



AusCheck Amendment Act 2009

No. 123, 2009

An Act to amend the *AusCheck Act 2007*, and for related purposes

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

Contents

1	Short title	1
2	Commencement	1
3	Schedule(s)	2
Schedule 1—Amendments		3
	<i>AusCheck Act 2007</i>	3



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An Act to amend the *AusCheck Act 2007*, and for related purposes

[Assented to 7 December 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *AusCheck Amendment Act 2009*.

2 Commencement

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

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

AusCheck Act 2007

1 Subsection 4(1)

Insert:

identity verification information, in relation to an individual, means personal information consisting of the individual’s fingerprints or other biometric data about the individual, but does not include a photograph of the individual.

2 Subsection 4(1)

Insert:

national security background check, in relation to an individual, means a background check conducted in relation to the individual under an Act or legislative instrument referred to in subparagraph 8(1)(b)(i) or (ii) for a purpose referred to in paragraph 8(2)(a), (b), (c), or (d).

3 Subsection 4(2) (paragraph (b) of the definition of *personal information*)

Repeal the paragraph, substitute:

- (b) any other identifier assigned to the individual;
- (c) a photograph of the individual.

4 Paragraph 5(b)

After “security assessment”, insert “(as defined in subsection 35(1) of the *Australian Security Intelligence Organisation Act 1979*)”.

5 Paragraph 5(d)

Omit “verification checks of documents relating to”.

6 Section 8

Repeal the section, substitute:

8 Establishment of AusCheck scheme

- (1) The regulations may provide for the establishment of a scheme (the *AusCheck scheme*) relating to the conduct and coordination of background checks of individuals if:
- (a) any of the following laws requires or permits a background check to be conducted of an individual for specified purposes:
 - (i) the *Aviation Transport Security Act 2004* or regulations under that Act;
 - (ii) the *Maritime Transport and Offshore Facilities Security Act 2003* or regulations under that Act; or
 - (b) any other Act (other than this Act) expressly:
 - (i) requires or permits a background check of an individual to be conducted under the AusCheck scheme for purposes specified in the Act; or
 - (ii) provides for the making of a legislative instrument requiring or permitting a background check of an individual to be conducted under the AusCheck scheme for purposes specified in the Act.
- (2) If paragraph (1)(b) applies, the background check must be conducted for purposes related to:
- (a) Australia's national security; or
 - (b) the defence of Australia; or
 - (c) a national emergency; or
 - (d) the prevention of conduct to which Part 5.3 of Chapter 5 of the *Criminal Code* (which deals with terrorism) applies.

7 Saving of regulations

Despite the amendment made by item 6, regulations in force for the purposes of section 8 of the *AusCheck Act 2007* immediately before the commencement of this item continue in effect, after that commencement, as if they had been made for the purposes of that section, as in force after that commencement.

8 At the end of paragraph 9(1)(i)

Add:

- ; or (iii) that a national security background check has been conducted in relation to a particular individual; or

- (iv) that an individual who is in possession of a card, licence, permit or other authorisation in relation to which a national security background check has been conducted is the individual to whom the card, licence, permit or authorisation was issued.

9 At the end of section 9

Add:

- (4) For the purposes of paragraph (1)(b), an individual is taken to have given consent to another person making an application for a background check in relation to the individual if:
 - (a) the individual has applied for:
 - (i) an aviation security identification card; or
 - (ii) a maritime security identification card; or
 - (iii) any other card, licence, permit or authorisation; and
 - (b) before making the application referred to in paragraph (a), the individual was advised by the other person, in accordance with the requirements (if any) specified in the regulations, that a background check was a precondition to the issuing of the card, licence, permit or authorisation.

10 Section 13

Before “The collection,”, insert “(1)”.

Note: The following heading to subsection 13(1) is inserted “*Collection, use and disclosure of personal information other than identity verification information*”.

10A Division 1 of Part 3 (heading)

Repeal the heading, substitute:

Division 1—Collection, retention, use and disclosure of information

11 Section 13

After “personal information”, insert “(other than identity verification information)”.

12 At the end of paragraph 13(c)

Add:

- ; or (iii) that a national security background check has been conducted under the AusCheck scheme in relation to a particular individual; or
- (iv) that an individual who is in possession of a card, licence, permit or other authorisation in relation to which a national security background check has been conducted under the AusCheck scheme is the individual to whom the card, licence, permit or authorisation was issued.

13 At the end of section 13

Add:

Collection, use and disclosure of identity verification information

- (2) The collection, use and disclosure of identity verification 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 directly necessary for the purpose of verifying the identity of an individual in respect of whom a background check is being or has been conducted under the AusCheck scheme; and
 - (b) for a use or disclosure—the information is only used or disclosed to the extent necessary for the purpose mentioned in paragraph (a).

14 Subsection 14(1)

Omit “, including AusCheck scheme personal information,”, substitute “(other than identity verification information)”.

Note 1: The heading to section 14 is altered by inserting “**and disclosure**” after “**use**”.

Note 2: The following heading to subsection 14(1) is inserted “*Establishment of AusCheck database*”.

14A Subsection 14(2)

After “individual” (first occurring), insert “(other than identity verification information)”.

Note: The following heading to subsection 14(2) is inserted “*Use and disclosure of AusCheck personal information other than identity verification information*”.

15 Subsection 14(2A)

Omit “individual may be”, substitute “individual (other than identity verification information) may also be”.

16 At the end of subsection 14(2A)

Add:

- ; or (c) that a national security background check has been conducted in relation to a particular individual; or
- (d) that an individual who is in possession of a card, licence, permit or other authorisation in relation to which a national security background check has been conducted is the individual to whom the card, licence, permit or authorisation was issued.

17 After subsection 14(2A)

Insert:

Use and disclosure of AusCheck scheme personal information that is identity verification information

- (2AB) AusCheck scheme personal information about an individual that is identity verification information may be used or disclosed for the purpose of verifying the identity of the individual if a subsequent background check is being conducted in respect of the individual under the AusCheck scheme.

18 Subsection 14(2B)

After “(2A)”, insert “ or (2AB)”.

19 After section 14

Insert:

14A Special rule relating to collection, retention, use and disclosure of identity verification information by AusCheck staff members

Despite sections 13 and 14, those sections only authorise the collection, retention, use and disclosure by the Secretary or an AusCheck staff member of identity verification information about an individual in relation to whom a background check is being or has been conducted, if the collection, retention, use or disclosure is directly necessary for the purpose of:

- (a) passing the information to a Commonwealth, State or Territory body, agency or organisation that is responsible for, or deals with, law enforcement, criminal intelligence, criminal investigation, fraud or security intelligence in, or in a part of, Australia for the purpose of that body, agency or organisation verifying the identity of the individual for the purposes of the background check; or
- (b) providing the information to the individual.

20 After subsection 15(1)

Insert:

- (1A) A person commits an offence if:
 - (a) the person obtains information; and
 - (b) the information is AusCheck scheme personal information; and
 - (c) the person discloses the information to someone else.

Penalty: Imprisonment for 2 years.

21 Subsection 15(2)

After “(1)”, insert “or (1A)”.

22 After paragraph 15(2)(c)

Insert:

- (ca) if the information is AusCheck scheme personal information—a disclosure that is:
 - (i) taken to be authorised under section 13; or

- (ii) authorised under section 14; or
- (iii) required or authorised by or under another law;

*[Minister's second reading speech made in—
House of Representatives on 12 March 2009
Senate on 19 March 2009]*

(28/09)

AusCheck Amendment Act 2009 No. 123, 2009 10