

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Home Affairs

*Aviation Transport Security Act 2004*

*Maritime Transport and Offshore Facilities Security Act 2003*

### ***Transport Security Legislation Amendment (Repeal of Screening Officer Requirements) Regulations 2021***

The *Aviation Transport Security Act 2004* (the Aviation Act) and the *Aviation Transport Security Regulations 2005* (the Aviation Regulations) operate to safeguard against unlawful interference with aviation. The *Maritime Transport and Offshore Facilities Security Act 2003* (the Maritime Act) and the *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Maritime Regulations) operate to safeguard against unlawful interference with maritime transport and offshore oil and gas facilities.

To achieve this purpose, the Aviation Act and the Maritime Act each establish a regulatory framework and set, or provide for another instrument to set, minimum security requirements for the Australian aviation and maritime industries by imposing obligations on persons engaged in certain aviation and maritime-related activities to safeguard against unlawful interference with aviation or maritime transport, or offshore facilities.

One way in which this purpose is achieved is by the imposition of training, qualification and other requirements on aviation and maritime transport screening officers. Prior to amendments to the Aviation and Maritime Acts made by Schedule 2 to the *Transport Security Amendment (Testing and Training) Act 2020* (the Testing and Training Act), training, qualification and other requirements imposed on aviation and maritime transport screening officers were set out in the Aviation Regulations and Maritime Regulations.

#### **Legislative authority**

Subsection 133(1) of the Aviation Act and subsection 209(1) of the Maritime Act each provide that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that, where an Act provides the power to make an instrument, such as regulations, the power is also to repeal, rescind, revoke, amend, or vary that instrument. This instrument repeals provisions of the Aviation Regulations and Maritime Regulations that the Aviation and Maritime Acts previously mandated to be prescribed in those Regulations.

In December 2020, the Aviation Act and the Maritime Act were amended by the Testing and Training Act to allow for legislative instruments to be made determining training, qualifications and other requirements for specified screening officers. Consequently, provisions that previously prescribed these matters in the Aviation Regulations and Maritime Regulations are being repealed.

### **Purpose**

The purpose of the *Transport Security Legislation Amendment (Repeal of Screening Officer Requirements) Regulations 2021* (the Amendment Regulations) is to amend the Aviation Regulations and the Maritime Regulations to:

- repeal training and qualification requirements, and requirements in relation to the form, issue and use of identity cards for screening officers; and
- make minor consequential and technical amendments.

During the development of the Testing and Training Act, external stakeholders were regularly consulted through a number of aviation and maritime security fora. These included: the Aviation Security Advisory Forum; the Regional Aviation Security Advisory Forum; the Air Cargo Security Industry Advisory Forum; the Maritime Industry Security Consultative Forum; and the Issuing Body Forum. Industry was actively engaged via targeted working groups and a Technical Advisory Committee, and made aware of the consequential amendments included in these Amendment Regulations.

Further consultation on the Amendment Regulations was considered unnecessary, as they do not represent new policy to be considered, and are consequential to the policy intention in the Testing and Training Act.

The Office of Best Practice Regulation (OBPR) was consulted prior to making the Amendment Regulations, and advised that a Regulation Impact Statement was not required (OBPR: 43025).

### **Statement of compatibility with Human Rights**

A Statement of Compatibility with Human Rights has been completed in relation to the amendments to the regulations and assesses that the amendments are compatible with Australia's human rights obligations. A copy of the Statement of Compatibility with Human Rights is at [Attachment A](#).

Details of the Amendment Regulations are set out in [Attachment B](#).

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

The Amendment Regulations commence on the later of: the start of the day after registration of the instrument, and immediately after the commencement of Schedule 2 to the *Transport Security Amendment (Testing and Training) Act 2020*.

**Statement of Compatibility with Human Rights**

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

**Transport Security Legislation Amendment (Repeal of Screening Officer Requirements) Regulations 2021**

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**

The *Aviation Transport Security Act 2004* (the Aviation Act) and the *Aviation Transport Security Regulations 2005* (the Aviation Regulations) operate to safeguard against unlawful interference with aviation. The *Maritime Transport and Offshore Facilities Security Act 2003* (the Maritime Act) and the *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Maritime Regulations) operate to safeguard against unlawful interference with maritime transport and offshore oil and gas facilities.

To achieve this purpose, the Aviation Act and the Maritime Act each establish a regulatory framework and set, or provide for another instrument to set, minimum security requirements for the Australian aviation and maritime industries by imposing obligations on persons engaged in certain aviation and maritime-related activities.

The amendments made by the *Transport Security Legislation Amendment (Repeal of Screening Officer Requirements) Regulations 2021* (the Amendment Regulations) are consequential to amendments to the Aviation Act and the Maritime Act made by Schedule 2 to the *Transport Security Amendment (Testing and Training) Act 2020* (the Testing and Training Act).

In part, amendments made by Schedule 2 to the Testing and Training Act had the effect of removing the powers to mandatorily prescribe the training, qualification, and uniform requirements and relocating identity card requirements for the screening workforce in the Aviation Regulations and the Maritime Regulations. Those ‘prescribing’ powers were replaced with powers for the Secretary of the Department to determine those training, qualification, and uniform requirements matters in a legislative instrument.

Consequently, the Amendment Regulations make changes to the Aviation Regulations and the Maritime Regulations, to repeal the prescribed training, qualification, identity cards and uniform requirements for the screening workforce, and make other minor consequential amendments.

These amendments are necessary to give effect to amendments made by Schedule 2 to the Testing and Training Act. The regulations which prescribe certain requirements in the Aviation Regulations and Maritime Regulations would no longer be valid, and confusion may possibly arise if screening officer requirements continue to be prescribed in the Aviation Regulations and the Maritime Regulations, while those requirements have been determined by the Secretary in a legislative instrument.

### **Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

These Amendment Regulations are compatible with human rights as they do not raise any human rights issues.

**Hon Karen Andrews MP, Minister for Home Affairs**

## **ATTACHMENT B**

### **Details of the proposed *Transport Security Legislation Amendment (Repeal of Screening Officer Requirements) Regulations 2021***

#### **Section 1 – Name**

This section provides that the title of this instrument is *Transport Security Legislation Amendment (Repeal of Screening Officer Requirements) Regulations 2021* (the Amendment Regulations).

#### **Section 2 – Commencement**

This section provides for the commencement of the Amendment Regulations, as set out in the table in subsection 2(1).

Table item 1 of subsection 2(1) provides for the whole of the Amendment Regulations to commence on the later of the following events - the start of the day after the instrument is registered and immediately after the commencement of Schedule 2 to the *Transport Security Amendment (Testing and Training) Act 2020* (The Testing and Training Act).

Table item 1 of subsection 2(1) provides that the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

Subsection 2(2) clarifies that information in column 3 of the table in subsection (1) is not part of the instrument, and that information may be inserted there, or edited, in any published version of the instrument.

#### **Section 3 – Authority**

This section provides that the instrument is made under the *Aviation Transport Security Act 2004* and the *Maritime Transport and Offshore Facility Security Act 2003*.

#### **Section 4 – Schedules**

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

## Schedule 1—Amendments

### ***Aviation Transport Security Regulations 2005***

#### Item [1] – Division 5.3

Division 5.3 of Part 5 of the *Aviation Transport Security Regulations 2005* (the Aviation Regulations) previously dealt with the requirements for screening officers in relation to training and qualifications, and the form, issue and use of identity cards, and uniforms. These requirements were set out in regulations 5.06, 5.07, and 5.08, respectively.

This item amends the Aviation Regulations to repeal Division 5.3 of Part 5, including the heading for the Division. This amendment is consequential to amendments made to the *Aviation Transport Security Act 2005* (Aviation Act) by Schedule 2 to the Testing and Training Act.

In part, Schedule 2 to the Testing and Training Act amended section 94 of the Aviation Act, which previously provided that regulations must prescribe screening officers training and qualification requirements, and requirements in relation to the use of identity cards, and uniforms. The power to prescribe these requirements in the Aviation Regulations was repealed and replaced by a power for the Secretary for the Department of Home Affairs to determine these requirements in a legislative instrument. New section 94A of the Aviation Act provides, in part, that the Secretary may, by legislative instrument determine, for specified screening officers, training and qualification requirements, and requirements in relation to the use of identity cards and in relation to uniforms.

The Testing and Training Act also relocates the regulation power for prescribing requirements relating to the form and issue of identity cards for screening officers in the Aviation Regulations to new paragraph 44(2)(aaa) of the Aviation Act.

The purpose of this item is to give effect to the amendments to section 94, and the introduction of section 94A, of the Aviation Act made by Schedule 2 to the Testing and Training Act.

#### Item [2] – Subregulation 6.01(1) (paragraph (b) of the definition of *operational need*)

The definition of operational need in subregulation 6.01(1) of Division 6.1 of Part 6 of the Aviation Regulations relates to whether an issuing body may issue an Aviation Security Identification Card (ASIC) to a person, amongst other requirements set out in subregulation 6.28(1) of the Aviation Regulations. In essence, a person may only be issued an ASIC if they have an *operational need*.

Previously, paragraph 6.01(1)(b) provided that *operational need* meant “is required under regulation 3.12, 5.04, 5.07 or 5.10 to properly display a valid ASIC at all times; or”.

This item repeals the previous paragraph 6.01(1)(b) of the definition of *operational need*, and substitutes a new paragraph 6.01(1)(b).

New paragraph 6.01(1)(b) provides that *operational need* means “a requirement under the Act, these Regulations or another instrument made under the Act to properly display a valid ASIC at all times; or”.

The effect of the amendment is to make clear that a person who has a requirement under the Aviation Act, Aviation Regulations, or an instrument made under the Aviation Act, to properly display a valid ASIC at all times has an *operational need*.

This amendment is consequential to amendments made by item 1 of this instrument, which have the effect of repealing regulation 5.07. The purpose of this amendment is to cater for regulation 5.07 being repealed, and to clarify the language used in paragraph 6.01(1)(b) to account for persons who are required under the Aviation Act, the Aviation Regulations or another instrument made under the Aviation Act to properly display a valid ASIC at all times.

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

#### **Item [3] – Division 8.6**

Division 8.6 of Part 8 of the *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Maritime Regulations) previously prescribed the requirements for screening officers in relation to training and qualifications, and the form, issue and use of identity cards. These requirements were previously set out in regulations 8.60 and 8.65, respectively, of Division 8.6 of Part 8 of the Maritime Regulations.

This item amends the Maritime Regulations to repeal Division 8.6 of Part 8, including the heading for the Division. The amendment is consequential to amendments made to the *Maritime Transport and Offshore Facilities Security Act 2003* (the Maritime Act) by the Schedule 2 to the Testing and Training Act. In part, Schedule 2 to the Testing and Training Act amended section 165 of the Maritime Act, which previously mandated that requirements for screening officer training and qualifications, and the form, issue and use of identity cards be prescribed in the Maritime Regulations.

As part of the amendments made by Schedule 2 to the Testing and Training Act, the head of power that mandated prescribing screening officer training and qualifications, the use of identity cards, and uniforms in the Maritime Regulations was repealed and replaced by a power for the Secretary for the Department of Home Affairs to



determine these requirements in a legislative instrument. New section 165A of the Maritime Act provides, in part, that the Secretary may, by legislative instrument determine for specified screening officers training and qualification requirements, and requirements in relation to the use of identity cards and in relation to uniforms.

Schedule 2 to the Testing and Training Act also relocated the power for prescribing requirements relating to the form and issue of identity cards for screening officers to new paragraph 119(2)(aa) of the Maritime Act.

The purpose of this item is to give effect to amendments made to section 165, and the introduction of new section 165A, of the Maritime Act, made by Schedule 2 to the Testing and training Act.