

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Justice

*AusCheck Act 2007*

*Aviation Transport Security Act 2004*

*Maritime Transport and Offshore Facilities Security Act 2003*

*AusCheck and Other Laws (Repeal and Consequential Amendments) Regulations 2017*

### **Introduction**

The *AusCheck and Other Laws (Repeal and Consequential Amendments) Regulations 2017* are made under section 18 of the *AusCheck Act 2007*.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

### **Outline**

The *AusCheck Act 2007* (the Act) establishes a background checking function within the Attorney-General's Department (the department). The purpose of the Act is to enhance national security by providing a consistent approach to background checking for individuals who require access to secure areas of airports, seaports and facilities that handle security sensitive biological agents.

The *Aviation Transport Security Act 2004* (ATS Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFS Act) establish regulatory frameworks to safeguard against unlawful interference with aviation, and maritime transport or offshore facilities.

The background checking function under the Act is performed by a branch within the department called AusCheck. Section 8 of the Act states that the regulations may provide for the establishment of the AusCheck scheme. The scheme includes the conduct and coordination of background checks for the purposes of the ATS Act, MTOFS Act, and any other Act that expressly requires or permits a background check to be conducted under the AusCheck scheme.

Section 133 of the ATS Act provides that the Governor-General may make regulations prescribing matters required or permitted by the ATS Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the ATS Act. Additionally, subsection 74H(1) of the ATS Act provides that regulations may be made providing for matters relating to adverse aviation security status.

Section 209 of the MTOFS Act states that the regulations may provide for matters required or permitted by the MTOFS Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the MTOFS Act.

The *AusCheck Regulations 2017* are being introduced to replace the *AusCheck Regulations 2007* which will automatically repeal (sunset) on 1 October 2017, and to ensure that the AusCheck scheme continues to operate.

This instrument has been made to repeal the *AusCheck Regulations 2007* prior to the sunset date. This instrument also makes minor amendments to the *Aviation Transport Security*

*Regulations 2005 and the Maritime Transport and Offshore Facilities Security Regulations 2003 to update references and language to be consistent with the AusCheck Regulations 2017.*

### **Consultation**

In accordance with section 17 of the *Legislation Act 2003*, consultation on the content of this instrument occurred with the Department of Infrastructure and Regional Development (DIRD). DIRD is responsible for administering the *Aviation Transport Security Regulations 2005* (ATS Regulations) and the *Maritime Transport and Offshore Facilities Security Regulations 2003* (MTOFS Regulations). The department has received departmental-level approval from DIRD for the consequential amendments made to the ATS and MTOFS regulations.

### **Regulatory Impact Statement**

The Office of Best Practice Regulation (OBPR) was consulted in relation to the *AusCheck Regulations 2017* and advised that a Regulatory Impact Statement (RIS) would usually be required as the remade regulations are being introduced as a new legislative instrument. However the department has assessed the current regulations as fit for purpose, and given the changes are not substantial, a letter from the department's Deputy-Secretary to OBPR was sent in lieu of a RIS (**Attachment A**).

### **Commencement**

The instrument commences on 1 August 2017.

## Statement of Compatibility with Human Rights

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

### **AusCheck and Other Laws (Repeal and Consequential Amendments) Regulations 2017**

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 Legislative Instrument**

The *AusCheck Act 2007* (the Act) establishes a background checking function within the Attorney-General's Department (the department). The purpose of the Act is to enhance national security by providing a consistent approach to background checking for individuals who require access to secure areas of airports, seaports and facilities that handle security sensitive biological agents.

The *Aviation Transport Security Act 2004* (ATS Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFS Act) establish regulatory frameworks to safeguard against unlawful interference with aviation, and maritime transport or offshore facilities.

The background checking function under the Act is performed by a branch within the department called AusCheck. Section 8 of the Act states that the regulations may provide for the establishment of the AusCheck scheme. The scheme includes the conduct and coordination of background checks for the purposes of the ATS and MTOFS Acts.

The *AusCheck Regulations 2017* are being introduced to replace the *AusCheck Regulations 2007* which will automatically repeal (sunset) on 1 October 2017, and to ensure that the AusCheck scheme continues to operate.

This instrument has been made to repeal the *AusCheck Regulations 2007* prior to the sunset date. This instrument also makes minor amendments to the *Aviation Transport Security Regulations 2005* and the *Maritime Transport and Offshore Facilities Security Regulations 2003* to update references and language to be consistent with the *AusCheck Regulations 2017*.

### **Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

## **Details of the instrument**

### Section 1

This clause provides that the title of the instrument is the *AusCheck and Other Laws (Repeal and Consequential Amendments) Regulations 2017*.

### Section 2

This clause provides that the whole instrument commences on 1 August 2017.

### Section 3

This clause provides the authority to make the regulations which are under section 18 of the *AusCheck Act 2007*, section 133 of the *Aviation Transport Security Act 2004* and section 209 of the *Maritime Transport and Offshore Facilities Security Act 2003*.

### Section 4

This clause provides that each instrument in the Schedule to this instrument is amended or repealed as set out in that Schedule.

### Schedule 1

#### *Item 1*

This item repeals in whole the *AusCheck Regulations 2007*.

#### *Item 2*

This item repeals the definition of AusCheck facility in the *Aviation Transport Security Regulations 2005* and substitutes ‘a facility made available by the Secretary AGD for the purposes of the AusCheck scheme’. Currently AusCheck provide this facility through the AusCheck database.

#### *Item 3*

This item updates a reference to the *AusCheck Regulations 2007* in the *Aviation Transport Security Regulations 2005* to the *AusCheck Regulations 2017*.

#### *Item 4*

This item amends a reference to background check advice in the *Aviation Transport Security Regulations 2005* to the updated language and reference in the *AusCheck Regulations 2017*. The advice referred to has not changed.

*Item 5*

This clause amends a reference to background check advice including unfavourable criminal history in the *Aviation Transport Security Regulations 2005* to the updated language and reference in the *AusCheck Regulations 2017*.

*Item 6*

This item repeals the definition of AusCheck facility in the *Maritime Transport and Offshore Facilities Security Regulations 2003* and substitutes ‘a facility made available by the Secretary AGD for the purposes of the AusCheck scheme’. Currently AusCheck provide this facility through the AusCheck database.

*Item 7*

This item updates a reference to the *AusCheck Regulations 2007* in the *Maritime Transport and Offshore Facilities Security Regulations 2003* to the *AusCheck Regulations 2017*.

*Item 8*

This item updates a specific reference to a provision in the *AusCheck Regulations 2007* in the *Maritime Transport and Offshore Facilities Security Regulations 2003* to the updated provision in the *AusCheck Regulations 2017*.

## Attachment A



Australian Government  
Attorney-General's Department

17/3039-01

1 May 2017

Ms Tanja Cvijanovic  
First Assistant Secretary  
Office of Best Practice Regulation  
Regulatory Reform Division  
Department of Prime Minister and Cabinet

Email: [helpdesk@obpr.gov.au](mailto:helpdesk@obpr.gov.au)

Dear Ms Cvijanovic

### ***AusCheck Regulations 2007***

I am writing to the Office of Best Practice Regulation (OBPR) regarding the *AusCheck Regulations 2007*, which, as per the *Legislative Instruments Act 2003*, are scheduled to sunset on 1 October 2017. It has been decided that the instrument is to be remade without significant amendment.

The Attorney-General's Department certifies that the *AusCheck Regulations 2007* are operating effectively and efficiently, and therefore a Regulation Impact Statement is not required for this regulation to be remade.

The assessment that the regulation is operating effectively and efficiently has been informed by a consultation process which involved AusCheck, Australia's intelligence community agencies, the Australian Federal Police, the Department of Health, the Department of Immigration and Border Protection, the Department of Infrastructure and Regional Development and all issuing bodies responsible for issuing Aviation Security Identification Cards and Maritime Security Identification Cards. Consultation occurred between January and March 2017.

I acknowledge that OBPR will publish this letter for transparency purposes.

If you have any queries about this advice, please contact Michael Pahlow on 02 6141 2042 or [michael.pahlow@ag.gov.au](mailto:michael.pahlow@ag.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nicole Rose'.

Nicole Rose  
Deputy Secretary  
Criminal Justice Group  
Attorney-General's Department