

EXPLANATORY STATEMENT

Subject — *AusCheck Act 2007*
AusCheck Regulations 2017
Aviation Transport Security Act 2004
Aviation Transport Security Regulations 2005
Maritime Transport and Offshore Facilities Security Act 2003
Maritime Transport and Offshore Facilities Security Regulations 2003
AusCheck Legislation Amendment (Required Information) Regulations 2019

The *AusCheck Act 2007* (the AusCheck Act) establishes a background checking function within the Department of Home Affairs. The purpose of the AusCheck Act is to provide a regulatory framework for coordinating and conducting centralised criminal, security and other background checking and for related purposes. The Act enhances national security by providing a consistent approach to background checking for individuals who require unsupervised access to secure areas of airports, seaports and facilities that handle security sensitive biological agents. The AusCheck Act also aims to assist law enforcement and national security agencies to respond to security incidents and perform their functions.

Section 18 of the AusCheck Act provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed; or, necessary or convenient to be prescribed for carrying out or giving effect to this Act. Section 8 of the Act states that the regulations may provide for the establishment of the AusCheck scheme. Subsection 9(1) of the Act provides that the AusCheck scheme may make provision for: the making of applications for background checks; the information that is to be contained in an application for a background check; and, the decision or decision(s) that may be made as a result of an application for a background check.

The *AusCheck Regulations 2017* (the Principal Regulations) establish the AusCheck scheme, which relates to the conduct and coordination of background checks by AusCheck for the purposes of the *Aviation Transport Security Act 2004* (the Aviation Act), *Maritime Transport and Offshore Facilities Security Act 2003* (the Maritime Act), *National Health Security Act 2007*, and any other Act that expressly requires or permits a background check to be conducted under the AusCheck scheme. The Principal Regulations outline a range of administrative matters for the operation of the AusCheck scheme, in particular, the information which is required in an application for a background check.

The *Aviation Transport Security Regulations 2005* (the Aviation Regulations) and the *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Maritime Regulations) establish the regulatory framework for the aviation security identification card (ASIC) and maritime security identification card (MSIC) schemes. A person requiring unescorted access to security-sensitive areas of security controlled airports or security regulated ports, or carrying out certain security-relevant roles (such as a screening officer at an airport) must hold a valid ASIC or MSIC. A background check under the AusCheck scheme is one of the prerequisites for issuance of an ASIC or MSIC.

Subsection 133(1) of the Aviation 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.

Subsection 209(1) of the Maritime 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.

The *AusCheck Legislation Amendment (Required Information) Regulations 2019* provide for more reliable and accurate outcomes from the processes of the AusCheck scheme, and improve security outcomes, by:

- Clarifying name information required for a background check and other application requirements; and
- Authorising the Secretary to issue directions to ensure such information is provided and application requirements are met; and
- Authorising the Secretary to initiate a new background check if there is a reasonable suspicion that the provided information for an initial background check was incomplete or the application requirements were not met;
- Authorising the Secretary to cancel a background check where all required information was not provided on request;
- Authorising the Secretary to charge for costs incurred as a result of additional work undertaken because further information was requested; and
- Requiring ASICs and MSICs to be cancelled where an issuing body is advised that a background check on the holder has been cancelled.

The Australian Federal Police, Australian Criminal Intelligence Commission, Australian Security Intelligence Organisation, the Attorney-General's Department and the Australian Government Solicitor and the Department of Health have been consulted on the proposed amendments. All consultations were supportive of the proposed amendment.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate. A copy of the Statement is at Attachment A.

Details of the Regulations are set out in the Attachment B.

The AusCheck, Aviation and Maritime Acts do not specify any conditions which need to be satisfied before the respective powers to make the Regulations can be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 July 2019.

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

Authority:

Section 18 of the
AusCheck Act 2007

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

Subsection 209(1) of the
Maritime Transport and Offshore Facilities Security Act 2003

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

AusCheck Legislation Amendment (Required Information) Regulations 2019

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

This Disallowable Legislative Instrument amends the *AusCheck Regulations 2017* (AusCheck Regulations), the *Aviation Transport Security Regulations 2005* (Aviation Regulations) and the *Maritime Transport Security Regulations 2003* (Maritime Regulations) to:

- clarify the information required in an application for a background check and other application requirements;
- authorise the Secretary to request an individual or applicant for a background check do a specified thing (including giving specified information) to ensure such information is provided and application requirements are met;
- authorise the Secretary to initiate a new background check if there is a reasonable suspicion that the information provided for an initial background check was incomplete or the application requirements were not met;
- authorise the Secretary to cancel a background check where a request to do a specified thing is not complied with;
- authorise the Secretary to charge for costs incurred as a result of additional work undertaken because of a request to do a specified thing;
- authorise the Secretary to approve the form and specify requirements of an application for a background check; and
- require an ASIC or MSIC to be cancelled where an issuing body is advised that a background check on the holder has been cancelled.

These amendments will strengthen background checking requirements and improve security outcomes by tightening potential loopholes in the AusCheck and the ASIC and MSIC schemes.

The AusCheck Regulations were made in July 2017 and their compatibility with human rights was considered by the Parliamentary Joint Committee on Human Rights within report 11 of 2017. Prior to this legislative instrument amending the regulations, section 5 of the AusCheck Regulations stated that ‘required information’ for an individual to whom an application for a background check relates includes:

- a) the individual’s name, gender and date and place of birth; and
- b) any other name by which the individual is or was known.

This was intended to include ‘middle’ names, ‘maiden’ names, and aliases. Applicants were also required to provide (as relevant) their residential addresses covering the previous 10 years, preferred mailing address, preferred telephone contact number, preferred email address, the name and address of their employer, the name and address of their educational institution, and their visa information.

This Disallowable Legislative Instrument provides greater detail in the AusCheck Regulations, reflecting the original intention for ‘required information’. The criminal history and national security components of a background check utilises name information. To ensure the background check is as comprehensive as possible, it should take into account the full range of names associated with a person. This in turn ensures that a background check can most effectively support the national security outcomes of the ASIC, MSIC and NHS schemes, and in future the major national events scheme.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- Right to privacy – Article 17(1) of the *International Covenant on Civil and Political Rights* (ICCPR)
- Right to work – Article 6(1) of the *International Covenant on Economic Social and Cultural Rights* (ICESCR)

Right to privacy

Article 17(1) of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy. Parts 2 and 3 of the instrument engage the right to privacy by providing for the collection, use, storage and disclosure of personal information particularly names.

The instrument’s limit on the right to privacy is authorised by section 13 of the *AusCheck Act 2007* (the Act). The purpose of the authorisation in relation to the AusCheck scheme is to:

- determine whether a background check is required or permitted
- conduct or advise on the outcome of a background check
- update information on an individual who has undertaken a background check
- verify the identity of an individual, and
- provide an online card verification service.

The purpose of collecting, using, storing and disclosing information is reasonable and necessary to pursue the objective of national security. This is achieved by using an individual’s names to identify and disclose whether they would constitute a threat to particular national facilities. The clarification of information does not provide an additional onus on an individual applying for a background check as they are currently already required to provide name information. Therefore the additional privacy impact the Disallowable Legislative Instrument poses is minimal, however the improvement to national security outcomes could be significant. The collection and storage of personal information also assists law enforcement agencies to respond to security incidents by providing an up-to-date database of individuals with access to areas such as secure zones in airports and seaports.

Appropriate safeguards exist to ensure that use of an individual's personal information is reasonable and proportionate. Personal information is provided voluntarily by an individual with their consent to it being used for a background check. An individual is provided with a privacy notice by AusCheck detailing how their information will be utilised to ensure informed consent. AusCheck will update the privacy notice to capture the amendments in the Disallowable Legislative Instrument. Section 29 of the AusCheck Regulations allows the Secretary of the department to issue guidelines about the use and disclosure of information on the AusCheck database. The guidelines are currently publically available on the department's website. All AusCheck staff members are required to comply with the guidelines. Section 15 of the Act also provides an offence provision for AusCheck staff members who unlawfully disclose AusCheck scheme personal information.

Right to work

Article 6(1) of the ICESCR provides the right of everyone to work and have the opportunity to gain a living by work. The assessment by AusCheck of an individual's criminal history, or cancellation of a background check by AusCheck, may lead to a circumstance where an individual is ineligible to hold certain security cards such as ASICs and MSICs without additional approval or an additional finalised background check. Holding an ASIC or MSIC is an essential requirement for people who need to work unsupervised in secure zones in airports, seaports and offshore facilities, for example, baggage handlers, air stewards and dockworkers. It is also a pre-requisite for individuals carrying out certain security-relevant roles, such as screening officers at airports, and airport security guards. AusCheck's assessment, or cancellation of a background check, could limit the right to work of some individuals wishing to undertake security-relevant roles, or work in security sensitive areas at regulated airports, seaports and offshore facilities. The assessment of AusCheck of an individual's criminal history, or cancellation of a background check by AusCheck, may also lead to a circumstance where an individual does not become an authorised person under the NHS scheme without an additional approval or an additional finalised background check. Becoming an authorised person is an essential requirement for people who need to, unescorted or unsupervised, handle secure sensitive biological agents (SSBAs), access a facility where SSBAs are handled or access sensitive information related to SSBAs. AusCheck's assessment, or cancellation of a background check, could limit the right to work of some individuals wishing to undertake roles that require the handling of SSBAs, access to a facility where SSBAs are handled or access to sensitive information related to SSBAs.

Article 4 of the ICESCR provides that countries may limit economic, social and cultural rights if those limits are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society. The outcome of an unfavourable criminal history is an appealable decision. Under the ASIC and MSIC schemes a person with an adverse security record may apply under the Aviation Regulations or Maritime Regulations for discretionary approval to be issued an ASIC or MSIC on the basis that they are not a threat to aviation or maritime transport security, despite their criminal history. The limitation is considered to be reasonable and necessary to promote general welfare in a democratic society.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Details of the *AusCheck Legislation Amendment (Required Information) Regulations 2019*

Section 1 – Name

This section provides that the title of the Regulations is the *AusCheck Legislation Amendment (Required Information) Regulations 2019*.

Section 2 – Commencement

This section provides that the Regulations to commence on 1 July 2019.

Section 3 – Authority

This section provides that the Regulations are to be made under the *AusCheck Act 2007*, the *Aviation Transport Security Act 2004* and the *Maritime Transport and Offshore Facilities Security Act 2003*.

Section 4 – Schedules

This section provides that each instrument specified in a schedule to this instrument is amended or repealed as set out in this instrument and any other item in a schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Part 1 – Required information

Division 1 – Definitions

Item 1 – Section 4

Item 1 inserts a definition of ‘full name’ to clarify that any reference throughout the Regulations to an individual’s ‘full name’ includes any middle name(s).

Division 2 – Applications for background checks

Item 2 – Section 5

Item 2 provides new numbering of the paragraphs of section 5. Item 15 inserts “(1)” before “The *required information*”.

Item 3 – Paragraphs 5(a) and (b)

Paragraph 5 outlines the required information for an application for a background check. Item 3 repeals paragraphs 5(a) and (b) and substitutes these with paragraphs 5(a), (aa), (ab), (b), (ba) and (bb).

The regulations provide that required information is:

- (a) the individual’s current full name;
- (aa) all former full names of the individual, if the individual has any;

(ab) all other names, titles, pseudonyms and aliases by which the person is or was known or which the person uses or has used to identify himself or herself, if the individual has any;

(b) the individual's gender;

(ba) the individual's date of birth;

(bb) the individual's place of birth.

The purpose of these subparagraphs is to ensure that full and correct identification information is provided in applications for background checks and therefore that accurate background checks can be conducted. The regulation provides greater clarity in the information required to be included by applicants in their application for a background check.

Item 4 – At the end of section 5

Item 4 adds a new subsection 5(2) at the end of section 5. The subsection provides that for the purposes of paragraph (1)(ab), variants (including variants in spelling) of a name, title, pseudonym or alias are taken to be different names, titles, pseudonyms or aliases.

Two examples provide that Matthew and Mathew are different names, and John and Jack are different names.

The purpose of this subsection is to ensure that full and correct identification information is provided in applications for background checks and therefore that accurate background checks can be conducted. The regulation provides greater clarity in the information required to be included by applicants in their application for a background check.

Item 5 – Paragraph 8(3)(b)

Item 5 inserts the phrase “all of” after the word “include” in subsection 8(3)(b). The purpose of inserting “all of” in subsection 8(3)(b) is to clarify for applicants that the required information which must be included in an application made under subsection (1)(a) is the entirety of the required information outlined in section 5.

Item 6 – At the end of subsection 8(3)

Subsection 8(3) provides the manner and substance requirements of an application for a background check.

Item 6 inserts two paragraphs to subsection 8(3). Paragraph 8(3)(c) provides that an application be made in the form (if any) approved for the purposes of this paragraph under subsection (6); and paragraph 8(3)(d) that an application must meet any other requirements specified by the Secretary under subsection (7).

These paragraphs give operational effect to new subsections 8(6) and 8(7), as introduced in Item 9 of this instrument.

Item 7 – Paragraph 8(4)(b)

Paragraph 8(4)(b) provides for the substance requirements of an application for a background check made under a provision referred to in paragraph (1)(b). These applications are made by the Transport Secretary under the Aviation Regulations and Maritime Regulations.

Item 7 repeals paragraph 8(4)(b) and substitutes it with paragraphs (b) and (c). Paragraph 8(4)(b) provides that an application is to be made in the form (if any) approved for the

purposes of this paragraph under subsection (6); and paragraph 8(4)(c) provides that an application must meet any other requirements specified by the Secretary under subsection (7).

These subsections give operational effect to new subsections 8(6) and 8(7), as introduced in Item 9 of this instrument and allow for greater flexibility in setting the form and requirements for such applications.

Item 8 – At the end of subsection 8(5)

Subsection 8(5) provides for the form and substance of an application made under a provision referred to in subsection 8(2).

Item 8 adds paragraphs (c), (d) and (e) to subsection 8(5). Paragraph (c) provides that such an application must include all the required information for the individual mentioned in paragraphs 5(1)(a), (aa), (ab), (ba) and (c).

The purpose of the subparagraph is to ensure that full and accurate information is received in an application and that accurate background checks can be completed by providing certainty to the information which must be contained in an application for a background check made under this subsection.

Paragraphs (d) and (e) provide that such an application must be in the form (if any) approved under subsection (6) and meet any other requirements specified by the Secretary under subsection (7).

These subsections give operational effect to new subsections 8(6) and 8(7), as introduced in Item 9 of this instrument.

Item 9 – At the end of section 8

Item 9 introduces new subsections 8(6) and 8(7), which provide that the Secretary may, in writing, approve a form for the purposes of paragraph (3)(c), 4(b) or 5(d) or specify requirements for the purposes of paragraph (3)(d), (4)(c) or (5)(e).

The purpose of these subsections is to ensure that the Secretary has flexibility to consider and address matters of practice or efficiency which, in turn, allows the smooth continuance of the background checking process.

Item 10 – Paragraph 11(3)(b)

Item 10 inserts the phrase “all of” after the word “include” in subsection 11(3)(b). The purpose of inserting “all of” in subsection 11(3)(b) is to clarify for applicants that the required information which must be included in an application made under subsection (1) is the entirety of the required information outlined in section 5.

Item 11 – At the end of subsection 11(3)

Subsection 11(3) provides for the form and substance of an application made under a provision referred to in subsection 11(1).

Item 11 adds paragraphs (c) and (d) to subsection 11(3) which provide that such an application must be in the form (if any) approved under subsection (4) and meet any other requirements specified by the Secretary under subsection (5).

These subparagraphs give operational effect to new subsections 11(4) and 11(5), as introduced in Item 12 of this instrument.

Item 12 – At the end of section 11

Item 12 introduces subsections 11(4) and 11(5), which provide that the Secretary may, in writing, approve a form for the purposes of subsection (3)(c) or specify requirements for the purposes of subsection (3)(d).

The purpose of these subsections is to ensure that the Secretary has flexibility to consider and address matters of practice or efficiency which, in turn, allows the smooth continuance of the background checking process.

Division 3 – Online verification service

Item 13 – Paragraph 22(2)(b)

Item 13 omits “paragraph 5(h)” and substitutes it with “paragraph 5(1)(h)”. The purpose of this substitution is to ensure consistency with the new numbering in section 5.

Item 14 – Subparagraph 22(3)(a)(i)

Item 14 inserts the word “full” before the word “name” in subparagraph 22(3)(a)(i). The purpose of this insertion is to clarify that the reference to an individual’s name means their “full name” as inserted into the definitions of the Regulations by Item 1 of this instrument.

Item 15 – Subparagraph 22(3)(a)(i)

Item 15 inserts the word “full” before the word “names” in subparagraph 22(3)(a)(i). The purpose of this is to clarify that the reference to an individual’s name means their “full name” as inserted into the definitions of the Regulations by Item 1 of this instrument.

Item 16 – Subparagraph 22(3)(a)(ii)

Item 16 inserts the word “full” before the word “name” in subparagraph 22(3)(a)(ii). The purpose of this is to clarify that the reference to an individual’s name means their “full name” as inserted into the definitions of the Regulations by Item 1 of this instrument.

Part 2 – Requests for Information

Item 17 – After Division 3 of Part 2

Item 17 inserts new Division 3A after Division 3 of Part 2.

Division 3A – Further information etc. for background checks.

Division 3A facilitates the making of requests for further information for background checks.

Section 11A provides the Secretary authority to make a request of the applicant if the Secretary reasonably suspects that the request is necessary to undertake the background check.

Subsection 11A(1) provides that this section applies if an application is made for a background check of an individual.

Subsection 11A(2) provides that the Secretary may make a request, in writing, to either the individual, the issuing body or NHS entity that applied for the background check (if the individual did not apply for the background check) or, if the individual holds an ASIC or MSIC – the issuing body that issued the card, to do a specified thing.

Subsection 11A(2) further outlines when the Secretary may make such a request to do a specified thing. These circumstances are where the Secretary reasonably suspects that doing the thing is necessary for the purposes of (d) meeting any requirements of this instrument for the application; or (e) ensuring that all required information has been obtained; or (f) meeting any requirements specified for the purposes of this paragraph under subsection (3) of this section in relation to the application, if it was made under subsection 9(2), 10(2), 11(2), 16A(3) or 20B(3); or (g) completing the background check.

Subsection 11A(3) provides that the Secretary may, by notifiable instrument, specify requirements for the purposes of subparagraph (2)(f) of this section. This provision exempts an instrument made under subsection 11A(3) from being a legislative instrument and provides that it is to be made as a notifiable instrument. It is appropriate for instruments made under subsection 11A(3) to be notifiable instruments, and not legislative instruments, to ensure the Secretary has flexibility to consider and address matters of practice and efficiency in the background checking process, which will enhance security outcomes.

Subsection 11A(4) provides that the request made under subsection 11A(1) must specify the day on or before which the thing must be done, and this day must be at least 30 days after the date of the notice. Under subsection 11A(5), the Secretary may, on application in writing, extend the time for doing the thing and specify a later day on or before which the thing must be done.

Subsection 11A(6) provides that any information given in response to the request is taken to form part of the application for the background check, for the purposes of the AusCheck Scheme.

Subsection 11A(7) provides that the Secretary may cancel the background check if the thing is not done by the specified day. The note provides to see also sections 15A and 20A (AusCheck may advise issuing body etc. of the cancellation).

The purpose of this section is to ensure that all identification information which is necessary to undertake an accurate background check will be obtained from the applicant by providing a power to the Secretary to request further information for applications if the information provided is incomplete, prescribing the requirements of such a request and the consequences of an applicant's failure to comply.

Item 18 – subparagraph 13(1)(a)(ii)

Item 18 inserts “or 16A(3)” after “subsection 10(2)” in subparagraph 13(1)(a)(ii). The purpose of this insertion is to ensure that the provision of advice requirements under section 13 apply to an application for a background check made under subsection 16A(3).

Item 19 – Subsection 13(5)

Item 19 inserts “or 16A(3)” after “subsection 10(2)” in subsection 13(5). The purpose of this insertion is to ensure that the provision of advice requirements under section 13 will apply to an application for a background check made under subsection 16A(3).

Item 20 – Paragraph 13(7)(a)

Item 20 inserts “or 16A(3)” after “subsection 10(2)” in paragraph 13(7)(a). The purpose of this insertion is to ensure that the provision of advice requirements under section 13 will apply to an application for a background check made under subsection 16A(3).

Item 21 – After section 15

Item 21 inserts section 15A after section 15.

Section 15A provides that if the Secretary cancels a background check of an individual under subsection 11A(7) and had AusCheck completed the check, the Secretary required or authorised under this Division to give the individual, an issuing body or the Transport Secretary, advice or a document or a copy of a document (or would have been so permitted or authorised depending on the results of the background check); the Secretary must advise the advisee that the background check is cancelled.

Item 22 – After section 16

Item 22 inserts section 16A after section 16.

Section 16A provides that AusCheck may undertake new background checks in the prescribed circumstances.

Subsection 16A(1) provides for the circumstances under which section 16A may apply. The subsection provides that the section applies if the Secretary gives advice about a background check (the *original check*) under this Subdivision. Additionally, the section applies if the Secretary later reasonably suspects that any of the requirements for the application for the original check were not satisfied; or, that the Secretary did not have all of the required information for the individual when AusCheck undertook the original check; or, any of the requirements specified for the purposes of paragraph 11A(2)(f) under subsection 11A(3) in relation to the application for the original check were not satisfied; or, that the advice is inaccurate or incomplete.

Subsection 16A(2) provides that AusCheck may undertake a new background check of the individual.

Subsection 16A(3) provides that if AusCheck does undertake a new background check, the person who applied for the original check is taken to have applied for the new background check and the application for the new background check is taken to be the same as the application for the original check. A note provides that paragraph (b) may be relevant to whether the Secretary may make a request under subsection 11(2) in relation to the application.

The purpose of this section is to ensure that accurate background checks are conducted, accurate advice is given on the basis of background checks and to improve security outcomes. This purpose is achieved by giving AusCheck the power to undertake a new background check where it becomes apparent that any of the requirements for the application for the original check were not satisfied, or the required information for the initial background check was inaccurate or incomplete.

Item 23 – Paragraph 20(1)(a)

Item 23 inserts “or subsection 20B(3)” after “paragraph 11(2)(a)” to paragraph 20(1)(a). The purpose of this insertion is to ensure that the giving advice requirements under section 20 will apply to an application for a background check made under subsection 20B(3).

Item 24 – After section 20

Item 80 inserts section 20A and section 20B after section 20.

Section 20A – Advice about background check that is cancelled

Section 20A provides that advice about a background check that is cancelled may be given to the NHS entity.

Proposed section 20A would provide that if an NHS entity applies for a background check of an individual and the Secretary cancels the background check under subsection 11A(7), the Secretary must advise the NHS entity and the individual that the background check is cancelled.

Section 20B – AusCheck may undertake new background checks

Section 20B provides that AusCheck may undertake new background checks in the prescribed circumstances and processes.

Subsection 20B(1) provides that this section applies if the Secretary gives advice about a background check of an individual under this Subdivision and the Secretary later reasonably suspects that any of the requirements for the application for the original check were not satisfied; or, that the Secretary did not have all of the required information for the individual when AusCheck undertook the original check; or, any of the requirements specified for the purposes of paragraph 11A(2)(f) under subsection 11A(3) in relation to the application for the original check were not satisfied; or, that the advice is inaccurate or incomplete.

Subsection 20B(2) provides that AusCheck may undertake a new background check of the individual.

Subsection 20B(3) provides that if AusCheck does undertake a new background check, the NHS entity that applied for the original check is taken to have applied for the new background check and the application for the new background check is taken to be the same as the application for the original check. A note provides that paragraph (b) may be relevant to whether the Secretary may make a request under subsection 11(2) in relation to the application.

The purpose of this section is to ensure that accurate background checks are conducted, accurate advice is given on the basis of background checks and to improve security outcomes. This purpose is achieved by giving AusCheck the power to undertake a new background check where it becomes apparent that any of the requirements for the application for the original check were not satisfied, or the required information for the initial background check was inaccurate or incomplete.

Item 25 – Subsection 30(1)

Item 25 repeals subsection 30(1) (including the note) and substitutes it with new subsection 30(1). The new subsection provides that the Secretary may charge a fee under this subsection for an application for a background check.

The purpose of this subsection is to ensure that the Secretary may charge a fee for costs incurred as a result of conducting background checks.

Item 26 – After subsection 30(2)

Item 26 inserts new subsection (2A) which provides that the Secretary may charge a fee under this subsection for an application for a background check of an individual if the Secretary makes a request in relation to an application under section 11A(2) and the background check is not cancelled under subsection 11A(7).

The purpose of this subsection is to ensure that the Secretary may charge for costs incurred as a result of requesting and receiving further required information and the background check is not cancelled.

Item 26 also inserts new subsection (2B) which provides that the amount of the fee must be based on the nature and complexity of the background check and the effect on the background check of the need to make a request under subsection 11A(2).

The purpose of this subsection is to ensure that the fee charged will be appropriate, as it will be a second fee charged on one application.

Item 26 also inserts new subsection (2C) which provides that a fee under (2A) is in addition to any fee the Secretary charges for the application under subsection (1).

The purpose of this subsection is to clarify that an applicant can be charged multiple fees in respect of one application if the Secretary reasonably suspects the applicant failed to provide all required information or meet application requirements and the Secretary requests a specified thing is done in regard to that application.

Item 27 – Paragraph 30(3)(a)

Item 27 inserts “or (2A)” after “subsection (1)” in paragraph 30(3)(a). The purpose of this insertion is to ensure that fees charged under subsection 2A are categorised as debts due to the Commonwealth.

Item 28 – At the end of section 30

Section 30 provides for the charging of fees for applications for background checks.

Item 28 inserts subsection 30(4) which provides that a fee may be charged under subsection (1) or (2A) only if the Commonwealth incurs expense in relation to the matter.

The note provides that under paragraph 18(2)(a) of the AusCheck Act, a fee must not be such as to amount to taxation.

The purpose of this subsection is to clarify that the fee charged must be in respect of expenses incurred by the Commonwealth.

Aviation Transport Security Regulations 2005

Item 29 – After paragraph 6.43(2)(db)

Paragraph 6.43(2) provides for the circumstances under which an issuing body must immediately cancel an ASIC issued by the body.

Item 29 inserts paragraph (dc) after paragraph 6.43(2)(db) which introduces a new circumstance under which an issuing body must immediately cancel an ASIC where a background check of the holder is undertaken in response to an application made under regulation 6.27AA of these Regulations or under subsections 9(2) or 16A(3) of the *AusCheck Regulations 2017* and the Secretary AGD advises the issuing body under section 15A of the *AusCheck Regulations 2017* that the background check is cancelled.

The purpose of this paragraph is to enhance security outcomes by authorising the cancellation of an ASIC where a background check has been undertaken and subsequently cancelled under the *AusCheck Regulations 2017*. A decision to cancel an ASIC under regulation 6.43 is a reviewable decision.

Maritime Transport and Offshore Facilities Security Regulations 2003

Item 30 – After paragraph 6.08M(1)(eb)

Paragraph 6.08M(1) provides for the circumstances under which an issuing body must immediately cancel an MSIC issued by the body.

Item 30 inserts paragraph (ec) after paragraph 6.08M(1)(eb) which introduces a new circumstance under which an issuing body must immediately cancel an MSIC where a background check of the holder is undertaken in response to an application made under regulation 6.08BA or 6.08LC of these Regulations or under subsection 9(2), 10(2) or 16A(3) of the *AusCheck Regulations 2017* and the Secretary AGD advises the issuing body under section 15A of the *AusCheck Regulations 2017* that the background check is cancelled.

The purpose of this paragraph is to enhance security outcomes by authorising the cancellation of an MSIC where a background check has been undertaken and subsequently cancelled under the *AusCheck Regulations 2017*. A decision to cancel an MSIC under regulation 6.08M is a reviewable decision.

Part 3 – Application of Amendments

Item 31 – At the end of Part 5

Item 130 inserts new Division 3.

Division 3 – AusCheck Amendment (Application Requirements) Regulations 2019

Division 3 clarifies and facilitates the application of the amendments.

Section 37 is the application provision and sets out the application of the amendments made by this instrument. Subsection 37(1) provides that the amendments made by Division 2 of Part 1 of Schedule 1 to this instrument apply in relation to applications for background checks made on or after 1 July 2019.

Subsection 37(2) provides that the amendments made by Division 3 of Part 1 of Schedule 1 to this instrument apply in relation to issuing, or proposing to issue an ASIC or MSIC if the notification period ends on or after 1 July 2019 and the issuing body did not give the Secretary the matters required by subsection 22(3) of this instrument (as in force on 30 June 2019) in relation to the ASIC or MSIC on or before 30 June 2019.

Subsection 37(3) provides that section 11A, as inserted by this instrument, applies in relation to an application for a background check made on or before 30 June 2019 if that background check was not completed on or before 30 June 2019, or to an application for a background check made on or after 1 July 2019.

Subsection 37(4) provides that for the purposes of sections 16A and 20B of this instrument, it does not matter whether the Secretary gave the advice about the original check before, on or after 1 July 2019.

Subsection 37(5) provides that the amendments of subsection 30(1) made by this instrument does not apply in relation to a fee charged on or before 30 June 2019.

Subsection 37(6) provides that subsections 30(2A), (2B) and (2C), as inserted by this instrument, apply in relation to a request made under subsection 11A(2) on or after 1 July 2019, whether the application for the background check was made before, on or after 1 July 2019.

The purpose of the retrospectivity provided in subsections (3) and (4) is to enhance security outcomes by providing that a request for further information can be made and new background checks can be conducted where applications made before 1 July 2019 have been found to be incomplete or inaccurate.

The purpose of this section is to ensure that applicants and issuing bodies are able to fully implement the amendments into the relevant processes, and to ensure that no transitional provisions are required.