



AusCheck Amendment (System Functionality) Regulations 2017

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 14 December 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Michael Keenan
Minister for Justice

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1 Name

This instrument is the *AusCheck Amendment (System Functionality) Regulations 2017*.

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	A single day to be fixed by the Minister by notifiable instrument. However, if the provisions do not commence within the period of 18 months beginning on the day after this instrument is registered, they commence on the day after the end of that period.	1 October 2018 (F2018N00152)

Note: This table relates only to the provisions of this instrument as originally made.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 *AusCheck Act 2007*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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:

Category A identification document:

- (a) for an individual who is an applicant for, or a holder of, an ASIC—has the meaning given by subregulation 6.01(1) of the ATS Regulations; or
- (b) for an individual who is an applicant for, or a holder of, an MSIC—has the meaning given by subregulation 6.07B(1) of the MTOFS Regulations.

Category B identification document:

- (a) for an individual who is an applicant for, or a holder of, an ASIC—has the meaning given by subregulation 6.01(1) of the ATS Regulations; or
- (b) for an individual who is an applicant for, or a holder of, an MSIC—has the meaning given by subregulation 6.07B(1) of the MTOFS Regulations.

Category C identification document:

- (a) for an individual who is an applicant for, or a holder of, an ASIC—has the meaning given by subregulation 6.01(1) of the ATS Regulations; or
- (b) for an individual who is an applicant for, or a holder of, an MSIC—has the meaning given by subregulation 6.07B(1) of the MTOFS Regulations.

identification document means:

- (a) a Category A identification document; or
- (b) a Category B identification document; or
- (c) a Category C identification document.

Immigration Department means the Department administered by the Minister administering the *Migration Act 1958*.

2 After subparagraph 5(l)(i)

Insert:

- (ia) if the individual does not have, or cannot use or obtain, a passport—the number of any document issued to the individual by the Immigration Department as a result of the individual not having, or not being able to use or obtain, a passport; and

3 Subparagraph 5(l)(ii)

Before “the number”, insert “in any case—”.

4 At the end of section 5

Add:

- ; (m) if the individual’s application is made under paragraph 8(1)(a)—a record of the individual having given express consent to the identity of the individual being verified, and any one of the following:
 - (i) details of a Category A identification document;

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- (ii) details of any alternative identification requirements, and details of any other identification documents required by the alternative identification requirements, approved in relation to the individual under regulation 6.27AC of the ATS Regulations or regulation 6.08BC of the MTOFS Regulations.

5 After section 5

Insert:

5A Exemption from requirement to provide details of identification document

- (1) This section applies if:
 - (a) an individual is required to provide details of an identification document; and
 - (b) AusCheck cannot use the details to verify electronically the individual's identity for the purposes of a background check.
- (2) The issuing body may apply to the Secretary for an exemption from the requirement for the individual to provide details of the identification document.

Requirements for application

- (3) The application must:
 - (a) be in writing; and
 - (b) state that the individual has an identification document whose details AusCheck cannot use to verify electronically the individual's identity; and
 - (c) if the individual has another identification document—include details of that document; and
 - (d) in any case—include any other information that may assist the Secretary in making a decision about whether to grant an exemption in relation to the individual.

Matters to be considered

- (4) In making a decision under this section in relation to the individual, the Secretary must consider the following matters:
 - (a) the extent to which the issuing body can show evidence of the identity of the individual;
 - (b) the reason why the details of the individual's identification document cannot be used to verify electronically the individual's identity;
 - (c) if the application included details of another identification document—whether AusCheck can use the details to verify electronically the individual's identity.

Requirement for further information

- (5) If the Secretary requires further information to consider the application, the Secretary may request the issuing body to give the further information within 30 days after receiving the request.

When decision must be made

- (6) The Secretary must, in writing and within 30 days after receiving the application or, if further information is requested, within 30 days after receiving the further information in accordance with subsection (5):
- (a) do any one of the following:
 - (i) grant the exemption in relation to the individual;
 - (ii) for an exemption in relation to a Category A identification document—grant the exemption in relation to the individual, subject to one or more conditions;
 - (iii) in any case—refuse to grant the exemption in relation to the individual; and
 - (b) notify the issuing body of the decision; and
 - (c) if the decision is a refusal—notify the issuing body of the reasons for the refusal.
- (7) The Secretary is taken to have refused to grant the exemption if the Secretary has not made a decision on the application within the period mentioned in subsection (5).

5B Inability to verify identity of individual

AusCheck is not required to continue undertaking a background check of an individual if:

- (a) the background check requires details of an identification document to electronically verify the identity of the individual; and
- (b) AusCheck is not provided with details of an identification document that AusCheck can use to so verify that identity.

Note: An identification document is not required if:

- (a) alternative identification requirements that do not require details of an identification document have been approved in relation to the individual under regulation 6.27AC of the ATS Regulations or regulation 6.08BC of the MTOFS Regulations; or
- (b) an exemption has been granted under section 5A of this instrument in relation to the individual without a condition requiring details of an identification document.

6 At the end of section 13

Add:

Advice relating to identity of individual

- (8) If:
- (a) the application is made under a provision referred to in paragraph 8(1)(a); and
 - (b) the background check includes an assessment of information relating to the identity of the individual;
- the Secretary must advise the following of the final result of that assessment:
- (c) the issuing body;
 - (d) if the final result of that assessment is that the identity of the individual has failed to be verified—the individual.

7 Section 26

Repeal the section, substitute:

26 Review by the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Secretary to do any of the following:

- (a) to refuse to grant an exemption in relation to an individual under subsection 5A(6);
- (b) to grant an exemption in relation to an individual under subsection 5A(6) subject to one or more conditions;
- (c) to advise under Division 5 that an individual has an unfavourable criminal history.

8 Before section 31

Insert:

Division 1—AusCheck Regulations 2017**9 At the end of Part 5**

Add:

Division 2—AusCheck Amendment (System Functionality) Regulations 2017**36 Application provision—amendments made by AusCheck Amendment (System Functionality) Regulations 2017**

The amendments made by the *AusCheck Amendment (System Functionality) Regulations 2017* apply in relation to applications for background checks made after that instrument commences.