purpose, the Australian Federal Police is authorised to disclose personal information about the person to the police force or police service of each State and Territory.

-
- (3) For the purpose of enabling CASA or the Secretary to determine a person's aviation security status:
- (a) each agency mentioned in paragraphs (1) (a), (b) and (c) is authorised to disclose personal information about the person to CASA and the Department; and
 - (b) the police force or police service of each State and Territory is authorised to disclose personal information about the person to the Australian Federal Police.

[24] After regulation 6.58

insert

6.58A Matters to which CASA must have regard in determining aviation security status

- (1) Regulation 6.58 has effect in relation to the determination by CASA of a person's aviation security status as if each reference in that regulation to the Secretary were a reference to CASA.
- (2) In the interests of consistent decision-making, the Secretary may give advice or directions in writing as to 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.
- (3) In determining whether such a person has an adverse aviation security status, CASA must have regard to any such advice or directions of the Secretary.

6.58B Notice by CASA of certain decisions

If CASA determines that a person has an adverse aviation security status, CASA must inform the Secretary of:

- (a) the person's name; and
- (b) the determination and the reasons for it.

[25] Further amendments to notes — review of decisions

The note after each of the following provisions is amended by omitting ‘notice reviewed’ and inserting ‘decision reviewed’:

- 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).

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.