



Transport Security Legislation Amendment (Issuing Body Reform) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 17 March 2022

David Hurley
Governor-General

By His Excellency's Command

Karen Andrews
Minister for Home Affairs

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1 Name

This instrument is the *Transport Security Legislation Amendment (Issuing Body Reform) Regulations 2022*.

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	The day after this instrument is registered.	19 March 2022

Note: This table relates only to the provisions of this instrument as originally made.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 *Aviation Transport Security Act 2004*;
- (b) 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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Aviation Transport Security Regulations 2005

1 Subregulation 6.06(1) (note)

Repeal the note.

2 Regulation 6.12

Repeal the regulation, substitute:

6.12 Comptroller-General of Customs to be issuing body

- (1) The Comptroller-General of Customs is an issuing body.
- (2) The Comptroller-General of Customs must have an ASIC program.

3 Regulation 6.13 (note)

Repeal the note, substitute:

Note: The Secretary can revoke the authorisation of an issuing body under regulation 6.19 or 6.19A.

4 Regulations 6.15 and 6.16

Repeal the regulations.

5 Subregulation 6.19A(2)

Repeal the subregulation, substitute:

- (2) If the Secretary intends to revoke the authorisation of the relevant body under this regulation on the Secretary's own initiative, the Secretary must:
 - (a) give the relevant body written notice of the Secretary's intention to revoke the authorisation; and
 - (b) invite the relevant body to respond within 14 days.

6 Subregulation 6.19A(3)

Omit "must", substitute "may".

7 Paragraph 6.19A(3)(c)

Omit "there is another issuing body that", substitute "the Comptroller-General of Customs".

8 Paragraphs 6.19A(3)(d) and (e)

Repeal the paragraphs, substitute:

- (d) if the Comptroller-General of Customs cannot be the issuing body as mentioned in paragraph (c)—whether there is another issuing body that can be the issuing body for the things mentioned in subparagraphs (c)(i) and (ii);
- (e) the effect the revocation of the relevant body's authorisation may have on operations;

9 Paragraph 6.19A(3)(f)

Omit “, including whether the relevant body wants to continue to be an issuing body”.

10 Subregulations 6.19A(4), (5), (6), (7) and (8)

Repeal the subregulations, substitute:

- (4) If the Secretary decides to revoke, or refuse to revoke, the relevant body’s authorisation under this regulation, the Secretary must give the body written notice of the following:
- (a) the Secretary’s decision;
 - (b) the reasons for the decision;
 - (c) if the Secretary decides to revoke the authorisation—the day on which the authorisation is revoked.

Note: 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—see subregulation 6.20(2).

- (5) If the Secretary decides to revoke the relevant body’s authorisation under this regulation, and there are:
- (a) ASICs referred to in paragraph (3)(a) issued by the relevant body; or
 - (b) applications for ASICs that the relevant body is yet to approve or refuse to approve;

the Secretary must decide, under regulation 6.22, that another issuing body is to be the issuing body for the ASICs and applications.

Note: If there are no ASICs or applications referred to in paragraph (a) or (b), the Secretary may revoke the relevant body’s authorisation without making a decision under regulation 6.22.

- (6) A revocation of the relevant body’s authorisation under this regulation takes effect at the start of the day specified in the notice in accordance with paragraph (4)(c).

11 Subregulation 6.20(2) (note)

Omit “referred to in paragraph 6.19A(5)(c) or (d)”, substitute “under regulation 6.22”.

12 Regulation 6.21

Repeal the regulation.

13 At the end of Part 6

Add:

Division 6.8—Miscellaneous**6.60 Fees**

- (1) For the purposes of paragraph 133(2)(a) of the Act, an issuing body may charge a person who asks the body to issue an ASIC a fee to recover costs and expenses reasonably incurred by the body in relation to the issue of the ASIC.
- (2) A fee charged under subregulation (1) must not be such as to amount to taxation.

14 Paragraphs 8.02(1)(a) and (b)

Repeal the paragraphs.

15 In the appropriate position in Part 10

Insert:

Division 21—Amendments made by the Transport Security Legislation Amendment (Issuing Body Reform) Regulations 2022

10.47 Definitions

In this Division:

amending Regulations means the *Transport Security Legislation Amendment (Issuing Body Reform) Regulations 2022*.

old Regulations means these Regulations as in force immediately before the commencement of the amending Regulations.

10.48 Continued authorisation as issuing body

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.

Note: The Secretary can revoke the authorisation of an issuing body under regulation 6.19 or 6.19A.

10.49 Outstanding applications for authorisation as issuing body will lapse

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.

10.50 Secretary's discretion to revoke authorisation as issuing body

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.

10.51 Review of certain decisions of Secretary made under old Regulations

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.

Maritime Transport and Offshore Facilities Security Regulations 2003**16 Subregulation 6.07B(1)**

Insert:

Comptroller-General of Customs means 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*.

17 Regulations 6.07O and 6.07P

Repeal the regulations, substitute:

6.07P Comptroller-General of Customs to be issuing body

- (1) The Comptroller-General of Customs is an issuing body.
- (2) The Comptroller-General of Customs must have an MSIC plan.

18 Subregulation 6.07Q(1) (note)

Repeal the note.

19 Subregulation 6.07X(2)

Repeal the subregulation, substitute:

- (2) If the Secretary intends to revoke the authorisation of the relevant body under this regulation on the Secretary's own initiative, the Secretary must:
 - (a) give the relevant body written notice of the Secretary's intention to revoke the authorisation; and
 - (b) invite the relevant body to respond within 14 days.

20 Subregulation 6.07X(3)

Omit "must", substitute "may".

21 Paragraph 6.07X(3)(c)

Omit "there is another issuing body that", substitute "the Comptroller-General of Customs".

22 Paragraphs 6.07X(3)(d) and (e)

Repeal the paragraphs, substitute:

- (d) if the Comptroller-General of Customs cannot be the issuing body as mentioned in paragraph (c)—whether there is another issuing body that can be the issuing body for the things mentioned in subparagraphs (c)(i) and (ii);
- (e) the effect the revocation of the relevant body's authorisation may have on operations;

23 Paragraph 6.07X(3)(f)

Omit "including whether the relevant body wants to continue to be an issuing body".

24 Subregulations 6.07X(4), (5), (6), (7) and (8)

Repeal the subregulations, substitute:

- (4) If the Secretary decides to revoke, or refuse to revoke, the relevant body's authorisation under this regulation, the Secretary must give the body written notice of the following:
- (a) the Secretary's decision;
 - (b) the reasons for the decision;
 - (c) if the Secretary decides to revoke the authorisation—the day on which the authorisation is revoked.

Note: 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—see subregulation 6.07Y(2).

- (5) If the Secretary decides to revoke the relevant body's authorisation under this regulation, and there are:
- (a) MSICs referred to in paragraph (3)(a) issued by the relevant body; or
 - (b) applications for MSICs that the relevant body is yet to approve or refuse to approve;

the Secretary must decide, under regulation 6.07ZA, that another issuing body is to be the issuing body for the MSICs and applications.

Note: If there are no MSICs or applications referred to in paragraph (a) or (b), the Secretary may revoke the relevant body's authorisation without making a decision under regulation 6.07ZA.

- (6) A revocation of the relevant body's authorisation under this regulation takes effect at the start of the day specified in the notice in accordance with paragraph (4)(c).

25 Subregulation 6.07Y(2) (note)

Omit “referred to in paragraph 6.07X(5)(c) or (d)”, substitute “under regulation 6.07ZA”.

26 Regulation 6.07Z

Repeal the regulation.

27 Paragraphs 6.08X(1)(a) and (b)

Repeal the paragraphs.

28 In the appropriate position in Schedule 2

Insert:

Part 12—Amendments made by the Transport Security Legislation Amendment (Issuing Body Reform) Regulations 2022

115 Definitions

In this Part:

amending Regulations means the *Transport Security Legislation Amendment (Issuing Body Reform) Regulations 2022*.

old Regulations means these Regulations as in force immediately before the commencement of the amending Regulations.

116 Continued authorisation as issuing body

The repeal, by the amending Regulations, of regulation 6.07P does not affect the continuity of an authorisation as an issuing body, or an approval of an issuing body's MSIC plan, that was in force immediately before that repeal.

Note: The Secretary can revoke the authorisation of an issuing body under regulation 6.07W or 6.07X.

117 Outstanding applications for authorisation as issuing body will lapse

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.

118 Secretary's discretion to revoke authorisation as issuing body

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.

119 Reconsideration and review of certain decisions made under old Regulations

Despite the amendments of regulation 6.08X 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.