



Transport Security Legislation Amendment (Serious Crime) 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 31 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 (Serious Crime) 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. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	5 April 2022
2. Schedule 1	The day after this instrument is registered.	5 April 2022
3. Schedule 2	At the same time as Schedule 2 to the <i>Transport Security Amendment (Serious Crime) Act 2021</i> commences.	22 June 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Note: This table relates only to the provisions of this instrument as originally made.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 *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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Information requirements and review processes

AusCheck Regulations 2017

1 Section 4 (paragraphs (d) and (e) of the note to the heading)

Repeal the paragraphs, substitute:

(d) Secretary.

2 Section 4

Insert:

Transport Secretary means the Secretary of the Department administered by the Minister who administers the *Aviation Transport Security Act 2004*.

3 Subsection 13(6)

Repeal the subsection.

4 Subsections 14(2) and (4)

Repeal the subsections, substitute:

Advice relating to criminal history

(2) If the individual has an unfavourable criminal history, the Secretary must advise the issuing body for the ASIC or MSIC.

5 Subsection 14(5)

Omit “Transport Secretary”, substitute “issuing body for the ASIC or MSIC”.

6 Paragraph 15A(b)

Omit “individual, an issuing body, or the Transport Secretary,”, substitute “individual or an issuing body”.

7 Section 16 (heading)

Repeal the heading, substitute:

16 Advice about background check etc. in certain circumstances

8 Paragraph 16(1)(c)

Omit “the Transport Secretary informs the Secretary that”.

9 Subsection 16(2)

Omit “The Secretary must give the Transport Secretary”, substitute “AusCheck must give the Secretary”.

10 Paragraph 16A(1A)(a)

Omit “and gives advice of the cancellation under section 15A”.

11 Paragraph 18(a)

Omit “the Transport Secretary tells the Secretary”, substitute “the Secretary decides”.

12 Section 18 (note)

Repeal the note, substitute:

Note: For decisions that an issuing body is to be an issuing body for transferred ASIC applications or transferred ASICs, see regulation 6.22 of the ATS Regulations. For decisions that an issuing body is to be an issuing body for transferred MSIC applications or transferred MSICs, see regulation 6.07ZA of the MTOFS Regulations.

13 Section 28

Omit “the Transport Secretary tells the Secretary”, substitute “the Secretary decides”.

14 Section 28 (note)

Repeal the note, substitute:

Note: For decisions that an issuing body is to be an issuing body for transferred ASIC applications or transferred ASICs, see regulation 6.22 of the ATS Regulations. For decisions that an issuing body is to be an issuing body for transferred MSIC applications or transferred MSICs, see regulation 6.07ZA of the MTOFS Regulations.

15 Section 33

Repeal the section.

16 In the appropriate position in Part 5

Insert:

Division 6—Transport Security Legislation Amendment (Serious Crime) Regulations 2022**40 Application provision—amendments made by Schedule 1**

- (1) The amendments of sections 13, 14, 15A and 16A made by Schedule 1 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022* apply in relation to any background check for which an application is made after the commencement of that Schedule.
- (2) The amendments of section 16 made by Schedule 1 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022* apply in relation to any application in relation to an individual made under subregulation 6.29(1) or 6.43A(2) of the ATS Regulations or subregulation 6.08F(1) or 6.08MA(2) of the MTOFS Regulations after commencement of that Schedule, whether the background check of the individual was undertaken before or after that commencement.
- (3) The amendments of sections 18 and 28 made by Schedule 1 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022* apply in relation to any decision that an issuing body is to be the issuing body for transferred ASIC applications or transferred ASICs, or transferred MSIC applications or transferred MSICs, made after the commencement of that Schedule.

Aviation Transport Security Regulations 2005

17 Subregulation 6.22(3)

Repeal the subregulation.

18 Subregulation 6.22A(3)

Repeal the subregulation.

19 Part 8 (heading)

Omit “**Review**”, substitute “**Reconsideration and review**”.

20 After regulation 8.01

Insert:

**8.01A Reconsideration of decisions in relation to ASICs and related matters—
decisions of Secretary**

Decisions in relation to issuing bodies

- (1) Application may be made to the Secretary for reconsideration of a decision of the Secretary:
- (a) to refuse to exempt an issuing body from giving effect to its ASIC program in a particular case or respect; or
 - (b) to impose a condition on an exemption; or
 - (c) to direct an issuing body to vary its ASIC program; or
 - (d) to refuse to approve a variation of an issuing body’s ASIC program; or
 - (e) to revoke an issuing body’s authorisation; or
 - (f) to refuse to revoke an issuing body’s authorisation.

Decisions in relation to issue, suspension and cancellation of ASICs

- (2) Application may be made to the Secretary for reconsideration of a decision of the Secretary:
- (a) to grant, or to refuse to grant, an issuing body an exemption from needing the relevant airport operator’s approval to issue an airport-specific ASIC to a person for an airport under regulation 6.27A; or
 - (b) to refuse to approve the issuing of an ASIC; or
 - (c) to approve the issuing of an ASIC subject to a condition; or
 - (d) to give the issuing body for an ASIC a direction under subregulation 6.31(3); or
 - (e) to direct the suspension of an ASIC; or
 - (f) to refuse to set aside the cancellation of an ASIC under regulation 6.43B or 6.43C; or
 - (g) to set aside the cancellation of an ASIC subject to a condition under regulation 6.43D.

Decisions in relation to wearing and use of ASICs

- (3) Application may be made to the Secretary for reconsideration of a decision of the Secretary:

- (a) to refuse to exempt somebody from displaying a valid ASIC in a secure area, or part of such an area; or
- (b) to impose a condition on such an exemption.

8.01B If Secretary makes no decision

If a person applies to the Secretary under regulation 8.01A for reconsideration of a decision and, 30 days after making the application, the Secretary has not notified the Secretary's decision about the application to the applicant, the Secretary is taken to have refused to vary the original decision.

21 Subregulation 8.02(1)

Repeal the subregulation, substitute:

Reconsideration decisions

- (1) Applications may be made to the Tribunal for review of decisions of the Secretary under regulation 8.01A or 8.01B.

22 Subregulations 8.02(3) and (4)

Repeal the subregulations.

23 In the appropriate position in Part 10

Insert:

Division 22—Amendments made by the Transport Security Legislation Amendment (Serious Crime) Regulations 2022

10.52 Application of amendments made by Schedule 1

Despite the amendments made by Schedule 1 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022*, Part 8 continues to apply, in relation to any decision mentioned in regulation 8.02 (as in force immediately before the commencement of that Schedule) made before that commencement, as if those amendments had not been made.

Maritime Transport and Offshore Facilities Security Regulations 2003

24 Subregulation 6.07ZA(3)

Repeal the subregulation.

25 Subregulation 6.07ZB(3)

Repeal the subregulation.

26 Subregulations 6.08X(3A) and (6)

Repeal the subregulations.

27 Regulation 6.08Z

Repeal the regulation, substitute:

6.08Z AAT review of Secretary's decisions

Review of reconsideration decisions

- (1) Applications may be made to the Tribunal for review of decisions of the Secretary under regulation 6.08X or 6.08Y.

Decisions relating to alternative identification requirements

- (2) Applications may be made to the Tribunal for review of decisions of the Secretary under paragraph 6.08BC(5)(a) to refuse to approve alternative identification requirements for a person.

28 In the appropriate position in Schedule 2

Insert:

Part 13—Amendments made by the Transport Security Legislation Amendment (Serious Crime) Regulations 2022

120 Application of amendments made by Schedule 1

Despite the amendments made by Schedule 1 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022*, Subdivision 6.1A.7 continues to apply, in relation to any decision mentioned in regulation 6.08X or 6.08Z (as in force immediately before the commencement of that Schedule) made before that commencement, as if those amendments had not been made.

Schedule 2—Criminal intelligence assessments

AusCheck Regulations 2017

1 Section 4

Insert:

adverse criminal intelligence assessment has the same meaning as in section 36A of the *Australian Crime Commission Act 2002*.

2 After subsection 13(4)

Insert:

Advice relating to adverse criminal intelligence assessment

- (4A) The Secretary must advise the issuing body whether or not an adverse criminal intelligence assessment of the individual has been given to the Secretary.

3 At the end of section 14

Add:

Advice relating to adverse criminal intelligence assessment

- (6) The Secretary must advise the issuing body for the ASIC or MSIC whether or not an adverse criminal intelligence assessment of the individual has been given to the Secretary.

4 After subparagraph 23(b)(ii)

Insert:

- (ia) an adverse criminal intelligence assessment of the individual has not been given to the Secretary; or

5 At the end of Division 6 of Part 5

Add:

41 Application provision—amendments made by Schedule 2

The amendments of sections 13 and 14 made by Schedule 2 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022* apply in relation to any background check for which an application is made after the commencement of that Schedule.

Aviation Transport Security Regulations 2005

6 Regulation 1.03

Insert:

adverse criminal intelligence assessment—see subregulation 6.01(1).

7 Subregulation 6.01(1)

Insert:

adverse criminal intelligence assessment has the same meaning as in section 36A of the *Australian Crime Commission Act 2002*.

Note: For a person's notification and review rights in relation to an adverse criminal intelligence assessment, see section 36D and Subdivision C of Division 2A of Part II of the *Australian Crime Commission Act 2002*.

8 Subregulation 6.27AA(3)

Omit all the words after "reasonable grounds", substitute:

that:

- (a) the person has been convicted of an aviation-security-relevant offence; or
- (b) the person constitutes a threat to aviation security; or
- (c) there is a risk that the person would use aviation in connection with serious crime.

9 Subregulation 6.27AA(4)

Omit "paragraph (3)(a) or (b)", substitute "paragraph (3)(a), (b) or (c)".

10 After paragraph 6.28(1)(e)

Insert:

- (ea) the issuing body has been notified in writing by the Secretary that an adverse criminal intelligence assessment of the person has not been given to the Secretary; and

11 Paragraph 6.28(3)(a)

After "(e)", insert ", (ea)".

12 Subregulation 6.28(4)

After "(e)", insert ", (ea)".

13 Paragraph 6.38(6)(c)

After "(ba),", insert "(bb),".

14 After paragraph 6.43(2)(ba)

Insert:

- (bb) the Secretary has notified the issuing body in writing that an adverse criminal intelligence assessment of the holder has been given to the Secretary; or

15 Paragraph 6.43F(1)(c)

After "(b),", insert "(bb),".

16 At the end of Division 22 of Part 10

Add:

10.53 Application of amendments made by Schedule 2

- (1) The amendments of regulation 6.27AA made by Schedule 2 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022* apply in relation to any application for a background check made after the commencement of that Schedule.

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- (2) The amendments of regulation 6.28 made by Schedule 2 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022* apply in relation to any issue of an ASIC if the application for the background check on the applicant for the issue of the ASIC is made after the commencement of that Schedule.
 - (3) The amendment of regulation 6.43 made by Schedule 2 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022* applies in relation to any ASIC issued before or after the commencement of that Schedule.
 - (4) The amendment of regulation 6.43F made by Schedule 2 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022* applies in relation to any ASIC cancelled after the commencement of this Schedule, whether the ASIC, VIC or TAC was issued before or after that commencement.

Maritime Transport and Offshore Facilities Security Regulations 2003

17 Subregulation 1.03(1)

Insert:

adverse criminal intelligence assessment—see subregulation 6.07B(1).

18 Subregulation 6.07B(1)

Insert:

adverse criminal intelligence assessment has the same meaning as in section 36A of the *Australian Crime Commission Act 2002*.

19 After paragraph 6.08C(1)(d)

Insert:

- (da) the issuing body has been notified in writing by the Secretary that an adverse criminal intelligence assessment of the person has not been given to the Secretary; and

20 Paragraph 6.08C(4)(a)

Omit “and (d)”, substitute “, (d) and (da)”.

21 Subregulation 6.08D(1)

Repeal the subregulation, substitute:

- (1) This regulation applies if:
 - (a) the background check of an applicant for an MSIC reveals that:
 - (i) the person has been convicted of a tier 1 offence; or
 - (ii) the security assessment of the person is adverse and is not a qualified security assessment; or
 - (b) as a result of a background check, an adverse criminal intelligence assessment of an applicant for an MSIC is given to the Secretary.

Note: For a person’s notification and review rights in relation to an adverse criminal intelligence assessment, see section 36D and Subdivision C of Division 2A of Part II of the *Australian Crime Commission Act 2002*.

22 Subregulation 6.08LC(1)

Omit all the words after “reasonable grounds”, substitute:

that:

- (a) the person has been convicted of a maritime-security-relevant offence; or
- (b) the person constitutes a threat to maritime transport or offshore facility security; or
- (c) there is a risk that the person would use maritime transport or an offshore facility in connection with serious crime.

23 Subregulation 6.08LC(2)

Omit “paragraph (1)(a) or (b)”, substitute “paragraph (1)(a), (b) or (c)”.

24 After paragraph 6.08M(1)(ca)

Insert:

- (cb) the Secretary has notified the issuing body in writing that an adverse criminal intelligence assessment of the holder has been given to the Secretary; or

25 Paragraphs 6.08M(2A)(a) and (2B)(a)

After “(ca),”, insert “(cb),”.

26 At the end of Part 13 of Schedule 2

Add:

121 Application of amendments made by Schedule 2

- (1) The amendments of regulation 6.08C made by Schedule 2 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022* apply in relation to any issue of an MSIC if the application for the background check on the MSIC applicant is made after the commencement of that Schedule.
- (2) The amendments of regulation 6.08LC made by Schedule 2 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022* apply in relation to any application for a background check made after the commencement of that Schedule.
- (3) The amendments of regulation 6.08M made by Schedule 2 to the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022* apply in relation to any MSIC issued before or after the commencement of that Schedule.