



# AusCheck Privacy Notice – ASIC & MSIC

## June 2019

The Department of Home Affairs (the Department) includes the Australian Border Force. The *AusCheck Act 2007* (AusCheck Act) authorises and requires the Department to collect certain personal information to administer the AusCheck scheme.

The *Privacy Act 1988* (Privacy Act) requires the Department to notify an individual of certain matters when it collects personal information about them. This form is your notification of those matters.

This document explains:

- what personal information is collected from you when an application for a background check is made in connection with you being issued or holding an Aviation Security Identification Card (ASIC) or Maritime Security Identification Card (MSIC)
- how your personal information will be used, and
- where you can find more information.

### What is personal information?

The Privacy Act defines personal information as information or an opinion about an individual who is reasonably identifiable.

Under the Privacy Act personal information may include sensitive information.

Sensitive information is a subset of personal information and includes information or opinion about an individual's racial or ethnic origin, political, religious and philosophical beliefs, trade or professional associations or memberships, union membership, sexual orientation or practices, criminal history, health, genetic and biometric information.

### Why is my personal information being collected?

Under the *Aviation Transport Security Regulations 2005* and the *Maritime Transport and Offshore Facilities Security Regulations 2003*, a person must undergo an AusCheck coordinated background check before they can be issued with an ASIC or MSIC. AusCheck requires some of your personal information in order to conduct this background check. Your issuing body will apply to AusCheck for a background check on your behalf.

Applicants and cardholders are required to notify their issuing body of any changes to their name and, in the case of a four-year MSIC, any changes to their address. You are able to update your details with AusCheck at any time by either contacting your issuing body or AusCheck.

### Consent

Under the AusCheck Act, by accepting this Privacy Notice and making an application for an ASIC or MSIC, you are taken to have consented to an AusCheck coordinated background check.

This consent applies to the initial background check required as part of your ASIC or MSIC application, as well as any further background checks required or permitted by the AusCheck Act or other legislation. This includes:

- a second background check triggered on the two year anniversary of the completion of the initial check undertaken for a four year MSIC
- a further background check in circumstances where it is reasonably suspected that the information provided for the original background check was incomplete, the application requirements were not met, or the advice given as a result of that check was inaccurate or incomplete, and
- a background check requested by the Secretary of the Department.

In circumstances where you are a holder of an ASIC or MSIC and you are convicted of an aviation or maritime security relevant offence you have a legal obligation to report this conviction. In order to continue holding an ASIC or MSIC an additional AusCheck coordinated background check will need to be undertaken. This will only be undertaken if you provide further consent for this process.

You will be prompted to provide express consent to have your identity documents electronically verified with the document issuer or official record holder through third party systems.

## What personal information is being collected about me?

Your issuing body will collect the information that AusCheck requires to conduct a background check and to perform card verification.

The required information includes:

- **details of identification documents:** for example your birth certificate registration number, to enable the electronic verification of these documents. If there are issues verifying these documents, your issuing body may provide copies of these documents to AusCheck to assist with troubleshooting. These copies will be stored in accordance with Commonwealth government record keeping obligations as set out in the *Archives Act 1983*
- **identity information:** your full name, all former full names, all other names, titles, pseudonyms and aliases which you are or were known by, use or have used to identify yourself (variants, including variants in spelling are taken to be different name, titles pseudonyms or aliases), date and place of birth, gender, any other names by which you are known or have previously been known, contact details, current residential address, and all other previous residential addresses for the past 10 years
- a **photograph** taken at the same time as, or within 6 months prior to, your application showing your full face, and head and shoulders
- **work and study information:** the name, telephone number and business address of your employer and/or the name and business address of the institution where you are studying

- **other information:** AusCheck may also need additional information in order to confirm your identity, such as fingerprints or other biometric data.

If an immigration check is requested by your issuing body, AusCheck will also need your **immigration information**:

- your passport number, and the number and expiry date of any visa granted to you enabling you to travel to and enter, remain and/or work in Australia.

If your issuing body or employer has asked you for any additional personal information, you should contact them to clarify why that additional information is required.

Biometric data is defined as 'identity verification information' in the AusCheck Act and includes data such as your fingerprints. Identity verification information is given additional protection under the AusCheck Act, and may only be collected, retained, used or disclosed for the purposes of verifying your identity for the purposes of the background check. AusCheck can only conduct a background check if the required information is provided. Failure to provide the required information will delay the commencement of your background check.

AusCheck may direct your issuing body to provide further information if doing so is necessary for the purposes of meeting background check application requirements, ensure all required information is provided or completing a background check. This direction may be given whilst the background check is being undertaken, or while your ASIC or MSIC is valid. AusCheck may charge for the cost of undertaking a new background check in these circumstances.

## How will my personal information be used?

AusCheck will only use your personal information for purposes permitted by law, including:

- determining whether a background check is required or permitted
- conducting and advising on the outcome of a background check
- updating information on an individual who has undertaken a background check

- providing updated advice on the outcome of a background check if the initial advice was inaccurate or incomplete (this may involve further background checking)
- verifying the identity of an individual
- providing an online verification service that will verify if an ASIC or a MSIC has been issued and its status
- responding to a national security incident, and
- performing functions relating to law enforcement or national security.

Your personal information will be stored in the AusCheck database for these permitted purposes.

Your personal information will be used and stored securely in accordance with the Australian Privacy Principles. Your personal information may be disclosed to an overseas recipient but only in specific instances where this disclosure is authorised by legislation.

AusCheck will conduct and coordinate a background check using the information you provide to your issuing body. That information may also be used to conduct subsequent background checks (see 'consent' above). The outcome of these background checks affects your eligibility to be issued and to hold an ASIC or MSIC.

When conducting a background check, AusCheck will disclose your personal information to the following Commonwealth Government agencies:

- **The Australian Security Intelligence Organisation (ASIO):** ASIO will assess your background and any past activities to determine whether there could be a threat to national security. ASIO will keep your information and use it as required for national security purposes.
- **The Australian Criminal Intelligence Commission (ACIC):** The ACIC will check your criminal record in the databases of all Australian legal jurisdictions and supply a copy of your criminal record to AusCheck. AusCheck will provide you with an opportunity to review your security relevant offences before finalising the eligibility assessment. If you dispute the details of these offences, you are required to contact AusCheck in the first instance.

AusCheck can provide details of your dispute to the ACIC, but you may need to contact the relevant police in the jurisdiction in which the offence occurred to directly query your criminal record. The ACIC may also use your information to perform functions related to law enforcement purposes, including those purposes set out in the *Australian Crime Commission Act 2002*.

AusCheck will only provide your personal information for other purposes where specifically required or permitted by law such as verifying ASIC or MSIC details, responding to a national security incident, and for law enforcement or national security purposes.

AusCheck will disclose your personal information to other parts of the Department to electronically verify your identification, or to check your citizenship status or your legal right to work in Australia. This information may also be used for immigration compliance purposes.

**If you are under 18 years of age**, AusCheck will only conduct the security assessment component of the background check. AusCheck will only provide your personal information for other purposes where specifically required or permitted by law.

**If you are under 14 years of age**, your parent or legal guardian will be required to provide written consent to your issuing body for the background check to be undertaken.

### What happens after my background check is complete?

AusCheck will use the results of these checks to advise your issuing body or the Department's Aviation and Maritime Security Division (AMS) whether you:

- have a 'disqualified' (MSIC only), 'adverse', or 'qualified' (ASIC only) criminal record
- have an 'adverse' or 'qualified' security assessment
- have the right to work (MSIC) or right to be (ASIC) in Australia if requested by your issuing body.

**If you have applied for an ASIC and have a qualified criminal history**, your issuing body has discretion about whether to issue you an ASIC on the basis of your criminal record. AusCheck will provide your issuing body with the details of your convictions for aviation security relevant offences to assist them when making this decision.

**If you have applied for an ASIC and have an adverse criminal history**, your issuing body must not issue you an ASIC.

**If you have applied for an MSIC and have a disqualified criminal history**, your issuing body must not issue you an MSIC.

**If you have applied for an ASIC or an MSIC and you have an adverse security assessment**, your issuing body must not issue you an ASIC or MSIC.

**If you have applied for an ASIC or MSIC and you have a qualified security assessment**, AMS has discretion on whether your issuing body can issue you an ASIC or MSIC. Your security assessment will be provided to AMS to assist them when making this decision.

**If you have applied for an ASIC or MSIC** and you do not hold a visa entitling you to work (MSIC) or to be (ASIC) in Australia, your issuing body must not issue you an ASIC or MSIC.

AusCheck will keep your personal information on the AusCheck database. Issuing bodies, certain industry participants, as well as Commonwealth, state and territory authorities seeking access for the purposes of performing functions relating to law enforcement or national security can access this information in certain circumstances authorised by law.

### **Four-year MSIC – Two-year check**

If you apply for and are found eligible to be issued with a four year MSIC, AusCheck is required to undertake a second background check, triggered on the two year anniversary of your initial background check. The fee paid for your four year MSIC includes the cost of this second background check. The second background check is similar in nature and process to your initial check.

If you apply for and are found eligible to be issued with a four year MSIC, but subsequently decide you do not want to have the second background check, you can withdraw your consent for that second check by contacting your issuing body before the second background check occurs.

If you withdraw your consent for the second check:

- your issuing body must immediately cancel your MSIC
- your issuing body will receive a credit for AusCheck's fees associated with the second check.

If you do not want to have a second background check, you have the option of applying for a two year MSIC.

### **Spent convictions**

A spent conviction is a criminal conviction that lapses after a period of time and will not ordinarily be disclosed on a person's criminal record. The Commonwealth spent convictions scheme is contained in Part VIIC of the *Crimes Act 1914* (Cth) and limits the use and disclosure of certain criminal history information. AusCheck will not be provided with, and will not use or disclose, information about a conviction which is 'spent' (unless an exclusion applies – see below). This includes convictions that have been quashed or set aside, or for which a pardon has been granted.

A conviction is a 'spent conviction' under the Commonwealth spent convictions scheme if all of the following applies:

- you were not sentenced to more than 30 months imprisonment in relation to the offence
- the 'waiting period' has ended – 10 years since the date of the conviction (or five years if you were dealt with as a minor), and
- you have not been convicted for an offence during the waiting period.

A conviction is also 'spent' under the Commonwealth scheme if it is considered a 'spent conviction' under a state or territory law. Note that AusCheck is exempt from the application of the South Australian spent convictions scheme.

Some exclusions apply to persons applying for an ASIC or MSIC. This means that the details of convictions for certain aviation and maritime-security-relevant offences will be given to AusCheck and used and disclosed in relation to the background check even if they are 'spent'.

If you believe the 'spent convictions' rules have been breached by AusCheck, you can apply to the Office of the Australian Information Commissioner for an investigation.

### **Where can I get more information?**

The AusCheck section of the Home Affairs website has more information about:

- 'spent convictions'
- how your personal information will be used
- to whom your personal information may be disclosed
- your rights to access and correct your personal information
- your rights to complain about any suspected breach of your privacy
- how your personal information is secured by AusCheck
- the background checking process
- the decision making process and considerations
- processing times and outcome notification
- discretionary cards
- appeal processes
- obligations to self-report, and
- legislation relating to AusCheck.

You can see the website at:

<https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/crime-prevention/auscheck>.

You can contact an AusCheck staff member with any questions or comments on (02) 6141 2000 or at [AusCheck@homeaffairs.gov.au](mailto:AusCheck@homeaffairs.gov.au).