

## **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 (Issuing Body Reform) Regulations 2022*

The *Aviation Transport Security Act 2004* (the Aviation Act), the *Aviation Transport Security Regulations 2005* (the Aviation Regulations), 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 aviation and maritime transport and offshore oil and gas facilities against acts of terrorism, unlawful interference and, since the passage of the *Transport Security Amendment (Serious Crime) Act 2021*, the use of those entities and assets in connection with serious criminal influence and activities.

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.

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.

Part of the regulatory framework, set up by the Aviation Act and Maritime Act and Regulations, are the aviation and maritime security identification card (ASIC and MSIC) schemes. Playing a role in the ASIC and MSIC schemes are the multiple issuing bodies that, broadly speaking, manage applications for the cards and the physical issuing of the cards.

Through compliance checks on the issuing bodies, vulnerabilities with the multiple issuing body model have been identified. Additionally, the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (the PJCACLEI) in Recommendation 3 of their 2020 report, *Integrity of Australia's Border Security*, recommended that the Australian Government review the overall administration of the ASIC and MSIC schemes to consider either a “single issuing authority or a significantly reduced number of issuing bodies”.

The purpose of the *Transport Security Legislation Amendment (Issuing Body Reform) Regulations 2022* (the Amending Regulations) is to make amendments to the Aviation Regulations and Maritime Regulations, which aligns with the PJCACLEI recommendation.

Specifically, the Amending Regulations:

- remove the ability to apply to be an issuing body for the ASIC and MSIC schemes;
- amend the existing discretionary power, in both the Aviation Regulations and Maritime Regulations, for the Secretary of the Department of Home Affairs to revoke the authorisation of issuing bodies; and
- remove the decision to authorise a body as an ASIC or MSIC issuing body from the list of AAT reviewable decisions in both the Aviation Regulations and Maritime Regulations.

The Amending Regulations also amend the Aviation Regulations to provide legislative authority to charge for ASICs to be consistent with MSICs.

There are currently 32 private sector issuing bodies. The Amending Regulations remove the ability for new entities to apply to become issuing bodies. All issuing bodies and two industry associations were consulted in relation to the PJCACLEI report and recommendation. No issuing bodies stated that the current issuing body model would provide stronger security outcomes than a reduced number of issuing bodies for the schemes. The Department of Home Affairs will engage further with industry as reforms are progressed, including by working with industry to address operational matters raised by industry during the consultation process.

Key Commonwealth Government stakeholders were consulted in relation to the recommendation to consider a single issuing authority or significantly reduced number of issuing bodies for the schemes. Commonwealth Government stakeholders overall supported the proposal to reduce the number of issuing bodies for the schemes.

The Office of Best Practice Regulation (OBPR) was consulted prior to making the Regulations, and determined that no Regulation Impact Statement for these Regulations is required (OBPR21-01193).

A Statement of Compatibility with Human Rights in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011* is included at [Attachment A](#). The overall assessment is that the Amending Regulations are compatible with human rights.

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

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

The Amending Regulations commence on the day after they are registered.

<u>Authority:</u>	Subsection 133(1) of the <i>Aviation Transport Security Act 2004</i>
	Subsection 209(1) of the <i>Maritime Transport and Offshore Facilities Security Act 2003</i>

## **Statement of Compatibility with Human Rights**

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

### **Transport Security Amendment (Issuing Body Reform) Regulations 2022**

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), *Aviation Transport Security Regulations 2005* (the Aviation Regulations), *Maritime Transport and Offshore Facilities Security Act 2003* (the Maritime Act) and *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Maritime Regulations) operate to safeguard the aviation and maritime sectors against acts of terrorism, unlawful interference and, since the passage of the *Transport Security Amendment (Serious Crime) Act 2021*, serious criminal influence and activities.

To achieve these purposes, 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 protect Australia's aviation and maritime industries against acts of terrorism, unlawful interference and serious criminal influence and activities, the Aviation Regulations and Maritime Regulations provide the legislative basis for the aviation and maritime security identification card (ASIC and MSIC) schemes. The schemes help ensure that people who have authorised access to security regulated transport infrastructure are not a significant risk to the transport system. The schemes support transport security by requiring people who have an operational need for unescorted access to secure areas of security controlled airports, security regulated ports and other regulated facilities, to have passed mandatory background checks.

To obtain an ASIC or MSIC, an application must be lodged with an issuing body authorised under the Aviation Regulations or Maritime Regulations. Issuing bodies are responsible for performing certain administrative functions for the schemes, including identity verification, and the production, distribution and collection of cards.

The regulatory amendments would align fee-making provisions in the Aviation Regulations and Maritime Regulations to ensure current issuing bodies can charge a fee for issuing ASICs. The amendment would specify that any costs or expenses recoverable would not amount to taxation.

Further, in December 2020, Recommendation 3 of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (PJCACLEI) report, *'Integrity of Australia's border arrangements'*, recommended that the government

review the ASIC and MSIC schemes and consider “a single issuing authority or significantly reduced number of issuing bodies” for the schemes.

These regulatory amendments align with the PJCACLEI report’s recommendation by:

- removing the ability for entities to apply to become issuing bodies (and remove related merits review provisions)—consistent with the PJCACLEI recommendation.
- better facilitating the transfer of responsibility for the management of existing ASICs and MSICs when issuing bodies exit the ASIC and MSIC markets. This would be achieved by amending the factors that the Secretary may take into account when deciding whether to revoke (or not revoke) an existing body’s status as an issuing body. This will ensure the schemes remain fit for purpose.

Relevantly, the amendments do not alter the requirement for the Secretary to ensure that any ASICs or MSICs issued by the revoked issuing body, or any existing applications for an ASIC or MSIC, are transferred to a new issuing body.

### **Human rights implications**

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

### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Karen Andrews MP**

**Minister for Home Affairs**

**Details of the *Transport Security Amendment (Issuing Body Reform) Regulations 2022***

**Section 1 – Name**

This section provides that the title of the Amending Regulations is the *Transport Security Legislation Amendment (Issuing Body Reform) Regulations 2022* (the Amending Regulations).

**Section 2 – Commencement**

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

Table Item 1 of subsection 2(1) provides for the whole of the Amending Regulations to commence on the day after they are registered.

**Section 3 – Authority**

This section provides that the Amending Regulations are made under the *Aviation Transport Security Act 2004* (the Aviation Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (the Maritime Act).

**Section 4 – Schedules**

This section provides for each instrument in the Schedule to be amended as set out in the Schedule to the Amending Regulations. The instruments to be amended are:

- the *Aviation Transport Security Regulations 2005* (the Aviation Regulations);  
and
- the *Maritime Transport and Offshore Facilities Security Regulations 2003* (the Maritime Regulations).

## Schedule 1—Amendments

Schedule 1 to the Amending Regulations provides for the amendments to the Aviation Regulations and the Maritime Regulations.

### *Aviation Transport Security Regulations 2005*

#### **Item [1] – Subregulation 6.06(1) (note)**

The amendment made by this item repeals the note following subregulation 6.06(1). Subregulation 6.06(1) defines the term ‘ASIC program’.

Previously, the note following the subregulation reminded the reader that an application for authorisation as an issuing body, under regulation 6.15, must be accompanied by an ASIC program.

The amendment made by this item is consequential to the amendment made by item 4, below, which repeals regulation 6.15, to prevent new issuing bodies from entering the market.

The purpose and effect of this item is to repeal a note that is made redundant by other amendments.

#### **Item [2] – Regulation 6.12**

The amendment made by this item repeals previous regulation 6.12 and substitutes it with a new regulation 6.12 that provides that the Comptroller-General of Customs is an issuing body, and that the Comptroller-General of Customs must have an ASIC program.

Previously, regulation 6.12 provided that the Comptroller-General of Customs and the Civil Aviation Safety Authority (CASA) are issuing bodies. CASA did not undertake issuing body activities, and there is no intention for the Aviation Regulations to continue to provide for CASA to be an issuing body.

The purpose and effect of this item is to remove CASA as an issuing body and continue to provide that the Comptroller-General of Customs is an issuing body, and to specify that the Comptroller-General of Customs must have an ASIC program.

#### **Item [3] – Regulation 6.13 (note)**

The amendment made by this item repeals the note following regulation 6.13, and substitutes a new note which reminds the reader that the Secretary can revoke the authorisation of an issuing body under regulation 6.19 or 6.19A.

Previously, the note only reminded the reader that an issuing body may apply under regulation 6.20 to the Secretary to revoke the issuing body’s authorisation under regulation 6.19A.

The purpose and effect of this item is to refer directly to the Secretary's powers to revoke an authorisation, rather than simply reminding the reader that an issuing body can seek revocation of its own authorisation.

#### **Item [4] – Regulations 6.15 and 6.16**

The amendment made by this item repeals regulations 6.15 and 6.16.

Previously, regulation 6.15 provided for certain aviation industry participants and Commonwealth agencies to apply to the Secretary for authorisation as an issuing body, and regulation 6.16 provided for the making of a decision in relation to an application that has been made under regulation 6.15.

As a consequence of the repeal of regulation 6.15, there is no longer a need to provide for the making of a decision in relation to such an application. At the time this instrument came into effect, there were no applications made under regulation 6.15 that were yet to be decided.

The purpose and effect of this item is to close off the ability for new issuing bodies to enter the market by removing the ability to apply for authorisation as an issuing body, and to repeal the regulation that provided for making a decision about an application for authorisation as an issuing body. This aligns with the PJCACLEI recommendation.

#### **Item [5] – Subregulation 6.19A(2)**

The amendment made by this item repeals previous subregulation 6.19A(2) and replaces it with a new subregulation 6.19A(2). Previous subregulation 6.19A(2) provided that if the Secretary is considering revoking an issuing body's authorisation on the Secretary's own initiative, then the Secretary must give that body written notice inviting the body to respond within 14 days.

New subregulation 6.19A(2) provides that if the Secretary is intending to revoke the issuing body's authorisation then the Secretary must:

- give the relevant issuing body written notice of the Secretary's intention to revoke the authorisation; and
- invite the relevant issuing body to respond within 14 days.

The 14 days response period substantially replicates the existing response period given to an issuing body.

The purpose and effect of this item is to make clear that, rather than notifying the issuing body that the Secretary is considering whether or not to revoke the authorisation, the Secretary will be notifying the body of the intention that the authorisation is revoked.

#### **Item [6] – Regulation 6.19A(3)**

The amendment made by this item omits the word 'must' in the chapeau to subregulation 6.19A(3) and substitutes it with the word 'may'. Subregulation

6.19A(3) previously provided a number of matters that the Secretary must consider before deciding whether or not to revoke an authorisation.

The purpose and effect of the amendment made by this item is to provide that the Secretary *may* rather than *must* consider the listed criteria in subregulation 6.19A(3). This simplifies the Secretary's ability to revoke an issuing body's authorisation. This approach aligns with the PJCACLEI recommendation to consider either a single issuing authority or a significantly reduced number of issuing bodies.

**Item [7] – Paragraph 6.19A(3)(c)**

The amendment made by this item omits the words 'there is an issuing body that' and substitute them with 'the Comptroller-General of Customs' in paragraph 6.19A(3)(c).

Previously, paragraph 6.19A(3)(c) provided that the Secretary must consider whether another issuing body can take responsibility for any ASICs that have been issued by the relevant issuing body and any outstanding applications of the issuing body whose authorisation is being revoked.

The purpose and effect of the amendment made by this item, and the item below, is to provide that, in the first instance, the Secretary may consider if the Comptroller-General of Customs as an issuing body can take responsibility for the ASICs and outstanding applications to better achieve security outcomes, if it is appropriate for the Comptroller-General of Customs as an issuing body to be the issuing body for the ASICs and outstanding applications to better achieve security outcomes.

**Item [8] – Paragraphs 6.19A(3)(d) and (e)**

The amendment made by this item repeals previous paragraphs 6.19A(3)(d) and (e) and substitutes them with new paragraphs 6.19A(3)(d) and (e).

Previously, paragraphs 6.19A(3)(d) and (e) provided the matters for consideration were whether the relevant body should be a transitional issuing body under regulation 6.22A (paragraph (d)); and any information given to the Secretary by the Secretary AGD about any applications referred to in paragraph (b); any applications for ASICs that have been approved by the relevant body, but the ASIC has not yet been issued; and the effect the revocation of the body's authorisation may have on operations (paragraph (e)).

New paragraph 6.19A(3)(d) provides that if the Comptroller-General of Customs cannot take responsibility for the ASICs and applications of the issuing body, whose authorisation is being revoked, then the Secretary must consider if there is another issuing body that can do so.

New paragraph 6.19A(3)(e) provides that the Secretary must consider the effect of the revocation on operations. "Operations" refers to the operations of aviation security generally.

The purpose and effect of the amendments made by this item is to simplify the language used in the circumstance where the Comptroller-General of Customs cannot be the issuing body receiving the relevant ASICs and outstanding applications, and if



there is another issuing body that can do so. It is also to reflect that information is no longer provided to the Secretary AGD as a result of Administrative Arrangement Orders transferring responsibility for background checks under the *AusCheck Act 2007* to the Home Affairs portfolio.

**Item [9] – Paragraph 6.19A(3)(f)**

The amendment made by this item removes the words ‘including whether the relevant body wants to continue to be an issuing body’.

Previously, paragraph 6.19A(3)(f) provided that if the issuing body has responded to a notice given under subregulation 6.19A(2), then the Secretary must consider the issuing body’s response, including whether the issuing body wants to continue as an issuing body.

The purpose and effect of the amendment made by this item is to continue to provide that the Secretary may consider the response of the issuing body, but the Secretary is no longer required to consider if the issuing body wishes to remain as an issuing body. This better facilitates a reduction in the number of issuing bodies, irrespective of whether a particular issuing body wishes to remain as an issuing body.

**Item [10] – Subregulations 6.19A(4), (5), (6), (7) and (8)**

The amendment made by this item repeals subregulations 6.19A(4) to (8) and replaces them with new subregulations 6.19A(4) to (6).

New subregulation 6.19A(4) is an expansion of previous subregulation 6.19A(4), to provide that if the Secretary decides to revoke or to not revoke an authorisation, then the Secretary must advise the issuing body in writing:

- what the Secretary’s decision is (paragraph (4)(a));
- the reasons for the decision (paragraph (4)(b)); and
- if it is a decision to revoke, the day on which the authorisation is revoked (paragraph (4)(c)).

New paragraphs 6.19A(4)(a) and (b) reflect the content that was in the previous subregulation 6.19A(4). New paragraph 6.19A(4)(c) is additional content, which is included to make clear when the revocation will take effect.

The note following new subregulation 6.19A(4) reminds the reader that if the body applied for the revocation, the Secretary must make the decision and give the body written notice within 30 days of receiving the application, and directs the reader to see subregulation 6.20(2).

New subregulation 6.19A(5) provides that if the Secretary decides to revoke an authorisation and there are ASICs the issuing body is still responsible for or any outstanding applications yet to be considered by the body, then the Secretary must decide under regulation 6.22 which issuing body will be responsible for those ASICs and applications.

New subregulation 6.19A(5) differs from the current subregulation in that it will not include an option for the Secretary to declare the issuing body a transitional issuing body. The Secretary will still be able to declare an issuing body a transitional issuing body under regulation 6.22A. However, this amendment repeals the requirement for the Secretary to consider whether the issuing body should be declared a transitional issuing body before revoking an issuing body's authorisation, which simplifies the revocation process.

The note following new subregulation 6.19A(5) clarifies that if the body being revoked has no ASICs or applications referred to in subregulation 6.19A(5)(a) or (b), then the Secretary may revoke the body's authorisation without making a decision under regulation 6.22.

New subregulation 6.19A(6) provides that the revocation takes effect at the start of the day specified in the notice, given to the issuing body under the new subregulation (4), which replaces existing subregulation 6.19A(7), and deals with when revocation of issuing body status takes effect.

The purpose and effect of this item is clarify the language used to describe the requirements in relation to a decision made by the Secretary to revoke an authorisation.

#### **Item [11] – Subregulation 6.20(2) (note)**

The amendment made by this item amends the note following subregulation 6.20(2), and is consequential to the amendments to regulation 6.19A in items 5 to 10, above.

Previously, the note following subregulation 6.20(2) referred to a decision that the Secretary was required to make under paragraphs 6.19A(5)(c) or (d), which was repealed by the amendments made by item 10 above.

This item removed the reference to 'referred to in paragraph 6.19A(5)(c) or (d)' and replaces it with 'under regulation 6.22', which is the provision under with the decision will be made (see new subregulation 6.19A(5)).

The purpose and effect of this item is to amend the note to make the reference to regulation 6.22.

#### **Item [12] – Regulation 6.21**

The amendment made by this item repeals regulation 6.21.

Previously, regulation 6.21 provided that having an authorisation as an issuing body revoked did not prevent an issuing body from reapplying for that authorisation.

This amendment removes the ability to apply to be an issuing body—consistent with the PJACLEI recommendation. The purpose and effect of this amendment is to repeal the regulation, as there will no longer be a requirement for this provision.

### **Item [13] – At the end of Part 6**

The amendment made by this item inserts a new Division 6.8 at the end of Part 6 of the Aviation Regulations to deal with ‘Miscellaneous’ matters. New Division 6.8 contains regulation 6.60, which relates to fees.

New subregulation 6.60(1) provides that for the purposes of paragraph 133(2)(a) of the Aviation Act, an issuing body may charge a fee to recover costs and expenses reasonably incurred by the body in relation to the issuing of the ASIC.

New subregulation 6.60(2) makes clear that any amount charged under subregulation 6.60(1), must not be such as to amount to taxation.

Most private sector issuing bodies charge a fee for the services they provide in connection with issuing an ASIC.

The Comptroller-General of Customs operating as an issuing body does not charge for issuing ASICs to officers of the Department or to officers or employees of other agencies.

The amendment made by this item aligns the Aviation Regulations with the Maritime Regulations which, under regulation 6.09A, provides the Comptroller-General of Customs and other issuing bodies with a similar authority to recover costs in relation to issuing MSICs.

The purpose and effect of this amendment is to provide the Comptroller-General of Customs and other issuing bodies with a clearer authority to charge a fee for the issuing of an ASIC.

### **Item [14] – Paragraph 8.02(1)(a) and (b)**

The amendment made by this item repeals paragraphs 8.02(1)(a) and (b) that provided for the Administrative Appeals Tribunal (the AAT) to review decisions of the Secretary to refuse to authorise an aviation industry participant or Commonwealth agency as an issuing body (paragraph (a)); and to impose a condition on an issuing body (paragraph (b)).

In aligning with the recommendation of the PJACLEI, and as a consequence of the repeal of regulations 6.15 and 6.16 made by item 4 above, it is no longer considered necessary that the decisions in paragraphs (a) and (b) be reviewable by the AAT.

Previously the decision to revoke or not revoke was made on the basis that:

- new applications could be made to be authorised as an issuing body;
- the power to revoke under regulation 6.19A was utilised in response to individual circumstances of issuing bodies.

In aligning with the PJACLEI recommendation, the Amending Regulations achieve the following:

- there will not be an avenue for new issuing bodies to be authorised;

- simplify the Secretary’s ability to exercise the power to revoke or to decide not to revoke in addressing vulnerabilities in the ASIC scheme.

The purpose and effect of this amendment is, as noted previously, to align with the recommendation of the PJACLEI, that there be either a single issuing authority or a significantly reduced number of issuing bodies.

#### **Item [15] – In the appropriate position in Part 10**

The amendment made by this item inserts a new Division 21 ‘Amendments made by the *Transport Security Legislation Amendment (Issuing Body Reform) Regulations 2022*’. This new division deals with transitional provisions and provides definitions for terms used within those transitional provisions.

#### ***New regulation 10.47***

New regulation 10.47 defines, for Division 21, *amending Regulations* to mean the *Transport Security Legislation Amendment (Issuing Body Reform) Regulations 2022*, and *old Regulations* to mean these Regulations as in force immediately before the commencement of the amending Regulations.

#### ***New regulation 10.48***

New regulation 10.48 deals with the continued authorisation of an issuing body by providing that the repeal, by the amending Regulations, of regulation 6.16, does not affect the continuity of an authorisation as an issuing body that was in force immediately before that repeal.

The note following new regulation 10.48 reminds the reader that the Secretary can revoke the authorisation of an issuing body under regulation 6.19 or 6.19A.

The purpose and effect of this amendment is to make clear that the repeal of regulation 6.16 will not cease an authorisation to be an issuing body that is in force at the time the amending Regulations comes into effect.

#### ***New regulation 10.49***

New regulation 10.49 deals with the lapsing of any outstanding applications for authorisation as an issuing body by providing that, without limiting the effect of the repeal of regulation 6.16 by the amending Regulations, the repeal applies in relation to an application for authorisation as an issuing body made before the commencement of the amending Regulations if a decision on the application under subregulation 6.16(2) was not made before that commencement.

The purpose and effect of this amendment is to make clear that if a decision in relation to an application for authorisation to be an issuing body had not been made before the commencement of the amending Regulations, those applications will lapse.

This amendment aligns with the recommendation of the PJACLEI to consider a single issuing authority or a significantly reduced number of issuing bodies.

### ***New regulation 10.50***

New regulation 10.50 deals with the Secretary's discretion to revoke authorisation as an issuing body by providing that, despite the amendments made by the amending Regulations, regulation 6.19A continues to apply, in relation to a notice given under subregulation 6.19A(2), or an application made under regulation 6.20, before the commencement of the amending Regulations, as if those amendments had not been made.

The purpose and effect of this amendment is to make clear that the amendments made by the amending Regulations do not affect the application of regulation 6.19A in relation to a notice given before the commencement of the amending Regulations to an issuing body under subregulation 6.19A(2), or an application made before the commencement of the amending Regulations by an issuing body under regulation 6.20.

### ***New regulation 10.51***

New regulation 10.51 deals with review of certain decisions of the Secretary made under old Regulations by providing that, despite the amendments made by the amending Regulations, regulation 8.02 continues to apply, in relation to a decision referred to in paragraph 8.02(1)(a) or (b) of the old Regulations that was made before the commencement of the amending Regulations, as if those amendments had not been made.

The purpose and effect of this amendment is to make clear that if an issuing body sought AAT review of a decision under paragraph 8.02(1)(a) or (b) before the amending Regulations come into effect, the review is not impacted by the commencement of the amending Regulations.

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

### **Item [16] – Subregulation 6.07B(1)**

The amendment made by this item amends subregulation 6.07B(1) to insert a definition of *Comptroller-General of Customs*, which is defined to mean the person who is the Comptroller-General of Customs in accordance with subsection 11(3) or 14(2) of the *Australian Border Force Act 2015*.

The amendment made by this item is consequential to other amendments in this instrument.

The purpose and effect of this amendment is to align the Maritime Regulations with similar provisions in the Aviation Regulations.

### **Item [17] – Regulations 6.07O and 6.07P**

The amendment made by this item repeals regulations 6.07O and 6.07P and substitutes a new regulation 6.07P that provides that the *Comptroller-General of Customs* is an issuing body, and that the *Comptroller-General of Customs* must have an MSIC plan.

Previously, regulation 6.07O permitted certain maritime industry participants, bodies representing participants or their employees, Commonwealth authorities and the *Comptroller-General of Customs* to apply to the Secretary for authorisation as an issuing body, and regulation 6.07P provided a discretion to the Secretary to request additional information in relation to an application made under regulation 6.07O, and sets timeframes for a decision to be made on the basis of receiving, or not receiving that information.

To align with the PJCACLEI recommendation, the avenue for new issuing bodies to enter the market is removed.

The purpose and effect of this item is twofold. In the first instance the amendment closes off the ability for new issuing bodies to enter the market by removing the ability to apply for authorisation as an issuing body, and to repeal the regulation that provided for making a decision about an application for authorisation as an issuing body. In the second instance, the amendment makes clear that the Comptroller-General of Customs continues to be an issuing body, and specifies that the Comptroller-General of Customs must have an MSIC plan.

#### **Item [18] – Subregulation 6.07Q(1) (note)**

The amendment made by this item repeals the note following subregulation 6.07Q(1), which previously reminded the reader that an applicant for authorisation as an issuing body must provide with its application a statement of its proposed MSIC plan (see regulation 6.07O).

The amendment made by this item is consequential to the repeal of regulation 6.07O made by item 17, above.

The purpose and effect of this amendment is to remove a note made redundant by the repeal of the referenced provision.

#### **Item [19] – Subregulation 6.07X(2)**

The amendment made by this item repeals subregulation 6.07X(2) and substitutes a new subregulation 6.07X(2).

Previous subregulation 6.07X(2) provided that if the Secretary is considering revoking an issuing body's authorisation under this regulation or on the Secretary's own initiative, then the Secretary must give that body written notice inviting the body to respond within 14 days.

New subregulation 6.07X(2) provides that if the Secretary is intending to revoke the issuing body's authorisation then the Secretary must:

- give the relevant issuing body written notice of the Secretary's intention to revoke the authorisation; and
- invite the relevant issuing body to respond within 14 days.

The purpose and effect of this item is to make clear that, rather than notifying the issuing body that the Secretary is considering whether or not to revoke the

authorisation, the Secretary will be notifying the body of the intention that the authorisation is revoked. The 14 days response period substantially replicates the previous response period given to an issuing body. This amendment aligns with an amendment made to the corresponding provision in the Aviation Regulations by item 4, above.

#### **Item [20] – Subregulation 6.07X(3)**

The amendment made by this item omits the word ‘must’ in the chapeau to subregulation 6.07X(3) and substitutes it with the word ‘may’. Subregulation 6.07X(3) previously provided a number of matters that the Secretary was required to consider before deciding whether or not to revoke an authorisation.

The purpose and effect of this item is to provide that the Secretary *may* rather than *must* consider the listed criteria in subregulation 6.07X(3).

This amendment simplifies the Secretary’s ability to revoke an issuing body’s authorisation and aligns with the PJACLEI recommendation to consider either a single issuing authority or a significantly reduced number of issuing bodies.

#### **Item [21] – Paragraph 6.07X(3)(c)**

The amendment made by this item omits the words ‘there is an issuing body that’ and substitutes them with ‘the Comptroller-General of Customs’ in paragraph 6.07X(3)(c).

Previously, paragraph 6.07X(3)(c) provided that the Secretary must consider whether another issuing body can take responsibility for any MSICs that have been issued by the relevant issuing body and any outstanding applications of the relevant issuing body whose authorisation is being revoked.

The purpose and effect of this item, and the item below, is to provide that in the first instance the Secretary may consider if the Comptroller-General of Customs as an issuing body can take responsibility for the MSICs issued by the body, and any outstanding applications, if it is appropriate for the Comptroller-General of Customs as an issuing body to be the issuing body for the MSICs and outstanding applications to better achieve security outcomes.

#### **Item [22] – Paragraphs 6.07X(3)(d) and (e)**

The amendment made by this item repeals the existing paragraphs 6.07X(3)(d) and (e) and substitutes them with new paragraphs.

Previously, paragraphs 6.07X(3)(d) and (e) provided the matters for consideration were whether the relevant body should be a transitional issuing body under regulation 6.07ZB (paragraph (d)); and any information given to the Secretary by the Secretary AGD about any applications referred to in paragraph (b); any applications for MSICs that have been approved by the relevant body, but the MSIC has not yet been issued; and the effect the revocation of the body’s authorisation may have on operations (paragraph (e)).

New paragraph 6.07X(3)(d) provides that if the Comptroller-General of Customs cannot take responsibility for the MSICs and applications of the issuing body, whose authorisation is being revoked, then the Secretary must consider if there is another issuing body that can do so.

New paragraph 6.07X(3)(e) provides that the Secretary must consider the effect of the revocation on operations. “Operations” refers to the operations of maritime security generally.

The purpose and effect of this item is to simplify the language used in the circumstance where the Comptroller-General of Customs cannot be the issuing body receiving the relevant MSICs and outstanding applications, and if there is another issuing body that can do so. It is also to reflect that information is no longer provided to the Secretary AGD as a result of Administrative Arrangement Orders transferring responsibility for background checks under the *AusCheck Act 2007* to the Home Affairs portfolio.

#### **Item [23] – Paragraphs 6.07X(3)(f)**

The amendment made by this item removes the words ‘including whether the relevant body wants to continue to be an issuing body’.

Previously, paragraph 6.07X(3)(f) provided that if the issuing body has responded to a notice given under subregulation 6.07X(2), then the Secretary must consider the relevant issuing body’s response, including whether the issuing body wants to continue as an issuing body.

The purpose and effect of this item is to provide that the Secretary may consider the response of the issuing body, but the Secretary is no longer required to consider if the issuing body wishes to remain as an issuing body. This better facilitates a reduction in the number of issuing bodies, irrespective of whether a particular issuing body wishes to remain as an issuing body.

#### **Item [24] – Subregulations 6.07X(4), (5), (6), (7) and (8)**

The amendment made by this item repeals subregulations 6.07X(4), (5), (6), (7) and (8) and replaces them with new subregulations (4) to (6).

New subregulation 6.07X(4) is an expansion of previous subregulation 6.07X(4), to provide that if the Secretary decides to revoke or to not revoke an authorisation, then the Secretary must advise the issuing body in writing:

- what the Secretary’s decision is (paragraph (4)(a));
- the reasons for the decision (paragraph (4)(b)); and
- if it is a decision to revoke, the day on which the authorisation is revoked (paragraph (4)(c)).

New paragraphs 6.07X(4)(a) and (b) reflect the content that was in the previous subregulation. New paragraph 6.07X(4)(c) is additional content, which is being included to make clear when the revocation will take effect.



New subregulation 6.07X(5) provides that if the Secretary decides to revoke an authorisation and there are MSICs the issuing body is still responsible for or any outstanding applications yet to be considered by the body, then the Secretary must decide under regulation 6.07ZA which issuing body will be responsible for those MSICs and applications.

The note following subregulation 6.07X(5) reminds the reader that if there are no MSICs or applications referred to in paragraphs (a) or (b), the Secretary may revoke the relevant body's authorisation without making a decision under regulation 6.07ZA.

New subregulation 6.07X(5) differs from the previous subregulation in that it will not include an option for the Secretary to declare the issuing body a transitional issuing body. The Secretary will still be able to declare an issuing body a transitional issuing body under regulation 6.07ZB. However, this amendment removes the requirement for the Secretary to consider whether the issuing body should be declared a transitional issuing body before revoking an issuing body's authorisation, which simplifies the revocation process.

New subregulation 6.07X(6) will provide that the revocation takes effect at the start of the day specified in the notice, given to the issuing body under the new paragraph 6.07X(4)(c), which replaces existing subregulation 6.07X(7), and deals with when revocation of issuing body status takes effect.

The repeal of subregulation 6.07X(8) is to reflect that information is no longer provided to the Secretary AGD as a result of Administrative Arrangement Orders transferring responsibility for background checks under the *AusCheck Act 2007* to the Home Affairs portfolio.

The purpose and effect of this item is to clarify the language used to describe the requirements in relation to a decision made by the Secretary to revoke an authorisation.

#### **Item [25] – Subregulation 6.07Y(2) (note)**

The amendment made by this item amends the note following subregulation 6.07Y(2), and is consequential to the amendments to regulation 6.07X in items 19 to 24, above.

Previously, the note following subregulation 6.07Y(2), referred to a decision that the Secretary must make under paragraphs 6.07X(5)(c) or (d), which is repealed by the amendments made by item 24 above.

This item removes the reference to 'referred to in paragraph 6.07X(5)(c) or (d)' and replaces it with 'under regulation 6.07ZA'.

The purpose and effect of this item is to amend the note to make the reference to regulation 6.07ZA.

#### **Item [26] – Regulation 6.07Z**

The amendment made by this item repeals regulation 6.07Z.

Previously, regulation 6.07Z provided that having an authorisation as an issuing body revoked, does not prevent an issuing body from reapplying for that authorisation under regulation 6.07O.

This amendment removes the ability to apply to be an issuing body— consistent with the PJACLEI recommendation.

The purpose and effect of this amendment is to repeal the regulation, as there will no longer be a requirement for this clarifying provision.

#### **Item [27] – Paragraphs 6.08X(1)(a) and (b)**

The amendment made by this item repeals paragraphs 6.08X(1)(a) and (b) that provided for the Secretary to reconsider decisions of the Secretary to refuse to authorise a person as an issuing body (paragraph (a)); and to impose a condition on an issuing body (paragraph (b)).

In aligning with the PJACLEI recommendation, it is no longer considered necessary that the decisions in paragraphs (a) and (b) be reconsidered by the Secretary.

Previously the decision to revoke or not revoke was made on the basis that:

- new applications could be made to be authorised as an issuing body;
- the power to revoke under regulation 6.19A was utilised in response to individual circumstances of issuing bodies.

In alignment with the PJACLEI recommendation, the Amending Regulations achieves the following:

- there will not be an avenue for new issuing bodies to be authorised;
- simplifies the Secretary’s ability to exercise the power to revoke or to decide not to revoke in addressing vulnerabilities in the MSIC scheme.

#### **Item [27] – In the appropriate position in Schedule 2**

The amendment made by this item inserts a new Part 12 ‘Amendments made by the *Transport Security Legislation Amendment (Issuing Body Reform) Regulations 2022*’. This new Part deals with transitional provisions and provides definitions for terms used within those transitional provisions.

#### ***New clause 115***

New clause 115 defines, for Part 12, *amending Regulations* to mean the *Transport Security Legislation Amendment (Issuing Body Reform) Regulations 2022*, and *old Regulations* to mean these Regulations as in force immediately before the commencement of the amending Regulations.

### ***New clause 116***

New clause 116 deals with the continued authorisation of an issuing body by providing that the repeal, by the amending Regulations, of regulation 6.07P does not affect the continuity of an authorisation as an issuing body that was in force immediately before that repeal.

The note following new clause 116 reminds the reader that the Secretary can revoke the authorisation of an issuing body under regulation 6.07W or 6.07X.

The purpose and effect of this amendment is to make clear that the repeal of regulation 6.07P will not cease an authorisation to be an issuing body that is in force at the time the amending Regulations comes into effect.

### ***New clause 117***

New clause 117 deals with the lapsing of any outstanding applications for authorisation as an issuing body by providing that, without limiting the effect of the repeal of regulation 6.07P by the amending Regulations, the repeal applies in relation to an application for authorisation as an issuing body made before the commencement of the amending Regulations if a decision on the application under subregulation 6.07P(2) was not made before that commencement.

The purpose and effect of this amendment is to make clear that if a decision in relation to an application for authorisation to be an issuing body has not been made before the commencement of the amending Regulations, those applications will lapse.

This amendment aligns with the recommendation of the PJCACLEI to consider a single issuing authority or a significantly reduced number of issuing bodies.

### ***New clause 118***

New clause 118 deals with the Secretary's discretion to revoke authorisation of an issuing body by providing that, despite the amendments made by the amending Regulations, regulation 6.07X continues to apply, in relation to a notice given under subregulation 6.07X(2), or an application made under regulation 6.07Y, before the commencement of the amending Regulations, as if those amendments had not been made.

The purpose and effect of this amendment is to make clear that the amendments made by the amending Regulations do not affect the application of regulation 6.07X in relation to a notice given before the commencement of the amending Regulations to an issuing body under subregulation 6.07X(2), or an application made before the commencement of the amending Regulations by an issuing body under regulation 6.07Y.

### ***New clause 119***

New clause 119 deals with reconsideration of certain decisions of the Secretary made under old Regulations by providing that, despite the amendments of regulation 6.07X made by the amending Regulations, Subdivision 6.1A.7 continues to apply, in relation to a decision referred to in paragraph 6.08X(1)(a) or (b) of the old Regulations that

was made before the commencement of the amending Regulations, as if those amendments had not been made.

The purpose and effect of this amendment is to make clear that if an issuing body sought the Secretary's reconsideration of a decision under paragraph 6.08X(1)(a) or (b) before the amending Regulations come into effect, the reconsideration is not impacted by the commencement of the amending Regulations.