



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Local Government**

Changes to the MSIC Scheme

New Maritime Security Relevant Offence List

On 1 July 2010, the Government introduced new regulations to enhance the Maritime Security Identification Card (MSIC) regime.

What is happening?

From 1 July 2010, your MSIC application or renewal will be checked against a new expanded set of criminal offences. These new offences include:

- piracy;
- assassination, murder, attempted murder and manslaughter;
- a range of aggravated assault offences, whether or not the assault results in injury;
- kidnapping and hostage taking offences;
- incitement to racial hatred and incitement to vilification;
- affray or riot;
- arson offences;
- weapons, firearms and explosive offences not already covered in the Regulations;
- bribery, corruption and graft offences;
- extortion, racketeering and blackmail offences;
- false testimony, perjury or subverting the course of justice;
- a range of forgery and fraud offences not already covered in the Regulations;
- identity fraud offences including passport and visa offences;
- a number of drug trafficking offences not already covered in the Regulations;
- a range of conspiracy offences; and
- hoax/threat offences not already covered under the Regulations.

A full list of the eligibility criteria offence category can be found at <http://www.infrastructure.gov.au/transport/security/maritime/msic.aspx>.

What does this mean?

It means that the criminal history background checks done on your MSIC application will take into account the new set of criminal offences, and this from 1 December 2010 will happen more often (every 2 years instead of every 5 years).

Why have these changes been made?

To strengthen security in Australia's maritime and offshore oil and gas industries. A comprehensive review of the MSIC scheme conducted by the Office of Transport Security revealed that the previous eligibility criteria required adjustment to respond to maritime security risk, including the threat of 'trusted insiders' to the maritime and offshore oil and gas industries.

What if I'm affected?

If you are affected and cannot get or renew an MSIC, you can appeal this decision to the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government. For more information, you can:

- email: ID.Security@infrastructure.gov.au; or
- call 02 6274 7748 for further assistance.

Choice of 4 or 2 year MSICs

What is happening?

From 1 December 2010, 5 year MSICs will no longer be given to MSIC applicants and holders.

Instead you may get a choice between:

- a 4 year MSIC with an initial background check and another after 2 years; or
- a 2 year MSIC

What does this mean?

It means that people who think they will be working in the maritime industry for more than 2 years can apply for a 4 year card. People who think they will only require an MSIC for less than 2 years can apply for a 2 year card.

What if I have an MSIC that hasn't expired yet?

Your card will remain valid and you will not have to re-apply for another MSIC until your card expires.

New Legal Obligations with MSICs for Holders

What is happening?

From 1 December 2010, you will be required to report to your MSIC issuing body or AusCheck any additional criminal offences that you get on your record which are considered to be a maritime relevant offence. You still have to report even if you did not get sent to prison.

What does this mean?

It means that if you are convicted of any new criminal offences by the courts (that are listed on the maritime relevant offence list) while you hold an MSIC then you will have to declare this within 7 days to either AusCheck or your MSIC issuing body.

Why have these changes been made?

To strengthen security in Australia's maritime and offshore oil and gas industries.

If I get a 4 year or 2 year MSIC, what do I need to do?

You need to keep your MSIC issuing body advised of your current address, telephone/mobile number and email address. This will assist with the background checking process.

Who is AusCheck?

They are a government agency that arranges background checking for MSIC applicants.

What is an MSIC Issuing Body?

They are the company who processed your MSIC application and gave you an MSIC.

How do I go about declaring an MSRO?

Tell the organisation that you (or your employer) got your MSIC from or to AusCheck on 02 6141 2000

How long do I have to declare?

Within 7 days of being found guilty of the maritime relevant offence by the courts.

How do I know if my criminal offence is on the New Maritime Offence List?

Examples of maritime relevant offences on this list can be found at A full list of the eligibility criteria offence category can be found at <http://www.infrastructure.gov.au/transport/security/maritime/msic.aspx>.

If your offence is on the list, or if you are unsure, then contact your issuing body or AusCheck.

What offences are not on the list?

Parking fines and minor vehicle/traffic offences are among the offences not included.

What if I don't declare that I have a Criminal Offence that is on the new list?

If you don't declare it to your MSIC Issuing Body or AusCheck and you are caught then you may have to pay a fine (a maximum of \$2,200) and your MSIC will be cancelled. This could also affect you getting another MSIC in the future.



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MARITIME SECURITY IDENTIFICATION CARD (MSIC) ENHANCEMENTS

Fact Sheet

Overview

On 29 January 2010 the Minister for Infrastructure, Transport, Regional Development and Local Government, Minister Albanese, announced changes to the MSIC scheme. The changes:

- tighten the eligibility criteria for the issue of an MSIC by increasing the number of criminal offences 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); and
- 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.

Impact

The majority of MSIC holders will not be impacted by the changes; analysis conducted indicates there will be a likely increase from 5 to 18 in every 1000 new MSIC applicants found ineligible to hold a card. Every new applicant will have access to the current appeals provisions which will be retained.

Current MSIC holders will not be required to resubmit applications or take any action; they will be screened against the tightened criteria when they are next required to renew their cards. Applicants found ineligible as part of this process can appeal to the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government for consideration of their individual circumstances. An additional criterion has been introduced to reinforce that the Secretary must consider if a person has been convicted of a maritime security relevant offence/s before or after becoming the holder of an MSIC.

There will be some additional costs imposed by Government in terms of more frequent background checking however this is only likely to equate to an extra \$100 per card holder over a four year period. Overall pricing for the issue of an MSIC is at the discretion of individual issuing bodies according to their own pricing structure and business requirements.

New Mandatory Reporting Requirements

MSIC holders will be required to notify their issuing body or AusCheck if they have been convicted of a maritime security relevant offence. An issuing body will be obligated to suspend an MSIC, if the holder has been convicted of a maritime security related offence awaiting further information as to the sentence of the courts.

If an MSIC holder is sentenced to a term of imprisonment by the courts, they are required to notify their issuing body or AusCheck, in writing, of the sentence imposed. The issuing body will be obligated to cancel an MSIC, if the holder has been convicted and sentenced to imprisonment for a maritime security relevant offence.

An MSIC holder who fails to notify their issuing body or Auscheck, in writing, of a conviction for a maritime security relevant offence will commit a strict liability offence and be subject to a fine.

New Penalties

A maximum penalty of 20 penalty units, or \$2,200, has been introduced for MSIC holders who fail to comply with these new obligations. The maximum fine that may be imposed on MSIC issuing bodies that fail to comply with the new obligations is 50 penalty units, or \$5,500 (this penalty can be multiplied by five for corporations, as per the Corporations Act for a total maximum penalty of \$27,500).

Issuing bodies will not be held accountable under the new obligations if information regarding a conviction or term of imprisonment has not been communicated to them.

Implementation and Timing

On 1 July 2010, new Maritime Security Identification Card (MSIC) eligibility criteria offence categories will take effect. All MSIC applications and renewals will be background checked against the new offence eligibility criteria. In recognition that some applicants would have been MSIC holders prior to being found ineligible under

the new offence criteria, the Secretary will have the ability to consider a person's MSIC history on appeal.

On 1 December 2010, the card validity, suspension provisions, further additional background checking requirements, new penalties for MSIC holders failing to report an maritime security relevant offence and issuing bodies failing to cancel or suspend a MSIC, will take effect.

For further information please contact the Identity Security Section within the Office of Transport Security idssecurity@infrastructure.gov.au



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MSIC Refusals – what to do

What happened?

I applied for an MSIC and I got a letter from AusCheck saying that I have been refused an MSIC, as I have an adverse criminal record –convicted of a maritime security relevant offence and sentenced to imprisonment (even if they didn't go to prison).

What are my options?

If you need an MSIC for work, you can:

- 1) Appeal to the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government; and if you are still refused,
- 2) Appeal to the Administrative Appeals Tribunal

What's an Appeal to the Secretary of the Department of Infrastructure?

It's a different government Department who can also look at the decision not to give you an MSIC. If you appeal and the Secretary of the Department of Infrastructure determines that you are not a threat to maritime security, then he or she can overturn the AusCheck decision for you to get an MSIC. The Secretary will take into account factors such as the type and nature of the offence, term of imprisonment, conducted since imprisonment, operational need and information considered relevant to the individuals' circumstances.

Is there a Cost?

No, an appeal to the Secretary of the Department of Infrastructure is free.

How do I Appeal to the Secretary of the Department of Infrastructure?

You write a letter, email or fax to the Secretary requesting an 'Appeal under 6.08F of the Maritime Transport and Offshore Facilities Security Regulation 2003'. Address the envelope to the 'Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government' but attention it to the 'Director of Identity Security, OTS'.

In this letter, you need to write:

- why you need an MSIC,
- what you were sentenced to? This means did you go to jail or you were given a suspended sentence/ community service.
- how much of the sentence did you serve? That is, did the judge suspend your sentence or did you get parole because of good behavior.

You should also describe what has changed in your life since your conviction and imprisonment. For example, have you gained employment, completed training and/or rehabilitation.

What else can I do to increase the chance of my Appeal being successful?

You should provide supporting documentation with your appeal. Examples of supporting documentation include:

- character and work references,
- employment documents (like pay summaries or a letter of job offer),
- training certificates.

Note that references from employers acknowledging the applicant's offences are particularly encouraged (although not compulsory).

If you need more information, you may call 02 6274 7748 to talk to a Case Officers in the Identity Security Section of the Department of Infrastructure about your situation and how to lodge an appeal.

These people will manage your appeal and present it to the Secretary's representative for you. If you talk to them and tell them your situation, they can tell you what documents you may wish to put in your appeal. You may also wish to seek legal advice or advice from an employee representative group.

What if they still refuse to give me an MSIC?

Your first appeal will be an 'Appeal under 6.08F of the Maritime Transport and Offshore Facilities Security Regulation 2003'. If the Secretary's representative refuses to give you an MSIC under 6.08F of the Maritime Transport and Offshore Facilities Security Regulation 2003, you can have a different delegate for the Secretary look at your case by making an 'Appeal under 6.08X of the Maritime Transport and Offshore Facilities Security Regulation 2003'.

A case officer in the Identity Security Section will tell you how to do submit an 'Appeal under 6.08X of the Maritime Transport and Offshore Facilities Security Regulation 2003'.

Can I go straight to an Appeal under 6.08X?

No. Your Appeal must be refused under 6.08F of the Maritime Transport and Offshore Facilities Security Regulation 2003 before you can lodge an 'Appeal under 6.08X of the Maritime Transport and Offshore Facilities Security Regulation 2003'.

What if the Secretary of Department of Infrastructure still refuses to give me an MSIC?

Then you can make a subsequent appeal to the Administrative Appeals Tribunal.

What's the Administrative Appeals Tribunal?

It's a Government organisation who can review the decision to not give you an MSIC. If you believe that you should have got an MSIC, and the Tribunal agrees, then they can overturn previous decisions not to issue you with an MSIC. If your appeal is successful on the basis of information provided then you may be issued with an MSIC.

Is there a Cost?

Yes. To get the Administrative Appeals Tribunal to look at your case there is a fee of around \$640.00.

Can my Appeal go straight to the Administrative Appeals Tribunal?

No. You must be refused under both an 'Appeal under 6.08F of the Maritime Transport and Offshore Facilities Security Regulation 2003' and 'Appeal under 6.08X of the Maritime Transport and Offshore Facilities Security Regulation 2003' before you can have your case go to the Administrative Appeals Tribunal.

Where can I get more information on the Administrative Appeals Tribunal?

The letter from AusCheck advising you that have been found ineligible for an MSIC has more information on appealing to the Administrative Appeals Tribunal on page 7.

Additionally, your case officer will be able to tell you where to get help.