



Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023

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 2 March 2023

David Hurley
Governor-General

By His Excellency's Command

Clare O'Neil
Minister for Home Affairs

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1 Name

This instrument is the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023*.

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.	4 March 2023

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Amendments

AusCheck Regulations 2017

1 Section 4

Insert:

high risk criminal intelligence assessment, of an individual, means an adverse criminal intelligence assessment that indicates the person issuing the assessment reasonably believes:

- (a) if the individual is an applicant for, or a holder of, an ASIC—that preventing the individual from holding an ASIC is necessary or desirable to prevent the use of aviation in connection with serious crime; or
- (b) if the individual is an applicant for, or a holder of, an MSIC—that preventing the individual from holding an MSIC is necessary or desirable to prevent the use of maritime transport or an offshore facility in connection with serious crime.

offshore facility has the same meaning as in the *Maritime Transport and Offshore Facilities Security Act 2003*.

2 Subsection 13(4A)

Repeal the subsection, substitute:

Advice relating to high risk criminal intelligence assessment

- (4A) The Secretary must advise the issuing body whether or not the Department has been given a high risk criminal intelligence assessment of the individual.

3 Subsection 14(6)

Repeal the subsection, substitute:

Advice relating to high risk criminal intelligence assessment

- (6) The Secretary must advise the issuing body for the ASIC or MSIC whether or not the Department has been given a high risk criminal intelligence assessment of the individual.

4 Subparagraph 23(b)(ia)

Repeal the subparagraph, substitute:

- (ia) the Department has not been given a high risk criminal intelligence assessment of the individual; or

5 At the end of Part 5

Add:

Division 7—Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023

42 Application provision—amendments made by the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023*

- (1) The amendments of sections 13, 14 and 23 made by Schedule 1 to the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023* apply in relation to any background check for which an application is made after the commencement of that Schedule (the *commencement time*).
- (2) The amendments of sections 13, 14 and 23 made by Schedule 1 to the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023* also apply in relation to any background check of an individual if:
 - (a) an application for the background check is made before the commencement time; and
 - (b) the Secretary does not, before the commencement time, advise the issuing body mentioned in that section whether or not an adverse criminal intelligence assessment of the individual has been given to the Secretary.

Aviation Transport Security Regulations 2005

6 Paragraph 6.28(1)(ea)

Repeal the paragraph, substitute:

- (ea) the issuing body has been notified in writing by the Secretary that the Department has not been given an adverse criminal intelligence assessment that indicates the person issuing the assessment reasonably believes that preventing the person proposed to be issued an ASIC from holding an ASIC is necessary or desirable to prevent the use of aviation in connection with serious crime; and

7 Paragraph 6.43(2)(bb)

Repeal the paragraph, substitute:

- (bb) the Secretary has notified the issuing body in writing that the Department has been given an adverse criminal intelligence assessment that indicates the person issuing the assessment reasonably believes that preventing the holder from holding an ASIC is necessary or desirable to prevent the use of aviation in connection with serious crime; and

8 At the end of Part 10

Add:

Division 23—Amendments made by the Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023

10.54 Application of amendments made by the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023*

- (1) The amendments of regulation 6.28 made by Schedule 1 to the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023* 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 (the **relevant person**) is made after the commencement of that Schedule (the **commencement time**).
- (2) The amendments of regulation 6.28 made by Schedule 1 to the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023* also apply in relation to any issue of an ASIC if:
 - (a) the application for the background check on the relevant person is made before the commencement time; and
 - (b) the Secretary does not, before the commencement time, notify in writing the issuing body mentioned in that regulation whether or not an adverse criminal intelligence assessment of the relevant person has been given to the Secretary.
- (3) The amendments of regulation 6.43 made by Schedule 1 to the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023* apply in relation to any ASIC issued before or after the commencement time.

Maritime Transport and Offshore Facilities Security Regulations 2003

9 Paragraph 6.08C(1)(da)

Repeal the paragraph, substitute:

- (da) the issuing body has been notified in writing by the Secretary that the Department has not been given an adverse criminal intelligence assessment that indicates the person issuing the assessment reasonably believes that preventing the person proposed to be issued an MSIC from holding an MSIC is necessary or desirable to prevent the use of maritime transport or an offshore facility in connection with serious crime;

10 Paragraph 6.08D(1)(b)

Repeal the paragraph, substitute:

- (b) as a result of a background check, the Department is given an adverse criminal intelligence assessment that indicates the person issuing the assessment reasonably believes that preventing an applicant for an MSIC from holding an MSIC is necessary or desirable to prevent the use of maritime transport or an offshore facility in connection with serious crime.

11 Paragraph 6.08M(1)(cb)

Repeal the paragraph, substitute:

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- (cb) the Secretary has notified the issuing body in writing that the Department has been given an adverse criminal intelligence assessment that indicates the person issuing the assessment reasonably believes that preventing the holder from holding an MSIC is necessary or desirable to prevent the use of maritime transport or an offshore facility in connection with serious crime; or

12 At the end of Schedule 2

Add:

Part 14—Amendments made by the Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023

122 Application of amendments made by the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023*

- (1) The amendments of regulations 6.08C and 6.08D made by Schedule 1 to the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023* apply in relation to any issue of an MSIC if the application for the background check on the applicant for the issue of the MSIC (the **relevant person**) is made after the commencement of that Schedule (the **commencement time**).
- (2) The amendments of regulations 6.08C and 6.08D made by Schedule 1 to the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023* also apply in relation to any issue of an MSIC if:
 - (a) the application for the background check on the relevant person is made before the commencement time; and
 - (b) the Secretary does not, before the commencement time, notify in writing the issuing body mentioned in that regulation whether or not an adverse criminal intelligence assessment of the relevant person has been given to the Secretary.
- (3) The amendments of regulation 6.08D made by Schedule 1 to the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023* do not affect the validity of a disqualifying notice issued under subregulation 6.08D(2) before the commencement time.
- (4) The amendments of regulation 6.08M made by Schedule 1 to the *Transport Security Legislation Amendment (Criminal Intelligence Threshold) Regulations 2023* apply in relation to any MSIC issued before or after the commencement time.