





# **Customs and AusCheckLegislation Amendment (Organised Crime and Other Measures) Act 2013**

**No. 52, 2013**

**An Act to assist in the prevention of organised  
crime, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
<b>Schedule 1—Amendment of the Customs Act 1901</b>		<b>4</b>
Part 1—Fit and proper person tests		4
Division 1—Amendments		4
Division 2—Application of amendments		10
Part 2—Amendments relating to cargo terminal operators and cargo handlers		11
Part 3—Using information held by Customs		24
Part 4—Infringement notices		26
Division 1—Amendments		26
Division 2—Savings		29
Part 5—Strict liability offences		30
Part 6—Other amendments		37
Division 1—Amendments		37
Division 2—Application of amendments		42
<b>Schedule 2—Amendment of the AusCheck Act 2007</b>		<b>44</b>
Part 1—Amendments		44
Part 2—Application of amendments		55
<b>Schedule 3—Amendment of the Law Enforcement Integrity Commissioner Act 2006</b>		<b>56</b>





# **Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013**

**No. 52, 2013**

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## **An Act to assist in the prevention of organised crime, and for other purposes**

*[Assented to 28 May 2013]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Customs and AusCheck Legislation  
Amendment (Organised Crime and Other Measures) Act 2013*.

## 2 Commencement

- (1) Each provision of this Act 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 May 2013
2. Schedule 1, Parts 1 and 2	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1, Part 3	The day after this Act receives the Royal Assent.	29 May 2013
4. Schedule 1, Parts 4, 5 and 6	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
5. Schedules 2 and 3	The day this Act receives the Royal Assent.	28 May 2013

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedule(s)**

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

## Schedule 1—Amendment of the Customs Act 1901

### Part 1—Fit and proper person tests

#### Division 1—Amendments

##### 1 Subsection 4(1)

Insert:

*transport security identification card* means:

- (a) an aviation security identification card issued under the *Aviation Transport Security Regulations 2005*; and
- (b) a maritime security identification card issued under the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

##### 2 At the end of subsection 67EB(3)

Add:

- ; and (g) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately before the decision.

##### 3 At the end of subsection 67H(2)

Add:

- ; and (g) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately before the decision.

##### 4 At the end of subsection 77K(2)

Add:

- ; and (f) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately before the decision.

**5 Paragraph 77N(2)(d)**

Omit all the words after “member of the”, substitute:

partnership:

- (i) is convicted of an offence referred to in paragraph 77K(2)(a) or (b); or
- (ii) becomes an insolvent under administration; or
- (iii) has been refused a transport security identification card, or has had such a card suspended or cancelled, within the applicable period referred to in paragraph 77V(2)(e).

**6 At the end of subsection 77V(2)**

Add:

- ; and (e) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled:
  - (i) if the licence has not been renewed previously—after the grant of the licence or within 10 years immediately before the grant of the licence; or
  - (ii) if the licence has been renewed on one or more occasions—after the renewal or latest renewal of the licence or within 10 years immediately before that renewal.

**7 At the end of paragraphs 81(2)(a), (b) and (c)**

Add “and”.

**8 At the end of subsection 81(2)**

Add:

- ; and (f) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately preceding the making of the application.

**9 At the end of paragraphs 82(1)(a), (b) and (ba)**

Add “or”.

**10 Paragraph 82(1)(c)**

Omit all the words after “member of the”, substitute:

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partnership:

- (i) is convicted of an offence referred to in paragraph 81(2)(a) or (b); or
- (ii) becomes bankrupt; or
- (iii) has been refused a transport security identification card, or has had such a card suspended or cancelled, within the applicable period referred to in paragraph 86(1A)(d); or

**11 At the end of paragraph 82(1)(d)**

Add “or”.

**12 Subsection 82(1)**

Omit “the event, change, conviction, bankruptcy or appointment, as the case requires”, substitute “the event referred to in whichever of the preceding paragraphs applies”.

**13 Subsection 82(1)**

Omit “, change, conviction, bankruptcy or appointment, as the case requires” (second occurring).

**14 At the end of subparagraph 86(1A)(a)(i)**

Add “and”.

**15 Subparagraph 86(1A)(a)(ii)**

Omit “renewal; or”, substitute “renewal; and”

**16 At the end of subparagraph 86(1A)(a)(iii)**

Add “and”.

**17 At the end of subparagraph 86(1A)(b)(i)**

Add “and”.

**18 Subparagraphs 86(1A)(b)(ii) and (iii)**

Omit “renewal; or”, substitute “renewal; and”.

**19 At the end of subsection 86(1A)**

Add:

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; and (d) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled:

- (i) where the licence has not been renewed—after the grant of the licence or within 10 years immediately preceding the making of the application for the licence; and
- (ii) where the licence has been renewed on one occasion only—after the renewal of the licence or within 10 years immediately preceding the making of the application for the renewal; and
- (iii) where the licence has been renewed on more than one occasion—after the latest renewal of the licence or within 10 years immediately preceding the making of the application for the latest renewal.

**20 At the end of subparagraphs 86(1B)(a)(i) and (ii)**

Add “or”.

**21 At the end of sub-subparagraph 86(1B)(a)(iv)(A)**

Add “and”.

**22 Sub-subparagraph 86(1B)(a)(iv)(B)**

Omit “licence; or”, substitute “licence; and”.

**23 At the end of subparagraph 86(1B)(a)(iv)**

Add “and”.

**24 At the end of subparagraphs 86(1B)(b)(i) and (ii)**

Add “or”.

**25 At the end of sub-subparagraph 86(1B)(b)(iv)(A)**

Add “and”.

**26 Subparagraph 86(1B)(b)(iv)**

Omit “company; or”, substitute “company; and”.

**27 Subsection 183CC(1)**

Omit “person of integrity” (wherever occurring), substitute “fit and proper person”.

**28 Subsection 183CC(4)**

Omit “person of integrity”, substitute “fit and proper person”.

**29 After paragraph 183CC(4)(a)**

Insert:

and (aa) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately preceding the making of the application; and

**30 At the end of paragraph 183CC(4)(b)**

Add “and”.

**31 At the end of paragraph 183CG(1)(a)**

Add “or”.

**32 Paragraph 183CG(1)(b)**

Omit all the words after “holder of the”, substitute:

licence:

- (i) becomes bankrupt; or
- (ii) has been refused a transport security identification card, or has had such a card suspended or cancelled, after the licence was granted or last renewed, or within the 10 years immediately preceding that grant or renewal; or

**33 Subsection 183CG(1)**

Omit “the conviction, bankruptcy or event referred to in paragraph (c), as the case requires” (first occurring), substitute “the event referred to in paragraph (a), (b) or (c)”.

**34 Subsection 183CG(1)**

Omit “the conviction, bankruptcy or event referred to in paragraph (c), as the case requires” (second occurring), substitute “that event”.

**35 At the end of paragraphs 183CG(3)(a) and (b)**

Add “or”.

**36 Paragraph 183CG(3)(c)**

Omit all the words after “customs”, substitute:

broker:

- (i) is convicted of a prescribed offence; or
- (ii) becomes bankrupt; or
- (iii) has been refused a transport security identification card, or has had such a card suspended or cancelled, after the licence was granted or last renewed, or within the 10 years immediately preceding that grant or renewal; or

**37 After subparagraph 183CG(3)(d)(i)**

Insert:

- (ia) a member of the partnership has been refused a transport security identification card, or has had such a card suspended or cancelled, after the licence was granted or last renewed, or within the 10 years immediately preceding that grant or renewal; or

**38 Subsection 183CG(3)**

Omit “the event, change, conviction or bankruptcy, as the case requires”, substitute “the event referred to in whichever of the preceding paragraphs applies”.

**39 Subsection 183CG(3)**

Omit “, change, conviction or bankruptcy, as the case requires” (second occurring).

**40 Paragraphs 183CG(4)(a) and (b)**

Omit “persons of integrity”, substitute “fit and proper persons”.

**41 After paragraph 183CQ(1)(b)**

Insert:

- (ba) the customs broker, being a natural person, has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately preceding the giving of the notice; or

## **Division 2—Application of amendments**

### **42 Application of amendments**

- (1) The amendments made by this Part apply in relation to an application for, or the renewal of, any of the following made on or after the commencement of this item:
  - (a) registration as a special reporter;
  - (b) registration as a re-mail reporter;
  - (c) a depot licence;
  - (d) a warehouse licence;
  - (e) a broker's licence.
- (2) Subject to subitem (3), the amendments made by this Part apply in relation to a refusal, suspension or cancellation of a transport security identification card, whether the refusal, suspension or cancellation:
  - (a) occurs before, on or after the commencement of this item; or
  - (b) relates to a registration made or a licence granted before, on or after that commencement.
- (3) If an amendment made by this Part would require a person to notify the CEO of a refusal, suspension or cancellation of a transport security identification card that occurred before the commencement of this item, the person is taken to have complied with the requirement if the notification is made within the period of 90 days after that commencement.

## **Part 2—Amendments relating to cargo terminal operators and cargo handlers**

### **43 After Part V**

Insert:

## **Part VAAA—Cargo terminals**

### **Division 1—Preliminary**

#### **102B Definitions**

In this Part:

***cargo handler*** means a person who is involved in any of the following activities at a cargo terminal:

- (a) the movement of goods subject to Customs control into, within or out of the terminal;
- (b) the loading, unloading or handling of goods subject to Customs control at the terminal;
- (c) the storage, packing or unpacking of goods subject to Customs control at the terminal.

***cargo terminal*** means a place (other than a depot to which a depot licence relates or a warehouse to which a warehouse licence relates), within the limits of a port, airport or wharf, where:

- (a) goods are located immediately after being unloaded from a ship that:
  - (i) has taken the goods on board at a place outside Australia; and
  - (ii) carried the goods to a port or wharf in a State or Territory where some or all of the goods are unloaded; or
- (b) goods are located immediately after being unloaded from an aircraft that:
  - (i) has taken the goods on board at a place outside Australia; and

- (ii) carried the goods to an airport in a State or Territory where some or all of the goods are unloaded; or
- (c) goods are located immediately before being loaded on a ship or aircraft in which they are to be exported.

***cargo terminal operator***, in relation to a cargo terminal, means a person who manages the cargo terminal.

***establishment identification***, in relation to a cargo handler and a port, airport or wharf, means the handler's identification code provided by Customs for the port, airport or wharf.

***executive officer*** of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

***place*** includes an area, a building and a part of a building.

### **102BA Meaning of *fit and proper person***

- (1) In deciding whether a natural person is a ***fit and proper person*** for the purposes of this Part, the decision-maker must have regard to:
  - (a) any conviction of the person of an offence against this Act committed within the 10 years immediately before the decision; and
  - (b) any conviction of the person of an offence punishable by imprisonment for 1 year or longer:
    - (i) against another law of the Commonwealth; or
    - (ii) against a law of a State or Territory;if that offence was committed within the 10 years immediately before the decision; and
  - (c) whether the person has been refused a transport security card, or has had such a card suspended or cancelled, within the 10 years immediately before the decision; and
  - (d) if a request has been made of the person under subsection 102CF(2) and the CEO is considering giving a direction to the person under Division 5—any misleading statement given by the person in response to the request.
- (2) In deciding whether a company is a ***fit and proper person*** for the purposes of this Part, the decision-maker must have regard to:
  - (a) any conviction of the company of an offence:

- (i) against this Act; or
- (ii) if punishable by a fine of 100 penalty units or more—  
against another law of the Commonwealth, or a law of a  
State or of a Territory;  
committed:
  - (iii) within the 10 years immediately before the decision;  
and
  - (iv) at a time when any person who is presently a director,  
officer or shareholder of the company was such a  
director, officer or shareholder; and
- (b) whether a receiver of the property, or part of the property, of  
the company has been appointed; and
- (c) whether the company is under administration within the  
meaning of the *Corporations Act 2001*; and
- (d) whether the company has executed, under Part 5.3A of that  
Act, a deed of company arrangement that has not yet  
terminated.

## **Division 2—Obligations of cargo terminal operators**

### **102C Notifying Customs of cargo terminal**

- (1) The cargo terminal operator of a cargo terminal must notify  
Customs of:
  - (a) the terminal managed by the operator; and
  - (b) the terminal's physical address.
- (2) A notification must:
  - (a) be in a form approved, in writing, by Customs for the  
purposes of this section; and
  - (b) provide all the information, and be accompanied by any  
documents, required by the form.

### **102CA Physical security of cargo terminal and goods**

- (1) The cargo terminal operator of a cargo terminal must ensure:
  - (a) adequate physical security of the terminal; and
  - (b) adequate security of goods at the terminal.

- (2) At a minimum, the following requirements must be met in relation to a cargo terminal:
  - (a) the terminal must be protected by:
    - (i) adequate fencing; and
    - (ii) a monitored alarm system;
  - (b) entry or exit to the terminal must be controlled or limited;
  - (c) appropriate procedures and methods for ensuring the security of goods at the terminal must be in place.
- (3) The cargo terminal operator of a cargo terminal must give Customs written notice of any substantial change that would affect:
  - (a) the physical security of the terminal; or
  - (b) the security of goods at the terminal.
- (4) A notice must be given at least 30 days before the change occurs, unless the change is required in response to an emergency or disaster, in which case a notice must be given as soon as practicable.
- (5) Within 30 days of being requested to do so by an authorised officer, the cargo terminal operator must provide documentation of the procedures and methods in place for ensuring the security of goods at the terminal.

#### **102CB Movement of signs at or near cargo terminal**

- (1) If Customs has placed a sign at or near a cargo terminal, the cargo terminal operator of the terminal must ensure that the sign is not concealed, moved or removed without the written approval of an authorised officer.
- (2) Subsection (1) does not apply if:
  - (a) the sign is temporarily moved while maintenance or construction work is carried out; and
  - (b) the sign is moved for no more than 5 days.

#### **102CC Notification requirements relating to goods**

- (1) The cargo terminal operator of a cargo terminal must, within the time and in the manner mentioned in subsection (2), notify Customs of any of the following events:
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- (a) an unauthorised movement of goods subject to Customs control in or from the cargo terminal;
  - (b) an unauthorised access to goods subject to Customs control:
    - (i) in the cargo terminal; or
    - (ii) on a ship or aircraft within, or adjacent to, the terminal;
  - (c) an unauthorised access to an information system, whether electronic or paper based, relating to goods subject to Customs control;
  - (d) an enquiry relating to goods subject to Customs control from a person who does not have a commercial connection with the goods;
  - (e) a theft, loss or damage of goods subject to Customs control;
  - (f) a break in and entry, or attempted break in, of the cargo terminal;
  - (g) a change that may adversely affect the security of the terminal;
  - (h) a suspected breach of a Customs-related law in the cargo terminal.
- (2) The notification of an event must:
- (a) be in writing; and
  - (b) be made as soon as practicable, but not later than 5 days after the cargo terminal operator becomes aware of the event.

### **102CD Unclaimed goods**

- (1) The cargo terminal operator of a cargo terminal must notify Customs, within the time and in the manner mentioned in subsection (2), of goods not belonging to the operator that remain at the terminal for more than 30 days.
- (2) The notification must:
  - (a) be in writing, including:
    - (i) a description of the goods; and
    - (ii) the date the goods were received; and
  - (b) be made no later than 35 days after the date the goods were received.

### **102CE Record keeping requirements**

- (1) The cargo terminal operator of a cargo terminal must keep a record of each person who enters the terminal.
- (2) The record may be kept by electronic means.
- (3) The record must include such particulars for each person as are prescribed by the regulations.
- (4) Within 30 days of being requested to do so by an authorised officer, the cargo terminal operator must provide to the officer the records kept under this section for the period specified in the request.
- (5) The disclosure of personal information in response to a request by an authorised officer is taken to be a disclosure that is authorised by this Act for the purposes of the *Privacy Act 1988*.
- (6) Subsection (1) does not apply in relation to a person who is:
  - (a) an employee of the cargo terminal operator; or
  - (b) an officer or employee of, or of an authority of, the Commonwealth, a State or a Territory.

### **102CF Fit and proper person**

- (1) The cargo terminal operator of a cargo terminal must take all reasonable steps to ensure that:
  - (a) the operator is a fit and proper person; and
  - (b) if the operator is a body corporate—each executive officer of the body corporate is a fit and proper person.
- (2) Within 30 days of being requested to do so by an authorised officer, the cargo terminal operator must provide to the officer information that would support an assessment that:
  - (a) the operator is a fit and proper person; and
  - (b) if the operator is a body corporate—each executive officer of the body corporate is a fit and proper person.

### **102CG Adequate training of staff**

The cargo terminal operator of a cargo terminal must take all reasonable steps to educate and train its employees or other persons

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involved in the operator's business to ensure their awareness of the operator's responsibilities and obligations in relation to goods subject to Customs control.

**102CH Complying with directions**

The cargo terminal operator of a cargo terminal must comply with a written direction given by an authorised officer under section 102EB.

**102CI Responsibility to provide facilities and assistance**

The cargo terminal operator of a cargo terminal must provide an authorised officer with all reasonable facilities and assistance for the effective exercise of their powers under a Customs-related law.

**102CJ CEO may impose additional obligations**

The CEO may, by legislative instrument, impose additional obligations on cargo terminal operators generally if the CEO considers the obligations to be necessary or desirable:

- (a) for the protection of the revenue; or
- (b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; or
- (c) for any other purpose.

**102CK Offence—failure to comply with obligations or requirements**

- (1) A person commits an offence if:
  - (a) the person is a cargo terminal operator; and
  - (b) the person fails to comply with an obligation or requirement:
    - (i) set out in this Division; or
    - (ii) set out in a legislative instrument made under section 102CJ.

Penalty: 60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

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

### **Division 3—Obligations of cargo handlers**

#### **102D Certain provisions of Division 2 apply**

Sections 102CC and 102CF to 102CI apply to a cargo handler in the same way as they apply to a cargo terminal operator.

#### **102DA Unpacking of goods in containers at cargo terminal**

If goods are in a container at a cargo terminal, a cargo handler must not allow the container to be unpacked without the written approval of an authorised officer.

#### **102DB Facilitating transshipment or export of goods**

If goods are imported into Australia and are subject to Customs control, a cargo handler must not facilitate the transshipment or export of the goods without the written approval of an authorised officer.

#### **102DC Using establishment identification when communicating with Customs**

- (1) When communicating electronically with Customs about activities undertaken at a port, airport or wharf, a cargo handler must use his, her or its correct establishment identification for the port, airport or wharf.
- (2) Subsection (1) does not apply in relation to a particular port, airport or wharf if a cargo handler has the written approval of an authorised officer for the handler to use a contingency code for the port, airport or wharf.

#### **102DD CEO may impose additional obligations**

The CEO may, by legislative instrument, impose additional obligations on cargo handlers generally if the CEO considers the obligations to be necessary or desirable:

- (a) for the protection of the revenue; or
- (b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the

regulations or a law of a State or Territory prescribed by the regulations; or

(c) for any other purpose.

### **102DE Offence—failure to comply with obligations or requirements**

- (1) A person commits an offence if:
- (a) the person is a cargo handler; and
  - (b) the person fails to comply with an obligation or requirement:
    - (i) set out in section 102CC, 102CF, 102CG, 102CH or 102CI; or
    - (ii) set out in this Division; or
    - (iii) set out in a legislative instrument made under section 102DD.

Penalty: 60 penalty units.

Note: For subparagraph (b)(i), see section 102D.

- (2) Subsection (1) is an offence of strict liability.

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

## **Division 4—Powers of authorised officers**

### **102E General powers**

- (1) For the purpose of determining whether a provision of any Customs-related law has been, or is being, complied with, an authorised officer may enter a cargo terminal and exercise the following powers:
- (a) the power to inspect any document at the terminal;
  - (b) the power to take extracts from, or make copies of, any such document;
  - (c) the power to take into the terminal such equipment and materials as the authorised person requires for the purpose of exercising powers under a Customs-related law in relation to the terminal.
- (2) While at a cargo terminal, an authorised officer may:
- (a) access electronic equipment at the terminal; and
  - (b) use a disk, tape or other storage device that:

- (i) is at the terminal; or
    - (ii) can be used with the equipment or is associated with it;
- if the authorised officer has reasonable grounds for suspecting that the electronic equipment, disk, tape or other storage device is or contains information relating to a matter mentioned in subsection (3).
- (3) For the purposes of subsection (2), the matters are:
- (a) the unloading of goods subject to Customs control from a ship or aircraft or their movement to a particular part of the cargo terminal; or
  - (b) the receipt of goods subject to Customs control at the cargo terminal; or
  - (c) access to goods subject to Customs control:
    - (i) in the cargo terminal; or
    - (ii) on a ship or aircraft within, or adjacent to, the terminal; or
  - (d) the security of goods subject to Customs control in the cargo terminal; or
  - (e) where goods subject to Customs control are stacked in the terminal; or
  - (f) ship bay plans relating to the terminal; or
  - (g) the rostering and attendance of staff at the terminal.

**102EA Power to make requests**

- (1) An authorised officer may request, in writing, that a cargo terminal operator of a cargo terminal:
  - (a) provide documentation to the officer of the procedures and methods in place for ensuring the security of goods at the terminal; or
  - (b) provide to the officer the records relating to each person who enters the terminal for the period specified in the request.
- (2) An authorised officer may request, in writing, that a cargo terminal operator of a cargo terminal or a cargo handler:
  - (a) provide information to the officer that would support an assessment that:
    - (i) the operator or handler is a fit and proper person; and

- (ii) if the operator or handler is a body corporate—each executive officer of the body corporate is a fit and proper person; or
- (b) give the officer access to electronic equipment at the terminal for the purpose of obtaining information relating to a matter mentioned in subsection 102E(3).

### **102EB Power to give directions**

#### *Directions relating to cargo terminals*

- (1) An authorised officer may give a written direction to a cargo terminal operator of a cargo terminal requiring the operator to:
  - (a) carry out remedial work at or near the terminal to address security concerns; or
  - (b) install a closed-circuit television system for the terminal; or
  - (c) keep all footage from a closed-circuit television system.

#### *Directions relating to goods*

- (2) An authorised officer may give a written direction to:
  - (a) a cargo terminal operator of a cargo terminal; or
  - (b) a cargo handler in relation to a cargo terminal.
- (3) A direction given under subsection (2) may relate to all or any of the following:
  - (a) the movement of goods subject to Customs control into, within or out of the terminal;
  - (b) the loading, unloading or handling of goods subject to Customs control at the terminal;
  - (c) the storage, packing or unpacking of goods subject to Customs control at the terminal.
- (4) A direction given under subsection (1) or (2) is not a legislative instrument.

#### *Other directions*

- (5) An authorised officer may, for the purpose of:
  - (a) preventing interference with goods subject to Customs control at a cargo terminal; or

- (b) preventing interference with the exercise of the powers or the performance of the functions of the authorised person or another authorised person in respect of a cargo terminal or of goods subject to Customs control at the terminal;  
give directions to any person at the terminal.
- (6) If a direction is given under subsection (5) in writing, the direction is not a legislative instrument.

## **Division 5—Directions to cargo terminal operators or cargo handlers**

### **102F Directions to cargo terminal operators or cargo handlers etc.**

- (1) The CEO may give a written direction to:
  - (a) a cargo terminal operator; or
  - (b) if a cargo terminal operator is a body corporate—an executive officer of the operator;that the person may not be involved, either indefinitely or for a specified period, in any way in the loading, unloading, handling or storage of goods subject to Customs control in the terminal.
- (2) The CEO may give a written direction to:
  - (a) a cargo handler; or
  - (b) if a cargo handler is a body corporate—an executive officer of the handler;that the person may not be involved, either indefinitely or for a specified period, in any way in the loading, unloading, handling or storage of goods subject to Customs control in a cargo terminal specified in the direction.
- (3) Before giving a direction, the CEO must be satisfied that:
  - (a) the person to whom the direction will be given is not a fit and proper person; or
  - (b) the direction is necessary:
    - (i) for the protection of the revenue; or
    - (ii) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations.

**102FA Offence—failure to comply with direction**

- (1) A person commits an offence if:
- (a) the person is given a direction under section 102F; and
  - (b) the person fails to comply with the direction.

Penalty: 100 penalty units.

- (2) Subsection (1) is an offence of strict liability.

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

**44 After paragraph 273GA(b)**

Insert:

- (baaa) a decision of the CEO under section 102F to give a direction;

## Part 3—Using information held by Customs

### 45 After section 233BABA E

Insert:

#### 233BABA F Using information held by Customs

##### *Using information to commit offence*

- (1) A person commits an offence if:
- (a) the person obtains information; and
  - (b) the information is restricted information; and
  - (c) the person uses the information to commit an offence against a law of the Commonwealth, a State or a Territory.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the offence was an offence against a law of the Commonwealth, a State or a Territory.

##### *Disclosing information to another person*

- (3) A person commits an offence if:
- (a) the person obtains information; and
  - (b) the information is restricted information; and
  - (c) the person discloses the information to another person; and
  - (d) the person is not authorised or required under:
    - (i) this Act; or
    - (ii) the *Customs Administration Act 1985*;to make that disclosure.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (4) In this section:

***restricted information*** means information:

- (a) held in a computer owned, leased or operated by Customs;
- and

- (b) to which access is restricted by an access control system associated with a function of the computer.

#### **46 Application**

- (1) Subsection 233BABAF(1) of the *Customs Act 1901*, as inserted by item 45 of this Schedule, applies in relation to an offence that is committed on or after the day this item commences, even if the information to which the offence relates was obtained by a person before that day.
- (2) Subsection 233BABAF(3) of the *Customs Act 1901*, as inserted by item 45 of this Schedule, applies in relation to a disclosure that is made on or after the day this item commences, even if the information disclosed was obtained by a person before that day.

## Part 4—Infringement notices

### Division 1—Amendments

#### 47 Subsection 4(1)

Insert:

*infringement notice* has the meaning given by subsection 243X(1).

#### 48 Subsection 64AB(14A)

Omit “served with an infringement notice under Division 5 of Part XIII”, substitute “given an infringement notice”.

#### 49 Paragraph 71AAAR(2)(a)

Omit “action may be taken under Subdivision A of Division 5 of that Part”, substitute “an infringement notice may be given to a person”.

#### 50 Paragraph 71H(2)(a)

Omit “action may be taken under Subdivision A of Division 5 of that Part”, substitute “an infringement notice may be given to a person”.

#### 51 Subsection 119B(2A)

Omit “action may be taken under Subdivision A of Division 5 of Part XIII”, substitute “an infringement notice may be given to a person”.

#### 52 Paragraph 203(3)(e)

Repeal the paragraph, substitute:

(e) whether an infringement notice might be given for any such offence;

#### 53 Subsection 205B(1A)

Omit “section 243ZK”, substitute “subsection 243Y(1)”.

#### 54 Paragraph 205D(2)(aa)

Omit “section 243ZK”, substitute “subsection 243Y(1)”.

### **55 Subparagraphs 243T(4)(c)(i) and (d)(i)**

Omit “served under Subdivision A of Division 5 on”, substitute “given to”.

### **56 Paragraph 243U(4A)(b)**

Omit “served under Subdivision A of Division 5 on”, substitute “given to”.

### **57 Division 5 of Part XIII**

Repeal the Division, substitute:

## **Division 5—Infringement notices**

### **243X Infringement notices—general**

- (1) A regulation may make provision enabling a person who is alleged to have committed an offence of strict liability or of absolute liability against this Act to pay to the Commonwealth a penalty specified in a notice (an *infringement notice*) as an alternative to prosecution.
- (2) The penalty must not exceed either:
  - (a) one-quarter of the maximum fine that a court could impose on the person as a penalty for that offence; or
  - (b) subject to subsection (3), whichever of the following applies:
    - (i) 15 penalty units if the person is an individual;
    - (ii) 75 penalty units if the person is a body corporate.

Note: Because of subsection 4B(3) of the *Crimes Act 1914*, the maximum penalty that may be specified in accordance with paragraph (a) in an infringement notice given to a body corporate may be 5 times greater than the maximum penalty that may be specified in accordance with that paragraph in an infringement notice given to an individual.
- (3) Paragraph (2)(b) does not apply if:
  - (a) the penalty for the offence may be determined wholly or partly by reference to:
    - (i) an amount of duty that may be, or would have been, payable; or
    - (ii) the value of particular goods; and
  - (b) it is possible to determine that amount or that value.

**243Y Infringement notices—forfeiture of goods that are prohibited imports if infringement notice paid**

- (1) Goods are taken to be condemned as forfeited to the Crown if:
  - (a) the goods are prohibited imports of a kind prescribed by a regulation for the purposes of this section; and
  - (b) a person pays a penalty to the Commonwealth under an infringement notice as an alternative to prosecution for an offence for a contravention of paragraph 233(1)(b) (importing prohibited imports) in relation to the goods; and
  - (c) the infringement notice has not been withdrawn.
- (2) In addition:
  - (a) the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods; and
  - (b) the title cannot be called into question.
- (3) The goods must be dealt with and disposed of in accordance with the directions of the CEO.

**243Z Infringement notices—right of compensation in certain circumstances for goods disposed of or destroyed**

- (1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown under subsection 243Y(1), a person may apply to a court of competent jurisdiction for compensation under this section.
- (2) A right to compensation exists if:
  - (a) the goods were not prohibited imports; and
  - (b) the goods were not used or otherwise involved in the commission of an offence; and
  - (c) the person establishes, to the satisfaction of the court, that he or she is the rightful owner of the goods.
- (3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to the market value of the goods at the time of their disposal or destruction.

## Division 2—Savings

### 58 Savings provision

- (1) Despite the repeal of Division 5 of Part XIII of the former Act by this Schedule, that Division and the provisions of the former Act amended by this Part continue to apply on and after commencement in relation to an act or omission constituting an alleged offence that occurs before a regulation makes provision as mentioned in subsection 243X(1) of the amended Act.
- (2) In this item:  
*amended Act* means the *Customs Act 1901*, as in force at the commencement.  
*commencement* means the commencement of this item.  
*former Act* means the *Customs Act 1901*, as in force immediately before the commencement.

## Part 5—Strict liability offences

### 59 Subsections 60(1A) and (2A)

Repeal the subsections.

### 60 After subsection 60(3)

Insert:

(3A) Subsections (1), (2) and (3) are offences of strict liability.

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

### 61 Subsection 61(1) (penalty)

Omit “50 penalty units”, substitute “60 penalty units”.

### 62 Subsection 62(1) (penalty)

Omit “50 penalty units”, substitute “60 penalty units”.

### 63 Subsection 63(1) (penalty)

Omit “50 penalty units”, substitute “60 penalty units”.

### 64 Subsection 64AE(1) (penalty)

Omit “5 penalty units”, substitute “30 penalty units”.

### 65 Subsection 64AE(2) (penalty)

Omit “5 penalty units”, substitute “30 penalty units”.

### 66 Subsection 64A(1) (penalty)

Omit “20 penalty units”, substitute “60 penalty units”.

### 67 Subsection 64A(2) (penalty)

Omit “10 penalty units”, substitute “30 penalty units”.

### 68 Subsection 64A(3) (penalty)

Omit “10 penalty units”, substitute “30 penalty units”.

### 69 Subsection 65(1) (penalty)

Omit “50 penalty units”, substitute “60 penalty units”.

**70 Subsection 65(2) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**71 Subsection 67E(1) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**72 Subsection 69(10) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**73 Subsection 70(7) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**74 Subsection 71AAAQ(1) (penalty)**

Omit “15 penalty units”, substitute “60 penalty units”.

**75 Subsection 71G(1) (penalty)**

Omit “15 penalty units”, substitute “60 penalty units”.

**76 Subsection 77R(1) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**77 Subsection 77Y(4) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**78 Subsection 82C(1) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**79 Subsection 90(1) (penalty)**

Omit “10 penalty units”, substitute “30 penalty units”.

**80 Subsection 96A(11)**

Omit “50 penalty units”, substitute “60 penalty units”.

**81 Subsection 96B(11)**

Omit “50 penalty units”, substitute “60 penalty units”.

**82 Subsection 101(1) (penalty)**

Omit “10 penalty units”, substitute “30 penalty units”.

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**83 Subsection 102(1) (penalty)**

Omit “10 penalty units”, substitute “30 penalty units”.

**84 Subsection 102(2) (penalty)**

Omit “10 penalty units”, substitute “30 penalty units”.

**85 Subsection 105C(2) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**86 Subsection 112D(2) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**87 Subsection 113(1) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**88 Subsection 114B(7) (penalty)**

Omit “10 penalty units”, substitute “30 penalty units”.

**89 Subsection 116(2) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**90 Subsection 123(1) (penalty)**

Omit “5 penalty units”, substitute “30 penalty units”.

**91 Subsection 123(2) (penalty)**

Omit “5 penalty units”, substitute “30 penalty units”.

**92 Subsection 126C(1) (penalty)**

Omit “10 penalty units”, substitute “30 penalty units”.

**93 Subsection 127(1) (penalty)**

Omit “20 penalty units”, substitute “60 penalty units”.

**94 Paragraph 129(3)(a)**

Omit “20 penalty units”, substitute “60 penalty units”.

**95 Subsection 130B(3)**

Omit “20 penalty units”, substitute “60 penalty units”.

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**96 Subsection 181(5)**

Omit “10 penalty units”, substitute “30 penalty units”.

**97 Subsection 188(1) (penalty)**

Omit “5 penalty units”, substitute “30 penalty units”.

**98 Subsection 191(1) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**99 Subsection 192(1) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**100 Subsection 195(2) (penalty)**

Omit “10 penalty units”, substitute “30 penalty units”.

**101 Subsection 197(6) (penalty)**

Omit “45 penalty units”, substitute “60 penalty units”.

**102 Subsection 227E(5) (penalty)**

Omit “45 penalty units”, substitute “60 penalty units”.

**103 Subsection 234A(1) (penalty)**

Omit “50 penalty units”, substitute “60 penalty units”.

**104 Subsection 234AB(3) (penalty)**

Omit “10 penalty units”, substitute “30 penalty units”.

**105 Before subsection 240(1)**

Insert:

*Keeping commercial documents*

**106 After subsection 240(1B)**

Insert:

(1C) Subsections (1), (1AA), (1A) and (1B) are offences of strict liability.

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

*Certified true copies of commercial documents*

**107 Before subsection 240(4)**

Insert:

*Place, manner and form for keeping and storing commercial documents*

**108 After subsection 240(5)**

Insert:

(5A) Subsection (5) is an offence of strict liability.

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

*Informing authorised officer of whereabouts of commercial document*

**109 Subsection 240(6A)**

After “offence”, insert “of strict liability”.

**110 At the end of subsection 240(6A)**

Add:

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

**111 Before subsection 240(6B)**

Insert:

*Altering and defacing commercial documents*

**112 After subsection 240(6B)**

Insert:

(6BA) Subsection (6B) is an offence of strict liability.

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

**113 Before subsection 240(7)**

Insert:

*Exceptions to requirements to keep commercial documents*

**114 Before subsection 240AB(1)**

Insert:

*Scope and purpose*

**115 Before subsection 240AB(3)**

Insert:

*Requirements to keep records*

**116 After subsection 240AB(3A)**

Insert:

(3B) Subsections (3) and (3A) are offences of strict liability.

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

*Place, manner and form for keeping and storing records*

**117 Before subsection 240AB(6)**

Insert:

*Informing authorised officer of whereabouts of record*

**118 Subsection 240AB(7)**

After “offence”, insert “of strict liability”.

**119 At the end of subsection 240AB(7)**

Add:

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

**120 Before subsection 240AB(8)**

Insert:

*Interaction with section 240*

**121 At the end of section 243SA**

Add:

(4) Subsections (1), (2) and (3) are offences of strict liability.

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

**122 Section 243SB**

Before “A person”, insert “(1)”.

**123 At the end of section 243SB**

Add:

(2) Subsection (1) is an offence of strict liability.

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

**124 Subsection 243T(3)**

Repeal the subsection, substitute:

(3) An offence against subsection (1) is punishable on conviction by a fine not exceeding the greater of:

- (a) 60 penalty units; and
- (b) the amount of the excess.

**125 Subsections 243U(3) and 243V(3)**

Omit “50 penalty units”, substitute “60 penalty units”.

## **Part 6—Other amendments**

### **Division 1—Amendments**

#### **126 Subsection 82A(1)**

Omit “after a warehouse licence is granted”.

#### **127 Subsection 84(2)**

Repeal the subsection.

#### **128 At the end of section 84**

Add:

Note: Additional conditions may be imposed on the licence under section 82A, and the conditions to which the licence is subject may be varied under subsection 82(5) or section 82B.

#### **129 Section 100**

Repeal the section, substitute:

#### **100 Entry of goods without warehousing with permission of Customs**

*Applying for permission to enter goods without warehousing*

- (1) A person may apply to Customs for permission for goods that have been entered for warehousing to be:
  - (a) further entered in accordance with section 99 without having been warehoused; and
  - (b) dealt with in accordance with that further entry as if they had been warehoused.
- (2) An application under subsection (1) may be made by document or electronically.
- (3) A documentary application must:
  - (a) be communicated to Customs by sending or giving it to a Collector; and
  - (b) be in an approved form; and
  - (c) contain such information as is required by the form; and

- (d) be signed in a manner specified in the form.
- (4) An electronic application must communicate such information as is set out in an approved statement.
- (5) The CEO may approve different forms for documentary applications, and different statements for electronic applications, made under this section in different circumstances or by different classes of persons.

*Giving permission to enter goods without warehousing*

- (6) Customs must, on receiving an application under subsection (1), by notice in writing either:
- (a) grant the permission, which has effect accordingly; or
  - (b) refuse to grant the permission.

*Giving particulars of further entry to warehouse licence holder*

- (7) A person who makes a further entry in accordance with a permission under subsection (6) must, as soon as practicable, give particulars of the further entry to the holder of the warehouse licence for the warehouse in which the goods were intended to have been warehoused.

Penalty: 60 penalty units.

- (8) Subsection (7) is an offence of strict liability.

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

**130 Subsection 183CG(6)**

Omit all the words after “necessary or”, substitute:

desirable:

- (a) for the protection of the revenue; or
- (b) for the purpose of ensuring compliance with the Customs Acts; or
- (c) for any other purpose.

**131 After subsection 183CG(7)**

Insert:

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(7A) Subsection (7) does not limit section 183CGB.

### **132 After section 183CG**

Insert:

#### **183CGA The CEO may impose additional conditions to which a broker's licence is subject**

- (1) The CEO may, at any time, impose additional conditions to which the licence is subject if the CEO considers the conditions to be necessary or desirable:
  - (a) for the protection of the revenue; or
  - (b) for the purpose of ensuring compliance with the Customs Acts; or
  - (c) for any other purpose.
- (2) If the CEO imposes conditions under subsection (1):
  - (a) the CEO must, by written notice to the holder of the broker's licence, notify the holder of the conditions; and
  - (b) the conditions cannot take effect before:
    - (i) the end of 30 days after the giving of the notice; or
    - (ii) if the CEO considers that it is necessary for the conditions to take effect earlier—the end of a shorter period specified in the notice.

#### **183CGB The CEO may vary the conditions to which a broker's licence is subject**

- (1) The CEO may, by written notice to the holder of a broker's licence, vary:
  - (a) the conditions specified in the broker's licence under section 183CG; or
  - (b) the conditions imposed under section 183CGA to which the licence is subject.
- (2) A variation under subsection (1) cannot take effect before:
  - (a) the end of 30 days after the giving of the notice under that subsection; or

(b) if the CEO considers that it is necessary for the variation to take effect earlier—the end of a shorter period specified in the notice given under that subsection.

(3) This section does not limit subsection 183CG(7).

### **183CGC Breach of conditions of a broker's licence**

(1) The holder of a broker's licence must not breach a condition to which the licence is subject under section 183CG or 183CGA (including a condition varied under subsection 183CG(7) or section 183CGB).

Penalty: 60 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

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

### **133 Subsection 183CJ(4)**

Repeal the subsection.

### **134 At the end of section 183CJ**

Add:

Note: Additional conditions may be imposed on the licence under section 183CGA, and the conditions to which the licence is subject may be varied under subsection 183CG(7) or section 183CGB.

### **135 Paragraph 234(2)(c)**

Omit "100 penalty units", substitute "250 penalty units".

### **136 Subsection 234(3)**

Omit "50 penalty units", substitute "100 penalty units".

### **137 Subsection 240AB(3)**

Omit "one year", substitute "5 years".

### **138 Subsection 240AB(3A)**

Omit "one year", substitute "5 years".

### **139 Subsection 243T(1)**

Repeal the subsection, substitute:

- (1) A person commits an offence if:
- (a) the person:
    - (i) makes, or causes to be made, to an officer a statement (other than a statement in a cargo report or an outturn report) that is false or misleading in a material particular; or
    - (ii) omits, or causes to be omitted, from a statement (other than a statement in a cargo report or an outturn report) made to an officer any matter or thing without which the statement is false or misleading in a material particular; and
  - (b) either of the following applies:
    - (i) the amount of duty properly payable on the goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading;
    - (ii) the amount that would have been payable as a refund or drawback of duty on the goods if that amount had been determined on the basis that the statement was not false or misleading exceeds the amount of refund or drawback properly payable (which may be nil).

### **140 After subsection 243T(3)**

Insert:

- (3A) For the purposes of this section, a person is taken to cause to be made a statement (other than a statement in a cargo report or outturn report) that is false or misleading in a material particular if:
- (a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement (other than a statement in a cargo report or outturn report) by the other person or someone else to an officer; and
  - (b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause such a statement to be made.

(3B) For the purposes of this section, a person is taken to cause to be made an omission (a *punishable omission*) from a statement (other than a statement in a cargo report or outturn report) of a matter or thing without which the statement is false or misleading in a material particular, if:

- (a) the person gives to another person, for inclusion in a statement (other than a statement in a cargo report or an outturn report) by the other person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and
- (b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause a punishable omission to be made.

#### **141 Subparagraphs 243T(4)(b)(i) and (ii)**

Repeal the subparagraphs, substitute:

- (i) a person who made the statement or caused it to be made (the *defendant*); or
- (ii) a person who omitted, or caused to be omitted, from the statement a matter or thing without which the statement was false or misleading (the *defendant*); and

#### **142 Paragraphs 243T(4)(c) and (d) and (4A)(b) and (c)**

Omit “the owner of the goods” (wherever occurring), substitute “the defendant”.

### **Division 2—Application of amendments**

#### **143 Application of amendments**

- (1) The amendments made by items 126 to 128 apply to a warehouse licence whether it is granted or renewed before, on or after the commencement of this item.
- (2) The amendments made by items 131 to 134 apply to a broker’s licence whether it is granted or renewed before, on or after the commencement of this item.

- (3) The amendments made by items 137 and 138 apply to a communication made on or after the commencement of this item.

## Schedule 2—Amendment of the AusCheck Act 2007

### Part 1—Amendments

#### 1 Subsection 4(1)

Insert:

*ASIC* (short for aviation security identification card) has the same meaning as in the *Aviation Transport Security Regulations 2005*.

*aviation-security-relevant offence* has the same meaning as in the *Aviation Transport Security Regulations 2005*.

#### 2 Subsection 4(1) (definition of *aviation security identification card*)

Repeal the definition.

#### 3 Subsection 4(1)

Insert:

*charged*: an individual is *charged* with a serious offence if an information is laid against the individual for the offence, whether or not:

- (a) a summons to require the attendance of the individual to answer the information has been issued; or
- (b) a warrant for the arrest of the individual has been issued.

*issuing body* means:

- (a) an issuing body within the meaning of the *Aviation Transport Security Regulations 2005*; or
- (b) an issuing body within the meaning of the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

*maritime-security-relevant offence* has the same meaning as in the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

**4 Subsection 4(1) (definition of *maritime security identification card*)**

Repeal the definition.

**5 Subsection 4(1)**

Insert:

*MSIC* (short for maritime security identification card) has the same meaning as in the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

*resolved*: for when a charge for a serious offence is *resolved* in relation to an individual, see subsection (3).

*Secretary* means the Secretary of the Department.

*serious offence*:

- (a) in relation to an applicant for, or holder of, an ASIC—means an aviation-security-relevant offence of a kind specified in the regulations for the purposes of this paragraph; and
- (b) in relation to an applicant for, or holder of, an MSIC—means a maritime-security-relevant offence of a kind specified in the regulations for the purposes of this paragraph.

*Transport Secretary* means the Secretary of the Department administered by the Minister who administers the *Aviation Transport Security Act 2004*.

**6 Before subsection 4(2)**

Insert:

*Meaning of personal information*

**7 Subsection 4(2) (paragraph (a) of the definition of *personal information*)**

Omit “aviation security identification card or a maritime security identification card”, substitute “ASIC or MSIC”.

**8 At the end of section 4**

Add:

*When a charge is resolved*

- (3) For the purposes of this Act, a charge for a serious offence is **resolved** in relation to an individual if the charge is finally dealt with in any of the following ways:
- (a) the charge is withdrawn;
  - (b) the charge is dismissed by a court;
  - (c) the individual is discharged by a court following a committal hearing;
  - (d) the individual is acquitted of the offence by a court;
  - (e) the individual is found guilty of the offence and a court:
    - (i) sentences the person for the offence; or
    - (ii) makes an order relating to the offence under section 19B of the *Crimes Act 1914*, or a corresponding provision of a law of a State or Territory.

**9 After paragraph 5(a)**

Insert:

- (aa) if required or permitted under a regulation made under subsection 8(3):
  - (i) whether the individual has been charged with a serious offence; or
  - (ii) whether a charge for a serious offence has been resolved in relation to the individual;

**10 At the end of subsection 8(1)**

Add:

- ; or (c) a regulation made under subsection (3) requires or permits a background check to be conducted of an individual.

**11 Before subsection 8(2)**

Insert:

*National security background checks*

**12 At the end of section 8**

Add:

*Background checks required or permitted under the regulations—  
charges for serious offences*

- (3) The regulations may require or permit a background check covering a matter referred to in paragraph 5(a), (aa) or (d) to be conducted in relation to an individual if:
- (a) one of the following applies:
    - (i) the individual has applied to an issuing body for an ASIC or MSIC, and the issuing body has neither issued, nor refused to issue, the ASIC or MSIC;
    - (ii) the individual or an issuing body has applied to the Transport Secretary for approval to issue an ASIC or MSIC to the individual, and the application has not been determined;
    - (iii) the individual is the holder of an ASIC or MSIC;
    - (iv) the individual or an issuing body has applied to the Transport Secretary to set aside the cancellation of an ASIC or MSIC issued to the individual;
    - (v) the individual has applied to the Administrative Appeals Tribunal for review of a decision by an issuing body, the Secretary or the Transport Secretary relating to the issue, suspension or cancellation of an ASIC or MSIC, and the application has not been determined; and
  - (b) the Secretary considers on reasonable grounds that:
    - (i) the individual has been charged with a serious offence;  
or
    - (ii) a charge for a serious offence has been resolved in relation to the individual.
- Note: The matters referred to in paragraphs 5(a), (aa) and (d) cover the individual's criminal history, whether the individual has been charged with a serious offence or has had a charge for such an offence resolved, and the individual's identity.
- (4) A regulation made under subsection (3) may only require or permit a background check to be conducted for purposes related to determining whether it is appropriate for the individual to enter any area or zone to which access is restricted under:
- (a) the *Aviation Transport Security Act 2004* or regulations under that Act; or
  - (b) the *Maritime Transport and Offshore Facilities Security Act 2003* or regulations under that Act.

**13 Section 9 (at the end of the heading)**

Add “—background checks required or permitted other than under regulations made under this Act”.

**14 Subsection 9(1)**

After “may” (first occurring), insert “, for the purposes of paragraphs 8(1)(a) and (b),”.

**15 Paragraph 9(1)(h)**

Omit “check;”, substitute “check.”.

**16 Paragraph 9(1)(i)**

Repeal the paragraph.

**17 Paragraph 9(2)(a)**

Omit “under the AusCheck scheme”, substitute “for the purposes of paragraphs 8(1)(a) and (b)”.

**18 Subparagraphs 9(4)(a)(i) and (ii)**

Repeal the subparagraphs, substitute:

- (i) an ASIC or MSIC; or

**19 Paragraph 9(4)(b)**

Omit “the other person”, substitute “the person to whom that application was made”.

**20 Paragraph 9(4)(b)**

Omit all the words after “precondition”, substitute:

to:

- (i) the issuing of the card, licence, permit or authorisation;  
or
- (ii) if the background check is required or permitted to be conducted as referred to in paragraph 8(1)(a) in a particular circumstance—the individual’s continuing eligibility to hold the card in that circumstance.

**21 After section 9**

Insert:

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**10 Matters covered by AusCheck scheme—background checks required or permitted under regulations made under this Act**

- (1) The AusCheck scheme may, for the purposes of paragraph 8(1)(c), make provision for and in relation to the following:
  - (a) the giving to the Secretary of information, relating to an individual in respect of whom a background check is conducted, that is directly necessary for the purpose of conducting the background check;
  - (b) the criteria against which a background check is to be assessed;
  - (c) the decision or decisions that may be made as a result of a background check;
  - (d) the form of advice to be given to an individual in respect of whom a background check is conducted;
  - (e) the form of advice to be given to other persons about the outcome of a background check.
- (2) The matters referred to in subsection (1) may relate to:
  - (a) all background checks to be conducted for the purposes of paragraph 8(1)(c); or
  - (b) a specified class of background checks.
- (3) The AusCheck scheme may, for the purposes of paragraph 8(1)(c), make provision for and in relation to an individual or an issuing body notifying the Secretary or the Transport Secretary of specified matters if:
  - (a) one of the following applies:
    - (i) the individual has applied to an issuing body for an ASIC or MSIC, and the issuing body has neither issued, nor refused to issue, the ASIC or MSIC;
    - (ii) the individual or an issuing body has applied to the Transport Secretary for approval to issue an ASIC or MSIC to the individual, and the application has not been determined;
    - (iii) the individual is the holder of an ASIC or MSIC;
    - (iv) the individual or an issuing body has applied to the Transport Secretary to set aside the cancellation of an ASIC or MSIC issued to the individual;

- (v) the individual has applied to the Administrative Appeals Tribunal for review of a decision by an issuing body, the Secretary or the Transport Secretary relating to the issue, suspension or cancellation of an ASIC or MSIC, and the application has not been determined; and
- (b) the individual has been charged with a serious offence, or a charge for a serious offence has been resolved in relation to the individual; and
- (c) in the case of an issuing body:
  - (i) the individual applied to the issuing body for the ASIC or MSIC; or
  - (ii) the issuing body issued the ASIC or MSIC to the individual.

#### **10A Matters covered by AusCheck scheme—online verification service**

The AusCheck scheme may make provision for and in relation to matters relating to the establishment and provision of an online verification service that will enable verification:

- (a) that an ASIC or MSIC has been issued to a particular individual and is in effect at a particular time; or
- (b) that an individual who is in possession of an ASIC or MSIC is the person to whom the card was issued; or
- (c) that a national security background check has been conducted in relation to a particular individual; or
- (d) that an individual who is in possession of a card, licence, permit or other authorisation in relation to which a national security background check has been conducted is the individual to whom the card, licence, permit or authorisation was issued.

#### **22 Before subsection 11(2)**

Insert:

*Directions about advising whether licence etc. has been issued to individual*

#### **23 At the end of section 11**

Add:

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*Directions in connection with background checks required or permitted under the regulations—charges for serious offences*

- (3) Without limiting subsection (1), the AusCheck scheme may empower the Secretary to give one or more of the following kinds of direction if the Secretary considers on reasonable grounds that an individual has been charged with a serious offence:
- (a) a direction to an issuing body to delay considering an application for an ASIC or MSIC to be issued to the individual until further direction from the Secretary in accordance with subsection (4);
  - (b) a direction to the Transport Secretary to delay considering an application for approval to issue an ASIC or MSIC to the individual until further direction from the Secretary in accordance with subsection (4);
  - (c) a direction to an issuing body to suspend an ASIC or MSIC issued by the issuing body to the individual until further direction from the Secretary in accordance with subsection (4);
  - (d) a direction to the Transport Secretary to delay considering an application to set aside the cancellation of an ASIC or MSIC issued to the individual until further direction from the Secretary in accordance with subsection (4).

*Giving further directions referred to in subsection (3)*

- (4) The Secretary:
- (a) must give the further direction referred to in subsection (3) to the relevant person as soon as practicable after the Secretary considers that:
    - (i) all charges for serious offences have been resolved in relation to the individual; and
    - (ii) a background check has been conducted covering the matter referred to in paragraph 5(a) (criminal history) after subparagraph (i) is satisfied, whether or not the background check also covers other matters; and
  - (b) may give the further direction at any time before paragraph (a) applies.

*Directions under subsection (3) to suspend ASICs or MSICs—other cards also taken to be suspended*

- (5) If an ASIC or MSIC is suspended as referred to in paragraph (3)(c), then any other card issued to the individual under the *Aviation Transport Security Regulations 2005* or the *Maritime Transport and Offshore Facilities Security Regulations 2003* is taken also to be suspended.

*Other matters connected with giving directions under subsection (3)*

- (6) The AusCheck scheme may make provision for matters connected with the giving of a direction under subsection (3), including the following:
- (a) preventing the individual from making any other application under the *Aviation Transport Security Regulations 2005* or the *Maritime Transport and Offshore Facilities Security Regulations 2003*, or entering any area or zone to which access is restricted under those regulations, until after the further direction referred to in subsection (3) has been given;
  - (b) preventing an issuing body or other person from issuing any card to the individual under those regulations until after the further direction referred to in subsection (3) has been given;
  - (c) preventing a person from escorting the individual in any area or zone to which access is restricted under those regulations until after the further direction referred to in subsection (3) has been given;
  - (d) returning a suspended card issued to the individual under those regulations to a specified person;
  - (e) updating registers of cards and other records kept by an issuing body;
  - (f) an issuing body or the Secretary notifying other persons of matters in connection with the giving of the direction, for the purpose of preventing:
    - (i) an unlawful interference with aviation (within the meaning of the *Aviation Transport Security Act 2004*); or
    - (ii) an unlawful interference with maritime transport or offshore facilities (within the meaning of the *Maritime Transport and Offshore Facilities Security Act 2003*); or
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- (iii) the commission of an offence against a law of the Commonwealth or a State or Territory; or
- (iv) an incident that poses a threat to national security.

#### **24 Before paragraph 13(1)(a)**

Insert:

- (aa) the collection, use or disclosure is for the purposes of, or for purposes directly relating to, determining whether a background check under the AusCheck scheme is required or permitted to be conducted in respect of a particular individual; or

#### **25 Subparagraphs 13(1)(c)(i) and (ii)**

Omit “aviation security identification card or a maritime security identification card”, substitute “ASIC or MSIC”.

#### **26 After subparagraph 14(2)(b)(i)**

Insert:

- (ia) monitoring and enforcing compliance with a requirement under the AusCheck scheme, the *Aviation Transport Security Regulations 2005* or the *Maritime Transport and Offshore Facilities Security Regulations 2003* to notify the Secretary or the Transport Secretary of a specified matter;

#### **27 At the end of paragraph 14(2)(b)**

Add:

- (iv) without limiting subparagraph (iii)—determining whether any individual referred to in paragraph 8(3)(a) has been charged with a serious offence, or whether a charge for a serious offence has been resolved in relation to any such individual.

#### **28 Paragraph 14(2A)(a)**

Omit “aviation security identification card or a maritime security identification card”, substitute “ASIC or MSIC”.

#### **29 Paragraph 14(2A)(b)**

Omit “such an identification card”, substitute “an ASIC or MSIC”.

**30 Paragraph 18(2)(c)**

Omit “50”, substitute “100”.

## **Part 2—Application of amendments**

### **31 Application of amendments**

- (1) The amendments made by this Schedule apply in relation to an applicant for an ASIC or MSIC, whether the application is made before, on or after the commencement of this item.
- (2) The amendments made by this Schedule apply in relation to the holder of an ASIC or MSIC, whether the ASIC or MSIC is issued before, on or after the commencement of this item.
- (3) The amendments made by this Schedule apply in relation to an individual charged with a serious offence on or after the commencement of this item.
- (4) Sections 13 and 14 of the *AusCheck Act 2007*, as in force on and after the commencement of this item, apply in relation to personal information whether it is collected before, on or after that commencement.

### **32 Savings provision—online verification service**

Despite the repeal of paragraph 9(1)(i) of the *AusCheck Act 2007* by this Schedule, regulations in force for the purposes of that paragraph immediately before the commencement of this item continue in force on and after that commencement for the purposes of section 10A of that Act (as inserted by this Schedule).

## Schedule 3—Amendment of the Law Enforcement Integrity Commissioner Act 2006

### 1 Paragraph 213(3)(c)

Omit “Representatives; or”, substitute “Representatives.”.

### 2 Paragraph 213(3)(d)

Repeal the paragraph.

### 3 Savings provision

Despite paragraph 213(4)(b) of the *Law Enforcement Integrity Commissioner Act 2006*, a person holding an office specified in paragraph 213(3)(d) of that Act immediately before the commencement of this item is taken never to have ceased holding office as a member of the Committee.

Note: See section 33AB of the *Acts Interpretation Act 1901* for the validity of things done by or in relation to a person purporting to act under an appointment that has ceased to have effect.

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[*Minister’s second reading speech made in—  
House of Representatives on 20 March 2013  
Senate on 16 May 2013*]

(85/13)

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