



## **AusCheck Regulations 2017**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 27 July 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

Michael Keenan  
Minister for Justice

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## Part 1—Preliminary

### 1 Name

This instrument is the *AusCheck Regulations 2017*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 August 2017.	1 August 2017

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *AusCheck Act 2007*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) AusCheck database;
- (b) background check;
- (c) issuing body;
- (d) Secretary;
- (e) Transport Secretary.

In this instrument:

*Act* means the *AusCheck Act 2007*.

***adverse criminal record:***

- (a) for an individual who is an applicant for, or a holder of, an ASIC—has the meaning given by subregulation 6.01(2) of the ATS Regulations; or
- (b) for an individual who is an applicant for, or a holder of, an MSIC—has the meaning given by regulation 6.08A of the MTOFS Regulations; or
- (c) otherwise—has the meaning given by clause 1.3 of the SSBA Standards.

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**adverse security assessment** has the same meaning as in Part IV of the *Australian Security Intelligence Organisation Act 1979*.

**ASIC** has the same meaning as in the ATS Regulations but does not include a temporary ASIC issued under those regulations.

**ATS Regulations** means the *Aviation Transport Security Regulations 2005*.

**entity** has the same meaning as in the *National Health Security Act 2007*.

**health security relevant offence** has the meaning given by clause 1.3 of the SSBA Standards.

**MSIC** has the same meaning as in the MTOFS Regulations but does not include a temporary MSIC (within the meaning of those regulations).

**MTOFS Regulations** means the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

**NHS entity** means an entity to which Division 5 of Part 3 of the *National Health Security Act 2007* applies.

**notification period**: see subsection 22(5).

**old regulations** means the *AusCheck Regulations 2007*.

**operational need**:

- (a) for an ASIC—has the meaning given by subregulation 6.01(1) of the ATS Regulations; or
- (b) for an MSIC—has the meaning given by regulation 6.07F of the MTOFS Regulations.

**qualified criminal record**:

- (a) for an individual who is an applicant for, or a holder of, an ASIC—has the meaning given by subregulation 6.01(3) of the ATS Regulations; or
- (b) otherwise—has the meaning given by clause 1.3 of the SSBA Standards.

**qualified security assessment** has the same meaning as in Part IV of the *Australian Security Intelligence Organisation Act 1979*.

**required information**: see section 5.

**SSBA Standards** has the same meaning as in the *National Health Security Act 2007*.

**transferred ASIC applications** has the meaning given by paragraph 6.22(2)(b) of the ATS Regulations.

**transferred ASICs** has the meaning given by paragraph 6.22(2)(a) of the ATS Regulations.

**transferred MSIC applications** has the meaning given by paragraph 6.07ZA(2)(b) of the MTOFS Regulations.

**transferred MSICs** has the meaning given by paragraph 6.07ZA(2)(a) of the MTOFS Regulations.

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*unfavourable criminal history*: see section 6.

## 5 Required information

The *required information* for an individual to whom an application for a background check relates is the following information:

- (a) the individual's name, gender and date and place of birth;
- (b) any other name by which the individual is or was known;
- (c) the individual's current residential address;
- (d) all other residential addresses of the individual in the 10 years before the application is made;
- (e) the individual's preferred mailing address;
- (f) the individual's preferred telephone contact number;
- (g) the individual's preferred email address;
- (h) if the individual is employed and, at the time the application is made, the individual has an operational need for an ASIC or MSIC for the purposes of that employment—the name and business address of the individual's employer;
- (i) if the individual is employed and the application is made under clause 3.6 of the SSBA Standards—the name and business address of the individual's employer;
- (j) if the individual is a student and, at the time the application is made, the individual has an operational need for an ASIC or MSIC for the purposes of the individual's studies—the name and business address of the institution at which the individual is studying;
- (k) if the individual is a student and the application is made under clause 3.6 of the SSBA Standards—the name and business address of the institution at which the individual is studying;
- (l) if the background check includes an assessment of information relating to whether the individual is an unlawful non-citizen or holds a visa entitling the individual to work in Australia:
  - (i) the number and country of issue of any passport issued to the individual; and
  - (ii) the number and expiry date of any visa granted to the individual enabling the individual to travel to and enter, or remain in, Australia.

## 6 Unfavourable criminal history

An individual has an *unfavourable criminal history* if the criminal history of the individual discloses that the individual has any of the following:

- (a) an adverse criminal record;
- (b) a qualified criminal record;
- (c) a conviction (within the meaning of the MTOFS Regulations) for a disqualifying offence (within the meaning of those regulations).

**Part 2** AusCheck scheme

**Division 1** Establishment of AusCheck scheme

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**Part 2—AusCheck scheme**

**Division 1—Establishment of AusCheck scheme**

**7 Establishment of the AusCheck scheme**

For the purposes of Part 2 of the Act, this Part establishes the AusCheck scheme.



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## **Division 2—Background checks for aviation and maritime security purposes**

### **8 Background check of applicants for, or holders of, ASICs or MSICs—application made by issuing body or Transport Secretary**

*When AusCheck may undertake a background check of an individual*

- (1) AusCheck may undertake a background check of an individual if an application for a background check of the individual is made under:
  - (a) paragraph 6.27AA(1)(a) of the ATS Regulations or paragraph 6.08BA(a) of the MTOFS Regulations (which deal with applications by an issuing body relating to applicants for ASICs or MSICs); or
  - (b) subregulation 6.27AA(3) of the ATS Regulations or subregulation 6.08LC(1) of the MTOFS Regulations (which deal with applications by the Transport Secretary relating to certain applicants for, or holders of, ASICs or MSICs).

*When AusCheck must undertake a background check of an individual*

- (2) AusCheck must undertake a background check of an individual if an application for a background check of the individual is made under paragraph 6.27AA(1)(c) of the ATS Regulations or paragraph 6.08BA(c) of the MTOFS Regulations (which deal with applications by an issuing body relating to holders of ASICs or MSICs convicted of certain offences).

*Application requirements*

- (3) An application for a background check of an individual that is made under a provision referred to in paragraph (1)(a) of this section must:
  - (a) be made electronically; and
  - (b) include the required information for the individual.
- (4) An application for a background check of an individual that is made under a provision referred to in paragraph (1)(b) of this section must:
  - (a) be made in writing; and
  - (b) include the individual's name, date of birth and residential address.
- (5) An application for a background check of an individual that is made under a provision referred to subsection (2) of this section must:
  - (a) be made electronically; and
  - (b) include the information notified by the individual under subregulation 6.41(1) of the ATS Regulations or subregulation 6.08LB(2) of the MTOFS Regulations (as the case may be).

### **9 Background check of applicants for, or holders of, ASICs or MSICs—deemed application by individuals convicted of certain offences**

- (1) This section applies if:

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- (a) an individual notifies the Secretary under subregulation 6.41(1) of the ATS Regulations, or subregulation 6.08LB(2) of the MTOFS Regulations, of the matters mentioned in that subregulation; and
  - (b) the individual consents to a background check of the individual being conducted under the AusCheck scheme.
- (2) The individual is taken, for the purposes of the AusCheck scheme, to have applied to AusCheck for a background check of the individual.
- (3) AusCheck must undertake a background check of the individual.

**10 Background check of holders of MSICs that are in force for 4 years etc.**

- (1) This section applies if:
- (a) an individual:
    - (i) holds an MSIC that is in force for 4 years; or
    - (ii) held an MSIC that was to be in force for 4 years and the MSIC was cancelled under paragraph 6.08M(1)(f) or (g) or regulation 6.08N of the MTOFS Regulations; and
  - (b) a background check of the individual was undertaken prior to the issue of the MSIC; and
  - (c) the Secretary gave advice about the background check under Division 5 of this Part; and
  - (d) the individual has not withdrawn his or her consent to an additional background check of the individual being conducted under the AusCheck scheme on the second anniversary of the day a record of that advice is made in the AusCheck database.
- (2) The issuing body for the MSIC is taken, for the purposes of the AusCheck scheme, to have applied for a background check of the individual on the second anniversary of that day.
- (3) AusCheck must undertake a background check of the individual.

## **Division 3—Background checks for national health security purposes**

### **11 Background check of individuals for national health security purposes**

*When AusCheck may undertake a background check of an individual*

- (1) AusCheck may undertake a background check of an individual if an application for a background check of the individual is made by an NHS entity under clause 3.6 of the SSBA Standards.

*When AusCheck must undertake a background check of an individual*

- (2) If an NHS entity informs AusCheck of information relating to an individual under clause 3.6.2 of the SSBA Standards, then:
  - (a) the NHS entity is taken, for the purposes of the AusCheck scheme, to have applied to AusCheck for a background check of the individual; and
  - (b) AusCheck must undertake a background check of the individual.

*Application requirements*

- (3) An application for a background check of an individual that is made under the provision referred to in subsection (1) must:
  - (a) be made electronically; and
  - (b) include the required information for the individual.

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**Division 4—Preliminary assessment that individual has an unfavourable criminal history**

**12 Preliminary assessment by Secretary that an individual has an unfavourable criminal history**

- (1) This section applies if:
  - (a) AusCheck is undertaking a background check of an individual; and
  - (b) the Secretary makes a preliminary assessment that the individual has an unfavourable criminal history.
- (2) The Secretary must give the individual a written notice that:
  - (a) set out the preliminary assessment and the reasons for the preliminary assessment; and
  - (b) informs the individual that the individual may, on or before a day (the *specified day*) specified in the notice, make representations to the Secretary about the preliminary assessment.
- (3) The specified day must be at least:
  - (a) if the application for the background check of the individual was made under a provision referred to in paragraph 8(1)(a) or subsection 11(1)—28 days after the notice is given; or
  - (b) otherwise—14 days after the notice is given.
- (4) The individual may, before the specified day, request the Secretary to specify a later day for the making of representations about the preliminary assessment.
- (5) If the individual makes a request under subsection (4), the Secretary may, by written notice given to the individual, specify a later day for the making of representations about the preliminary assessment.
- (6) The Secretary must not give advice about the background check of the individual under Division 5 of this Part before:
  - (a) if the individual makes representations about the preliminary assessment on or before the specified day (or any later day specified under subsection (5))—those representations are considered by the Secretary; or
  - (b) otherwise—the end of the specified day (or any later day specified under subsection (5)).

## **Division 5—Advice about background check of individuals**

### **Subdivision A—Advice about background checks for aviation and maritime security purposes**

#### **13 Advice about background check of an individual—application made, or taken to have been made, by an issuing body**

- (1) This section applies if:
  - (a) an application for a background check of an individual:
    - (i) is made by an issuing body under a provision referred to in paragraph 8(1)(a) or subsection 8(2); or
    - (ii) is taken to have been made by an issuing body under subsection 10(2); and
  - (b) AusCheck undertakes a background check of the individual.

##### *Advice relating to criminal history*

- (2) The Secretary must advise the issuing body whether or not the individual has an unfavourable criminal history.
- (3) If the Secretary advises the issuing body under subsection (2) that the individual has a qualified criminal record, the advice must be accompanied by a document setting out the aviation-security-relevant offences to which the qualified criminal record relates.
- (4) If the Secretary advises the issuing body under subsection (2) that the individual has an unfavourable criminal history, the Secretary must inform the individual of that advice and the reasons for that advice.

##### *Advice relating to security assessment*

- (5) If the application is made under a provision referred to in paragraph 8(1)(a) or is taken to have been made under subsection 10(2), the Secretary must advise the issuing body whether or not a security assessment of the individual is an adverse security assessment or qualified security assessment.
- (6) If the Secretary advises the issuing body under subsection (5) that the security assessment of the individual is a qualified security assessment, the Secretary must give the Transport Secretary a copy of the security assessment.

##### *Advice relating to whether the individual is an unlawful non-citizen etc.*

- (7) If:
  - (a) the application is made under a provision referred to in paragraph 8(1)(a) or is taken to have been made under subsection 10(2); and
  - (b) the background check includes an assessment of information relating to whether the individual is an unlawful non-citizen or holds a visa entitling the individual to work in Australia;the Secretary must advise the issuing body of the result of that assessment.

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**14 Advice about background check of an individual—application made by the Transport Secretary**

- (1) This section applies if:
  - (a) an application for a background check of an individual who has applied for, or who holds, an ASIC or MSIC is made by the Transport Secretary under a provision referred to in paragraph 8(1)(b); and
  - (b) AusCheck undertakes a background check of the individual.

*Advice relating to criminal history*

- (2) The Secretary must advise the Transport Secretary whether or not the individual has an unfavourable criminal history.
- (3) If the Secretary advises the Transport Secretary under subsection (2) that the individual has a qualified criminal record, the advice must be accompanied by a document setting out the aviation-security-relevant offences to which the qualified criminal record relates.
- (4) If the Secretary advises the Transport Secretary under subsection (2) that the individual has an unfavourable criminal history, the Secretary must:
  - (a) inform the issuing body for the ASIC or MSIC of that advice; and
  - (b) if the Transport Secretary is given a document under subsection (3)—give that issuing body a copy of that document.
- (5) If the Secretary advises the Transport Secretary under subsection (2) that the individual has an unfavourable criminal history, the Secretary must inform the individual of that advice and the reasons for that advice.

**15 Advice about background check of an individual—deemed application by an individual**

- (1) This section applies if:
  - (a) an application for a background check of an individual who has applied for, or who holds, an ASIC or MSIC is taken to have been made by the individual under subsection 9(2); and
  - (b) AusCheck undertakes a background check of the individual.

*Advice relating to criminal history*

- (2) The Secretary must advise the individual whether or not the individual has an unfavourable criminal history.
- (3) If the Secretary advises the individual under subsection (2) that the individual has an unfavourable criminal history, the Secretary must give the individual the reasons for that advice.
- (4) If the Secretary advises the individual under subsection (2) that the individual has an unfavourable criminal history, the Secretary must:
  - (a) inform the issuing body for the ASIC or MSIC of that advice; and

- (b) if the individual has a qualified criminal record—give that issuing body a document setting out the aviation-security-relevant offences to which the qualified criminal record relates.

### **16 Secretary must give the Transport Secretary advice about background check etc. in certain circumstances**

- (1) This section applies if:
  - (a) a background check of an individual was undertaken by AusCheck; and
  - (b) the Secretary gave advice under this Subdivision that the individual has an unfavourable criminal record because the individual has an adverse criminal record; and
  - (c) the Transport Secretary informs the Secretary that an application in relation to the individual has been made under:
    - (i) subregulation 6.29(1) or 6.43A(2) of the ATS Regulations; or
    - (ii) subregulation 6.08F(1) or 6.08MA(2) of the MTOFS Regulations.
- (2) The Secretary must give the Transport Secretary the following:
  - (a) the advice referred to in paragraph (1)(b);
  - (b) a document setting out the individual's criminal history;
  - (c) any other information relevant to the background check of the individual.

### **17 Secretary must give further advice if initial advice is inaccurate or incomplete**

If the Secretary becomes aware that advice about a background check of an individual that has been given under this Subdivision is inaccurate or incomplete, the Secretary must give further advice in accordance with this Subdivision that is accurate and complete.

### **18 Secretary may give advice to new issuing body for transferred ASIC or MSIC applications etc.**

If:

- (a) the Transport Secretary tells the Secretary that an issuing body (the *new issuing body*) is to be the issuing body for:
  - (i) transferred ASIC applications or transferred ASICs; or
  - (ii) transferred MSIC applications or transferred MSICs; and
- (b) the Secretary would have been required or authorised to give advice under this Subdivision to the issuing body that was the original issuing body in relation to such an application or such an ASIC or MSIC;

the Secretary may give that advice to the new issuing body.

Note: The Transport Secretary is required to tell the Secretary of the matter mentioned in paragraph (a) of this section under subregulation 6.22(3) of the ATS Regulations or subregulation 6.07ZA(3) of the MTOFS Regulations (as the case may be).

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**Subdivision B—Advice about background checks for national health security purposes**

**19 Advice about background check of an individual—application made by an NHS entity**

- (1) This section applies if:
  - (a) an application for a background check of an individual is made by an NHS entity under the provision referred to in subsection 11(1); and
  - (b) AusCheck undertakes a background check of the individual.

*Advice relating to criminal history etc.*

- (2) The Secretary must advise the NHS entity:
  - (a) whether or not the individual has an unfavourable criminal history; and
  - (b) whether or not a security assessment of the individual is an adverse security assessment or qualified security assessment; and
  - (c) if the background check includes an assessment of information relating to whether the individual is an unlawful non-citizen or holds a visa entitling the individual to work in Australia—the result of that assessment.
- (3) If the Secretary advises the NHS entity under paragraph (2)(a) that the individual has a qualified criminal record, the advice must be accompanied by a document setting out the health security relevant offences to which the qualified criminal record relates.
- (4) If the Secretary advises the NHS entity under paragraph (2)(a) that the individual has an unfavourable criminal history, the Secretary must inform the individual of that advice and the reasons for that advice.

**20 Advice about background check of an individual—application taken to have been made by an NHS entity**

- (1) This section applies if:
  - (a) an application for a background check of an individual is taken to have been made by an NHS entity under paragraph 11(2)(a); and
  - (b) AusCheck undertakes a background check of the individual.

*Advice relating to criminal history*

- (2) The Secretary must advise the NHS entity whether or not the individual has an unfavourable criminal history.
- (3) If the Secretary advises the NHS entity under subsection (2) that the individual has a qualified criminal record, the advice must be accompanied by a document setting out the health security relevant offences to which the qualified criminal record relates.
- (4) If the Secretary advises the NHS entity under subsection (2) that the individual has an unfavourable criminal history, the Secretary must inform the individual of that advice and the reasons for that advice.



**21 Secretary must give further advice if initial advice is inaccurate or incomplete**

If the Secretary becomes aware that advice about a background check of an individual that has been given under this Subdivision is inaccurate or incomplete, the Secretary must give further advice in accordance with this Subdivision that is accurate and complete.

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## Division 6—Online verification service

### 22 Issuing body must give Secretary certain information after background check of an individual

- (1) This section applies if the Secretary gives an issuing body advice (the **background check advice**) about a background check of an individual under section 13.

*Information about individual with operational need for ASIC or MSIC*

- (2) If:
- (a) the issuing body proposes to issue an ASIC or MSIC to the individual; and
  - (b) the application for the background check of the individual did not include the information referred to in paragraph 5(h) or (j) (as the case may be);
- the issuing body must, before issuing the ASIC or MSIC to the individual, give the Secretary that information.

*Information about holder, or proposed holder, of ASIC or MSIC*

- (3) If the issuing body issues, or proposes to issue, an ASIC or MSIC to the individual, the issuing body must, within the notification period, give the Secretary:
- (a) the following information:
    - (i) if the issuing body issues, or proposes to issue, a replacement ASIC or MSIC to the individual because the individual's name has changed—the individual's former and current names;
    - (ii) if subparagraph (i) does not apply—the individual's name;
    - (iii) the number and expiry date of the ASIC or MSIC;
    - (iv) for an ASIC—the locations for which it is, or will be, valid; and
  - (b) a photograph of the individual.
- (4) The Secretary may grant an issuing body an exemption from the requirement to give the Secretary a photograph of an individual under paragraph (3)(b).
- (5) The **notification period** is:
- (a) if the ASIC or MSIC is issued within 30 days after the Secretary gives the background check advice—the period ending at the end of those 30 days; or
  - (b) otherwise—the period ending 30 days after the ASIC or MSIC is issued to the individual.

*Information about cancellation or suspension of ASIC or MSIC*

- (6) If:
- (a) the issuing body issues an ASIC or MSIC to the individual; and
  - (b) the ASIC or MSIC is cancelled or suspended before its expiry date;
- the issuing body must inform the Secretary of the cancellation or suspension within 48 hours after that cancellation or suspension occurs.

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*Information about lost, stolen or destroyed ASIC or MSIC*

- (7) If:
- (a) the issuing body issues an ASIC or MSIC to the individual; and
  - (b) the ASIC or MSIC is lost, stolen or destroyed;
- the issuing body must inform the Secretary of that matter within 48 hours after becoming aware of the loss, theft or destruction.

**23 Issuing body must inform Secretary of decision not to issue ASIC or MSIC to certain individuals**

- If:
- (a) AusCheck undertakes a background check of an individual; and
  - (b) the Secretary advises an issuing body under section 13 that:
    - (i) the individual does not have an unfavourable criminal history; or
    - (ii) the security assessment of the individual is not an adverse security assessment or qualified security assessment; or
    - (iii) the individual is not an unlawful non-citizen; or
    - (iv) the individual holds a visa entitling the individual to work in Australia; and
  - (c) the issuing body decides not to issue an ASIC or MSIC to the individual;
- the issuing body must inform the Secretary of that decision as soon as practicable after the decision is made.

**24 NHS entity must inform Secretary of cancellation or suspension of an authorisation under SSBA Standards**

- If:
- (a) the Secretary gives an NHS entity advice about a background check of an individual under section 19 or 20; and
  - (b) the NHS entity authorises the individual under clause 3.3 of the SSBA Standards for a particular period; and
  - (c) the NHS entity cancels or suspends the authorisation before the end of that period;
- the NHS entity must inform the Secretary of the cancellation or suspension within 48 hours after that cancellation or suspension occurs.

## **Division 7—Other matters**

### **25 Assessment of information relating to an individual's criminal history from foreign countries**

- (1) This section applies if a background check of an individual includes an assessment of information relating to the individual's criminal history.
- (2) The information relating to the individual's criminal history must not include information (the *foreign information*) from a country other than Australia unless the law that requires or authorises the background check of the individual to be conducted under the AusCheck scheme:
  - (a) specifies the circumstances in which the foreign information may be assessed; and
  - (b) sets out the criteria against which the foreign information must be assessed.

### **26 Review by the Administrative Appeals Tribunal**

Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Secretary under Division 5 of this Part to advise that an individual has an unfavourable criminal history.

### **27 Website**

The Secretary must keep a website about the AusCheck scheme.

## **Part 3—AusCheck database**

### **28 Treatment of new issuing body for transferred ASIC or MSIC applications etc. for the purposes of the AusCheck database**

If the Transport Secretary tells the Secretary that an issuing body (the *new issuing body*) is to be the issuing body for:

- (a) transferred ASIC applications or transferred ASICs; or
- (b) transferred MSIC applications or transferred MSICs;

then, for the purposes of the AusCheck database, the new issuing body is taken to be, and to have always been, the issuing body for such an application or such an ASIC or MSIC.

Note: The Transport Secretary is required to tell the Secretary of the matter mentioned in this section under subregulation 6.22(3) of the ATS Regulations or subregulation 6.07ZA(3) of the MTOFS Regulations (as the case may be).

### **29 Guidelines about use and disclosure of information included in AusCheck database**

- (1) The Secretary may issue written guidelines about the use and disclosure of information included in the AusCheck database.
- (2) If the Secretary issues guidelines under subsection (1), an AusCheck staff member must comply with the guidelines.

## Part 4—Miscellaneous matters

### 30 Fees

- (1) The Secretary may charge a fee for an application for a background check of an individual in relation to which expenses are incurred by the Commonwealth under the Act or this instrument.

Note: Under paragraph 18(2)(a) of the Act, a fee must not be such as to amount to taxation.

- (2) The amount of the fee must be based on the nature and complexity of the background check of an individual.

Note 1: A higher fee may be required for an initial background check of an individual than for a subsequent background check of the individual.

Note 2: The fee for a background check of an individual may vary depending on the kinds of information mentioned in section 5 of the Act that are to be assessed as part of the background check.

- (3) If:
- (a) a fee under subsection (1) is payable by an issuing body or NHS entity; and
  - (b) the issuing body or NHS entity is not the Commonwealth or an unincorporated Commonwealth authority;
- the fee is a debt due to the Commonwealth and is recoverable by the Secretary on behalf of the Commonwealth.

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## **Part 5—Transitional, application and savings provisions**

### **31 Transitional provision—applications for background checks**

- (1) This section applies in relation to an application for a background check of an individual if:
  - (a) the application was made, or was taken to have been made, before the repeal of the old regulations; and
  - (b) immediately before that repeal, the application has not been finally dealt with in accordance with the old regulations.
- (2) On and after 1 August 2017, the application is taken to have been made, and may be dealt with, in accordance with this instrument.

### **32 Transitional provision—preliminary assessments**

- (1) This section applies if a notice was given to an individual under regulation 8 of the old regulations before their repeal.

#### *Saving of pre-repeal notices*

- (2) If:
  - (a) the day mentioned in the notice, or nominated by the Secretary under subregulation 8(4) of the old regulations, is on or after the day on which the old regulations are repealed; and
  - (b) the individual has not made any representations to the Secretary immediately before the repeal of the old regulations;the notice continues to have effect, on and after 1 August 2017, as if it had been given under section 12 of this instrument.

#### *Representations made but not considered before repeal*

- (3) If:
  - (a) the individual made representations to the Secretary in accordance with the notice before the repeal of the old regulations; and
  - (b) immediately before that repeal, the Secretary has not considered the representations;subsection 12(6) of this instrument applies, on and after 1 August 2017, in relation to the representations.

### **33 Application provision—requirement to give advice to Transport Secretary in certain circumstances**

- If:
- (a) before the repeal of the old regulations, the Transport Secretary told the Secretary of a matter relating to an individual that is mentioned in paragraph 10(1)(c) of the old regulations; and

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- (b) immediately before that repeal, the Secretary has not complied with subregulation 10(1A) of the old regulations;
- the Secretary must, on or after 1 August 2017, comply with subsection 16(2) of this instrument in relation to the individual.

### **34 Application provision—online verification service requirements**

- (1) This section applies if:
  - (a) before the repeal of the old regulations, an issuing body or NHS entity was required to comply with regulation 14 or 14A of the old regulations in relation to a matter relating to an individual; and
  - (b) immediately before that repeal, the time for complying with regulation 14 or 14A of the old regulations (as the case may be) has not ended.
- (2) On and after 1 August 2017, the issuing body or NHS entity is required to comply with whichever of sections 22, 23 and 24 of this instrument are applicable in relation to the matter relating to the individual.

### **35 Savings provision—guidelines**

- If:
- (a) guidelines were issued under regulation 15 of the old regulations; and
  - (b) the guidelines were in force immediately before the repeal of the old regulations;
- the guidelines continue in force, and may be dealt with, on and after 1 August 2017 as if they had been issued under section 29 of this instrument.