

## **Appendix 3**

# **Maritime Transport and Offshore Security Amendment Regulations 2005**





# Maritime Transport and Offshore Security Amendment Regulations 2005 (No. )<sup>1</sup>

Select Legislative Instrument 2005 No.

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Maritime Transport and Offshore Security Act 2003*.

Dated 2005

Governor-General

By His Excellency's Command

**[DRAFT ONLY – NOT FOR SIGNATURE]**  
Minister for Transport and Regional Services

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**1 Name of Regulations**

These Regulations are the *Maritime Transport and Offshore Security Amendment Regulations 2005 (No. )*.

**2 Commencement**

These Regulations commence on the day after they are registered.

**3 Amendment of *Maritime Transport and Offshore Security Regulations 2003***

Schedule 1 amends the *Maritime Transport and Offshore Security Regulations 2003*.

**Schedule 1 Amendments**

(regulation 3)

**[1] After regulation 3.10**

*insert*

**3.12 Operator to tell Secretary about issuing body for MSICs**

- (1) No later than 30 June 2006, a port operator, port facility operator or port service provider must give the Secretary the following information in writing:
- (a) if the operator is not an issuing body, the identity of the person who will issue MSICs for the operator;
  - (b) whether the operator will issue temporary MSICs and, if not, the identity of the person who will issue temporary MSICs for the operator.
- (2) The operator must notify the Secretary within 7 days if any information given for subregulation (1) is no longer correct.

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[2] **After regulation 5.10**

*insert*

**5.12 Operator to tell Secretary about issuing body for MSICs**

- (1) No later than 30 June 2006, an offshore facility operator must give the Secretary the following information in writing:
  - (a) if the operator is not an issuing body, the identity of the person who will issue MSICs for the operator;
  - (b) whether the operator will issue temporary MSICs and, if not, the identity of the person who will issue temporary MSICs for the operator.
- (2) The operator must notify the Secretary within 7 days if any information given for subregulation (1) is no longer correct.

[3] **Paragraph 5A.85 (1) (a)**

*substitute*

- (a) the boundaries of:
  - (i) the zone; and
  - (ii) any area within an offshore facility zone in which, because of paragraph 6.07J (2) (c), subregulation 6.07J (1) will not apply (a *non-operational area*); and

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[4] **After regulation 6.05**

*insert*

**Division 6.1A Control of maritime security zones**

**Subdivision 6.1A.1 Preliminary**

**6.07A Purpose of Division 6.1A**

- (1) This Division provides for a scheme under which:
  - (a) a maritime security identification card (*MSIC*) is issued to identify a person who has been the subject of a background check; and
  - (b) a maritime industry participant will not allow a person to enter, or remain in, a maritime security zone unless he or she:
    - (i) displays a valid MSIC; or
    - (ii) is escorted by the holder of an MSIC.
- (2) The Division includes requirements about:
  - (a) the display of MSICs; and
  - (b) issuing bodies for MSICs; and
  - (c) the issue of an MSIC to a person; and
  - (d) the expiry and cancellation of MSICs.

**6.07B Definitions for Division 6.1A**

In this Division:

*AFP* means the Australian Federal Police established under the *Australian Federal Police Act 1979*.

*ASIO* means the Australian Security Intelligence Organisation established under the *Australian Security Intelligence Organisation Act 1979*.

*background check* of a person means:

- (a) a criminal records check of the person; and

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- (b) unless a security assessment of the person has previously been conducted — a security assessment of the person conducted by ASIO.

**Commonwealth authority** means:

- (a) a Commonwealth department; or  
(b) a body established for a public purpose by or under a law of the Commonwealth.

**conviction** (of a person for an offence) has the meaning given by subsection 85ZM (1) of the *Crimes Act 1914*, but does not include:

- (a) a spent conviction (within the meaning given by subsection 85ZM (2) of that Act); or  
(b) a conviction for an offence of which, under a law relating to pardons or quashed convictions, the person is taken never to have been convicted.

**DIMIA** means the Department administered by the Minister who administers the *Migration Act 1958*.

**disqualifying offence** means an offence mentioned in item 1 or 2 of Table 6.07C.

**holder**, of an MSIC, means the person to whom it is issued.

**issuing body** means a person or body authorised to issue MSICs.

**MSIC** means maritime security identification card.

**security assessment** has the same meaning as in Part IV of the *Australian Security Intelligence Organisation Act 1979*.

**sentence** includes a suspended sentence.

*Note 1* Under the definition of **conviction** in subsection 85ZM (1) of the *Crimes Act 1914*, somebody is also taken to have been convicted of an offence if he or she has been convicted of the offence but no conviction has been recorded, and if a court has taken the offence into account in sentencing him or her for another offence: see paragraphs 85ZM (1) (b) and (c) of that Act.

*Note 2* Under Part VIIC of the *Crimes Act 1914*, if somebody receives a free and absolute pardon for an offence against a law of the Commonwealth or a Territory because he or she was wrongly convicted of the offence, he or she is taken for all purposes never to have been convicted — see section 85ZR of that Act.

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*Note 3* Under the *Crimes Act 1914*, a person need not disclose convictions that:

- (a) have been quashed (see section 85ZT); or
- (b) are spent (see section 85ZV).

*Note 4* Convictions for disqualifying offences do not become spent for the purposes of an authority assessing whether to issue the convicted person with an MSIC — see the *Crimes Act 1914*, paragraph 85ZZH (k), and the *Crimes Regulations 1990*, regulation 8 and Schedule 4.

### 6.07C Meaning of *maritime-security-relevant offence*

In this division, a *maritime-security-relevant offence* means an offence of a kind mentioned in an item in Table 6.07C or a similar offence against a law of a State or Territory, or of any other country or part of a country.

**Table 6.07C Maritime-security-relevant offences**

Item	Kind of offence
1	An offence mentioned in Chapter 5 of the <i>Criminal Code</i> . <i>Note</i> Offences for this item include treason, espionage and harming Australians
2	An offence involving the supply of weapons of mass destruction as mentioned in the <i>Weapons of Mass Destruction (Prevention of Proliferation) Act 1995</i>
3	An offence mentioned in Part II of the <i>Crimes Act 1914</i>
4	An offence involving interference with aviation or maritime transport infrastructure including hijacking of an aircraft or ship, destruction of an aircraft or ship, carriage of dangerous goods on board an aircraft or ship, or endangering the security of aerodromes or ports
5	An identity offence involving counterfeiting or falsification of identity documents, or assuming another individual's identity
6	Transnational crime involving money laundering, or another crime associated with organised crime or racketeering
7	People smuggling and related offences mentioned in Part 4 Division 73 of the <i>Criminal Code</i>



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Item	Kind of offence
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|---|--|
| 8 | An offence involving the importing, exporting, supply or production of weapons, explosives or a trafficable quantity of drugs. |
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*Note 1* Before 1 July 2006, a person who has been convicted of an offence mentioned in item 1 or 2 of Table 6.07C (a *disqualifying offence*) must not enter a maritime security zone: see regulations 6.08D and 6.07K.

*Note 2* On and after 1 July 2006, a person who has been convicted of a disqualifying offence must not be issued with an MSIC: see regulations 6.08C and 6.08H.

#### 6.07D Meaning of *valid MSIC*

- (1) For this Division, an MSIC is *valid* if:
  - (a) it is issued in accordance with Subdivision 6.1A.4; and
  - (b) it is not expired or cancelled; and
  - (c) it is not altered or defaced (permanently or temporarily); and
  - (d) the person who shows or displays it is the person to whom it was issued.
- (2) However, an MSIC issued to a person who changes his or her name ceases to be valid 1 month after the day on which the change is made.

#### 6.07E Meaning of *properly displaying*

- (1) For this Division, somebody is *properly displaying* an MSIC only if it is attached to his or her outer clothing:
  - (a) above waist height; and
  - (b) at the front or side of his or her body; and
  - (c) with the whole front of the MSIC clearly visible.
- (2) He or she is not *properly displaying* the MSIC if the photograph or anything else on it is obscured.

#### 6.07F Meaning of *operational need*

For this Division, a person has *an operational need* to hold an MSIC if his or her occupation or business interests require, or

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will require, him or her to have unmonitored access to a maritime security zone at least once each year.

*Examples*

- 1 a person whose work takes him or her into a zone;
- 2 a representative of a maritime industry participant that has a business connection with the zone;
- 3 a representative of an employee association whose members work in the zone;
- 4 a representative of an industry association whose members include a maritime industry participant that has a connection with the zone;
- 5 a representative of an issuing body.

### **6.07G Kinds of identification document**

- (1) This regulation sets out the criteria that a document must meet to qualify as a primary, secondary or tertiary identification document for somebody.
- (2) A document is a *primary identification document* for somebody if it is:
  - (a) a certified copy (that is, a copy certified by a Registrar of Births or similar officer to be a correct copy) of the entry, in a register of births, of his or her birth; or
  - (b) a copy (certified under section 44 of the *Australian Citizenship Act 1948*) of a citizenship certificate granted to him or her; or
  - (c) a document issued to him or her under the law of another country that is evidence, under that law, that he or she is a citizen of that country; or
  - (d) a passport issued to him or her.
- (3) A document is a *secondary identification document* for somebody if:
  - (a) it has on it a recent photograph of him or her, or his or her signature; and
  - (b) it is:
    - (i) a licence (for example, a driver's licence) issued to him or her under a law of the Commonwealth or a State or Territory; or

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- (ii) a government employee identification document issued to him or her; or
  - (iii) an Australian student identification document issued to him or her; or
  - (iv) a verifiable reference.
- (4) In subregulation (3):
- Australian student identification document* means a card or document issued to a student at a tertiary education institution in Australia to identify him or her as a student at the institution.
- government employee identification document* means a document issued by or for the Commonwealth or a State or Territory to somebody employed by or for the Commonwealth or the State or Territory.
- verifiable reference* about somebody (the *identified person*) means a reference from:
- (a) a bank or similar financial institution; or
  - (b) somebody whose identity has been verified by means of:
    - (i) 2 primary identification documents; or
    - (ii) a primary identification document and a secondary identification document; or
    - (iii) a primary identification document and 2 tertiary identification documents; or
  - (c) a referee acceptable to the person or body that requires the identification of the identified person;
- that:
- (d) identifies the identified person by name; and
  - (e) certifies that the person who signed the reference has known the identified person by that name for at least 12 months; and
  - (f) is signed by or for the referee and by the identified person.
- (5) A document is a *tertiary identification document* for somebody if:
- (a) it sets out his or her name and address; and
  - (b) it is:
    - (i) a signed statement by his or her employer or former employer about that employment; or

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- (ii) a copy (certified by a Registrar of Titles or similar officer to be a correct copy) of a record issued under a law about land titles; or
  - (iii) a document issued by a rating authority from its records about land ownership or occupation; or
  - (iv) a document issued by a bank or similar financial institution from its records about a mortgage or other security that he or she gave to the bank or institution; or
  - (v) an extract from the electoral roll compiled by the Australian Electoral Commission; or
  - (vi) a record issued under a law in force in Australia other than a law about land titles.

#### **6.07H Authentication of certain foreign documents**

- (1) In this regulation:

*Hague Convention* means the *Convention abolishing the Requirement of Legalisation for Foreign Public Documents*, done at the Hague on 5 October 1961.

- (2) This regulation applies if a person presents to an issuing body, as an identification document, a document that is a public document for the purposes of the Hague Convention and was issued in a country (other than Australia) that is a Contracting State to that Convention.
- (3) The body may require the person to have the authenticity of the document certified in accordance with that Convention.

*Note* The authentication procedure involves the endorsement on, or attachment to, the document of a certificate in a standard form. Details of the procedure and any fee payable should be available from the embassy of the country in which the document was issued.

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## Subdivision 6.1A.2 Display of MSICs

### 6.07I Definitions for Subdivision 6.1A.2

In this Subdivision:

*escort* means a person who escorts, or continuously monitors, another person in a maritime security zone.

*Note* Unless exempt, an escort must hold a valid MSIC: see regulation 6.07J.

*visitor*, to a maritime security zone, means a person who is entitled to be in the zone because he or she is being escorted or continuously monitored.

### 6.07J Requirement to display MSIC in maritime security zones

- (1) A person commits an offence if:
- (a) he or she is in a maritime security zone; and
  - (b) he or she fails to properly display a valid MSIC.

Penalty:

- (c) for a first offence — 5 penalty units; or
  - (d) for a second offence within 2 years of an offence — 10 penalty units; or
  - (e) for a third or subsequent offence within 2 years of an offence — 20 penalty units.
- (2) Subregulation (1) does not apply to:
- (a) a visitor to the zone, if his or her escort:
    - (i) is displaying a valid MSIC; or
    - (ii) is carrying a valid MSIC but, under regulation 6.07M, is exempt from the requirement to display it;
    - (iii) is exempt, under regulation 6.07M, from the requirement to carry a valid MSIC; or
  - (b) the holder of an identification document issued by an arm of the Defence Force who:
    - (i) is displaying his or her identification document; and

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- (ii) is in the zone as part of his or her duties for the Force; or
  - (c) a person who is in a non-operational area (within the meaning given in subparagraph 5A.85 (1) (a) (ii)) of an offshore facility zone.
- (3) A contravention of subregulation (1) is an offence of strict liability.
  - (4) Subregulation (1) does not apply before 1 July 2006.

**6.07K Person given disqualifying offence not to enter maritime security zone**

- (1) A person who has been given a disqualifying notice by the Secretary under regulation 6.08D must not enter a maritime security zone.

Penalty: 5 penalty units.

- (2) Subregulation (1) does not apply to a person who is a visitor to a zone for the purpose of boarding or leaving a vessel as part of a recreational activity.
- (3) A contravention of subregulation (1) is an offence of strict liability.

**6.07L Offence — failure to properly escort visitor**

- (1) An escort is guilty of an offence if he or she fails to escort, or continuously monitor, a visitor in accordance with the procedures set out in the maritime security plan of the maritime industry participant concerned.

Penalty: 5 penalty units.

- (2) A contravention of subregulation (1) is an offence of strict liability.

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**6.07M Persons exempted by Secretary from requirement to hold, carry or display MSIC**

- (1) Despite regulation 6.07J, somebody to whom the Secretary has given an exemption under this regulation need not display an MSIC in a maritime security zone.
- (2) Within 30 days after receiving an application, the Secretary must:
  - (a) give or refuse the exemption; and
  - (b) notify the person in writing of the decision and, if the decision is a refusal, the reasons for it.
- (3) On the Secretary's own initiative, or on written application by a person, the Secretary may give a person, or all persons in a specified class, exemption from the requirement, in 1 or more specified maritime security zones, to:
  - (a) hold an MSIC; or
  - (b) carry an MSIC; or
  - (c) display an MSIC.
- (4) Before giving or refusing an exemption, the Secretary must consider:
  - (a) why the exemption is necessary; and
  - (b) the likely effect of the proposed exemption on maritime transport security in the zone; and
  - (c) how long the proposed exemption will last, if it is given; and
  - (d) anything else relevant that the Secretary knows about.
- (5) The Secretary may give an exemption:
  - (a) for a particular period and subject to a condition or conditions mentioned in the exemption; or
  - (b) limited to a particular zone or part of a zone.
- (6) If the Secretary gives an exemption to all persons in a specified class, the Secretary must publish a notice of the exemption in the *Gazette*.

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### **6.07N Access by emergency personnel**

- (1) Nothing in this Division requires or authorises a maritime industry participant to prevent any of the following having access to any part of a maritime security zone:
  - (a) members of the Defence Force who are responding to an event or threat of unlawful interference with maritime transport in the zone;
  - (b) ambulance, rescue or fire service officers who are responding to an emergency.
- (2) A requirement of this Part to display an MSIC does not apply to a person referred to in paragraph (1) (a), (b) or (c).

### **Subdivision 6.A1.3 MSIC issuing bodies**

#### **6.07O Application for authorisation to issue MSICs**

- (1) The following may apply, in writing, to the Secretary for authorisation as an issuing body:
  - (a) a maritime industry participant;
  - (b) a body representing participants;
  - (c) a body representing employees of participants;
  - (d) a Commonwealth authority.

*Note* Knowingly making a false or misleading statement in an application is an offence punishable by imprisonment for 12 months — see the *Criminal Code*, section 136.1.
- (2) However, a participant may engage an agent to issue MSICs and the agent may apply to be an issuing body.
- (3) An application must be accompanied by a statement setting out the applicant's proposed MSIC plan.
- (4) An applicant is entitled to perform the functions or exercise the powers of an issuing body only if the applicant's MSIC plan is approved by the Secretary.



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### 6.07P Decision on application

- (1) If the Secretary needs more information to deal with an application under regulation 6.07O, the Secretary may ask the applicant, in writing, to provide the information.
- (2) Before the end of 30 days after receiving an application (or, if the Secretary asks for more information under subregulation (1), before the end of 30 days after receiving the information), the Secretary must:
  - (a) authorise, or refuse to authorise, the applicant as an issuing body; and
  - (b) notify the body in writing of the decision and, if the decision is a refusal, the reasons for the decision.

*Note* Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are affected by the decision notice of the making of the decision and of the person's right to have the notice reviewed.

- (3) If the Secretary has not authorised, or refused to authorise the applicant as an issuing body within the period allowed by subregulation (2), the Secretary is taken to have refused to authorise the applicant as an issuing body.
- (4) The Secretary must not authorise the applicant as an issuing body unless the Secretary is satisfied that:
  - (a) the applicant's MSIC plan is apparently adequate to give effect to the proposed plan's purposes; and
  - (b) authorising the applicant as an issuing body would not be likely to be a threat to maritime transport security.
- (5) The Secretary may authorise an applicant as an issuing body subject to a condition set out in the instrument of authorisation.

### 6.07Q What an MSIC plan is

- (1) An *MSIC plan* sets out procedures to be followed for the following purposes:
  - (a) the issue and production of MSICs;
  - (b) the design, distribution and storage of sample MSICs for training purposes, if the issuing body proposes to issue such MSICs;

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- (c) the safekeeping, secure transport and disposal of MSICs and associated equipment;
  - (d) the recovery and secure destruction of issued MSICs that are no longer required;
  - (d) the security of records in relation to applicants for MSICs;
  - (f) lost, destroyed or stolen MSICs;
  - (g) ensuring that MSICs are returned to issuing bodies when they are no longer required.
- (2) An MSIC plan must also set out the procedures that will be followed if the applicant is authorised as an issuing body and the authorisation is later revoked, including procedures to ensure that information about applications for MSICs, and holders of MSICs, is appropriately preserved.

*Note* An applicant for authorisation as an issuing body must provide with its application a statement of its proposed MSIC plan— see regulation 6.07O.

#### **6.07R Issuing body to give effect to MSIC plan**

- (1) An issuing body must not fail to give effect to its MSIC plan.

Penalty: 50 penalty units.

- (2) Without limiting subregulation (1), an issuing body fails to give effect to its MSIC plan if it:
- (a) fails to do something that its MSIC plan requires that it do;  
or
  - (b) does something that its MSIC plan requires that it not do;  
or
  - (c) does something that its MSIC plan requires that it do, but does so in a way that contravenes the plan.
- (3) A contravention of subregulation (1) is an offence of strict liability.
- (4) However, an issuing body may apply, in writing, to the Secretary for exemption from giving effect to its MSIC plan in a particular case or respect.

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- (5) If the Secretary needs more information to deal with an application, the Secretary may ask the applicant, in writing, to provide the information.
  - (6) Within 30 days after receiving an application (or, if the Secretary asks for more information under subregulation (5), within 30 days after receiving the information), the Secretary must:
    - (a) grant or refuse the exemption; and
    - (b) notify the body in writing of the decision and, if the decision is a refusal, the reasons for the decision.

*Note* Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are affected by the decision notice of the making of the decision and of the person's right to have the notice reviewed.

- (7) If the Secretary has not approved, or refused to approve, the exemption within the period allowed by subregulation (6), the Secretary is taken to have refused to approve the exemption.
- (8) The Secretary may also grant, on his or her own initiative, an issuing body a written exemption from giving effect to its MSIC plan in a particular case or respect.
- (9) Before granting or refusing an exemption under this regulation, the Secretary must consider:
  - (a) the justification for the proposed exemption; and
  - (b) the likely effect of the proposed exemption on each of the plan purposes; and
  - (c) how long the proposed exemption will be for, if it is granted; and
  - (d) anything else relevant that the Secretary knows about.
- (10) The Secretary may grant an exemption for a particular period and subject to a condition mentioned in the exemption.

#### **6.07S Direction to vary MSIC plan**

- (1) If an issuing body's MSIC plan is not adequate to give effect, in all circumstances, to any 1 or more of the plan purposes, the Secretary may direct the body, in writing, to vary the plan.

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- (2) The Secretary must not give such a direction in relation to a plan purpose unless the Secretary is satisfied that the variation is appropriate to make the plan adequate for that purpose.
  - (3) A direction must:
    - (a) indicate the variation needed; and
    - (b) state the time within which the issuing body must submit an appropriately varied plan to the Secretary.
  - (4) An issuing body must comply with such a direction.

*Note* Regulation 6.07V provides for the revocation of the authorisation of a body that does not comply with a direction.

#### **6.07T Variation of MSIC plan by issuing body**

- (1) An issuing body may:
  - (a) review its MSIC plan at any time; and
  - (b) submit a written proposed variation of the plan to the Secretary for approval.
- (2) If the Secretary needs more information to deal with an application, the Secretary may ask the applicant, in writing, to provide the information.
- (3) Before the end of 30 days after receiving the proposed variation (or, if the Secretary asks for more information under subregulation (2)), before the end of 30 days after receiving the information), the Secretary must:
  - (a) approve or refuse to approve the variation; and
  - (b) notify the body in writing of the decision and, if the decision is a refusal, the reasons for the decision.

*Note* Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are affected by the decision notice of the making of the decision and of the person's right to have the notice reviewed.

- (4) If the Secretary has not approved, or refused to approve, the plan within the period allowed by subregulation (3), the Secretary is taken to have refused to approve the plan.
- (5) The Secretary must approve the variation if the plan, as varied, will give effect to the plan purposes.

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#### **6.07U Issuing bodies' staff**

- (1) An issuing body other than a Commonwealth authority must not allow a person to be directly involved in the issue of MSICs unless he or she is able to satisfy the security-relevant criteria for the issue of an MSIC.

Penalty: 20 penalty units.

- (2) A Commonwealth authority that is an issuing body must not allow a person to be directly involved in the issue of MSICs unless he or she is able to satisfy the security-relevant criteria for the issue of an MSIC.
- (3) Despite subregulations (1) and (2) the Secretary may approve the involvement of a person in the issue of MSICs if:
  - (a) a security assessment of the person is qualified; but
  - (b) the Secretary is satisfied that the involvement of the person in the issue of MSICs would not constitute a threat to maritime transport security.
- (4) For subregulations (1) and (2), a person *satisfies the security-relevant criteria* for the issue of an MSIC if he or she is able to satisfy the criteria for the issue of an MSIC set out in paragraphs 6.08C (1) (b), (c), (d) and (e).

#### **6.07V Revocation of authorisation for cause**

- (1) The Secretary must revoke an issuing body's authorisation as an issuing body if in the opinion of the Secretary:
  - (a) the body's MSIC plan is apparently no longer adequate to give effect to a plan purpose and it is unlikely that a direction under regulation 6.07S will make the plan adequate for that purpose; or
  - (b) allowing the body's authorisation to continue would be likely to be a significant threat to maritime transport security; or
  - (c) the body does not comply with a direction of the Secretary under regulation 6.07S.
- (3) The Secretary may revoke the authorisation of an issuing body if the body contravenes:
  - (a) a condition of its authorisation; or

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- (b) its MSIC plan.
  - (4) For subregulation (3), the Secretary must consider:
    - (a) the kind and seriousness of the contravention; and
    - (b) whether the issuing body has previously contravened a condition of its authorisation or its MSIC plan.
  - (5) As soon as practicable after revoking the authorisation of a body under this regulation, the Secretary must notify the body in writing of the revocation and the reasons for the revocation.

*Note* Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are affected by the decision notice of the making of the decision and of the person's right to have the notice reviewed.
  - (6) The revocation takes effect when written notice of the revocation is given to the body.

**6.07W Revocation of authorisation at request of issuing body**

- (1) The Secretary must revoke the authorisation of a body as an issuing body if the body asks the Secretary, in writing, to do so.
- (2) A revocation under subregulation (1) takes effect when the request was made.

**6.07X Re-applying for authorisation**

A body whose authorisation is revoked may apply under regulation 6.07O for a new authorisation.

**6.07Y What happens if issuing body no longer able to issue MSICs**

- (1) This regulation applies if:
  - (a) the authorisation of an issuing body (the *original issuing body*) is revoked; or
  - (b) the body ceases to exist; or
  - (c) for any other reason, the body no longer performs the functions or exercises the powers of an issuing body.

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- (2) The Secretary may authorise, in writing, another person to perform the functions, and exercise the powers, of the original issuing body (other than functions and powers relating to the documents mentioned in paragraph (5) (a)) in relation to MSICs issued by that body.
  - (3) An MSIC issued by the original issuing body that is in force at the time of such an authorisation is not affected by:
    - (a) the body having ceased to exist; or
    - (b) the new authorisation.
  - (4) The person authorised under subregulation (2) is taken to be the issuing body for the MSIC, but is not responsible for the actions of the original issuing body in relation to the MSIC before the authorisation.
  - (5) An authorisation:
    - (a) is subject to the condition that any documents used to decide about the eligibility of a person for an MSIC are to be held by the Secretary; and
    - (b) may be subject to another condition specified in it.

#### **Subdivision 6.1A.4 MSICs: issue, expiry and cancellation**

##### **6.08A Meaning of *adverse criminal record***

For this Subdivision, a person has an *adverse criminal record* if he or she has been convicted of a maritime-security-relevant offence and sentenced to imprisonment (including periodic detention, home-based detention, and detention until the rising of the court, but not including a sentence of community service).

*Note* For the meaning of *maritime-security-relevant offence*, see regulation 6.07C.

##### **6.08B MSICs — application for issue**

- (1) A person may, in writing, apply to an issuing body for the issue of an MSIC if he or she has an operational need to hold an MSIC.

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- (2) An applicant who has turned 18 must prepare a signed form of consent to background checking of the applicant and:
- (a) if applying before 1 July 2006 — send the form to the AFP; or
  - (b) if applying on or after 1 July 2006 — include the form with the application.

**6.08C MSICs — issue**

- (1) An issuing body may issue an MSIC to a person only if:
- (a) the person has an operational need to hold an MSIC; and
  - (b) the person has verified his or her identity by showing the issuing body:
    - (i) a primary identification document; and
    - (ii) either:
      - (A) a secondary identification document; or
      - (B) 2 tertiary identification documents; and
  - (c) either:
    - (i) has shown the issuing body a document that is evidence that the person is an Australian citizen (for example, his or her Australian birth certificate, Australian passport or Australian naturalisation certificate); or
    - (ii) the issuing body is satisfied that he or she holds a visa entitling him or her to work in Australia; and
  - (d) the issuing body has been notified in writing that a security assessment of the person has been made, and:
    - (i) the assessment was not adverse; or
    - (ii) if the assessment was qualified — the issuing body has not been directed by the Secretary under subregulation 6.08H (2) not to issue an MSIC to the person.
  - (e) the issuing body has been notified in writing that a criminal records check of the person has been made, and:
    - (i) the check shows that the person does not have an adverse criminal record; or
    - (ii) if the check shows that the person has an adverse criminal record — the Secretary has approved an

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application to issue an MSIC to the person under paragraph 6.08F (3) (a).

Penalty: 50 penalty units.

- (2) For subparagraphs (1) (e) (i) and (ii):
- (a) from 1 October 2005 to the end of 30 June 2006 — the Secretary; or
  - (b) on and after 1 July 2006 — the issuing body;
- must decide whether the criminal records check shows that the person has an adverse criminal record.
- (3) An offence against subregulation (1) is an offence of strict liability.
- (4) In the case of a person who is under 18, the issuing body may issue an MSIC to him or her despite paragraphs (1) (d) and (e) if he or she meets the criteria in paragraphs (1) (a), (b) and (c).

*Note* An MSIC issued under subregulation (3) ceases to be valid 6 months after the holder turns 18: see paragraph 6.08I (2) (a).

- (5) If a person's MSIC is cancelled at his or her request under regulation 6.08N and, less than 12 months after the cancellation, the person:
- (a) has an operational need to hold an MSIC; and
  - (b) gives an issuing authority a statutory declaration stating that, since the cancellation, no relevant circumstance of the person has changed;
- the issuing body may issue the MSIC to him or her despite anything in subregulation (1).
- (6) An issuing body may issue an MSIC subject to a condition, but must notify the holder in writing what the condition is.

*Example*

A condition that background checking of the holder is carried out more frequently than required by these Regulations.

- (7) An issuing body may issue MSICs only in accordance with its MSIC plan.

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**6.08D Issue of disqualifying offence notice**

- (1) This regulation applies if, before 1 July 2006, the background check of an applicant for an MSIC reveals that:
  - (a) he or she has been convicted of a disqualifying offence; or
  - (b) the security assessment of the person is adverse and is not a qualified security assessment.
- (2) The Secretary must send the person a notice in writing (a *disqualifying notice*) that informs the person about the results of the background check and the effect of regulation 6.07K in relation to the person.

**6.08E Issue of MSICs to ASIC holders**

An issuing body may issue an MSIC to a person without verifying that the person has satisfied the criteria set out in subregulation 6.08C (1) if the person:

- (a) holds an ASIC issued under the *Aviation Transport Security Regulations 2005*; and
- (b) has an operational need for an MSIC.

*Note* The MSIC expires on the same day as the ASIC: see paragraph 6.08I (2) (c).

**6.08F MSICs — Secretary's approval of issue in certain cases**

- (1) If:
  - (a) a person is not eligible to be issued an MSIC only because he or she has an adverse criminal record; and
  - (b) he or she has not been convicted of a disqualifying offence;an issuing body or the applicant may apply to the Secretary, in writing, for approval to issue an MSIC to the person.
- (2) If the Secretary needs more information to deal with an application, the Secretary may ask the issuing body or applicant, in writing, to provide the information.

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- (3) Within 30 days after receiving an application (or, if the Secretary has asked for information under subregulation (2), after receiving the information), the Secretary must:
- (a) approve, or refuse to approve, in writing, the issuing of the MSIC; and
  - (b) notify the body, or applicant, in writing of the decision and, if the decision is a refusal, notify the applicant of the reasons for the decision.

*Note* Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are affected by the decision notice of the making of the decision and of the person's right to have the notice reviewed.

- (4) If the Secretary has not approved, or refused to approve, the issue of the MSIC within the period allowed by subregulation (3), the Secretary is taken to have refused to approve the issue of the MSIC.
- (5) Before approving or refusing to approve the issue of the MSIC to a person who is not eligible to be issued an MSIC only because, under paragraph 6.08C (1) (e), the person's criminal record prevents him or her being issued with an MSIC, the Secretary must decide whether the person constitutes a threat to maritime transport security by considering:
- (a) the nature of the offence the person was convicted of; and
  - (b) the length of the term of imprisonment imposed on him or her; and
  - (c) if he or she has served the term, or part of the term — how long it is, and his or her conduct and employment history, since he or she did so; and
  - (d) if the whole of the sentence was suspended — how long the sentence is, and his or her conduct and employment history, since the sentence was imposed; and
  - (e) anything else relevant that the Secretary knows about.
- (6) The Secretary may give an approval subject to a condition, but must notify the issuing body in writing what the condition is.

*Example*

A condition that background checking is conducted at specified intervals.

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**6.08G Report to Secretary of refusal to issue MSICs in certain cases**

- (1) If, on or after 1 July 2006, an issuing body refuses to issue an MSIC to an applicant because the applicant fails to satisfy a criterion in paragraph 6.08C (1) (c) or (e), the issuing body must, within 7 days of the decision, give the Secretary a written report that sets out:
  - (a) the applicant's name, address and date of birth; and
  - (b) the reasons for the refusal.
- (2) The Secretary may pass the information mentioned in paragraph (1) (a) on to other issuing bodies if he or she thinks that doing so will help to prevent unlawful interference with maritime transport.

**6.08H Persons the subject of adverse or qualified security assessments**

- (1) If a security assessment of a person is an adverse security assessment, the Secretary must direct an issuing body that proposes to issue an MSIC to the person that the MSIC is not to be issued.
- (2) The Secretary may direct an issuing body not to issue an MSIC to a person if, on the basis of a security assessment of the person that is a qualified security assessment, the Secretary is satisfied that the holding of an MSIC by the person would constitute a threat to maritime transport security.
- (3) A direction under subregulation (1) or (2) must be in writing.
- (4) An issuing body must not issue an MSIC to a person in contravention of a direction under subregulation (1) or (2).

Penalty: 20 penalty units.

*Note* If an adverse or qualified security assessment about a person is provided to a Commonwealth authority, the authority must notify the person in writing within 14 days (including a copy of the assessment) and must notify him or her how to apply to the Administrative Appeals Tribunal for review of the assessment — see the *Australian Security Intelligence Organisation Act 1979*, section 38.

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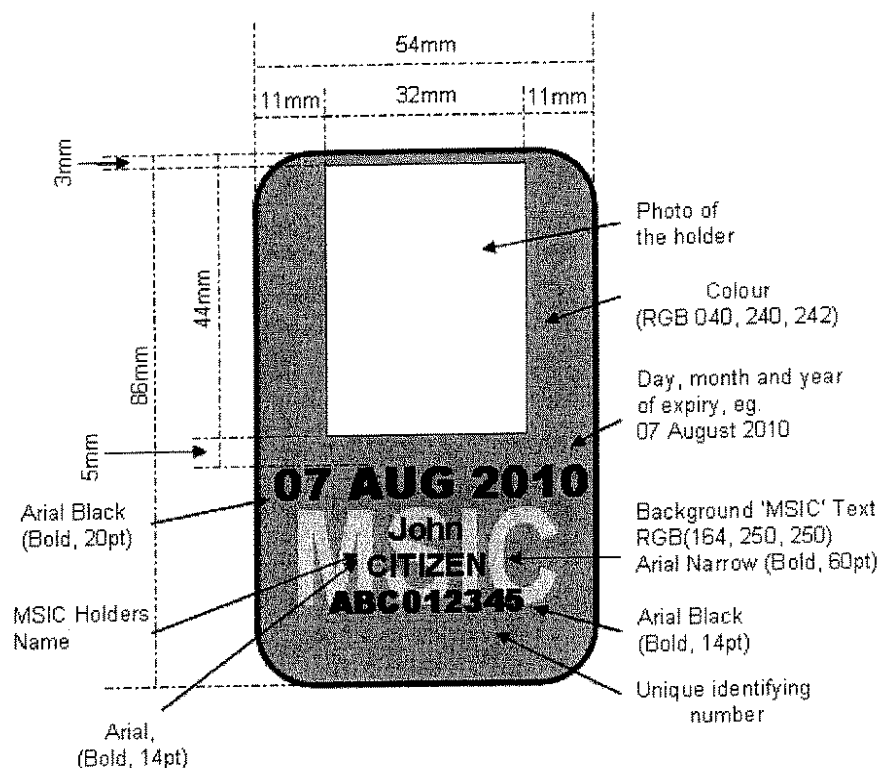
**6.08I MSICs — period of issue and expiry**

- (1) Unless earlier cancelled, an MSIC expires 5 years after the day when the relevant criminal records check conducted by the AFP is completed.
- (2) However:
  - (a) an MSIC issued to a person under 18 in reliance on subregulation 6.08C (3) must expire no later than 6 months after the person's 18th birthday; and
  - (b) an MSIC issued to a person who is entitled to remain in Australia because he or she holds a visa must expire no later than the day on which the person's visa expires; and
  - (c) an MSIC issued under regulation 6.08E must expire on the same day as the ASIC mentioned in paragraph 6.08E (a).

**6.08J Form of MSICs other than temporary MSICs**

- (1) This regulation does not apply to a temporary MSIC.  
*Note* For details about temporary MSICs, see regulation 6.08K.
- (2) The form of an MSIC is as follows:

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- (3) An MSIC must comply with the following requirements:
- the dimensions of the MSIC, and of each of its parts, must be as shown in the diagram in subregulation (2);
  - where the diagram indicates a particular colour, type-face or type size, that colour, type-face or type size must be used;
  - the photograph of the holder must be a recent (that is, taken within 6 months before the issue of the MSIC) photograph of the holder, showing the holder's full face and his or her head and shoulders;
  - the photograph must be protected against tampering by a method that is approved by the Secretary and identified in a notice published in the *Gazette*; or
  - the first name and surname must be those that the holder normally uses;

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- (f) the number must be unique among MSICs issued by that issuing body and include the issuing body identifier as directed by, or agreed with, the Secretary;
  - (g) if the issuing body is the Australian Customs Service, the word 'Customs' must appear on the MSIC;
  - (h) the expiry date must be expressed as *day abbreviated month year*, where *abbreviated month* means the first 3 letters of the name of the month of expiry.
- (4) An MSIC that is issued to a law enforcement officer or an officer or employee of ASIO may bear the holder's name on the back of the MSIC.
  - (5) The Secretary may approve the issue of an MSIC showing the holder's name on the back if the Secretary is satisfied that having the holder's name on the front would put the holder's personal security at risk.
  - (6) An issuing body must not issue an MSIC that does not comply with subregulations (2), (3), (4) and (5).  
Penalty: 50 penalty units.
  - (7) An offence under subregulation (6) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **6.08K Temporary MSICs**

- (1) A temporary MSIC may be issued to a person by:
  - (a) an issuing body; or
  - (b) if it acts in accordance with its maritime security plan — a maritime industry participant;if:
  - (c) the person is the holder of another MSIC and has forgotten the other MSIC, or it has been lost, stolen or destroyed; and
  - (d) the issuing body or participant is satisfied about the identity of the person.

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- (2) The issuing body or participant may issue an MSIC that is valid only for a specified period.

**6.08L Issue of replacement MSICs**

- (1) An issuing body may issue a replacement MSIC to the holder of another MSIC if he or she has lost the other MSIC, or it has been stolen or destroyed, and:
- (a) he or she has made a statutory declaration setting out the circumstances of the loss, theft or destruction; or
  - (b) if the other MSIC has been stolen — he or she has given the issuing body a copy of a police report, or other information issued by the police, regarding the theft.
- (2) If the holder of an MSIC changes his or her name, an issuing body may issue a replacement MSIC to the holder after:
- (a) the holder provides written evidence of the change; and
  - (b) the issuing body notifies ASIO of the change of name and ASIO acknowledges receipt of the notification.
- (3) A replacement MSIC must expire no later than the earlier MSIC would have expired.

**6.08M Cancellation of MSICs**

- (1) An issuing body must immediately cancel an MSIC issued by the body if:
- (a) the body finds out that the MSIC was not issued in accordance with the body's MSIC plan; or
  - (b) the Secretary finds out that the MSIC was not issued in accordance with the body's MSIC plan and notifies the issuing body in writing; or
  - (c) the Secretary has notified the issuing body in writing that a security assessment of the holder was adverse; or
  - (d) the body finds out that the holder is or has become an unlawful non-citizen; or
  - (e) the body finds out that the holder has been convicted of a disqualifying offence; or
  - (f) the holder no longer has an operational need to hold an MSIC; or



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- (g) the body finds out that, for a continuous period of 12 months, the holder has not had an operational need to hold an MSIC.

*Note for paragraph (1) (e)* See regulation 6.07B for the meaning of *disqualifying offence*.

- (2) As soon as practicable after an issuing body cancels an MSIC under subregulation (1), the body must notify the holder, in writing, that the MSIC has been cancelled and the reasons for the cancellation.

*Note* Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are affected by the decision notice of the making of the decision and of the person's right to have the notice reviewed.

- (3) A cancellation under subregulation (1) takes effect when the holder is notified of it in writing.

#### **6.08N Cancellation of MSICs at holder's request**

- (1) An issuing body must cancel an MSIC issued by the body if the holder of the MSIC asks the body to cancel it.
- (2) A cancellation under subregulation (1) takes effect when the MSIC is returned to the issuing body.

#### **6.08O Report to Secretary of cancellation of MSICs in certain cases**

- (1) If an issuing body cancels an MSIC on the basis of paragraph 6.08M (1) (c), (d), or (e), the issuing body must, within 7 days of the decision, give the Secretary a written report that sets out:
- (a) the holder's name, address and date of birth; and
  - (b) the reasons for the cancellation.
- (2) The Secretary may pass the information mentioned in paragraph (1) (a) on to other issuing bodies if he or she thinks that doing so will help to prevent unlawful interference with maritime transport.

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**6.08P Return of MSICs that have expired etc**

- (1) The holder of an MSIC must return it to an issuing body 30 days or less after:
- (a) the MSIC expires; or
  - (b) the holder is notified that it has been cancelled; or
  - (c) the MSIC has been damaged, altered or defaced (permanently or temporarily).

Penalty: 10 penalty units.

- (2) A contravention of subregulation (1) is an offence of strict liability.

**6.08Q Holder no longer needing MSIC**

- (1) The holder of an MSIC is guilty of an offence if:
- (a) he or she becomes aware of circumstances that will result in him or her not having an operational need to hold the MSIC for 12 months; and
  - (b) he or she fails to return it to an issuing body within 30 days of becoming aware of the circumstances.

Penalty: 5 penalty units.

- (2) Strict liability applies to paragraph (1) (b).

**6.08R Notification of lost etc MSICs**

- (1) The holder of an MSIC commits an offence if:
- (a) the MSIC has been lost, stolen or destroyed; and
  - (b) the holder of the MSIC knows about the loss, theft or destruction; and
  - (c) he or she does not:
    - (i) make a report, in the form of a statutory declaration, of the loss to the issuing body that issued the MSIC within 7 days of becoming aware of the loss, theft or destruction; or
    - (ii) if the MSIC was stolen — give the issuing body a copy of a police report, or other information issued

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by the police, regarding the theft, within 7 days of becoming aware of the theft.

Penalty: 10 penalty units.

- (2) Strict liability applies to paragraph (1) (c).
- (3) However, subregulation (1) does not apply if the MSIC has been destroyed by the issuing body that issued it.

#### **Subdivision 6.1A.5 Powers of security officers in relation to MSICs**

#### **6.08S Directions to show valid MSICs or other identification**

- (1) In this regulation:

*exempt person*, in relation to a part of a maritime security zone, means somebody who, under the Act or these Regulations, is not required to properly display a valid MSIC in that part of that zone.

*security officer* means:

- (a) a law enforcement officer; or
- (c) a maritime security inspector.

- (2) If:

- (a) a security officer knows, or has reason to believe, that a person who is in a part of a maritime security zone is an exempt person; and
- (b) the person is apparently not properly displaying a valid MSIC;

the security officer may direct the person to show him or her a valid MSIC or identification that establishes that he or she is an exempt person.

- (3) Before directing the person to do so, the security officer must show the person:

- (a) the officer's identity card; or
- (b) another appropriate form of identification.

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- (4) A person must comply with a direction of a security officer under subregulation (2).

Penalty: 10 penalty units.

### **Subdivision 6.1A.6 Record-keeping**

#### **6.08T Register of MSICs**

- (1) An issuing body must keep a register in accordance with this regulation.
- (2) The register must contain the following details of each MSIC issued by the body to a person:
- (a) his or her name and telephone number (if any);
  - (b) a copy of the photograph that appears on his or her MSIC;
  - (c) subject to subregulation (3), his or her residential address;
  - (d) the general reason that he or she has an operational need to hold an MSIC;
  - (e) the documents used to decide about his or her eligibility for an MSIC;
  - (f) the date of the beginning of the current period during which he or she has continuously held an MSIC;
  - (g) the unique number of the MSIC;
  - (h) its date of issue;
  - (i) its date of expiry;
  - (j) if applicable, the date on which it was cancelled;
  - (k) if applicable, the date or dates on which it was reported lost, stolen or destroyed.
- (3) The register need not contain the residential address of an MSIC holder who is:
- (a) a law enforcement officer; or
  - (b) an officer or employee of ASIO; or
  - (c) an employee of a Commonwealth authority.

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#### **6.08U Other records**

- (1) An issuing body must maintain records that are sufficient to demonstrate that it has complied with its MSIC plan.
- (2) The body must retain the record of issue of an MSIC to a person for at least 7 years after the creation of the record.
- (3) The records may be kept by means of a computer or in any other form that can be conveniently audited.
- (4) The issuing body must hold the records at its office.
- (5) The issuing body must allow a maritime security inspector to inspect the records on request subject to reasonable notice.

#### **6.08V Annual reporting**

An issuing body must report to the Secretary in writing, within 1 month after the end of each financial year:

- (a) the total number of MSICs issued by the body; and
- (b) the number of MSICs issued by the body that have not expired and have not been cancelled; and
- (c) the number of MSICs issued by the body that have expired or been cancelled but have not been returned to the body; and
- (d) the number of MSICs issued by the body that were cancelled in the financial year to which the report relates;
- (e) the number of MSICs issued by the body that expired in that financial year.

Penalty: 20 penalty units.

#### **Subdivision 6.1A.7 Review of decisions**

#### **6.08W Definitions**

In this Subdivision:

*AAT Act* means the *Administrative Appeals Tribunal Act 1975*.

*decision* has the same meaning as in the AAT Act.

*Tribunal* means the Administrative Appeals Tribunal.

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**6.08X Reconsideration of decisions in relation to MSICs and related matters**

*Decisions in relation to issuing bodies*

- (1) Application may be made to the Secretary for review of a decision of the Secretary:
- (a) to refuse to authorise a person as an issuing body; or
  - (b) to impose a condition on an issuing body; or
  - (c) to direct an issuing body to vary its MSIC plan; or
  - (d) to refuse to approve a variation of an issuing body's MSIC plan; or
  - (e) to refuse to exempt an issuing body from giving effect to its MSIC plan in a particular case or respect; or
  - (f) to impose a condition on an exemption; or
  - (g) to revoke an issuing body's authorisation.

*Decisions in relation to adverse maritime security status*

- (2) Application may be made to the Secretary for review of a decision of the Secretary that on the basis of a qualified security assessment, a person has an adverse maritime security status.

*Decisions in relation to issue and cancellation of MSICs*

- (3) Application may be made to the Secretary for review of a decision of:
- (a) the Secretary to:
    - (i) refuse to authorise the issue of an MSIC; or
    - (ii) impose a condition on an MSIC; or
  - (b) an issuing body to:
    - (i) refuse to issue an MSIC to somebody; or
    - (ii) issue an MSIC subject to a condition; or
    - (iii) cancel an MSIC.

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*Decisions in relation to wearing and use of MSICs*

- (4) Application may be made to the Secretary for review of a decision of the Secretary:
- (a) to refuse to exempt somebody from displaying a valid MSIC in a maritime security zone, or part of such an area; or
  - (b) to impose a condition on such an exemption.

*Decisions in relation to the substituted exercise of the powers of an issuing body*

- (5) Application may be made to the Secretary for review of a decision of the Secretary:
- (a) to authorise, or refuse to authorise, a person to perform the functions, or exercise the powers, of an issuing body; or
  - (b) to authorise a person to perform the functions or exercise the powers of an issuing body subject to a condition.

*Decisions in relation to issue of disqualifying notice*

- (6) Application may be made to the Secretary for review of a decision of the Secretary to issue a disqualifying notice under regulation 6.07K.

**6.08Y If Secretary makes no decision**

If person applies to the Secretary under regulation 6.08X for review of a decision and, 30 days after making the application, the Secretary has not notified his or her decision about the application to the applicant, the Secretary is taken to have refused to vary the original decision.

**6.08Z AAT review of Secretary's decisions**

Application may be made under the AAT Act to the Tribunal for review of a decision made by the Secretary as a result of an application under regulation 6.08W.

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**Subdivision 6.1A.8 Miscellaneous**

**6.09A Cost recovery**

An issuing body may recover the reasonable costs of the issue of an MSIC from the person who asks the body to issue the MSIC.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).

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