



AusCheck Regulations 2017

Frequently Asked Questions

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What is the purpose of the Regulation?

The AusCheck Regulations 2017 (the Regulations) commenced on 1 August 2017. The Regulations provide the authority for AusCheck to communicate information with its background checking partners and provide certainty in how AusCheck information is managed and held.

The Regulations outline a range of administrative matters for the operation of the AusCheck scheme as it applies to the Aviation Transport Security Act 2004 (ATS Act), Maritime Transport and Offshore Facilities Security Act 2003 (MTOFS Act), National Health Security Act 2007 (NHS Act), and any other Act that expressly requires or permits a background check to be conducted under the AusCheck scheme.

The Regulations cover the following:

- information required for an application
- decisions that can be made
- advice that may be given
- fees that may be charged
- review rights
- information required following a background check, and
- guidelines for the use and disclosure of information.

Why have the Regulations been updated?

The Regulations were initially made in 2007, and were due to automatically repeal (sunset) after 10 years of operation on 1 October 2017. Following an efficiency and effectiveness review, the decision was made to remake the Regulations in essentially the same terms, but with updates for clarity and consistency, and to make minor amendments.

The making of new Regulations ensures continuity of the AusCheck scheme.

There are no major policy changes from the previous Regulations in this new instrument, and only three minor policy changes, as outlined below.

How were updates to the Regulations identified?

AusCheck conducted an efficiency and effectiveness review, which included consultation both within AusCheck and our background checking partners, other government agencies, and external stakeholders including ASIC and MSIC issuing bodies.

The purpose of the review was to explore how the regulations were working in practice, and if amendments were necessary to ensure the efficient and effective implementation of AusCheck's mandate, being the coordination of criminal and national security background checking and identify individuals who should not be eligible to access aviation, maritime or national health facilities.

What consultations were conducted?

AusCheck conducted targeted consultations, through meetings with checking partners and other government agencies, and regular forums with ASIC and MSIC issuing bodies. AusCheck also prepared written consultation papers and received submissions in response.

The decision to remake the regulations with only minor amendments allowed for targeted consultations with key stakeholders rather than broad public consultations.

What stays the same under the new Regulations?

The Regulations are largely consistent with the previous framework, so the majority of the roles and responsibilities, and processes and procedures, remain the same.

What are the changes to the Regulations?

There are three minor changes to the policy of the AusCheck scheme, which are reflected in the Regulations. These are:

1. An applicant or holder of an ASIC or MSIC, or holder of NHS authorisation, is required to self-report if they have been convicted and sentenced of any security-relevant offences. In these circumstances an individual would have 14 days to make representations to the Secretary on their unfavourable criminal history. For 4 year MSIC holder, a background check is conducted on the two year anniversary of the first background check. If an individual is found to have an unfavourable criminal history, the MSIC holder will have 14 days to make representations to the Secretary (rather than 28 days) to be consistent with the time period given to individuals who would have self-reported a security-relevant offence.
2. The removal of the requirement for the Secretary to provide a copy of an individual's adverse security assessment to the Secretary of the Department of Infrastructure and Regional Development (DIRD), as there is no decision point or discretion for the grant of an ASIC or MSIC following an adverse security assessment (note the requirement is maintained for qualified security assessments); and
3. Clarifying that, for completeness, the Secretary is able to provide further advice to all relevant individuals, issuing bodies and entities, if the Secretary becomes aware that initial advice was inaccurate or incomplete. This remedied a gap in the previous regulations which did not allow further information to be provided to all parties depending on the circumstances.

The new regulations are structured differently to the previous regulations. For clarity, the new regulations have separate provisions for background checks for aviation and maritime security purposes and for background checks for national health security purposes. This is intended to clarify what processes are followed and what advice is provided when a background checks is conducted for a particular purpose. While the regulations appear different with this new structure, the policy informing the regulations has not changed.

How will AusCheck collect, use or disclose my personal information?

AusCheck is strongly committed to the principles of the Privacy Act 1988 and upholding the Australian Privacy Principles (APP). AusCheck continues to abide by its Privacy Notice, which is provided to individuals in the background checking process, and can be found on the Attorney-General Department's website.

The framework for the collection, use and disclosure of personal information within the AusCheck scheme is set out in section 13 of the AusCheck Act 2007 and is not replicated in the Regulations.

What is a deemed application?

The Regulations make reference to a deemed application, which then permits a background check to be completed. For example, a deemed application is taken to be made at the two-year anniversary of a four-year MSIC, removing the need for issuing bodies to administratively seek that update.

This is consistent with the previous framework, but provides more certainty about when AusCheck is permitted to conduct a background check of an individual.

What is a National Health Security (NHS) Entity?

The definition of NHS Entity appropriately reflects the terms in the National Health Security Act 2007.

Transferred applications

As was reflected in the old regulations, the new regulations allow for ‘transferred applications’ when an issuing body ceases to operate and a new issuing body takes on responsibility for an ASIC or MSIC, or application for one of those which is in progress but not yet issued.

The new Regulations deal with ‘transferred applications’ in two separate provisions: to allow for the provision of information from AusCheck to a new issuing body (section 18), and the new issuing body having access to relevant information within the AusCheck database (section 28).

Transitional regulations

For any application/s under the AusCheck scheme which has been made, or taken to have been made before 1 August 2017 and has not been finalised by that date, will be dealt with under the appropriate provision of the new Regulations.

Does AusCheck take into consideration foreign criminal history?

Currently foreign criminal history is not taken into account by the AusCheck scheme. The Regulations continue to allow for foreign criminal histories to be taken into account provided the authorising legislation requires a background check to be conducted, and specifies the circumstances and criteria under which foreign information can be assessed.

Does AusCheck charge a fee?

Consistent with the previous framework of the AusCheck scheme, AusCheck may charge a fee for an application for a background check of an individual. Further information is available in the AusCheck cost recovery implementation statement on the [Attorney-General’s Department](#) website.