

Post Implementation Review

Enhancements to the Maritime Security Identification Scheme

Problem

These enhancements provide for a series of amendments arising from the outcomes of a comprehensive review of the Maritime Security Identification Card (MSIC) scheme. The main finding of the review was that adjustments were needed to the MSIC eligibility criteria in the current maritime security risk context which includes the threat of trusted insiders. This review considered policy input from a range of key stakeholders including maritime industry participants, law enforcement agencies, employee representative groups, criminologists and security experts.

The MSIC Scheme is currently regulated through the Maritime Transport and Offshore Facilities Security Regulations 2003.

Without regulatory amendments the current scheme will continue to operate and although it provides a valuable layer of security for Australian maritime and offshore oil and gas assets, it could be improved. Government action is required to ensure that the current regulations are amended to be more responsive to the current threat and risk environment.

Objective

The objective of these changes is to strengthen the current security measures used to impede people – with adverse criminal and security assessments – from obtaining unmonitored access to security sensitive areas at ports and offshore facilities.

Options

The Maritime Security Identification Card (MSIC) Scheme requires an individual, who has an operational need for unescorted access to sensitive areas of Australia's ports, port facilities, ships and offshore facilities, to pass a criminal history and security check. A person may be excluded from holding an MSIC if they have been convicted and sentenced to imprisonment for a maritime security related offence.

On 29 January 2010, the Minister announced a number of enhancements to the MSIC scheme. The changes were designed to:

- strengthen the eligibility criteria for the issue of an MSIC by increasing the number of criminal offences (from 137 to 298) that will preclude an individual from obtaining an MSIC;
- reduce the validity period of an MSIC from five years to four, with an additional background check to be conducted after two years (meaning MSIC holders will now be background checked every two years instead of the current five);
- will see new offences created for MSIC holders who fail to advise their card issuing body of additions to their criminal record and any sentences of imprisonment imposed

as a result; MSIC issuing bodies will also be required to take appropriate action on receipt of this new maritime security relevant offence information; and

- provide the power for the Secretary to suspend an MSIC in limited and exceptional circumstances and under strict criteria. This power will only be available where a cardholder has been convicted of a maritime security relevant offence but not yet sentenced and only where the Secretary believes that the individual constitutes a threat to maritime or offshore security and in consideration of a number of factors.

In consideration of industry feedback and to allow the most effective implementation of the enhancements to take place, the regulations have been drafted to take effect in two phases.

- On 1 July the new MSIC eligibility criteria offence categories will take effect. All MSIC applications and renewals will then be background checked against the new offence eligibility criteria.
- On 1 December the card validity, suspension provisions , further additional background checking requirements and the new offences for MSIC holders and issuing bodies will take effect.

This phased implementation affords MSIC issuing bodies adequate time to implement systems modifications to comply with the new regulations. The phased implementation also allows sufficient time to explain the new requirements to existing cardholders, as well as new and renewing applicants.

Impact Analysis

Amendment 1 – strengthened eligibility criteria

This is a technical change that expands a section of an already existing regulatory framework therefore it is unlikely to have an appreciable impact on businesses issuing MSICs. The complete expanded offence list is broken into two sections as is the case with the current regulations. The first part comprises disqualifying offences, those offences considered serious enough to preclude an applicant from holding an MSIC except in exceptional circumstances. The second part comprises maritime security relevant offences, those offences considered serious enough to initially preclude a person from holding an MSIC but not as serious as disqualifying offences. The list is as follows:

Part 1 Disqualifying offences

Item	Matter
1.1	terrorism
1.2	treason, sedition, espionage or selling national secret
1.3	weapon of mass destruction
1.4	hijacking or destruction of an aircraft, vessel or offshore facility

Part 2 Other maritime-security-relevant offences

Item	Matter
2.1	armed attack relating to aircraft, airport, vessel, port or offshore facility
2.2	unlawful interference with maritime transport, offshore facility or aviation
2.3	threat to endanger aircraft, airport, vessel or port
2.4	theft of aircraft or vessel
2.5	piracy
2.6	assassination, murder, attempted murder or manslaughter
2.7	threat to murder
2.8	aggravated assault including the following, whether or not the assault results in injury: <ul style="list-style-type: none">• grievous bodily harm• actual bodily harm• torture• wounding

Item	Matter
	<ul style="list-style-type: none"> • aggravated sexual assault • assault with use of weapon • assault in company
2.9	kidnap
2.10	hostage-taking, deprivation of liberty or false imprisonment
2.11	people smuggling or people trafficking
2.12	racial hatred or racial vilification
2.13	affray or riot
2.14	arson or sabotage
2.15	threat to cause fire or explosion
2.16	unlawful activity relating to weapons, firearms or explosives (not including weapons of mass destruction)
2.17	armed robbery
2.18	destruction of or damage to property belonging to the Commonwealth
2.19	threat to destroy or damage property belonging to the Commonwealth
2.20	hinder or resist government officer concerned with national security
2.21	bribery or corruption
2.22	extortion, blackmail or racketeering
2.23	money laundering
2.24	false testimony, perjury or subverting the course of justice
2.25	forgery or fraud, including identity fraud
2.26	supply false documentation to get a weapons, explosives or vehicle licence
2.27	unlawful activity relating to passports or visas
2.28	impersonate, misrepresent or falsely advertise a profession or professional status
2.29	deceptive business practice
2.30	import, export, supply, manufacture or cultivate illegal drug or controlled substance
2.31	permit premises to be used for taking, selling or distributing illegal drugs or controlled substances
2.32	conspiracy to commit an offence related to a matter mentioned in items 1.1 to 1.4 and 2.1 to 2.31.

Note 1 A person convicted of an offence mentioned in Part 1 of Schedule 1 is disqualified from holding an MSIC but, under subregulation 6.08X (6), is entitled to seek reconsideration of the decision to issue a disqualifying notice.

Note 2 An issuing body must not issue an MSIC to a person who has been convicted of an offence mentioned in Part 2 of Schedule 1 and sentenced to imprisonment unless the Secretary, acting under regulation 6.08F, approves the issue of an MSIC to the person.

These additional offences were added as part of a series of amendments arising from the outcomes of a comprehensive review of the Maritime Security Identification Card (MSIC) scheme. The main finding of the review was that adjustments were needed to the MSIC eligibility criteria in the current maritime security risk context which includes the threat of trusted insiders. This review considered policy input from a range of key stakeholders including maritime industry participants, law enforcement agencies, employee representative groups, criminologists and security experts.

The proposed amendments to the eligibility criteria will also impact on cardholders; however, this is also expected to be low. Currently, there are 125,928 issued with the present number of people initially deemed ineligible under the current regulations being approximately 5 in 1,000. Under the new amendments, it is predicted that this number of ineligible people may increase to 18 in 1,000. This would represent about 2,266 persons deemed initially ineligible.

The MSIC Scheme is underpinned by a robust and equitable appeals process, including measures facilitating appeals to the Administrative Appeals Tribunal, to ensure that individuals receive procedural fairness. The current process will remain available to all applicants. Where an existing cardholder is deemed ineligible as a result of the new Regulations, their work history in the maritime sector will be considered as a factor in any appeal.

The increasing of criminal offences under the MSIC Scheme is not anticipated to affect the number and range of businesses in the maritime industry; nor is it foreseeable that this new amendment will affect an industry participant's ability to remain competitive or alter their incentives to compete. This is because the requirements will apply evenly across the entire industry.

The cost of this amendment is intangible and cannot be modeled, as such, it has not been included as an option in the business cost calculator.

Amendment 2 – moving to a four year card with biennial background checks

Under the present Maritime Security Identification Card (MSIC) Scheme arrangements, an MSIC is valid for five years and is subject to one background check for the life of the card.

This amendment to the MSIC Scheme will reduce the validity of the card from five to four years, and increase the frequency of background checking from once every five years to once every two years. The purpose of this new amendment is to ensure that MSIC holders are more frequently screened against the eligibility criteria to identify persons who have become ineligible to hold an MSIC during their card's life.

Estimates provided by AusCheck have been included in the business cost calculator model. These costs will be passed onto cardholders by issuing bodies. Anecdotal evidence available to the Department indicates that many individuals are required to purchase their own cards;

however, some employers do cover card costs for their employees. In this light, the impact on individuals appears to be minimal, as does the impact on businesses.

The Department anticipates minimal compliance costs for MSIC issuing bodies as they are currently required to have systems in place tracking card validity. In some cases, systems changes may be required to account for more frequent checking. As outlined in the business cost calculator, the Department has sought cost estimates from issuing bodies but has received no formal responses and just one informal comment during a meeting to base the cost estimates.

The new proposal is not anticipated to affect the number and/or range of businesses in the industry; nor will it affect the ability or incentives for businesses to compete. The costs have been modeled in the business cost calculator.

Because most of the 129,000 MSIC holders do not need to renew their cards and will not incur the additional costs until after the renewal date, there is no effective way to model the startup costs associated with this amendment. The ongoing costs have been modeled using the business cost calculator and the result is below.

	Cost per cardholder	Total cost for all cardholders
Ongoing compliance cost per year	\$37.00	\$4,773,000.00

Amendment 3 – introducing reporting requirements and supporting offence provisions

This amendment will create an offence and a related penalty provision under the existing regulatory framework to obligate MSIC holders to notify their issuing body where they are convicted for committing a maritime security relevant offence (including a disqualifying offence). The amendment will also create an offence and a related penalty provision for issuing bodies that fail to cancel an MSIC after becoming aware that a cardholder has been convicted of a disqualifying offence or convicted and sentenced to a period of imprisonment for a maritime security relevant offence.

Currently, issuing bodies are required to cancel an MSIC if the body becomes aware that a cardholder has committed a disqualifying offence, as defined in the Regulations. The addition of an offence and penalty for not cancelling an MSIC will not impact on current business practices for issuing bodies.

The new proposal will not affect the number and range of businesses in the industry nor will it affect the ability or incentives for businesses to compete. The cost of reporting for both cardholders and for issuing bodies will be minimal (for example a letter, email or fax suffices for the purposes of the regulations). In addition, it is anticipated that there will be few cancellations as a result of this new provision. As such, the compliance costs for this will be negligible. Because these costs will be minimal, they have not been included in the business cost calculator.

Although the cost of reporting will be minimal, the security benefit provided by requiring individuals to report new offences will be large. This amendment will allow for appropriate action to be taken in the limited circumstances where people have committed new maritime security relevant offences and these are reported to the Department.

Amendment 4 – suspension provisions

This amendment will allow the Secretary to direct an issuing body, in writing, to suspend an MSIC where the cardholder had been convicted for a maritime-security-relevant offence but not yet sentenced for the offence. In deciding whether to direct that an MSIC be suspended, the Secretary must decide whether the person constitutes a threat to the security of maritime transport or an offshore facility by considering:

- the type of offence the holder was convicted of and the circumstances in which the offence was committed;
- the effect the suspension may have on the holder's employment;
- whether the holder is employed in a port security zone, ship security zone, on-board security zone or offshore security zone and the type of area in which the holder is employed; and
- anything else relevant about which the Secretary knows.

In addition, this amendment requires the Secretary to notify the Secretary of AGD where a decision was made under this regulation.

This amendment is required to address the potential situation where an MSIC holder has been convicted of a maritime-security-relevant offence but not yet sentenced and is considered to pose an unacceptable risk to maritime transport or offshore facilities. The suspension is intended to be used on a discretionary basis only in exceptional circumstances and only in consideration of a number of factors as outlined above. Because suspension would only be used in exceptional and limited circumstances, it is anticipated that its impact would be negligible. The cost of suspension would be intangible and as such cannot be accurately modelled and has not been included in the business cost calculator.