Australian Government
Department of Home Affairs

CRITICAL INFRASTRUCTURE SECURITY CENTRE

Transport Security: Regulatory Principles and Approach.

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enquiries@CISC.gov.au

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Regulatory Principles and Approach

The purpose of this document is to outline the transport security regulatory principles and approach to ensure regulated entities meet their obligations under the relevant legislation.

In delivering a best-practice, risk-based and outcomes-focused regulatory approach, the Department of Home Affairs (the department) works collaboratively with industry participants and regulated entities to strengthen transport security across Australia.

Through education, engagement, compliance monitoring and enforcement activities, the department ensures the effective management of security risks and promotes compliance with transport security legislation, namely:

- *Aviation Transport Security Act 2004* (ATSA),
- *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA), and
- associated regulations (collectively referred to as transport security legislation).

Who do we regulate?

The department regulates security across Australia's aviation, maritime and air cargo sectors.

The department regulates a range of entities, including:

- airports
- aircraft operators
- regulated air cargo agents (RACA)
- known consignors (KC)
- port operators
- offshore facility operators
- security controlled ports and port facility operators.

Functions and powers

The transport security legislation confers functions and powers on the department that broadly include but are not limited to:

- establishing mechanisms to safeguard against unlawful interference with aviation or maritime sectors
- establishing a regulatory framework centred around the development of security plans for regulated entities
- security incident reporting obligations
- ensuring Australia's aviation obligations are met under the *Convention on International Civil Aviation*, Security – including its annex Safeguarding International Civil Aviation against Acts of Unlawful Interference – also known as the Chicago Convention
- ensuring Australia's maritime obligations under Chapter I-2 of the *International Convention for the Safety of Life at Sea 1974* (SOLAS) and the *International Ship and Port Facility Security Code 2003* (ISPS Code) are met.

Our regulatory principles

The following principles guide us in carrying out our regulatory activities to ensure security outcomes are achieved, exercising our regulatory powers and rules, and engaging with industry stakeholders, participants and regulated entities. Through our decisions and actions, the department is guided by the following five principles:

Focus on risk	Taking a risk-based approach, focusing our attention and resources on areas of higher risk to ensure the resilience and security of Australia's transport sector.
Promote voluntary compliance	Where appropriate, adopting a consultative approach, soliciting feedback to inform continuous improvement and providing education and guidance to assist industry partners to understand legislative obligations.
Be accountable, fair and transparent	Avoiding unnecessarily impeding the efficient and effective operations of regulated entities, while making timely decisions based on legislative requirements.
Act consistently	Delivering equitable decision-making by treating like situations in a like manner, while taking account of specific case circumstances.
Act proportionately	When exercising enforcement powers we will consider the: • security implications of the non-compliance • seriousness of the non-compliance • compliance history and regulatory posture of the entity • need for deterrence • facts of the matter at hand, and • impact on Australia's reputation or Australian interests overseas.

Our regulatory approach

The department takes a risk-based, intelligence-informed and outcomes-focused approach to regulation. Wherever possible, the department works collaboratively with industry participants and regulated entities to promote a strong security culture, support the effective management of security risks, and encourage voluntary compliance with legislative obligations.

The department recognises that regulated entities are responsible for managing security risks within their operations. Through education, guidance, engagement and information sharing, the department seeks to build security capability across the aviation, maritime and air cargo sectors and support industry participants in understanding and meeting their obligations under the ATSA and MTOFSA, and associated regulations.

The department's regulatory approach is founded on the principles of being accountable, fair, transparent, consistent and proportionate. The department seeks to achieve compliance through cooperation and engagement wherever appropriate, while recognising that enforcement action may be necessary where non-compliance presents a risk to transport security outcomes, is serious in nature, or is repeated.

The department uses a range of regulatory tools to implement an effective and flexible regulatory framework that addresses the causes of non-compliance without unnecessarily impeding the efficient operation of regulated entities. These tools include:

- education and engagement
- non-compliance and observation notices
- corrective action plans
- infringement notices
- directions
- enforceable undertakings
- enforcement orders
- suspension or revocation of authorisations
- prosecution.

Where non-compliance is identified, the department will assess the circumstances of each case and determine the most appropriate regulatory response. In doing so, the department may consider factors including the security implications and seriousness of the non-compliance, the compliance history and regulatory posture of the entity, the need for deterrence, and the specific facts of the matter. Regulatory responses may involve a combination of compliance and enforcement measures and may escalate where necessary to achieve compliance and protect Australia's transport security interests.

Review

The department will continuously monitor and evaluate the effectiveness of its compliance and enforcement activities to ensure they support the achievement of transport security outcomes. The department will review and refine its regulatory approach as required, taking into account changes in the threat environment, emerging risks, industry developments, and lessons identified through regulatory activities and stakeholder engagement.

Integrity

The department is committed to maintaining the highest standards of integrity, fairness and professionalism in its regulatory activities. Clear separation of regulatory functions and decision-making responsibilities supports impartiality, accountability and procedural fairness, ensuring compliance and enforcement actions are based on evidence, legislative requirements and the circumstances of each case.

Further information

In you need further information related to the departments transport security function regulatory approach contact us via enquiries@CISC.gov.au.