



Migration and Ombudsman Legislation Amendment Act 2005

No. 141, 2005

**An Act to amend the *Ombudsman Act 1976* and the
law relating to migration, and for related purposes**

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No. 141, 2005

**An Act to amend the *Ombudsman Act 1976* and the
law relating to migration, and for related purposes**

[Assented to 12 December 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration and Ombudsman
Legislation Amendment Act 2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	12 December 2005
2. Schedule 1	The day on which this Act receives the Royal Assent.	12 December 2005
3. Schedule 2, Part 1	The day on which this Act receives the Royal Assent.	12 December 2005
4. Schedule 2, item 26	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 16 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2006</i> . However, if item 16 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2006</i> does not commence at or before the start of the day on which this Act receives the Royal Assent, the provision(s) do not commence at all.	Does not commence
5. Schedule 2, item 27	The day on which this Act receives the Royal Assent. However, if item 16 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2006</i> commences at or before the start of the day on which this Act receives the Royal Assent, the provision(s) do not commence at all.	12 December 2005

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
6. Schedule 2, items 28 to 31	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 11 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2006</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	6 October 2006 (paragraph (b) applies)
7. Schedule 2, item 32	Immediately before the commencement of item 16 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2006</i> . However, if item 16 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2006</i> commences at or before the start of the day on which this Act receives the Royal Assent, the provision(s) do not commence at all.	6 October 2006
8. Schedule 3	The day after this Act receives the Royal Assent.	13 December 2005
9. Schedule 4	The day on which this Act receives the Royal Assent.	12 December 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to time limits for processing protection visas

Migration Act 1958

1 After section 65

Insert:

65A Period within which Minister must make decision on protection visas

- (1) If an application for a protection visa:
 - (a) was validly made under section 46; or
 - (b) was remitted by any court or tribunal to the Minister for reconsideration;then the Minister must make a decision under section 65 within 90 days starting on:
 - (c) the day on which the application for the protection visa was made or remitted; or
 - (d) in the circumstances prescribed by the regulations—the day prescribed by the regulations.
- (2) Failure to comply with this section does not affect the validity of a decision made under section 65 on an application for a protection visa.

2 At the end of Subdivision AL of Division 3 of Part 2

Add:

91Y Secretary's obligation to report to Minister

Secretary must give periodic reports to Minister

- (1) The Secretary must give a report under this section to the Minister within 45 days after the end of each of the following periods (each of which is a **reporting period**):
 - (a) the period that started on 1 July 2005 and ends, or ended, on 31 October 2005; and

- (b) each subsequent period of 4 months.

Secretary must give additional reports to Minister as required

- (2) The Minister may give to the Secretary a notice requiring the Secretary to give to the Minister a report under this section in addition to the reports required under subsection (1). The notice must specify the period to which the report is to relate (also a **reporting period**).
- (3) The Secretary must give the report under subsection (2) to the Minister:
 - (a) within 45 days after the day on which the reporting period ends; or
 - (b) within 45 days after the day on which the Minister gives the notice to the Secretary;whichever is later.
- (4) A notice under subsection (2) is not a legislative instrument.

Information that must be included in report

- (5) A report under this section relating to a reporting period must include information about each application for a protection visa:
 - (a) that:
 - (i) an applicant has validly made under section 46; or
 - (ii) a court or tribunal has remitted to the Minister for reconsideration; and
 - (b) for which:
 - (i) the Minister has made a decision under section 65 during the reporting period, but has not made the decision within the decision period; or
 - (ii) the Minister has not made a decision under section 65 before or during the reporting period, and the decision period has ended (whether before or during the reporting period).
- (6) The report must also include:
 - (a) the date on which each application was made that:
 - (i) was validly made under section 46; and
 - (ii) paragraph (5)(b) applies to; and

- (b) the reasons why decisions were not made within the decision period.

Note: The reasons mentioned in paragraph (6)(b) may relate to aspects of processing applications that are beyond the Department's control.

Information that must not be included in the report

- (7) A report under this section must not include:
 - (a) the name of any current or former applicant for a protection visa; or
 - (b) any information that may identify such an applicant; or
 - (c) the name of any other person connected in any way with any application for a protection visa made by the applicant mentioned in paragraph (a); or
 - (d) any information that may identify that other person.

Information that may be included in the report

- (8) The report may include any other information that the Secretary thinks appropriate.

Reports to be tabled in Parliament

- (9) The Minister must cause a copy of a report under this section to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report from the Secretary.

Definition

- (10) In this section:

decision period for an application for a protection visa means the period of 90 days starting on:

- (a) the day on which the application for the protection visa was made or remitted as mentioned in subsection (5); or
- (b) in the circumstances prescribed by the regulations—the day prescribed by the regulations.

3 After section 414

Insert:

414A Period within which Refugee Review Tribunal must review decision on protection visas

- (1) If an application for review of an RRT-reviewable decision:
 - (a) was validly made under section 412; or
 - (b) was remitted by any court to the Refugee Review Tribunal for reconsideration;then the Refugee Review Tribunal must review the decision under section 414 and record its decision under section 430 within 90 days starting on the day on which the Secretary gave the Registrar the documents that subsection 418(2) requires the Secretary to give to the Registrar.
- (2) Failure to comply with this section does not affect the validity of a decision made under section 415 on an application for review of an RRT-reviewable decision.

4 After section 440

Insert:

440A Principal Member's obligation to report to Minister

Principal Member must give periodic reports to Minister

- (1) The Principal Member must give a report under this section to the Minister within 45 days after the end of each of the following periods (each of which is a **reporting period**):
 - (a) the period that started on 1 July 2005 and ends, or ended, on 31 October 2005; and
 - (b) each subsequent period of 4 months.

Principal Member must give additional reports to Minister as required

- (2) The Minister may give to the Principal Member a notice requiring the Principal Member to give to the Minister a report under this section in addition to the reports required under subsection (1). The notice must specify the period to which the report is to relate (also a **reporting period**).
- (3) The Principal Member must give the report under subsection (2) to the Minister:

- (a) within 45 days after the day on which the reporting period ends; or
 - (b) within 45 days after the day on which the Minister gives the notice to the Principal Member;
- whichever is later.
- (4) A notice under subsection (2) is not a legislative instrument.

Information that must be included in report

- (5) A report under this section relating to a reporting period must include information about each application for a review of an RRT-reviewable decision:
- (a) that:
 - (i) an applicant has validly made under section 412; or
 - (ii) a court has remitted to the Refugee Review Tribunal for reconsideration; and
 - (b) for which:
 - (i) the Refugee Review Tribunal has reviewed the decision under section 414 and has recorded its decision under section 430 during the reporting period, but has not done so within the decision period; or
 - (ii) the Refugee Review Tribunal has not reviewed the decision under section 414 and has not recorded its decision under section 430 before or during the reporting period, and the decision period has ended (whether before or during the reporting period).
- (6) The report must also include:
- (a) the date on which each application was made that:
 - (i) was validly made under section 412; and
 - (ii) paragraph (5)(b) applies to; and
 - (b) the reasons why decisions were not reviewed within the decision period.

Note: The reasons mentioned in paragraph (6)(b) may relate to aspects of processing applications for review that are beyond the Refugee Review Tribunal's control.

Information that must not be included in the report

- (7) A report under this section must not include:
-

- (a) the name of any current or former applicant for review of an RRT-reviewable decision; or
- (b) any information that may identify such an applicant; or
- (c) the name of any other person connected in any way with any application for review of an RRT-reviewable decision made by the applicant mentioned in paragraph (a); or
- (d) any information that may identify that other person.

Information that may be included in the report

- (8) The report may include any other information that the Principal Member thinks appropriate.

Reports to be tabled in Parliament

- (9) The Minister must cause a copy of a report under this section to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report from the Principal Member.

Definition

- (10) In this section:

decision period for an application for review of an RRT-reviewable decision means the period of 90 days starting on the day on which the Secretary has given to the Registrar the documents required to be given by subsections 418(2) and 418(3).

5 Application of amendments

- (1) The amendments made by items 1 and 3 of this Schedule apply only to applications made on or after the commencement of those items.
- (2) The amendments made by items 2 and 4 of this Schedule apply in relation to:
 - (a) applications made on or after the commencement of this Schedule; and
 - (b) applications made before the commencement of this Schedule that, at the date of commencement, have not been decided.

Schedule 2—Amendments relating to the Commonwealth Ombudsman

Part 1—Main amendments

Complaints (Australian Federal Police) Act 1981

1 Subsection 38(2)

Omit “paragraph 19(1)(a)”, substitute “subsection 19(1)”.

Ombudsman Act 1976

2 Subsection 3(1)

Insert:

Commonwealth service provider has the meaning given by section 3BA.

3 After subsection 3(4A)

Insert:

(4B) For the purposes of this Act, if:

- (a) a person is not an officer of a Department or prescribed authority; and
- (b) the person is, or is an employee of, a Commonwealth service provider of the Department or prescribed authority under a contract; and
- (c) for the purposes of the contract, the person takes action in the exercise of a power or the performance of a function for or on behalf of the Department or prescribed authority; and
- (d) the person does not exercise the power or perform the function by reason of:
 - (i) his or her holding, or performing the duties of, an office established by, or in accordance with the provisions of, an enactment; or
 - (ii) his or her being a Judge of a court of, or a magistrate of, a State or Territory; and
- (e) the regulations do not otherwise provide;

the action is taken to be action taken by the Department or prescribed authority.

4 Subsection 3(7A)

Omit “under Part II”.

5 Subparagraph 3(17)(a)(v)

Repeal the subparagraph, substitute:

(v) subparagraphs 35(3)(b)(i) and (ia);

6 After section 3B

Insert:

3BA Commonwealth service providers

A person is a *Commonwealth service provider* of a Department or prescribed authority under a contract (the *Commonwealth contract*) if:

- (a) both of the following apply:
 - (i) the person, and the Department or prescribed authority or the Commonwealth, are parties to the Commonwealth contract;
 - (ii) for the purposes of the Commonwealth contract, the person is responsible for providing goods or services, for or on behalf of the Department or prescribed authority, to another person who is not a Department or prescribed authority or the Commonwealth; or
- (b) both of the following apply:
 - (i) the person, and a person who is (under a previous application of this section) a Commonwealth service provider of the Department or prescribed authority under the Commonwealth contract, are parties to another contract (the *subcontract*);
 - (ii) under the subcontract and for the purposes of the Commonwealth contract, the person is responsible for providing goods or services, for or on behalf of the Department or prescribed authority, to another person who is not a Department or prescribed authority or the Commonwealth.

7 Subsection 4(2)

Repeal the subsection, substitute:

- (2) The functions of the Commonwealth Ombudsman are to investigate complaints made to him or her under this Act and to perform such other functions as are conferred on him or her by:
 - (a) this Act or the regulations; or
 - (b) another Act or regulations made under another Act; or
 - (c) an ACT enactment or regulations made under an ACT enactment.

8 At the end of section 4

Add:

- (4) The Commonwealth Ombudsman, in performing his or her functions in relation to immigration (including immigration detention), may, if he or she so chooses, be called the Immigration Ombudsman.

9 After subsection 7A(1)

Insert:

Disclosure of information

- (1A) Subsections (1B), (1C), (1D) and (1E) apply if:
 - (a) the Ombudsman requests the principal officer, or (if applicable) an officer referred to in the arrangement, to give information (including an answer to a question) to the Ombudsman or to produce a document or other record to the Ombudsman; or
 - (b) the principal officer, or (if applicable) an officer referred to in the arrangement, reasonably believes that information or a document or other record would assist the Ombudsman to make a determination under subsection (1).
- (1B) If the officer:
 - (a) gives the information to the Ombudsman or produces the document or record to the Ombudsman; and
 - (b) by doing so:
 - (i) contravenes any other enactment; or

- (ii) might tend to incriminate the officer or make the officer liable to a penalty; or
 - (iii) discloses a legal advice given to a Minister, a Department or a prescribed authority; or
 - (iv) discloses a communication between an officer of a Department or of a prescribed authority and another person or body, being a communication protected against disclosure by legal professional privilege; or
 - (v) otherwise acts contrary to the public interest;
- the information or the production of the document or record is not admissible in evidence against the officer in proceedings other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act.
- (1C) The officer is not liable to any penalty under the provisions of any other enactment by reason of his or her giving the information to the Ombudsman or producing the document or record to the Ombudsman.
- (1D) For the purposes of the *Privacy Act 1988*, the giving of the information to the Ombudsman or the production of the document or record to the Ombudsman is taken to be authorised by law.
- (1E) Subsection (1B) does not otherwise affect a claim of legal professional privilege that anyone may make in relation to the information, document or record.

Note 1: The following heading to subsection 7A(1) is inserted “*Ombudsman may make preliminary inquiries*”.

Note 2: The following heading to subsection 7A(2) is inserted “*Arrangements with Departments and prescribed authorities*”.

10 After subsection 8(2)

Insert:

Disclosure of information

- (2A) Subsections (2B), (2C), (2D) and (2E) apply if:
- (a) either:
 - (i) for the purposes of an investigation under this Act (whether or not the investigation has been completed), the Ombudsman requests a person to give information (including an answer to a question) to the Ombudsman

- or to produce a document or other record to the Ombudsman; or
- (ii) a person reasonably believes that information or a document or other record is relevant to an investigation under this Act (whether or not the investigation has been completed); and
- (b) any of the following apply:
- (i) the person obtained the information, document or record in the course of the person's duties as the principal officer of a Department or prescribed authority, and the person is still the principal officer of the Department or prescribed authority;
 - (ii) the person obtained the information, document or record in the course of the person's duties as the principal officer of a Department or prescribed authority, the person is no longer the principal officer of the Department or prescribed authority, and the principal officer of the Department or prescribed authority has authorised the person to give the information to the Ombudsman or to produce the document or other record to the Ombudsman;
 - (iii) the person obtained the information, document or record in the course of the person's duties as an officer (other than as the principal officer) of a Department or prescribed authority, and the principal officer of the Department or prescribed authority has authorised the officer to give the information to the Ombudsman or to produce the document or other record to the Ombudsman;
 - (iv) the person obtained the information, document or record lawfully but not in the course of the person's duties as an officer (including as the principal officer) of a Department or prescribed authority.
- (2B) If the person:
- (a) gives the information to the Ombudsman or produces the document or record to the Ombudsman; and
 - (b) by doing so:
 - (i) contravenes any other enactment; or
 - (ii) might tend to incriminate the person or make the person liable to a penalty; or

- (iii) discloses a legal advice given to a Minister, a Department or a prescribed authority; or
- (iv) discloses a communication between an officer of a Department or of a prescribed authority and another person or body, being a communication protected against disclosure by legal professional privilege; or
- (v) otherwise acts contrary to the public interest;

the information or the production of the document or record is not admissible in evidence against the person in proceedings other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act.

- (2C) The person is not liable to any penalty under the provisions of any other enactment by reason of his or her giving the information to the Ombudsman or producing the document or record to the Ombudsman.
- (2D) For the purposes of the *Privacy Act 1988*, the giving of the information to the Ombudsman or the production of the document or record to the Ombudsman is taken to be authorised by law.
- (2E) Subsection (2B) does not otherwise affect a claim of legal professional privilege that anyone may make in relation to the information, document or record.

Note 1: The following heading to subsection 8(1) is inserted “*Ombudsman must inform of investigation*”.

Note 2: The following heading to subsection 8(2) is inserted “*Investigations to be in private*”.

Note 3: The following heading to subsection 8(3) is inserted “*Ombudsman may obtain information*”.

Note 4: The following heading to subsection 8(4) is inserted “*Rights to appear*”.

Note 5: The following heading to subsection 8(8) is inserted “*Ombudsman may discuss investigation with Ministers*”.

Note 6: The following heading to subsection 8(10) is inserted “*Breaches of duty etc.*”.

11 At the end of section 8

Add:

- (11) If:
 - (a) a person is, or is an employee of, a Commonwealth service provider of a Department or prescribed authority under a contract; and

- (b) in the opinion of the Ombudsman, there is evidence that the person has engaged in conduct that:
 - (i) would, if the person were an officer of the Department or prescribed authority, amount to a breach of duty or to misconduct; or
 - (ii) should be brought to the attention of the principal officer of the Department or prescribed authority; and
- (c) in the opinion of the Ombudsman, the evidence is, in all the circumstances, of sufficient force to justify the Ombudsman doing so;

the Ombudsman must bring the evidence to the notice of the principal officer of the Department or prescribed authority.

12 Subsection 9(1AA)

Omit all the words from and including “(1AA)” to and including “is capable of”, substitute:

- (1AA) If the Ombudsman has reason to believe that a person who is:
- (aa) an officer of a Department or prescribed authority; or
 - (ab) a Commonwealth service provider of a Department or prescribed authority under a contract; or
 - (ac) an employee of Commonwealth service provider of a Department or prescribed authority under a contract;
- is capable of

13 Subsection 9(1AA)

Omit “identity of the officer”, substitute “identity of the person”.

14 Subsection 11A(1)

Omit “by or under this Act or any other Act”.

15 Subsection 14(1)

Repeal the subsection, substitute:

- (1) For the purposes of an investigation under this Act, an authorised person may, at any reasonable time of the day:
 - (a) enter a place that is:
 - (i) occupied by a Department or prescribed authority; or
 - (ii) occupied by a person who is a Commonwealth service provider of a Department or prescribed authority under

- a contract, if the person occupies the place predominantly for the purposes of the contract; and
(b) carry on the investigation at the place.

16 Subsection 14(4)

After “under this section”, insert “(including premises occupied by a Commonwealth service provider)”.

17 Subsection 19(1)

Repeal the subsection, substitute:

- (1) The Ombudsman must, as soon as practicable, and in any event within 6 months, after each 30 June submit to the Minister, for presentation to the Parliament, a report of the operations of the Ombudsman during the year that ended on that 30 June.

18 Paragraph 19(2)(b)

Omit “under this Act”.

19 Subsection 19C(1)

Repeal the subsection, substitute:

- (1) The functions of the Defence Force Ombudsman are to investigate complaints made to him or her under this Act and to perform such other functions as are conferred on him or her by:
(a) this Act or the regulations; or
(b) another Act or regulations made under another Act.

20 Subsection 29(8)

Omit “under this Act or any other law”.

21 Paragraph 35(3)(a)

Omit “under this Act”.

22 Subparagraph 35(3)(b)(i)

Omit “furnished”, substitute “given”.

23 After subparagraph 35(3)(b)(i)

Insert:

- (ia) if the information was given by a person who is, or is an employee of, a Commonwealth service provider of a Department or prescribed authority under a contract— with the consent of the principal officer of the Department or prescribed authority or of the responsible Minister; or

24 Subparagraph 35(3)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) if the information was given by a person otherwise than as set out in subparagraph (i) or (ia)—with the consent of the person who gave the information.

25 Subsections 35(7) and 35A(1) and (2)

Omit “under this Act”.

Part 2—Other amendments

Migration Act 1958

26 Paragraph 193(3)(b)

Repeal the paragraph.

27 Subsection 193(3)

Repeal the subsection, substitute:

- (3) If a person covered by subsection (1) has not made a complaint in writing to the Human Rights and Equal Opportunity Commission, paragraph 20(6)(b) of the *Human Rights and Equal Opportunity Commission Act 1986* does not apply to the person.

Ombudsman Act 1976

28 Subsection 19M(1)

Repeal the subsection, substitute:

- (1) The functions of the Postal Industry Ombudsman are to investigate complaints made to him or her under this Act and to perform such other functions as are conferred on him or her by:
- (a) this Act or the regulations; or
 - (b) another Act or regulations made under another Act.

29 Subparagraph 19R(3)(b)(vii)

Omit “(10)”, substitute “(11)”.

30 After subparagraph 19R(3)(b)(viii)

Insert:

- (viiiia) paragraphs 9(1AA)(ab) and (ac);

31 After subparagraph 19R(3)(d)(i)

Insert:

- (ia) subparagraph 35(3)(b)(ia);

Postal Industry Ombudsman Act 2006

32 Items 15 and 16 of Schedule 1

Repeal the items, substitute:

15 Subsection 193(3)

Repeal the subsection, substitute:

(3) If:

- (a) a person covered by subsection (1) has not made a complaint in writing to the Human Rights and Equal Opportunity Commission, paragraph 20(6)(b) of the *Human Rights and Equal Opportunity Commission Act 1986* does not apply to the person; and
- (c) a person covered by subsection (1) has not made a complaint to the Postal Industry Ombudsman, paragraph 7(3)(b) of the *Ombudsman Act 1976* (as that paragraph applies because of section 19R of that Act) does not apply to the person.

Schedule 3—Amendments relating to identifying information

Migration Act 1958

1 At the end of subsection 336E(2)

Add:

- ; or (j) is authorised by section 336FA; or
- (k) is authorised by section 336FC.

2 After section 336F

Insert:

336FA Disclosure of certain personal identifiers to selected individuals

- (1) For the purposes of paragraph 336E(2)(j), this section authorises the disclosure, by an officer, of identifying information that relates to a person (the *subject*) if:
 - (a) the information disclosed is a personal identifier within the meaning of paragraph (b), (c), (d) or (f) of the definition of *personal identifier* in subsection 5A(1); and
 - (b) the disclosure is made to an individual; and
 - (c) the disclosure is for the purpose of obtaining the individual's help to do one or more of the following in connection with the administration of this Act:
 - (i) identify, authenticate the identity of, or locate, the subject;
 - (ii) refer the officer to another person who might be able to help identify, authenticate the identity of, or locate, the subject; and
 - (d) the officer has reasonable grounds to believe that the individual might be able to provide the help that is the purpose of the officer's disclosure; and
 - (e) the officer is satisfied that it is reasonably necessary to make the disclosure to the individual in order to obtain that help.

Note: The personal identifiers covered by this section are measurements of a person's height and weight, photographs or other images of a person's face and shoulders, audio or video recordings of a person (other than video recordings under section 261AJ) and signatures.

- (2) Nothing in subsection (1) prevents an officer from disclosing the personal identifier to more than one individual at the same time, as long as the requirements of subsection (1) are met in relation to each one of those individuals.

336FB Disclosure of other relevant information to selected individuals

- (1) An officer may disclose, to an individual, personal information (within the meaning of the *Privacy Act 1988*) about a person (the *subject*) if:
 - (a) the officer is disclosing, to the individual, a personal identifier of the subject and the disclosure is authorised by section 336FA; and
 - (b) the personal information is disclosed together with the personal identifier; and
 - (c) paragraphs 336FA(1)(b), (c), (d) and (e) are met in relation to the personal information as well as the personal identifier.
- (2) This section does not apply to personal information that is identifying information.
- (3) Nothing in subsection (1) prevents an officer from disclosing the personal information to more than one individual at the same time, as long as the requirements of paragraphs 336FA(1)(b), (c), (d) and (e) are met in relation to each one of those individuals.

336FC Disclosure of certain personal identifiers to the general public

- (1) For the purposes of paragraph 336E(2)(k), this section authorises the disclosure of identifying information that relates to a person (the *subject*) who is not a minor, if:
 - (a) the information disclosed is a personal identifier within the meaning of paragraph (b), (c), (d) or (f) of the definition of *personal identifier* in subsection 5A(1); and

- (b) the disclosure is for the purpose of obtaining the public's help to identify, authenticate the identity of, or locate, the subject, in connection with the administration of this Act; and
- (c) the Secretary has authorised, in writing, disclosure of the personal identifier.

Note: The personal identifiers covered by this section are measurements of a person's height and weight, photographs or other images of a person's face and shoulders, audio or video recordings of a person (other than video recordings under section 261AJ) and signatures.

- (2) The Secretary must not authorise disclosure of the personal identifier unless:
 - (a) the Secretary is satisfied that other reasonable steps have been taken to identify, authenticate the identity of, or locate, the subject; and
 - (b) either:
 - (i) the Secretary is satisfied that the subject has been informed of the proposed disclosure (including the personal identifier that is to be disclosed and the manner in which the disclosure is to be made) and the Secretary has either considered the subject's views in relation to the proposed disclosure or been satisfied that the subject has no views in relation to it; or
 - (ii) the Secretary is satisfied that the subject cannot be found; and
 - (c) the Secretary has considered the sensitivity of the personal identifier that is to be disclosed; and
 - (d) the Secretary is satisfied that it is reasonably necessary to authorise disclosure in order to identify, authenticate the identity of, or locate, the subject; and
 - (e) if personal information (within the meaning of the *Privacy Act 1988*) that is not identifying information is to be disclosed together with the personal identifier—the Secretary is satisfied that it is reasonably necessary to disclose the personal information together with the personal identifier in order to identify, authenticate the identity of, or locate, the subject.
- (3) For the purposes of subparagraph (2)(b)(i), if the subject does not express a view in relation to the proposed disclosure within a reasonable time of being informed of it, the Secretary is entitled to be satisfied that the subject has no views in relation to it.

- (4) If the Secretary authorises disclosure of a personal identifier under paragraph (1)(c), the authority covers all disclosures of the identifier made for the purpose mentioned in paragraph (1)(b).
- (5) An authority under paragraph (1)(c) is not a legislative instrument.

336FD Disclosure of other relevant information to the general public

- (1) For the purposes of:
 - (a) paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*; and
 - (b) paragraph 2.1(g) of National Privacy Principle 2 in Schedule 3 to the *Privacy Act 1988*;the disclosure by a person of personal information (within the meaning of the *Privacy Act 1988*) about another person (the *subject*) is taken to be a disclosure that is authorised by law if:
 - (c) the person is disclosing a personal identifier of the subject and the disclosure is authorised by section 336FC; and
 - (d) the personal information is disclosed together with the personal identifier; and
 - (e) the disclosure of the personal information is for the purpose mentioned in paragraph 336FC(1)(b).
- (2) This section does not apply to personal information that is identifying information.

Schedule 4—Technical amendments relating to legislative instruments

Migration Act 1958

1 Subsection 39(1)

Omit “49A of the *Acts Interpretation Act 1901*”, substitute “14 of the *Legislative Instruments Act 2003*”.

2 Subsection 39(1)

Omit “notice published in the *Gazette*”, substitute “legislative instrument”.

3 Subsection 245J(1)

Omit “approve in writing”, substitute “by legislative instrument, approve”.

4 Subsection 245J(4)

Repeal the subsection.

5 Subsection 245K(1)

Omit “in writing”, substitute “by legislative instrument”.

6 Subsection 245K(3)

Repeal the subsection.

7 Subsection 258(1)

Omit “(1)”.

8 Subsection 258(1)

Omit “in writing”, substitute “by legislative instrument”.

9 Subsection 258(2)

Repeal the subsection.

10 Subsections 306AD(1), (2) and (3)

Omit “writing”, substitute “legislative instrument”.

11 Subsection 306AD(4)

Repeal the subsection.

12 Subsection 332A(1)

Omit “written determination made”, substitute “determination made, by legislative instrument”.

13 Subsection 332A(2)

Repeal the subsection.

14 Paragraph 495A(3)(b)

Omit “determines, in writing,”, substitute “, by legislative instrument, determines”.

15 Subsection 495A(4)

Repeal the subsection.

16 Subsection 503A(9) (note to the definition of *gazetted agency*)

Omit “section 46”, substitute “subsection 13(3) of the *Legislative Instruments Act 2003* or subsection 46(3)”.

17 Subsection 504(2)

Omit “49A of the *Acts Interpretation Act 1901*”, substitute “14 of the *Legislative Instruments Act 2003*”.

18 Subsection 504(2)

Omit “a notice published in the *Gazette*”, substitute “an instrument in writing made under the regulations”.

Migration Legislation Amendment Act (No. 1) 2001

19 Item 11 of Schedule 1

Omit “section 48 of the *Acts Interpretation Act 1901*”, substitute “subsection 12(2) of the *Legislative Instruments Act 2003*”.

20 Application

The amendments made by this Schedule apply to instruments made on or after the commencement of this Schedule.

*[Minister's second reading speech made in—
Senate on 15 September 2005
House of Representatives on 2 November 2005]*

(162/05)
