



### Obligation to report aviation security relevant offences: effect of State legislation dealing with spent convictions

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This Practice Group Instruction (“PGI”) provides guidance to CDPP lawyers on the position adopted by the Attorney-General’s Department (“AGD”) and the Office of Transport Security (“OTS”) in relation to the intended operation of regulation 6.41 of the *Aviation Transport Security Regulations 2005 (Cth)* in circumstances where a person has been charged with, and found guilty of, an Aviation Security Relevant Offence under Queensland law but has been discharged without a conviction being recorded by the court. The CDPP and AFP were consulted during the preparation of the policy, as formulated below.

#### **Background**

- 1. Regulation 6.41 of the Aviation Transport Security Regulations (Cth) imposes an obligation on Aviation Security Identification (“ASIC”) holders to provide notice of circumstances where they have been convicted and sentenced for an aviation-security-relevant-offence. Failure to meet this obligation may attract a penalty of 50 penalty units.*
- 2. This obligation is qualified by subsection 85ZV(3) of the Crimes Act 1914 (Cth), which relevantly provides:*

*‘where ... under a law in force in the State, being a law dealing with the disclosure or taking into account of spent convictions (however described in that law) it is lawful for the person, in the particular circumstances or for a particular purpose, not to disclose the fact that the person was charged with, or convicted of, the offence ... the person is not required, in corresponding circumstances or for a corresponding purpose ... to disclose that fact to any Commonwealth authority’.*
- 3. AGD and OTS have considered the scope of this qualification in relation to the potential application of subsection 5(2) of the Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld), which relevantly provides:*

*A person shall not be required or asked to disclose and, if so required or asked, shall not be obliged to disclose for any purpose a conviction that is not part of the person’s criminal history ... or a charge made against the person...*
- 4. Subsection 3(1) of the Criminal Law (Rehabilitation of Offenders) Act includes various definitions, as follows:*

***charge** means an allegation formally made in court that a person has committed an offence where ... a conviction is not recorded by a court in respect of the allegation...’*

***criminal history** means, in relation to any person, the convictions recorded against the person in respect of offences.*

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**Summary of AGD and OTS position**

5. *AGD and OTS do not consider it necessary for Commonwealth authorities to take action to enforce any potential obligation under regulation 6.41 of the Aviation Transport Security Regulations 2005 (Cth) for an ASIC holder to report circumstances where a Queensland court has exercised its discretion to not record a conviction in respect of the offence/s. While acknowledging that there is no settled legal interpretation on this issue, AGD and OTS consider that such circumstances should be treated by Commonwealth authorities as falling within the qualification in subsection 85ZV(3) of the Crimes Act 1914 (Cth). This accords with the general legislative purpose of subsection 85ZV(3) to accommodate State or Territory spent convictions schemes which provide more beneficial treatment of offences than would otherwise be available under the Commonwealth spent convictions scheme.*
6. *AusCheck will rely on the notification of offences by the Queensland Police Service and the Australian Federal Police in assessing any potential obligations under regulation 6.41.*



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Graeme Davidson

Deputy Director, International Assistance and Specialist Agencies

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