EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 289

Issued by the Authority of the Minister of Transport and Regional Services

Subject - Aviation Transport Security Act 2004

Aviation Transport Security Amendment Regulations 2005 (No. 4)

Section 133 of the Aviation Transport Security Act 2004 (the Security Act) provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for giving effect to that Act and prescribe fees in respect of matters under that Act (including the regulations).

The Aviation Transport Security Regulations 2005 (the Principal Regulations) set out the requirements for the display of Aviation Security Identity Cards (ASICS) and Visitor Identity Cards (VICs) in secure areas of security controlled airports, with regular public transport (RPT) services.

The purpose of the proposed Regulations is to:

- exempt supervised passengers from the requirements to display an ASIC or a VIC for the purpose of identifying their baggage as part of the baggage screening or baggage reconciliation process in the secure area of an airport;
- provide that an exemption given by the Secretary of the Department of Transport and Regional Services from displaying an ASIC in a secure area of a security controlled airport, with RPT services, is also an exemption from holding an ASIC and make another minor clarification to correct the reference to the date of the Hague Convention definition; and
- allow ASIC issuing bodies to apply to the Secretary of the Department of Transport and Regional Services to vary their ASIC program to vary the format of VICs that they or their agents issue.

Attachment A outlines the scope of the proposed Regulations. Further details of the proposed Regulations are set out in Attachment B.

Consultation and regional workshops with industry indicate that the direct effect of these amendments to aviation industry participants will be positive.

The Security Act does not specify any conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The proposed Regulations would be a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The proposed Regulations would commence on the day after they are registered on the Federal Register of legislative Instruments.

The Minute recommends that Regulations be made in the form proposed.

Authority:

Section 133 of the Aviation Transport Security Act 2004
ATTACHMENT A

The proposed Regulations would amend the *Aviation Transport Security Regulations 2005* to specify that:

- persons are exempt from displaying an aviation security identification card (ASIC) or a visitor identification card (VIC) in a secure area of a security controlled airport, with regular public transport (RPT) services, if they are in the area for additional baggage clearance or screening purposes and are at all times, whilst in the secure area, escorted by a person who is properly displaying a valid ASIC;

- exemptions approved by the Secretary of the Department of Transport and Regional Services (DOTARS) to display an ASIC in a secure area of a security controlled airport, with RPT services, would also be an exemption from holding an ASIC;

- the definition of the Hague Convention is the *Convention abolishing the Requirement of Legislation for Foreign Public Documents*, done at the Hague on 5 October 1961;

- ASIC issuing bodies must comply with the VIC format requirements specified in the *Aviation Transport Security Regulations 2005* unless the Secretary of DOTARS approves a request for a variation to an ASIC program to vary the format of VICs that an ASIC issuing body or their agents issue;

- a request to vary an ASIC program to alter the format of VICs must be in writing and specify details of the proposed format, the reasons for the proposed differences and whether any agents of the issuing body are included in the proposal; and

- the Secretary of DOTARS may approve a variation to an ASIC program to vary the format of VICs issued subject to conditions.
Details of the proposed *Aviation Transport Security Amendment Regulations 2005 (No. 4)*

**Regulation 1 - Name of Regulation**

This regulation provides that the title of the Regulations is the *Aviation Transport Security Amendment Regulations 2005 (No. 4).*

**Regulation 2 - Commencement**

This regulation provides for the Regulations to commence on the day after they are registered.

**Regulation 3 - Amendment of the *Aviation Transport Security Regulations 2005***

This regulation provides that the *Aviation Transport Security Regulations 2005* (‘the Principal Regulations’) are amended as set out in Schedule 1.

**Schedule 1 - Amendments**

**Items [1], [2] – subregulation 3.03(1) and regulation 3.07A**

**Exempt supervised passengers from the requirements to display a visitor identification card (VIC) for the purpose of identifying their baggage as part of the baggage screening or baggage reconciliation process in the secure area of an airport**

The proposed amendment to subregulation 3.03(1) provides that the requirement to properly display a valid VIC in a secure area of a security controlled airport, with regular public transport (RPT) services, would not apply to persons attending baggage makeup areas in accordance with proposed regulation 3.07A.

The proposed new regulation 3.07A would exempt a person from displaying an ASIC or VIC in a secure area of a security controlled airport, with RPT services, if they are in the area for additional baggage clearance or screening purposes and are at all times, whilst in the secure area, escorted by a person who is properly displaying a valid ASIC.

**Item [3] – subregulation 3.08(6), note**

**Clarify that an exemption from displaying an ASIC in a secure area of an airport also exempts a person from holding an ASIC**

The proposed removal of the note to subregulation 3.08(6), would rectify an inconsistency in the regulation that requires a person or class of persons who have received an exemption from the Secretary of the Department of Transport and Regional Services from displaying an ASIC, to hold an ASIC.
An exemption from the Secretary of the Department of Transport and Regional Services from displaying an ASIC, under this regulation, is also an exemption from applying for and receiving (holding) an ASIC.

Item [4] –subregulation 6.05(1)

Correct the reference to the date of the Hague Convention

The proposed amendment to the definition of Hague Convention in subregulation 6.05(1) would rectify an error. The correct date of the making of the Convention abolishing the Requirement of Legislation for Foreign Public Documents is 5 October 1961.


Allow ASIC issuing bodies to apply to vary the format of visitor identification cards (VICs) that they and/or their agent issue

The proposed substituted regulation 6.39 would provide that unless the Secretary of the Department of Transport and Regional Services approves otherwise, the format of a VIC is prescribed and must comply with the regulations.

The proposed new subregulation 6.39A(1) would allow an ASIC issuing body to seek a variation approval from the Secretary of the Department of Transport and Regional Services to vary its ASIC program to provide for the issue of VICs in a form other than that prescribed by the regulations.

The proposed new subregulation 6.39A(2) would specify that the application to vary an ASIC program to vary the format of a VIC must be in writing and must provide details of the proposed format, the reasons for the proposed differences, and whether any agents of the issuing body are included in the proposal to vary the format of a VIC that they issue.

The proposed new subregulation 6.39A(3) would provide that the Secretary may, in writing, request that the ASIC issuing body provide additional information to enable consideration of the application to vary an ASIC program to vary the format of a VIC.

The proposed new subregulation 6.39A(4) would provide that the Secretary has 30 days after receiving the application, or 30 days from receiving additional information if requested, to approve or refuse to approve the issue of VICs in the proposed format and notify the ASIC issuing body of that decision in writing. If only some of the issuing body’s agents will issue VICs in the proposed form, these agents must be specified in the notice of the decision. If the decision is a refusal, the reasons for the decision must be included in the notice provided to the ASIC issuing body. The note to this subregulation advises that application may be made to the Administrative Appeals Tribunal for the review of a decision made by the Secretary to refuse to approve a variation of an issuing body’s ASIC program.

The proposed new subregulation 6.39A(5) would specify that if the Secretary has not approved or refused to approve the variation of the ASIC program to vary the format
of VICs in the proposed format within the period allowed in subregulation (4), the application is deemed to have been refused.

The proposed new subregulation 6.39A(6) would specify that before refusing to approve or refuse the variation to the ASIC program to vary the format of VICs that are issued the Secretary must consider the justification offered for the difference, the likely effect of the difference on aviation security in Australia generally, the likely effect of the difference on aviation security at the airport or airports concerned, and anything else relevant that the Secretary is aware of.

The proposed new subregulation 6.39A(7) would specify that the Secretary may give an approval to vary an ASIC program to vary the format of a VIC that is issued subject to conditions. If approval is given subject to conditions, the Secretary must notify the ASIC issuing body, in writing, what the conditions are.

The proposed new subregulation 6.39A(8) would specify that if the Secretary has approved the variation to an ASIC program to vary the format of VICs issued in a form other than that set out in regulation 6.39, the issuing body concerned, or an agent named in the notice of approval must not issue a VIC that does not comply with the approval or is in contravention of any conditions set out in the approval.

The proposed new subregulation 6.39A(9) would specify that it is a strict liability offence with a maximum penalty of 50 penalty units to issue a VIC that does not comply with the approval to vary the format of a VIC or any conditions placed on the approval.