



## **AusCheck Legislation Amendment (Required Information) Regulations 2019**

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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 21 March 2019

Peter Cosgrove  
Governor-General

By His Excellency's Command

Peter Dutton  
Minister for Home Affairs

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## 1 Name

This instrument is the *AusCheck Legislation Amendment (Required Information) Regulations 2019*.

## 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 July 2019.	1 July 2019

Note: This table relates only to the provisions of this instrument as originally made.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 following:

- (a) the *AusCheck Act 2007*;
- (b) the *Aviation Transport Security Act 2004*;
- (c) the *Maritime Transport and Offshore Facilities Security Act 2003*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

##### *AusCheck Regulations 2017*

#### 1 Section 4

Insert:

*full name*: to avoid doubt, the *full name* of an individual includes any middle names.

#### Division 2—Applications for background checks

##### *AusCheck Regulations 2017*

#### 2 Section 5

Before “The *required information*”, insert “(1)”.

#### 3 Paragraphs 5(a) and (b)

Repeal the paragraphs, substitute:

- (a) the individual’s current full name;
- (aa) all former full names of the individual (if 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 any) (see subsection (2));
- (b) the individual’s gender;
- (ba) the individual’s date of birth;
- (bb) the individual’s place of birth;

#### 4 At the end of section 5

Add:

- (2) 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.

Example 1: Mathew and Matthew are taken to be different names.

Example 2: John and Jack are taken to be different names.

#### 5 Paragraph 8(3)(b)

After “include”, insert “all of”.

#### 6 At the end of subsection 8(3)

Add:

- ; and (c) be made in the form (if any) approved for the purposes of this paragraph under subsection (6); and

- (d) meet any other requirements specified by the Secretary for the purposes of this paragraph under subsection (7).

### **7 Paragraph 8(4)(b)**

Repeal the paragraph, substitute:

- (b) be made in the form (if any) approved for the purposes of this paragraph under subsection (6); and
- (c) meet any other requirements specified by the Secretary for the purposes of this paragraph under subsection (7).

### **8 At the end of subsection 8(5)**

Add:

- ; and (c) include all of the required information for the individual mentioned in paragraphs 5(1)(a), (aa), (ab), (ba) and (c); and
- (d) be made in the form (if any) approved for the purposes of this paragraph under subsection (6); and
- (e) meet any other requirements specified by the Secretary for the purposes of this paragraph under subsection (7).

### **9 At the end of section 8**

Add:

- (6) The Secretary may, in writing, approve a form for the purposes of paragraph (3)(c), (4)(b) or (5)(d).
- (7) The Secretary may, by notifiable instrument, specify requirements for the purposes of paragraph (3)(d), (4)(c) or (5)(e).

### **10 Paragraph 11(3)(b)**

After “include”, insert “all of”.

### **11 At the end of subsection 11(3)**

Add:

- ; and (c) be made in the form (if any) approved for the purposes of this subsection under subsection (4); and
- (d) meet any other requirements specified by the Secretary for the purposes of this subsection under subsection (5).

### **12 At the end of section 11**

Add:

- (4) The Secretary may, in writing, approve a form for the purposes of paragraph (3)(c).
- (5) The Secretary may, by notifiable instrument, specify requirements for the purposes of paragraph (3)(d).

### **Division 3—Online verification service**

#### *AusCheck Regulations 2017*

**13 Paragraph 22(2)(b)**

Omit “paragraph 5(h)”, substitute “paragraph 5(1)(h)”.

**14 Subparagraph 22(3)(a)(i)**

Before “name”, insert “full”.

**15 Subparagraph 22(3)(a)(i)**

Before “names”, insert “full”.

**16 Subparagraph 22(3)(a)(ii)**

Before “name”, insert “full”.



## **Part 2—Requests for information**

### *AusCheck Regulations 2017*

#### **17 After Division 3 of Part 2**

Insert:

#### **Division 3A—Further information etc. for background checks**

##### **11A Secretary may request information etc. for background checks**

- (1) This section applies if an application is made for a background check of an individual.

*Secretary may request information etc.*

- (2) The Secretary may, in writing, request:
- (a) the individual; or
  - (b) the issuing body or NHS entity that applied for the background check (if the individual did not apply for the background check); or
  - (c) if the individual holds an ASIC or MSIC—the issuing body that issued the card;
- to do a specified thing (including giving specified information) if 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  
Example: The requirements of subsection 8(3), (4), (5) or 11(3).
  - (e) ensuring that the Secretary has all of the required information for the individual; or
  - (f) if the application is made under subsection 9(2), 10(2), 11(2), 16A(3) or 20B(3)—meeting any requirements specified for the purposes of this paragraph under subsection (3) of this section in relation to the application; or
  - (g) completing the background check.
- (3) The Secretary may, by notifiable instrument, specify requirements for the purposes of paragraph (2)(f).

*Day by which request must be complied with*

- (4) The request must specify the day on or before which the thing must be done. The day must be at least 30 days after the date of the notice.
- (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.

*Information taken to be included in application*

- (6) For the purposes of the AusCheck scheme, any information given to the Secretary in response to the request is taken to form part of the application for the background check.

*Consequences if request not complied with*

- (7) The Secretary may cancel the background check if the thing is not done by the specified day.

Note: See also sections 15A and 20A (AusCheck may advise issuing body etc. of the cancellation).

**18 Subparagraph 13(1)(a)(ii)**

After “subsection 10(2)”, insert “or 16A(3)”.

**19 Subsection 13(5)**

After “subsection 10(2)”, insert “or 16A(3)”.

**20 Paragraph 13(7)(a)**

After “subsection 10(2)”, insert “or 16A(3)”.

**21 After section 15**

Insert:

**15A Advice about background check that is cancelled**

If:

- (a) the Secretary cancels a background check of an individual under subsection 11A(7); and
- (b) had AusCheck completed the check, the Secretary would have been required or authorised under this Subdivision to give to the individual, an issuing body, or the Transport Secretary, (the *advisee*):
  - (i) advice; or
  - (ii) a document or a copy of a document;(or would have been so required or authorised depending on the results of the background check);

the Secretary must advise the advisee that the background check is cancelled.

**22 After section 16**

Insert:

**16A AusCheck may undertake new background checks**

- (1) This section applies if:
  - (a) the Secretary gives advice about a background check (the *original check*) of an individual under this Subdivision; and
  - (b) the Secretary later reasonably suspects that:
    - (i) any of the requirements of this instrument for the application for the original check were not satisfied; or
    - (ii) the Secretary did not have all of the required information for the individual when AusCheck undertook the original check; or
    - (iii) 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
    - (iv) the advice is inaccurate or incomplete.

- (2) Auscheck may undertake a new background check of the individual.
- (3) If Auscheck does so, for the purposes of the AusCheck scheme:
  - (a) the person who applied for the original check is taken to have applied for the new background check; and
  - (b) the application for the new background check is taken to be the same as the application for the original check (as affected by subsection 11A(6)).

Note: Paragraph (b) may be relevant to whether the Secretary may make a request under subsection 11A(2) in relation to the application.

### **23 Paragraph 20(1)(a)**

After “paragraph 11(2)(a)”, insert “or subsection 20B(3)”.

### **24 After section 20**

Insert:

#### **20A Advice about background check that is cancelled**

If:

- (a) an NHS entity applies for a background check of an individual; and
- (b) 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.

#### **20B AusCheck may undertake new background checks**

- (1) This section applies if:
  - (a) the Secretary gives advice about a background check (the *original check*) of an individual under this Subdivision; and
  - (b) the Secretary later reasonably suspects that:
    - (i) any of the requirements of this instrument for the application for the original check were not satisfied; or
    - (ii) the Secretary did not have all of the required information for the individual when AusCheck undertook the original check; or
    - (iii) 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
    - (iv) the advice is inaccurate or incomplete.
- (2) Auscheck may undertake a new background check of the individual.
- (3) If Auscheck does so, for the purposes of the AusCheck scheme:
  - (a) the NHS entity that applied for the original check is taken to have applied for the new background check; and
  - (b) the application for the new background check is taken to be the same as the application for the original check (as affected by subsection 11A(6)).

Note: Paragraph (b) may be relevant to whether the Secretary may make a request under subsection 11A(2) in relation to the application.

### **25 Subsection 30(1)**

Repeal the subsection, substitute:

*Application fees*

- (1) The Secretary may charge a fee under this subsection for an application for a background check of an individual.

**26 After subsection 30(2)**

Insert:

*Additional fees if further information etc. requested*

- (2A) The Secretary may charge a fee under this subsection for an application for a background check of an individual if:
- (a) the Secretary makes a request in relation to the application under section subsection 11A(2); and
  - (b) the background check is not cancelled under subsection 11A(7).
- (2B) The amount of the fee must be based on:
- (a) the nature and complexity of a background check of an individual; and
  - (b) the effect on a background check of an individual of a request needing to be made under subsection 11A(2).
- (2C) A fee under subsection (2A) of this section is in addition to any fee the Secretary charges for the application under subsection (1).

*General matters*

**27 Paragraph 30(3)(a)**

After “subsection (1)”, insert “or (2A)”.

**28 At the end of section 30**

Add:

- (4) The Secretary may charge a fee under subsection (1) or (2A) in respect of a matter only if the Commonwealth incurs expenses in relation to the matter 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.

***Aviation Transport Security Regulations 2005***

**29 After paragraph 6.43(2)(db)**

Insert:

- (dc) both of the following apply:
- (i) an application for a background check of the holder is made under regulation 6.27AA of these Regulations or subsection 9(2) or 16A(3) of the *AusCheck Regulations 2017*;
  - (ii) the Secretary AGD advises the issuing body under section 15A of the *AusCheck Regulations 2017* that the background check is cancelled;
- or

***Maritime Transport and Offshore Facilities Security Regulations 2003***

**30 After paragraph 6.08M(1)(eb)**

Insert:

- (ec) both of the following apply:
    - (i) an application for a background check of the holder is made under regulation 6.08BA or 6.08LC of these Regulations or subsection 9(2), 10(2) or 16A(3) of the *AusCheck Regulations 2017*;
    - (ii) the Secretary AGD advises the issuing body under section 15A of the *AusCheck Regulations 2017* that the background check is cancelled;
- or

## Part 3—Application of amendments

### *AusCheck Regulations 2017*

#### 31 At the end of Part 5

Add:

### Division 3—AusCheck Legislation Amendment (Required Information) Regulations 2019

#### 37 Application provision—amendments made by the *AusCheck Legislation Amendment (Required Information) Regulations 2019*

##### *Required information*

- (1) The amendments made by Division 2 of Part 1 of Schedule 1 to the *AusCheck Legislation Amendment (Required Information) Regulations 2019* apply in relation to applications for background checks made on or after 1 July 2019.
- (2) The amendments made by Division 3 of Part 1 of Schedule 1 to the *AusCheck Legislation Amendment (Required Information) Regulations 2019* apply in relation to issuing, or proposing to issue, an ASIC or MSIC if:
  - (a) the notification period ends on or after 1 July 2019; and
  - (b) 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.

##### *Requests for information*

- (3) Section 11A, as inserted by the *AusCheck Legislation Amendment (Required Information) Regulations 2019*, applies in relation to:
  - (a) an application for a background check made on or before 30 June 2019 if the background check was not completed on or before 30 June 2019; or
  - (b) an application for a background check made on or after 1 July 2019.

##### *Additional background checks*

- (4) For the purposes of sections 16A and 20B, as inserted by the *AusCheck Legislation Amendment (Required Information) Regulations 2019*, it does not matter whether the Secretary gave the advice about the original check before, on or after 1 July 2019.

##### *Fees*

- (5) The amendment of subsection 30(1) made by the *AusCheck Legislation Amendment (Required Information) Regulations 2019* does not apply in relation to a fee charged on or before 30 June 2019.
- (6) Subsections 30(2A), (2B) and (2C), as inserted by the *AusCheck Legislation Amendment (Required Information) Regulations 2019*, 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.