



AusCheck Act 2007

No. 53, 2007

An Act to provide a regulatory framework for coordinating and conducting centralised criminal, security and other background checking, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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[Assented to 12 April 2007]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *AusCheck Act 2007*.

2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Object of Act

The object of this Act is to provide a regulatory framework for coordinating and conducting certain criminal, security and other background checking.

4 Definitions

(1) In this Act:

AusCheck database means the database referred to in section 14.

AusCheck scheme means the scheme prescribed for the purposes of section 8.

AusCheck scheme personal information means personal information:

- (a) that is obtained under the AusCheck scheme; or
- (b) that relates to the administration of the AusCheck scheme.

AusCheck staff member means:

- (a) an APS employee who performs functions relating to, or for the purposes of, the AusCheck scheme; or
- (b) a person engaged as a consultant or contractor to perform functions relating to, or for the purposes of, the AusCheck scheme.

Note: For the definition of *APS employee*, see section 17AA of the *Acts Interpretation Act 1901*.

aviation security identification card means an identification card issued under the *Aviation Transport Security Act 2004* or regulations under that Act.

Commonwealth authority means a body corporate established for a public purpose by or under a law of the Commonwealth.

maritime security identification card means an identification card issued under the *Maritime Transport and Offshore Facilities Security Act 2003* or regulations under that Act.

permanent resident means a person:

- (a) who is not an Australian citizen; and
- (b) whose normal place of residence is situated in Australia; and
- (c) whose presence in Australia is not subject to any limitation as to time imposed by law; and
- (d) who is not an unlawful non-citizen.

personal information has the same meaning as in the *Privacy Act 1988*.

unlawful non-citizen has the same meaning as in the *Migration Act 1958*.

(2) To avoid doubt:

personal information, in relation to an individual, includes the following:

- (a) the number of an aviation security identification card or a maritime security identification card issued to the individual;
- (b) a photograph of the individual that appears on an aviation security identification card or a maritime security identification card issued to the individual.

5 Definition of *background check*

A **background check**, in relation to an individual, is an assessment of information relating to one or more of the following:

- (a) the individual's criminal history;
- (b) matters relevant to a security assessment of the individual;

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- (c) the individual's citizenship status, residency status or the individual's entitlement to work in Australia, including but not limited to, whether the person is an Australian citizen, a permanent resident or an unlawful non-citizen;
- (d) verification checks of documents relating to the identity of the individual.

6 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

7 Extension to external Territories

This Act extends to every external Territory.

Part 2—Establishment of AusCheck scheme

8 Establishment of AusCheck scheme

The regulations may provide for the establishment of a scheme (the *AusCheck scheme*) relating to the conduct and coordination of background checks of individuals, and the verification of documents:

- (a) for the purposes of the *Aviation Transport Security Act 2004* or regulations under that Act; and
- (b) for the purposes of the *Maritime Transport and Offshore Facilities Security Act 2003* or regulations under that Act.

9 Matters covered by AusCheck scheme

- (1) The AusCheck scheme may make provision for and in relation to the following:
 - (a) the making of applications for a background check by the individual to whom the background check relates;
 - (b) the making of applications for a background check by a person other than the individual to whom the background check relates, with the consent of the individual to whom the background check relates;
 - (c) the information that is to be contained in an application for a background check;
 - (d) the criteria against which an application for a background check is to be assessed;
 - (e) the decision or decisions that may be made as a result of an application for a background check;
 - (f) the form of advice to be given to the applicant for a background check;
 - (g) the form of advice to be given to an individual in respect of whom a background check is conducted;
 - (h) the form of advice to be given to other persons about the outcome of a background check;

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- (i) matters relating to the establishment and provision of an online verification service that will enable verification:
 - (i) that an aviation security identification card or a maritime security identification card has been issued to a particular individual and is in effect at a particular time; or
 - (ii) that an individual who is in possession of an aviation security identification card or a maritime security identification card is the person to whom the card was issued.
- (2) The matters referred to in subsection (1) may relate to:
 - (a) all background checks to be conducted under the AusCheck scheme; or
 - (b) a specified class of background checks.
- (3) Without limiting the way in which a class of background checks may be described for the purposes of subsection (2), a class may be described by reference to a specified legislative or non-legislative scheme, a specified law of the Commonwealth, specified provisions of a law of the Commonwealth or specified purposes.

11 Secretary may give directions under AusCheck scheme

- (1) The AusCheck scheme may empower the Secretary to give directions to an applicant for a background check, or to a person who is required or permitted to take action relating to matters connected with a background check.
- (2) Without limiting subsection (1), the AusCheck scheme may empower the Secretary to direct a person to advise the Secretary whether or not a licence, permit or other authorisation has been issued to an individual in respect of whom a background check has been conducted.

12 Delegation by Secretary

- (1) The Secretary may, by writing, delegate any or all of the Secretary's functions and powers under the AusCheck scheme:

- (a) to an SES employee, or acting SES employee, in the Department; or
- (b) to an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

Note: The expressions *APS employee*, *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Secretary.

Part 3—Information management

Division 1—Collection, use and disclosure of information

13 Authorisation of information collection, use and disclosure

The collection, use and disclosure of personal information about an individual is taken to be authorised by law for the purposes of the *Privacy Act 1988* if:

- (a) the collection, use or disclosure is for the purposes of, or for purposes directly relating to, conducting a background check or advising on the outcome of a background check in respect of the individual under the AusCheck scheme; or
- (b) the collection, use or disclosure is for the purposes of updating information held by the Secretary in respect of an individual in respect of whom a background check has been conducted under the AusCheck scheme; or
- (c) the collection, use or disclosure is for the purposes of providing an online verification service that will enable verification:
 - (i) that an aviation security identification card or a maritime security identification card has been issued to a particular individual and is in effect at a particular time; or
 - (ii) that an individual who is in possession of an aviation security identification card or a maritime security identification card is the person to whom the card was issued.

14 Authorisation of retention and subsequent use of information

- (1) The Secretary may establish and maintain a database (the *AusCheck database*) of information, including AusCheck scheme personal information, that relates to the AusCheck scheme.
- (2) AusCheck scheme personal information about an individual:
 - (a) may be included in the AusCheck database; and

- (b) may be used or disclosed for the following purposes:
 - (i) carrying out a subsequent background check in relation to the individual under the AusCheck scheme;
 - (ii) responding to an incident that poses a threat to national security;
 - (iii) the collection, correlation, analysis or dissemination of criminal intelligence or security intelligence by the Commonwealth, or by a Commonwealth authority that has functions relating to law enforcement or national security, for purposes relating to law enforcement or national security.
- (2A) AusCheck scheme personal information about an individual may be used or disclosed for the purpose of verifying:
 - (a) that an aviation security identification card or a maritime security identification card has been issued to a particular individual and is in effect at a particular time; or
 - (b) that an individual who is in possession of such an identification card is the person to whom the card was issued.
- (2B) AusCheck scheme personal information used or disclosed for the purpose mentioned in subsection (2A) must be limited to personal information of a kind directly necessary for that purpose, and must only be used or disclosed to the extent necessary for that purpose.
- (3) AusCheck scheme personal information included in the AusCheck database may be used in such a way that de-identified information derived from the AusCheck scheme personal information can be used and disclosed for the following purposes:
 - (a) research;
 - (b) government planning;
 - (c) industry planning.

Division 2—Protection of information

15 Protection of information

- (1) A person commits an offence if:
- (a) the person is or was an AusCheck staff member; and
 - (b) when the person is or was an AusCheck staff member, the person obtained information relating to the AusCheck scheme; and
 - (c) the person discloses the information to someone else.

Penalty: Imprisonment for 2 years.

- (2) Each of the following is an exception to subsection (1):
- (a) a disclosure for the purposes of the AusCheck scheme;
 - (b) if the information is AusCheck scheme personal information—a disclosure with the consent of the individual to whom the AusCheck scheme personal information relates;
 - (c) if the information is AusCheck scheme personal information—a disclosure to the individual to whom the AusCheck scheme personal information relates;
 - (d) a disclosure to the Australian Federal Police for the purposes of the AusCheck scheme.

Note 1: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: For prescribing by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (3) If a disclosure of information is covered by subsection (2), the disclosure is authorised by this section.
- (4) A person who is or was an AusCheck staff member is not to be required to disclose information relating to the AusCheck scheme to a court, except:
- (a) where it is necessary to do so for the purposes of giving effect to this Act or the AusCheck scheme; or
 - (b) for the purposes of a criminal proceeding for an offence against this Act or regulations under this Act (including a

proceeding to determine whether a person should be tried for an offence).

For this purpose, *court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

(5) In this section:

information includes, but is not limited to, AusCheck scheme personal information.

Part 4—Transitional provision in relation to information collected before commencement

16 Authorisation of use and disclosure of personal information collected for specified purposes

- (1) This section applies to personal information about an individual that was collected before the commencement of this section by an agency or organisation (within the meaning of the *Privacy Act 1988*) for the purposes of conducting background checking under:
 - (a) the *Aviation Transport Security Act 2004* or regulations under that Act; or
 - (b) the *Maritime Transport and Offshore Facilities Security Act 2003* or regulations under that Act.
- (2) The disclosure of the personal information to an AusCheck staff member, and the use and disclosure of the personal information by an AusCheck staff member, is taken to be authorised by law for the purposes of the *Privacy Act 1988* if the disclosure or use is for the purposes of the AusCheck scheme.

Part 5—Other matters

17 Use of the name AusCheck

- (1) The Commonwealth is entitled to use the name “AusCheck” for the purposes of the AusCheck scheme.
- (2) If the operation of this section would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (4) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

18 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may provide for the following:
 - (a) the charging and recovery of fees and other charges in respect of matters specified in the regulations, being matters in relation to which expenses are incurred by the Commonwealth under this Act or under the regulations, but not that would otherwise amount to taxation;

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- (b) the review of decisions under the regulations;
 - (c) the imposition of penalties, not exceeding 50 penalty units, for a contravention of the regulations;
 - (d) the making of guidelines about matters relating to background checking;
 - (e) the establishment and conduct of a review of the AusCheck scheme.
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*[Minister's second reading speech made in—
House of Representatives on 7 December 2006
Senate on 26 February 2007]*

(180/06)
