

EXPLANATORY STATEMENT

Issued by authority of the Secretary of the Department of Home Affairs

Aviation Transport Security Act 2004

Aviation Transport Security (Screening officer requirements) Determination (No. 2) 2022

The *Aviation Transport Security Act 2004* (the Aviation Act) establishes a regulatory framework to safeguard against unlawful interference with aviation and to prevent the use of aviation in connection with serious crime. To achieve these purposes, the Aviation Act establishes minimum security requirements for civil aviation in Australia by imposing obligations on persons engaged in civil aviation related activities.

Consistent with these purposes, the *Aviation Transport Security (Screening officer requirements) Determination (No. 2) 2022* (the Determination) determines qualifications, training, continuing professional development, use of identity card and uniforms requirements for specified screening officers, as well as record keeping requirements for screening authorities.

Legislative authority

The Determination is made under section 94A of the Aviation Act. Paragraph 94A(a) provides that the Secretary of the Department of Home Affairs (the Secretary) may determine, by a legislative instrument, the training and qualification requirements, and any other requirements, for specified screening officers relating to the exercise or performance of a power under Division 5 of Part 5 of the Aviation Act, or a screening function. Paragraph 94A(b) provides that the Secretary may, by legislative instrument, determine for specified screening officers requirements in relation to use of identity cards or in relation to uniforms.

Purpose

The purpose of the Determination is to determine certain requirements for specified screening officers to establish a national standard of competency, which will strengthen the performance of security screening activities undertaken at Australian security controlled airports and help ensure all screening officers in Australia are equipped to respond to current and emerging threats.

The Determination introduces new accreditation testing requirements for screening officers, building on existing qualification, on the job training and continuing professional development and other requirements, to ensure screening officers obtain and continue to have the knowledge and ability to maintain the Australian aviation security environment in accordance with current international aviation security standards.

Broadly, the following is determined in relation to requirements for specified screening officers:

- a screening officer must hold either a Certificate II in Transport Security Protection, a qualification that the Secretary is satisfied will enable the holder to carry out the

duties of a screening officer under the Act, or for certain persons already engaged or employed as a screening officer between certain dates, a Certificate II in Security Operations.

- screening officers first engaged or employed as a screening officer on or after 1 July 2022 must complete 40 hours of on-the-job training specific to their role.
- screening officers engaged or employed on or after 1 January 2023 must pass the relevant aviation accreditation test approved by the Secretary for each power and screening function they may use in their role before the screening officer may exercise independent screening decisions in relation to each power or screening function. Screening officers employed or engaged before 1 January 2023 will be able to continue in their roles and will have 12 months from 1 January 2023 to complete and pass all accreditation tests relevant to the powers and functions they perform in their role.
- from the date that a screening officer passes an aviation accreditation test, they must pass the accreditation test at least once every 12 months thereafter, if it continues to be relevant to a power or function they use in their role. The non-completion of an aviation accreditation test will only prevent a screening officer from exercising powers or performing the functions related to that specific test, and will not prevent a screening officer from exercising powers or performing functions if the screening officer has passed the relevant accreditation test. Screening officers may also retake a test up to three times within a month.
- all screening officers must complete at least 12 hours of continuing professional development specific to their role each year.
- screening officers must continue to hold and properly display an Aviation Security Identification Card (ASIC) at all times while on duty and wear a distinctive and recognisable uniform.

The Determination also includes record keeping obligations which require screening authorities to make electronic records of information relating to screening officers engaged or employed by the screening authority relating to, among other things, those officers' date of engagement or employment, qualifications, training, unique ASIC, the issuing body of that ASIC, when the ASIC ceases to be in effect and continuing professional development. These records must be kept by the screening authority for two years after the cessation of the screening officer's employment or engagement, even if the screening authority ceases to be a screening authority during that time.

The Department of Home Affairs has consulted with transport industry stakeholders on the various updates to the Determination. An exposure draft of this Determination was provided to aviation industry stakeholders for their review and comment. Following the exposure,

amendments were made to the updated Determination in response to industry feedback. Aviation industry stakeholders were supportive of the updated Determination, as amended following the consultation period.

The Office of Best Practice Regulation (OBPR) was consulted prior to making this Determination. OBPR noted that the Determination was unlikely to have more than a minor regulatory impact and that a Regulation Impact Statement for this Determination was not required (OBPR ID: 22344).

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 Determination is compatible with human rights.

Details of the Determination are set out in Attachment B.

The Determination is a legislative instrument for the purposes of the Legislation Act 2003.

The whole of the Determination commences on 1 January 2023 and revokes the *Aviation Transport Security (Screening Officer Requirements) Determination 2022*.

Statement of Compatibility with Human Rights

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

**Aviation Transport Security (Screening officer requirements) Determination (No. 2)
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) establishes a regulatory framework to safeguard against unlawful interference with aviation and to prevent the use of aviation in connection with serious crime. To achieve these purposes, the Aviation Act establishes minimum security requirements for civil aviation in Australia by imposing obligations on persons engaged in civil aviation related activities.

Consistent with these purposes, the *Aviation Transport Security (Screening officer requirements) Determination (No. 2) 2022* (the Determination) maintains screening officer qualification, identity card, uniform, training and continuous professional development requirements, while establishing new annual accreditation requirements.

The Determination is made under section 94A of the Aviation Act, which provides that the Secretary of the Department of Home Affairs may, by legislative instrument, determine the training and qualification requirements, and any other requirements, for specified screening officers relating to the exercise or performance of a power under Division 5 of Part 5 of the Aviation Act, or a screening function. It also provides that the Secretary may, by legislative instrument, determine for specified screening officers requirements in relation to the use of identity cards or in relation to uniforms.

The purpose of a new annual accreditation testing requirement is to establish a national standard of competency for aviation screening officers, which will strengthen the performance of security screening activities undertaken at Australia's security controlled airports and security regulated ports, and help ensure all screening officers in Australia are equipped to respond to current and emerging threats. Only those screening officers who are able to demonstrate competency in screening functions will be authorised to exercise specific powers under the Aviation Act and conduct screening functions.

Specifically, the following is determined in relation to requirements for specified screening officers:

- a screening officer must hold either a Certificate II in Transport Security Protection, a qualification that the Secretary is satisfied will enable the holder to carry out the duties of a screening officer under the Act, or for certain persons already engaged or

employed as a screening officer between certain dates, a Certificate II in Security Operations.

- screening officers first engaged or employed as a screening officer on or after 1 July 2022 must complete 40 hours of on-the-job training specific to their role.
- screening officers engaged or employed on or after 1 January 2023 must pass the relevant aviation accreditation test approved by the Secretary for each power and screening function they may use in their role before the screening officer may exercise independent screening decisions in relation to each power or screening function. Screening officers employed or engaged before 1 January 2023 will be able to continue in their roles and will have 12 months from 1 January 2023 to complete and pass all accreditation tests relevant to the powers and functions they perform in their role.
- from the date that a screening officer passes an aviation accreditation test, they must pass the accreditation test at least once every 12 months thereafter, if it continues to be relevant to a power or function they use in their role. The non-completion of an aviation accreditation test will only prevent a screening officer from exercising powers or performing the functions related to that specific test, and will not prevent a screening officer from exercising powers or performing functions if the screening officer has passed the relevant accreditation test. Screening officers may also retake a test up to three times within a month.
- all screening officers must complete at least 12 hours of continuing professional development specific to their role each year.
- screening officers must continue to hold and properly display an Aviation Security Identification Card (ASIC) at all times while on duty and wear a distinctive and recognisable uniform.

The Determination includes record keeping obligations which require screening authorities to make electronic records of information relating to screening officers engaged or employed by the screening authority relating to, among other things, those officers' training, qualifications and continuing professional development. These records must be kept by the screening authority for two years after the cessation of the screening officer's employment or engagement, even if the screening authority ceases to be a screening authority.

Where a screening authority has engaged or employed a person as an aviation screening officer prior to 1 July 2022 and that person was previously employed as an aviation screening officer by a screening authority or as a maritime screening officer under the Maritime Act, the screening authority must keep a record of any evidence relied on to determine if a person would require a Certificate II in Transport Security Protection or Certificate II in Security Operations, or whether they are required to do 40 hours of 'on-the-job' training prior to being assessed as competent by their supervisor. This evidence can include records of qualifications held or any other information demonstrating that a person was employed or engaged by a port facility operator, regulated Australian ship, or other screening authority.

The purpose of these record-keeping requirements is for screening authorities to be able to demonstrate that they have employed or engaged screening officers who meet the qualification, training, continuing professional development and other requirements in the Determination. This will enable the Department to assess the effectiveness of the screening officer legislative framework to safeguard against unlawful interference with aviation and prevent the use of aviation in connection with serious crime.

Human rights implications

This Disallowable Legislative Instrument may engage the following human rights:

- the right to freedom from discrimination under Article 2(2) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to work under Article 6 of ICESCR
- the right to privacy in Article 17 of the ICCPR

The right to work and non-discrimination

Article 6(1) of the ICESCR provides that:

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 6 of the ICESCR is a right to the opportunity for a person to gain work of their choosing. The right to work does not equate to a guarantee to particular employment. The United Nations Committee on Economic Social and Cultural Rights has stated that this protection includes the right to not be unfairly deprived of work. Any limitations need to be reasonable, necessary and proportionate to the legitimate objective sought to be achieved.

Article 2(2) of the ICESCR provides:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the ICCPR provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee, to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In its General Comment 18, the UN Human Rights Committee stated that:

The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.

Similarly, in its General Comment on Article 2 of the ICESCR (E/C.12/GC/20), UNCESCR has stated (at 13) that:

Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.

The Disallowable Legislative Instrument may promote the right to work in Article 6 of the ICESCR by including provision for certain maritime screening officers to be considered as existing aviation screening officers under the same date of employment and engagement requirements as existing aviation officers.

The Disallowable Legislative Instrument may also promote the work rights of screening officers by providing that existing maritime and aviation screening officers, engaged or employed prior to 1 July 2022, are not required to undertake further training in circumstances where they fulfil all other obligations and are assessed as already having the requisite skills, knowledge and qualifications to carry out their roles effectively. This avoids disrupting existing aviation screening officers and provides maritime screening officers the flexibility to transition to aviation.

To the extent that the measures may prevent a person from obtaining, or remaining in, employment as an aviation screening officer, the Disallowable Legislative Instrument may limit the right to work and the right to non-discrimination by imposing training, continuing professional development and accreditation testing obligations on new and existing aviation screening officers. However, this limitation is reasonable, necessary and proportionate in achieving the legitimate aim of safeguarding against interference with aviation and establishing a national standard of competency for aviation screening officers. The Australian aviation security environment is a highly sensitive environment, the consequences of unlawful interference with aviation are significant, and it is reasonable to impose necessary training, continuing professional development, and annual accreditation requirements on persons working, or wishing to work, in this environment. The new requirements also align Australia with international aviation security standards, and implement recommendations of the Inspector of Transport Security's *Inquiry into Aviation and Maritime Transport Security Education and Training in Australia*.

Notably, with regards to the annual accreditation testing requirement, not completing, or failing, an aviation accreditation test will only prevent a screening officer from exercising the powers, or performing the functions, related to that specific test. It will not prevent a screening officer from exercising other powers or performing other functions, if they have

passed the relevant aviation accreditation tests for those other powers and functions. A screening officer may re-take the test at any time, but no more than three times in any thirty-day period.

The annual accreditation testing requirement will apply to all screening officers. However, screening officers engaged or employed before 1 January 2023, will have 12 months to complete and pass all accreditation tests relevant to their role. This is to ensure a smooth transition in the screening workforce, allowing existing aviation screening officers to continue to exercise powers and perform functions related to their role.

To the extent that the Disallowable Legislative Instrument limits the right to non-discrimination and the right to work, the limitations are reasonable, necessary and proportionate in achieving a legitimate objective.

Right to privacy

Article 17 of the ICCPR relevantly states that:

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy... or correspondence*
2. *Everyone has the right to the protection of the law against such interference or attacks.*

Interferences with privacy may be permissible, provided that they are authorised by law and not arbitrary. In order for an interference with the right to privacy not to be arbitrary, the interference must be for a reason consistent with the provisions, aims and objectives of the ICCPR and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted ‘reasonableness’ in this context to mean that ‘any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case’.

The Disallowable Legislative Instrument engages the right to privacy through the record-keeping obligations. Information about a screening officer, their training and continuing professional development must be kept by the screening authority. The limitation on the right to privacy is reasonable, necessary and proportionate. It is aimed at ensuring that screening authorities are able to demonstrate that they have employed or engaged screening officers who meet the qualification, training, continuing professional development and other requirements in the Determination. The information collected by screening authorities is protected by the privacy protection framework in the *Privacy Act 1988* (Privacy Act). The Department may also request this information for the purposes of assessing the effectiveness of the screening officer training framework, consistent with the Determination, Aviation Act and Aviation Regulations, to safeguard against unlawful interference with aviation and prevent the use of aviation in connection with serious crime. The collection, storage, use and disclosure of personal information by the Department is undertaken in accordance with the Australian Privacy Principles contained in the Privacy Act.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it will assist to maintain the integrity of Australia's aviation security. To the extent that the Disallowable Legislative Instrument may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Clare O'Neil MP
Minister for Home Affairs

Details of the Aviation Transport Security (Screening officer requirements) Determination (No. 2) 2022

Section 1 – Name

This section provides that the title of this instrument is *Aviation Transport Security (Screening officer requirements) Determination (No. 2) 2022* (the Determination).

Section 2 – Commencement

This section provides that the Determination commences on 1 January 2023.

Section 3 – Revocation

The effect of this section is that, on commencement of the Determination, the *Aviation Transport Security (Screening Officer Requirements) Determination 2022* is revoked.

Section 4 – Definitions

Section 4 provides various definitions for the purpose of the Determination.

Note 1

Note 1 to section 4 notes that certain terms used in the Determination are defined in the *Aviation Transport Security Act 2004* (the Aviation Act). Those terms include *baggage*, *checked baggage*, *screening authority* and *screening officer*.

Note 2

Note 2 to section 4 notes that certain terms used in the Determination are defined in the *Aviation Transport Security Regulations 2005* (the Aviation Regulations). Those terms include *ASIC* and *properly displaying*.

Definitions

The definition of the term *Act* provides that the term means the *Aviation Transport Security Act 2004*.

The definition of the term *independent screening decision* provides that the term means a decision whether to allow a person, personal effects, carry-on baggage, checked baggage, goods or a vehicle to pass through a screening point, without prompting or guidance from a supervising officer. This definition is relevant to the training requirements determined in section 7 of the Determination.

The definition of the term *Regulations* means *Aviation Transport Security Regulations 2005*.

Section 5 – Application

This section has the effect that the Determination determines requirements under section 94A of the Act, for specified screening officers. Section 94A provides that the Secretary of the Department of Home Affairs may, by legislative instrument, determine the training and qualification requirements, and any other requirements, for specified screening officers relating to the exercise or performance of a power under Division 5 of Part 5 of the Act, or a screening function. It also provides that the Secretary may, by legislative instrument, determine for specified screening officers requirements in relation to the use of identity cards and uniforms.

Section 6 – Qualifications

This section sets out the qualification requirements for specified screening officers. The purpose of these requirements is to provide a consistent standard of qualification for specified screening officers to meet. The effect is that, if the screening officer does not meet the qualification requirement, then they are unable to perform the role of a screening officer.

Subsection 6(1) provides that screening officers must hold either a Certificate II in Transport Security Protection, or a qualification that the Secretary is satisfied will enable the holder to carry out the duties of a screening officer under the Act. The powers available to the Secretary in paragraph 94A(a) of the Aviation Act permit the Secretary to determine, in section 6 of the Determination, a mandatory qualification for a screening officer (in accordance with the date they were engaged or employed), and to include a qualification that the Secretary is satisfied will enable the holder to carry out the duties of a screening officer under the Aviation Act. The effect of paragraph 6(1)(b) is that the main criterion against which the Secretary would be ‘satisfied’ in this context is the relevance of the qualification to the role of a screening officer, and their ability to carry out their various duties as a screening officer under the Aviation Act.

Together, subsections 6(2) and (3) provide that certain persons, specified in subparagraphs 6(2)(a) and (b), may hold a Certificate II in Security Operations to satisfy the qualification requirements in this Determination. Subsections 6(2) and (3) have the effect that a person who was engaged or employed as a screening officer before 16 January 2022, by either a screening authority (under the Aviation Act), or by a port facility operator or regulated Australian ship under the *Maritime Transport and Offshore Facilities Security Act 2003* (Maritime Act) must hold either a Certificate II in Security Operations, a qualification that the Secretary is satisfied is equivalent to a Certificate II in Security Operations, or a Certification II in Transport Security Protection.

In addition, where a person engages subparagraph 6(2)(a) they must not:

- after 15 June 2020— have ceased to be engaged or employed as a screening officer by a screening authority, port facility operator or regulated Australian ship for a continuous period of more than 24 months; or
- after 31 December 2022—cease to be engaged or employed as a screening officer by a screening authority, port facility operator or regulated Australian ship for a continuous period of more than 24 months.

This exception continues arrangements in the previous Determination and has a beneficial effect for screening officers who were furloughed for an extended period during the global COVID-19 pandemic. It expressly allows those screening officers to rely on their existing Certificate II qualification, without requiring any screening officer who did not hold a Certificate II in Transport Security Protection at the time they were furloughed to obtain one. This subsection also recognises the skills and experience of screening officers who have transferred from the maritime sector to the aviation sector, provided that those officers have not ceased to be engaged or employed as a screening officer for a continuous period of 24 months or more, from particular points in time. This arrangement also ensures that persons who have had an extended period, being more than 24 months, away from being engaged or employed as a screening officer are required to obtain and hold the more recent Certification II in Transport Security Protection, or a qualification that the Secretary is satisfied will enable the holder to carry out the duties of a screening officer under the Act.

The guiding note to section 6 is a reminder that the Secretary can, under section 94B of the Aviation Act, exempt a class of screening officers from one or more of the requirements determined under paragraph 94A(a), if the Secretary is satisfied that there are exceptional circumstances.

Section 7 – Training

This section sets out the training requirements for screening officers. The purpose of these requirements is to provide a consistent standard of training for specified screening officers engaged or employed on or after 1 July 2022 to meet, while also recognising the skills and experience of screening officers who have been engaged or employed as screening officers prior to the commencement of this Determination.

Section 8 provides that if a screening officer does not meet the training requirements in section 7, then they are unable to undertake any aviation accreditation tests and make *independent screening decisions* (as defined in the Determination).

Subsection 7(1) has the effect that screening officers must complete at least 40 hours of on-the-job training specific to the screening officer's role if the screening officer was first engaged or employed as a screening officer on or after 1 July 2022 by a screening authority under the Aviation Act or the Aviation Regulations. The same requirement for at least 40 hours of on-the-job training is also applicable to screening officers that ceased to be engaged or employed as a screening officer for a continuous period of more than 24 months at any time from 1 July 2022.

Subsection 7(2) provides an exception to 7(1) where a screening officer does not need to complete 40 hours of on-the-job training if they were previously engaged or employed as a screening officer by a port operator or regulated Australian ship under the Maritime Act or an instrument made under the Maritime Act prior to 1 July 2022.

The requirements in subsections 7(1) and 7(2) apply to all screening officers.

Subsection 7(3) provides a non-exhaustive list of training activities that can be undertaken for the purposes of subsection 7(1), including supervised practice at a screening point,

training on X-ray image interpretation, on specific screening equipment used in the workplace, on weapons and prohibited items, on maintaining the integrity of sterile areas, on maintaining methods and techniques for screening and training designed to ensure familiarity with legislation relevant to screening.

The guiding note under subsection 7(3) is a reminder that the Secretary can, under section 94B of the Aviation Act, exempt a class of screening officers from one or more of the requirements determined under paragraph 94A(a), if the Secretary is satisfied that there are exceptional circumstances

Section 8 – Aviation accreditation test

This Determination introduces the requirement for screening officers to undertake aviation accreditation tests, which is a critical part of recent screening reforms which aim to introduce a national standard of competency for screening officers. This in turn will strengthen the performance of security screening activities undertaken at Australian security controlled airports and help ensure all screening officers in Australia are equipped to respond to current and emerging threats. Aviation accreditation testing replaces the requirement in the previous Determination for screening officers to be assessed as competent by a supervisor prior to making an independent screening decision.

Subsection 8(1) establishes that the Secretary may approve a test (an aviation accreditation test) that the Secretary is satisfied is appropriate to test the ability of a screening officer:

- to exercise a power mentioned in Division 5 of Part 5 of the Act that may be exercised by a screening officer; and
- to perform a screening function.

Division 5 of Part 5 of the Act sets out who is authorised to conduct screening, as well as the requirements and powers applicable to screening officers. Screening officers may also perform screening functions which are established in administrative notices made under the Aviation Regulations, which are not published publically to protect the integrity and security of airports and procedures.

Subsection 8(2) makes it clear that the accreditation tests must be administered by a person approved by the Secretary and completed using the Department of Home Affairs' ICT systems.

Section 9 – Testing screening officers

Subsection 9(1) has the effect that a screening officer cannot undertake any aviation accreditation test until they hold a relevant qualification in accordance with section 6, and have completed on the job training in accordance with section 7.

Subsection 9(2) has the effect that screening officers engaged or employed after 31 December 2022 must complete and pass the relevant aviation accreditation test approved by the Secretary for each power and screening function the screening officer will exercise or perform in their role, before making independent screening decisions which relate to the

power or screening function. Screening officers must pass relevant accreditations tests at least once every 12 months thereafter.

The guidance note makes it clear that not passing an aviation accreditation test will only prevent a screening officer from exercising the powers or performing the functions related to the specific test, and will not prevent a screening officer from exercising other powers or performing other functions for which the screening officer has passed the aviation accreditation tests for those other powers and functions.

Subsection 9(3) provides that screening officers engaged or employed prior to 1 January 2023 must pass an aviation accreditation test for each power and screening function the person will exercise or perform as screening officer:

- (a) within 12 months after 31 December 2022; and
- (b) at least once every 12 months after complying with paragraph (a).

The effect of this is to bring existing screeners (those employed or engaged prior to 1 January 2023) into the annual accreditation cycle, but allows them to exercise the powers and functions of a screening officer for up to 12 months until such time as they undertake accreditation testing. Consistent with subsection 9(2), the intention is that not passing an aviation accreditation test will only prevent a screening officer from exercising the powers or performing the functions related to the specific test, and will not prevent a screening officer from exercising other powers or performing other functions for which the screening officer has passed the aviation accreditation tests for those other powers and functions.

Subsection 9(4) provides that if none of the available aviation accreditation tests relate to a particular screening function or a particular power the person may use, then a screening officer must pass any aviation accreditation test before exercising the power or performing the screening function. In practice, a person engaged or employed as a screening officer will be undertaking multiple accreditation tests as part of their employment and this provision ensures that a person has completed and passed at least one test (as well as hold a qualification and have completed on the job training) before they make any independent screening decisions.

Subsection 9(5) has the effect that if a screening officer fails an aviation accreditation test, they must be supervised by a screening officer who has completed and passed the relevant aviation accreditation test, and must not make an independent screening decision related to the accreditation test that was failed. The screening officer may still make an independent screening decision where they have passed the relevant accreditation test. This provision, in conjunction with subsection (2) strikes an appropriate balance between making sure screening officers are competent and able to exercise powers and perform functions, and ensuring the screening officer workforce isn't impacted disproportionately by having screening officers taken offline because they failed one test.

Subsection 9(6) has the effect that if a screening officer fails an aviation accreditation test, the screening officer may re-take the test at any time, but no more than three times in any thirty-day period. This is to ensure screening officers have adequate time to be re-trained to

perform the screening function they have failed, and to prevent excessive test taking in the hope of achieving a successful test result.

The guiding note under subsection 9(6) defines the thirty-day period as one that would commence from the date of a screening officer's first unsuccessful attempt at an aviation accreditation test.

The example under subsection 9(6) illustrates that if a screening officer made an unsuccessful attempt at a specific aviation accreditation test on 1 January 2023, and made two more unsuccessful attempts in the following two days, the screening officer could not undertake another attempt at that specific aviation accreditation test until 1 February 2023.

Section 10 – Continuing professional development

Section 10 has the effect that a screening officer must complete at least 12 hours of continuing professional development specific to their role each calendar year. This training may include training on the topics listed in section 7, namely: X-ray image interpretation software; upgrades to existing equipment; new and emerging threats (or briefs on these) and detection and concealment techniques. The requirement in section 8 applies to all screening officers.

The guiding note under subsection 10(2) is a reminder that the Secretary can, under section 94B of the Aviation Act, exempt a class of screening officers from one or more of the requirements determined under paragraph 94A(a), if the Secretary is satisfied that there are exceptional circumstances.

The requirement in section 10 applies to all screening officers.

Section 11 – Aviation security identification cards

Section 11 has the effect that a screening officer must hold and properly display an ASIC at all times while on duty, or as otherwise required by the Aviation Regulations.

An applicant for an ASIC undergoes a series of background checks as part of the application process, comprising identity confirmation, a criminal history check, a security assessment, and, from 22 June 2022 in accordance with the *Transport Security Legislation Amendment (Serious Crime) Regulations 2022*, any new applicants for an ASIC will also undergo a criminal intelligence assessment. If applicable, an applicant will also undergo a check to ensure they have the right to work in Australia.

Screening officers perform a vital role in relation to aviation security. The purpose and effect of the requirement to hold an ASIC is to demonstrate that the holder of an ASIC has undergone appropriate background checking prior to working as a screening officer.

The requirement in section 11 applies to all screening officers.

Section 12 – Uniforms

Section 12 has the effect that a screening officer must wear a distinctive and recognisable uniform. The phrase ‘distinctive and recognisable’ is not defined in the Determination, the Aviation Act or the Aviation Regulations and should be given its ordinary meaning.

The purpose of this requirement is to ensure that persons performing screening functions are easily identifiable to the public.

The requirement in section 12 applies to all screening officers.

Section 13 – Record keeping

Section 13 has the effect of specifying record keeping requirements for screening authorities. Under the Determination, screening authorities are required to make electronic records in relation to screening officers engaged or employed by the authority in relation to:

- the date the screening officer commenced their engagement or employment with the screening authority;
- the qualifications held by a screening officer in accordance with section 6;
- the training undertaken by screening officer in accordance with section 7;
- any activity undertaken by a screening officer in accordance with section 9; and
- the screening officer’s unique ASIC number, the name of the issuing body that issued the ASIC, and when the ASIC ceases to be in effect.

Subsection 13(2) has the effect that, where a screening authority has determined that subsection 6(2) or 7(2) applies to a screening officer, the screening authority must make a record of the documents relied on. The guiding note provides the reader with examples of documents for which electronic records should be kept, including records of qualifications and evidence demonstrating that a person was previously employed by a port facility operator or regulated Australian ship.

Subsection 13(3) has the effect that a screening authority is required to retain the records made under subsection 13(1) for 2 years after the screening officer ceases to be engaged or employed by the screening authority, even if the screening authority ceases to be a screening authority during that time.

The purpose of these record-keeping requirements is for screening authorities to be able to demonstrate to Departmental compliance officers that they have employed or engaged screening officers who meet the accreditation, qualification, training, continuing professional development and other requirements in the Determination. This will also enable the Department to assess the effectiveness of the screening officer legislative framework, in safeguarding against unlawful interference with aviation and preventing the use of aviation in connection with serious crime.