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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**MIGRATION LEGISLATION AMENDMENT (INFORMATION AND OTHER
MEASURES) BILL 2007**

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Immigration and Citizenship,
The Hon Kevin Andrews, MP)

MIGRATION AMENDMENT (INFORMATION AND OTHER MEASURES) BILL 2007

OUTLINE

1. The Migration Legislation Amendment (Information and Other Measures) Bill 2007 ('the Bill') amends the *Migration Act 1958* ('the Migration Act') to:
 - address limitations of certain provisions dealing with identifying information;
 - broaden the ability of the Department of Immigration and Citizenship ('DIAC') to disclose movement records for the benefit of the person to whom the record relates; and
 - amend the definition of 'fisheries detention offence'.
2. The identifying information provisions were inserted into the Migration Act by the *Migration Legislation Amendment (Identification and Authentication) Act 2004* (the MLAIAA). The MLAIAA came into effect in August 2004. It created a scheme for the collection, access, disclosure and storage of "identifying information", such as signatures, photographs, fingerprints, iris scans, and audio and video tapes in the immigration context.
3. Part 4A of the Migration Act provides a strict scheme for the access and disclosure of identifying information. Sections 336C and 336E impose criminal penalties unless the access or disclosure comes within a list of permitted accesses or disclosures. The maximum penalty for accessing or disclosing identifying information is 2 years imprisonment or 120 penalty units or both.
4. The limitations and inflexibility of the permitted grounds for access and disclosure are causing serious problems throughout the DIAC in its day to day work, and for other agencies in the enforcement of the criminal law. DIAC's ability to continue normal working practices, such as disclosing photos and signatures to other agencies, has been severely hampered and in some instances has been discontinued as a result of the current provisions. The Commonwealth Director of Public Prosecutions has advised that many criminal prosecutions, some for drug importation, have been affected because of DIAC's limited ability to provide essential evidence to assist with the prosecution.
5. The *Fisheries Management Act 1991* ('the FMA'), the *Torres Strait Fisheries Act 1984* ('the TSFA'), and *Environmental Protection and Biodiversity Conservation Act 1999* ('the EPBCA') contain provisions mirroring the Migration Act identifying information provisions.
6. The reason for 'mirroring' the Migration Act identifying information amendments in the EPBCA, FMA and TSFA is for consistency, especially in the detention regime. For example, illegal foreign fishers may be in detention under the EPBCA, the FMA or the TSFA when brought into Australia, but the legal basis for their detention may change to the Migration Act while they remain in detention. There is therefore a need for consistency in how identifying information is collected and dealt with under all four pieces of legislation.

7. Therefore the bill makes similar amendments to the EPBCA, FMA and TSFA to ensure the provisions remain consistent across all four pieces of legislation.
8. Under subsection 488(1) of the Migration Act it is an offence for a person to read, examine, reproduce by any means, or use or disclose by any means, any part of a client's international movement records, otherwise than in accordance with an authority given under subsection 488(2). The authorisations in subsection 488(2) do not cover the disclosure of movement records to an individual to whom the record relates or to his or her duly appointed agent. Instead, an individual must apply for access to such information under the *Freedom of Information Act 1982* ('the FOI Act').
9. This process is inconsistent with the objectives of the FOI Act and the Ombudsman's view that government agencies should facilitate access by an individual to his or her own information. The process by which movement records are requested and retrieved under the FOI Act is unnecessarily complex and resource intensive. From a client service perspective, the proposed amendment to section 488 will ensure DIAC can respond to client requests in a more efficient manner.
10. The definition of 'fisheries detention offence' in section 5 of the Migration Act lists offences in the FMA and the TSFA. Non-citizens detained for those particular offences are granted enforcement visas by operation of section 164B of the Migration Act if they are brought into the migration zone.
11. The FMA was amended in 2006 by the insertion of new fishing offences (*Fisheries Legislation Amendment (Foreign Fishing Offences) Act 2006*). The proposed amendment will include references to these new offences in the definition of 'fisheries detention offence', to ensure that enforcement visas are granted to non-citizens who have been brought to Australia in relation to the new fishing offences.

FINANCIAL IMPACT STATEMENT

We expect some moderate savings to resource costs as a result of the amendments to section 488 relating to movement records.

MIGRATION LEGISLATION AMENDMENT (INFORMATION AND OTHER MEASURES) BILL 2007

NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short title

1. The short title by which this Act may be cited is the *Migration Amendment (Information and Other Measures) Act 2007*.

Clause 2 Commencement

2. Subclause 2(1) provides that each provision of the 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.

- Table Item 1 provides that Sections 1 to 3 of the bill and anything in the bill not elsewhere covered by this table will commence on the day on which this Act receives the Royal Assent.
- Table Item 2 provides that Schedule 1, Part 1 of the bill commences on a single day to be fixed by Proclamation. However, it also provides that if any of the provision(s) do not commence within the period of 6 months beginning on the day on which the bill receives the Royal Assent, they commence on the first day after the end of that period.

This item relates to the amendments to the personal identifier provisions of the EPBCA, the FMA, the Migration Act and the TSFA (“the main amendments”).

- Table Item 3 provides that Schedule 1, Part 2, Division 1 of the bill commences at the same time as the provision(s) covered by Table Item 2. However, it also provides that Division 1 of Part 2 of Schedule 1 to the bill does not commence at all, if Schedule 1 to the *Australian Citizenship (Transitionals and Consequentials) Act 2007* commences at or before that time.

This item relates to the amendments to the personal identifier provisions of the Migration Act which refer to the *Australian Citizenship Act 1948* (“the ACA 1948”). The ACA 1948 is to be repealed by the *Australian Citizenship (Transitionals and Consequentials) Act 2007* (“the AC(TC)A”). The item ensures that if the AC(TC)A commences before the bill commences, the amendments will not commence. If the AC(TC)A does not commence before the bill, the amendments will commence when the main personal identifier provisions commence (table item 2).

- Table Item 4 provides that items 66 and 67 to Schedule 1 of the bill commence immediately before the commencement of Schedules 1 and 3 to the AC(TC)A. However, it also provides that items 66 and 67 of Schedule 1 do not commence at all if Schedules 1 and 3 to the AC(TC)A commence at or before the time that the provision(s) covered by table item 2 commence.

Items 66 and 67 repeal item 39 of Schedule 1 to the AC(TC)A and item 22 of Schedule 3 to the AC(TC)A. Item 39 changes a reference in paragraph 336D(2)(g) of the Migration

Act from “the *Australian Citizenship Act 1948*” to “the *Australian Citizenship Act 2007*”. Item 22 contains a transitional provision, relating to the personal identifier provisions of the Migration Act, to cater for the repeal of the *Australian Citizenship Act 1948* and commencement of the *Australian Citizenship Act 2007* (“the ACA 2007”).

Table item 4 ensures that if the ACA 2007 commences after the main personal identifier amendments (table item 2), items 39 and 22 do not take effect, as the same effect will already have been achieved by items 68 and 71 of Schedule 1 to the bill. If however, the ACA 2007 commences before this Act, items 66 and 67 will not take effect, as items 39 and 22 of the ACA 2007 will have already commenced.

- Table Item 5 provides that item 68 to Schedule 1 of the bill commences on the later of two events as follows:
 - (a) the time the provision(s) covered by table item 2 commence; and
 - (b) immediately after the commencement of Schedule 1 to the *Australian Citizenship (Transitionals and Consequentials) Act 2007*.

However, it also provides that the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.

Item 68 amends paragraph 339D(2)(g) of the Migration Act, and the amendment refers to the ACA 2007. It will commence at the same time as the main personal identifier amendments (table item 2), unless the AC(TC)A has not yet commenced at that time, in which case it will commence if and when the AC(TC)A commences. The AC(TC)A repeals the ACA 1948, and commences at the same time the ACA 2007 commences.

- Table Item 6 provides that Item 69 to Schedule 1 of the bill commences at the same time as the provision(s) covered by table item 2. However, it also provides that item 69 does not commence at all if Schedule 1 to the AC(TC)A does not commence at or before that time.

Item 69 inserts new paragraph 336E(2)(ha) into the Migration Act. The new paragraph refers to the ACA 2007. It will commence at the same time as the main personal identifier amendments (table item 2), unless the AC(TC)A has not yet commenced by that time. If the AC(TC)A does not commence before this Act, item 69 will not commence at all, as the same amendment (but referring to the ACA 1948) will be made by item 63 of the bill.

- Table Item 7 provides that item 70 to Schedule 1 of the bill commences immediately after the commencement of Schedule 1 to the AC(TC)A. However, it also provides that Item 70 of the bill does not commence at all if Schedule 1 to the AC(TC)A commences at or before the time the provision(s) covered by table item 2 commence.

Item 70 repeals and substitutes subparagraph 336E(2)(ha)(i) of the Migration Act, inserted by item 63 of Schedule 1, Part 2 Division 1 of the bill. It changes the reference from ACA 1948 to ACA 2007. (Item 63 commences when the main personal identifier amendments commence, provided the AC(TC)A has not already commenced at that time – see table item 3). Item 70 only takes effect if the AC(TC)A commences after the bill. If that occurs, the amendment made by item 70 will commence immediately after the AC(TC)A commences. The AC(TC)A repeals the ACA 1948, at the time that the ACA 2007 commences.

- Table Item 8 provides that Items 71 and 72 to Schedule 1 commence at the same time as the provision(s) covered by Table Item 2.

Items 71 and 72 provide transitional and application provisions for items 68, 69 and 70. Items 71 and 72 will commence at the same time as the main amendments commence (table item 2).

- Table Item 9 provides that Schedule 2 commences at the same time as the provision(s) covered by Table Item 2.

Schedule 2 amends section 488 of the Migration Act, relating to movement records. This amendment and its application provision will commence at the same time as the main amendments to the Migration Act, FMA, TSFA (table item 2).

- Table Item 10 provides that Schedule 3 commences on the day on which this Act receives the Royal Assent.

Schedule 3 amends the definition of ‘fisheries detention offence’ in section 5 of the Migration Act.

3. An explanatory note is provided to assist the reader at the end of this table. It specifies that the table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It states clearly that the table will not be expanded to deal with provisions inserted in this Act after assent.

4. Subclause 2(2) explains that column 3 of the table contains additional information that is not part of this Act. It specifies that information in this column may be added to or edited in any published version of this Act.

Clause 3 Schedule(s)

5. This clause provides that each Act specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned. In addition, any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Personal identifiers

Part 1—Main amendments

Environment Protection and Biodiversity Conservation Act 1999

Item 1 Paragraphs 26(3)(a) and (b) of Schedule 1

This item amends paragraphs 26(3)(a) and (b) by omitting ‘non-citizen’ and substituting ‘person’.

The purposes set out in paragraphs (a) and (b) are relevant to the grounds for which access of identifying information may be authorised under clause 52 and the grounds for which disclosure is permitted under clause 53.

This amendment ensures that no offence is committed under clauses 52 or 53 if identifying information, collected from a non-citizen, is accessed or disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’).

Item 2 Clause 49 of Schedule 1 (definition of *disclose*)

This item substitutes new wording for the definition of ‘disclose’ in clause 49. The amendment inserts the word “unauthorised” after the word “provide” in the definition of “disclose”. The amendment makes clear the intention that providing an authorised access to a personal identifier (under clause 52) is not a ‘disclosure’ within the meaning in clause 53 (which makes it an offence to disclose identifying information where the disclosure is not a permitted disclosure). However, the provision of an unauthorised access to a personal identifier (i.e. an access not authorised by clause 52) is a disclosure, and may be an offence under clause 53 if the disclosure is not a permitted disclosure.

The new wording also makes a technical amendment to the definition to provide that the definition applies to personal identifiers provided under clause 28.

A note included after the definition of ‘disclose’ indicates that clause 52 deals with access to identifying information.

Item 3 Clause 49 of Schedule 1 (definition of *identifying information*)

This item repeals the definition of ‘identifying information’ in clause 49 and replaces it with a new definition.

The new definition clarifies that the definition of “identifying information” applies only to personal identifiers which have been provided under clause 28 of the EPBCA, and not to any personal identifier (i.e. any photograph or signature). The purpose of this amendment is to put it beyond doubt that the offences in clauses 51, 53, 55 and 56 apply only where the identifying information in question is a personal identifier provided under clause 28, or is information derived from such a personal identifier.

Item 4 After subclause 51(1) of Schedule 1

This item inserts new subclause 51(1A).

Subclause 51(1) creates an offence related to unauthorised access of identifying information. The term “identifying information” is defined in clause 49 as amended by item 3 of the bill.

New subclause 51(1A) provides that the offence in 51(1) does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

This exception to the offence mirrors the Information Privacy Principle 10.1(b) of the *Privacy Act 1988*, which allows for the use of personal information in these circumstances. Information Privacy Principle 11.1(c) also allows for disclosure of personal information in these circumstances.

A note is included at the end of subclause 51(1A) advising that the defendant bears an evidential burden in relation to the matter in subclause (1A), and referring the reader to subsection 13.3(3) of the *Criminal Code*.

Item 5 Paragraph 52(2)(g) of Schedule 1

This item omits paragraph 52(2)(g) and substitutes new paragraph (g). New paragraph (g) permits authorisation of access to identifying information for the purposes of the EPBCA. Currently, paragraph (g) limits access to where it is for the purposes of ‘making a decision under’ the EPBCA. The new, wider ground will ensure identifying information can be accessed for the purposes of exercising powers or performing functions under the EPBCA, including where the power or function is not strictly concerned with making a decision under the EPBCA.

Item 6 After subclause 53(1) of Schedule 1

This item inserts new subclauses 53(1A).

New subclause (1A) provides that clause 53 does not apply if the person making the disclosure believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

This exception to the offence mirrors the Information Privacy Principle 11.1(c) of the *Privacy Act 1988* which allows for the use of personal information in these circumstances. It also mirrors new subclause 51(1A) (inserted by item 4) relating to accessing identifying information.

A note is added at the end of new subclause 53(1A) stating that the defendant bears an evidential burden in relation to the matter in subclause (1A). The reader is directed to subsection 13.3(3) of the *Criminal Code*.

Item 7 Subparagraph 53(2)(a)(i) of Schedule 1

This item omits ‘non-citizen’ and inserts ‘person’ in subparagraph 53(2)(a)(i).

Subparagraph 53(2)(a)(i) provides that a disclosure for the purpose of data-matching in order to identify, or authenticate the identity of, a non-citizen, is a permitted disclosure.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). There is a particular risk that this may occur where there is a large-scale disclosure of identifying information for the purposes of data-matching.

Item 8 Subparagraph 53(2)(a)(ii) of Schedule 1

This item omits ‘non-citizens’ and inserts ‘persons’ in subparagraph 53(2)(a)(ii).

Subparagraph 53(2)(a)(ii) provides that a disclosure for the purpose of data-matching in order to facilitate the processing of non-citizens entering or departing from Australia is a permitted disclosure.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). There is a particular risk that this may occur where there is a large-scale disclosure of identifying information for the purposes of data-matching.

Item 9 Paragraph 53(2)(d) of Schedule 1

This item omits ‘non-citizen’ and inserts ‘person’ in paragraph 53(2)(d).

Paragraph 53(2)(d) provides that a disclosure of identifying information for the purpose of making the information available to the non-citizen to whom it relates, is a permitted disclosure.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). For example, a citizen may request a copy of identifying information obtained from that person before they became a citizen. The current wording of paragraph (d) would make it an offence to disclose the information to such a person.

Item 10 After paragraph 53(2)(d) of Schedule 1

This item inserts new paragraph 53(2)(da).

New paragraph (da) inserts a new permitted disclosure ground, where the disclosure is to a Commonwealth, State or Territory agency, in order to verify that a person is an Australian citizen or holds a visa of a particular class.

This amendment enables greater disclosure between Commonwealth, State or Territory agencies, and ensures persons receive any benefits they are entitled to because of their immigration status as soon as practicable. For example, this will allow Department of the Environment and Water Resources (the Environment Department) to provide a photograph or signature provided by a detainee, to another agency to verify that the detainee is not a citizen or permanent resident.

Item 11 After paragraph 53(2)(e) of Schedule 1

This item inserts new paragraphs 53(2)(ea) and (eb).

New paragraph (ea) inserts a new permitted disclosure ground where the disclosure is reasonably necessary for the enforcement of the criminal law of a Commonwealth or of a State or Territory.

This mirrors a similar provision which permits the disclosure of personal information under the *Privacy Act 1988* (paragraph (1)(e) of Information Privacy Principle 11 contained in section 14). For example, the amendment will allow the Environment Department to disclose a photograph or signature to the Australian Federal Police, or Commonwealth Department of Public Prosecutions, to assist in their investigation of a suspected offence. It complements existing paragraph 53(2)(f) of the EPBCA, which allows identifying information to be disclosed for the purpose of court or tribunal proceedings.

New paragraph (eb) permits disclosure of identifying information where the disclosure is required by or under a law of the Commonwealth or of a State or Territory. This is consistent with existing paragraph 52(2)(h) of the EPBCA, which allows access of identifying information to be authorised for the purpose of complying with the laws of the Commonwealth or the States or Territories.

Item 12 Paragraph 53(2)(f) of Schedule 1

This item amends paragraph 53(2)(f) by omitting ‘non-citizen’ and substituting ‘person’.

Paragraph 53(2)(f) of the EPBCA permits a disclosure of identifying information for the purpose of a proceeding, before a court or tribunal, relating to the non-citizen to whom the identifying information relates.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed under paragraph (f) after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). The

current wording of paragraph (f) would make it an offence to disclose the information to such a person.

Item 13 Paragraph 53(2)(g) of Schedule 1

This item repeals paragraph 53(2)(g) and replaces it with new paragraph (g).

Existing paragraph (g) of the EPBCA permits the disclosure of identifying information where the disclosure is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to the carrying out of an identification test or the requiring of the provision of a personal identifier.

New paragraph (g) expands this ground to cover any investigations of the Privacy Commissioner or Ombudsman relating to action taken by the Environment Department. This will allow for information held by the Environment Department, which may contain identifying information, to be disclosed to the Ombudsman or Privacy Commissioner where it is relevant to an investigation of action taken by the department.

Item 14 After paragraph 53(2)(h) of Schedule 1

This item inserts new paragraph 53(2)(ha). The new paragraph permits disclosure of audio and video recordings where the disclosure is for the purposes of the Act or regulations and is for the purpose of transcribing or translating the recording, or conducting language or accent analysis of the recording. This new permitted disclosure ground will allow the Environment Department to disclose tapes of interviews with detainees to companies providing transcription and translation services, so that the tape of interview can be transcribed and translated or both. Currently, such a disclosure would constitute an offence under section 53.

Item 15 Paragraph 53(2)(i) of Schedule 1

This item amends paragraph 53(2)(i) by omitting 'non-citizen' and substituting 'person'.

Paragraph (i) permits the disclosure of identifying information where it takes place with the written consent of the non-citizen to whom the identifying information relates.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of 'non-citizen'). Even where the person has given written consent to the disclosure, it would still constitute an offence under the current provision in such circumstances.

Fisheries Management Act 1991

Item 16 Paragraphs 26(3)(a) and (b) of Schedule 1A

This item amends paragraphs 26(3)(a) and (b) of Schedule 1A by omitting ‘non-citizen’ and substituting ‘person’.

The purposes set out in paragraphs (a) and (b) are relevant to the grounds for which access of identifying information may be authorised under clause 52 and the grounds for which disclosure is permitted under clauses 53 and 54.

This amendment ensures that no offence is committed under clauses 52 or 53 if identifying information, collected from a non-citizen, is accessed or disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’).

Item 17 Clause 49 of Schedule 1A (definition of *disclose*)

This item substitutes new wording for the definition of ‘disclose’ in clause 49 of Schedule 1A.

This amendment inserts the word “unauthorised” after the word “provide” in the definition of “disclose”. The amendment makes clear the intention that providing authorised access to a personal identifier (under clause 52) is not a ‘disclosure’ within the meaning in clause 53 (which makes it an offence to disclose identifying information where the disclosure is not a permitted disclosure). However, the provision of an unauthorised access to a personal identifier (i.e. an access not authorised by clause 52) is a disclosure, and may be an offence under clause 53 if the disclosure is not a permitted disclosure.

The new wording also makes a technical amendment to the definition to provide that the definition applies to personal identifiers provided under clause 28 of Schedule 1A of the FMA.

Item 18 Clause 49 of Schedule 1A (definition of *identifying information*)

This item repeals the definition of ‘identifying information’ in clause 49 of Schedule 1A and replaces it with a new definition.

The new definition clarifies that the definition of “identifying information” applies only to personal identifiers which have been provided under clause 28 of Schedule 1A of the FMA, and not to any personal identifier (i.e. any photograph or signature). The purpose of this amendment is to put it beyond doubt that the offences in clauses 51, 53, 55 and 56 apply only where the identifying information in question is a personal identifier provided under clause 28, or is information derived from such a personal identifier.

Item 19 After subclause 51(1) of Schedule 1A

This item inserts new subclause 51(1A).

Subclause 51(1) creates an offence related to unauthorised access of identifying information. The term “identifying information” is defined in clause 49 as amended by item 18 of the bill.

New subclause 51(1A) provides that the offence in subclause 51(1) does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

This exception to the offence mirrors the Information Privacy Principle 10.1(b) of the *Privacy Act 1988*, which allows for the use of personal information in these circumstances. Information Privacy Principle 11.1(c) also allows for disclosure of personal information in these circumstances.

The note are included at the end of subclause 51(1A) specifies that the defendant bears an evidential burden in relation to the matter in subclause (1A) and refers the reader to subsection 13.3(3) of the *Criminal Code*

Item 20 Paragraph 52(2)(g) of Schedule 1A

This item omits paragraph 52(2)(g) and substitutes new paragraph (g). New paragraph (g) permits authorisation of access to identifying information for the purposes of the FMA. Currently, paragraph (g) limits access to where it is for the purposes of ‘making a decision under’ the Act. The new, wider ground will ensure identifying information can be accessed for the purposes of exercising powers or performing functions under the FMA, including where the power or function is not strictly concerned with making a decision under the FMA.

Item 21 After subclause 53(1) of Schedule 1A

This item inserts new subclause 53(1A).

New subclause (1A) provides that clause 53 does not apply if the person making the disclosure believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

This exception to the offence mirrors the Information Privacy Principle 11.1(c) of the *Privacy Act 1988* which allows for the use of personal information in these circumstances. It also mirrors new subclause 51(1A) (inserted by item 19) relating to accessing identifying information.

The note at the end of new subclause 53(1A) states that the defendant bears an evidential burden in relation to the matter in subsection (1A). The reader is directed to subsection 13.3(3) of the *Criminal Code*.

Item 22 Subparagraph 53(2)(a)(i) of Schedule 1A

This item omits ‘non-citizen’ and inserts ‘person’ in subparagraph 53(2)(a)(i).

Subparagraph 53(2)(a)(i) provides that a disclosure for the purpose of data-matching in order to identify, or authenticate the identity of, a non-citizen, is a permitted disclosure.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of 'non-citizen'). There is a particular risk that this may occur where there is a large-scale disclosure of identifying information for the purposes of data-matching.

Item 23 Subparagraph 53(2)(a)(ii) of Schedule 1A

This item omits 'non-citizens' and inserts 'persons' in subparagraph 53(2)(a)(ii).

Subparagraph 53(2)(a)(ii) provides that a disclosure for the purpose of data-matching in order to facilitate the processing of non-citizens entering or departing from Australia is a permitted disclosure.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of 'non-citizen'). There is a particular risk that this may occur where there is a large-scale disclosure of identifying information for the purposes of data-matching.

Item 24 Paragraph 53(2)(d) of Schedule 1A

This item omits 'non-citizen' and inserts 'person' in paragraph 53(2)(d).

Paragraph 53(2)(d) provides that a disclosure of identifying information for the purpose of making the information available to the non-citizen to whom it relates, is a permitted disclosure.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen. For example, a citizen may request a copy of identifying information obtained from that person before they became a citizen. The current wording of paragraph (d) would make it an offence to disclose the information to such a person.

Item 25 After paragraph 53(2)(d) of Schedule 1A

This item inserts new paragraph 53(2)(da).

New paragraph (da) inserts a new permitted disclosure ground, where the disclosure is to a Commonwealth, State or Territory agency, in order to verify that a person is an Australian citizen or holds a visa of a particular class.

This amendment enables greater disclosure between Commonwealth, State or Territory agencies, and ensures persons receive any benefits they are entitled to because of their

immigration status as soon as practicable. For example, this will allow AFMA to provide a photograph or signature provided by a detainee, to another agency to verify that the detainee is not a citizen or permanent resident.

Item 26 After paragraph 53(2)(e) of Schedule 1A

This item inserts new paragraphs 53(2)(ea) and (eb).

New paragraph (ea) inserts a new permitted disclosure ground where the disclosure is reasonably necessary for the enforcement of the criminal law of a Commonwealth or of a State or Territory.

This mirrors a similar provision which permits the disclosure of personal information under the *Privacy Act 1988* (paragraph (1)(e) of Information Privacy Principle 11 contained in section 14). For example, the amendment will allow AFMA to disclose a photograph or signature to the Australian Federal Police (AFP), or Commonwealth Department of Public Prosecutions, to assist in their investigation of a suspected offence. It complements existing paragraph 53(2)(f) of the FMA, which allows identifying information to be disclosed for the purpose of court or tribunal proceedings.

New paragraph (eb) permits disclosure of identifying information where the disclosure is required by or under a law of the Commonwealth or of a State or Territory. This is consistent with existing paragraph 52(2)(h) of the FMA, which allows access of identifying information to be authorised for the purpose of complying with the laws of the Commonwealth or the States or Territories.

Item 27 Paragraph 53(2)(f) of Schedule 1A

This item amends paragraph 53(2)(f) by omitting ‘non-citizen’ and substituting ‘person’.

Subparagraph 53(2)(f) of the FMA permits a disclosure of identifying information for the purpose of a proceeding, before a court or tribunal, relating to the non-citizen to whom the identifying information relates.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed under paragraph (f) after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). The current wording of paragraph (f) would make it an offence to disclose the information to such a person.

Item 28 Paragraph 53(2)(g) of Schedule 1A

This item repeals paragraph 53(2)(g) and replaces it with new paragraph (g).

Existing paragraph (g) of the FMA permits the disclosure of identifying information where the disclosure is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to the carrying out of an identification test or the requiring of the

provision of a personal identifier. New paragraph (g) expands this ground to cover any investigations of the Privacy Commissioner or Ombudsman relating to action taken by AFMA. This will allow for information held by AFMA, which may contain identifying information, to be disclosed to the Ombudsman or Privacy Commissioner where it is relevant to an investigation of action taken by AFMA.

Item 29 After paragraph 53(2)(h) of Schedule 1A

This item inserts new paragraph 53(2)(ha). The new paragraph permits disclosure of audio and video recordings where it the disclosure is for the purposes of the FMA or regulations and is for the purpose of transcribing or translating the recording, or conducting language or accent analysis of the recording. This new permitted disclosure ground will allow disclosure of tapes of interviews with detainees to companies providing transcription and translation services, so that the tape of interview can be transcribed and translated or both. Currently, such a disclosure would constitute an offence under section 53.

Item 30 Paragraph 53(2)(i) of Schedule 1A

This item amends paragraph 53(2)(i) by omitting ‘non-citizen’ and substituting ‘person’.

Paragraph (i) permits the disclosure of identifying information where it takes place with the written consent of the non-citizen to whom the identifying information relates.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). Even where the person has given written consent to the disclosure, it would still constitute an offence under the current provision in such circumstances.

Migration Act 1958

Item 31 Paragraphs 5A(3)(a) and (b)

This item amends paragraphs 5A(3)(a) and (b) by omitting ‘non-citizen’ and substituting ‘person’.

The purposes set out in paragraphs (a) and (b) are relevant to the grounds for which access of identifying information may be authorised under section 336D and the grounds for which disclosure is permitted under section 336E and 336F.

This amendment ensures that no offence is committed under sections 336D or 336E if identifying information, collected from a non-citizen, is accessed or disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’).

Item 32 Section 5B

This item amends section 5B to omit ‘non-citizen’ and substitute ‘person’.

This amendment ensures consistency with the amendments to paragraph 5A(3)(a) and (b) made by item 31 of the bill.

Item 33 Section 336A (definition of *disclose*)

This item substitutes new wording for the definition of ‘disclose’ in section 336A.

This amendment inserts the word “unauthorised” after the word “provide” in the definition of “disclose”. The amendment makes clear the intention that providing an authorised access to a personal identifier (under section 336D) is not a ‘disclosure’ within the meaning in section 336E (which makes it an offence to disclose identifying information where the disclosure is not a permitted disclosure). However, the provision of an unauthorised access to a personal identifier (i.e. an access not authorised by section 336D) is a disclosure, and may be an offence under section 336E if the disclosure is not a permitted disclosure.

The new wording also makes a technical amendment to the definition to provide that the definition applies to personal identifiers provided under the various listed collection provisions of the Migration Act.

Item 34 Section 336A (definition of *identifying information*)

This item repeals the definition of ‘identifying information’ in section 336A and replaces it with a new definition.

The new definition clarifies that the definition of “identifying information” applies only to personal identifiers which have been provided under the various listed collection provisions of the Act, and not to any personal identifier (i.e. any photograph or signature). The purpose of this amendment is to put it beyond doubt that the offences in sections 336C, 336E, 336G and 336H apply only where the identifying information in question is a personal identifier provided under section 40, 46, 166, 170, 175, 188, 192 or 261AA, or is information derived from such a personal identifier.

Item 35 After subsection 336C(1)

This item inserts new subsection 336C(1A).

Subclause 336C(1) creates an offence related to unauthorised access of identifying information. The term “identifying information” is defined in section 336A as amended by item 34 of the bill.

New subsection 336C(1A) provides that the offence in 336C(1) does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

This exception to the offence mirrors the Information Privacy Principle 10.1(b) of the *Privacy Act 1988*, which allows for the use of personal information in these circumstances. Information Privacy Principle 11.1(c) also allows for disclosure of personal information in these circumstances.

A note is added at the end of this subsection which specifies that the defendant bears an evidential burden in relation to the matter in subsection (1A), and referring the reader to subsection 13.3(3) of the *Criminal Code*.

Item 36 After subsection 336E(1)

This item inserts new subsection 336E(1A).

New subsection (1A) provides that section 336E does not apply if the person making the disclosure believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

This exception to the offence mirrors the Information Privacy Principle 11.1(c) of the *Privacy Act 1988* which allows for the use of personal information in these circumstances. It also mirrors new subsection 336C(1A) (inserted by item 35) relating to accessing identifying information.

A note is also added at the end of new subsection 336E(1A) stating that the defendant bears an evidential burden in relation to the matter in subsection (1A). The reader is directed to subsection 13.3(3) of the *Criminal Code*.

Item 37 Subparagraph 336E(2)(a)(i)

This item omits ‘non-citizen’ and inserts ‘person’ in subparagraph 336E(2)(a)(i).

Subparagraph 336E(2)(a)(i) provides that a disclosure for the purpose of data-matching in order to identify, or authenticate the identity of, a non-citizen, is a permitted disclosure.

This amendment ensures that no offence is committed under section 336E if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). There is a particular risk that this may occur where there is a large-scale disclosure of identifying information for the purposes of data-matching.

Item 38 Subparagraph 336E(2)(a)(ii)

This item omits ‘non-citizens’ and inserts ‘persons’ in subparagraph 336E(2)(a)(ii).

Subparagraph 336E(2)(a)(ii) provides that a disclosure for the purpose of data-matching in order to facilitate the processing of non-citizens entering or departing from Australia is a permitted disclosure.

This amendment ensures that no offence is committed under section 336E if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). There is a particular risk that this may occur where there is a large-scale disclosure of identifying information for the purposes of data-matching.

Item 39 Paragraph 336E(2)(d)

This item omits ‘non-citizen’ and inserts ‘person’ in paragraph 336E(2)(d).

Subparagraph 336E(2)(d) provides that a disclosure of identifying information for the purpose of making the information available to the non-citizen to whom it relates, is a permitted disclosure.

This amendment ensures that no offence is committed under section 336E if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). For example, a citizen may request a copy of identifying information obtained from that person before they became a citizen (eg while they were a visa applicant). The current wording of paragraph (d) would make it an offence to disclose the information to such a person.

Item 40 After paragraph 336E(2)(d)

This item inserts new paragraph 336E(2)(da).

New paragraph (da) inserts a new permitted disclosure ground, where the disclosure is to a Commonwealth, State or Territory agency, in order to verify that a person is an Australian citizen or holds a visa of a particular class.

This amendment enables greater disclosure between Commonwealth, State or Territory agencies, and ensures persons receive any benefits they are entitled to because of their immigration status as soon as practicable. For example, this will allow the Department of Immigration and Citizenship to provide a photograph or signature provided by a person at the time they applied for citizenship or evidence of their citizenship, to another agency in order to verify, for that other agency, that the person to whom the identifying information relates is an Australian citizen.

Item 41 After paragraph 336E(2)(e)

This item inserts new paragraphs 336E(2)(ea) and (eb).

New paragraph (ea) inserts a new permitted disclosure ground where the disclosure is reasonably necessary for the enforcement of the criminal law of a Commonwealth or of a State or Territory.

This mirrors a similar provision which permits the disclosure of personal information under the *Privacy Act 1988* (paragraph (1)(e) of Information Privacy Principle 11 contained in

section 14). For example, the amendment will allow the Department of Immigration and Citizenship to disclose a photograph or signature provided by a visa applicant to the Australian Federal Police, or Commonwealth Department of Public Prosecutions, to assist in their investigation of a suspected offence. It complements existing paragraph 336E(2)(f) of the Act, which allows identifying information to be disclosed for the purpose of court or tribunal proceedings.

New paragraph (eb) permits disclosure of identifying information where the disclosure is required by or under a law of the Commonwealth or of a State or Territory. This is similar to a provision which permits disclosure of personal information under the *Privacy Act 1988* (paragraph (1)(d) of Information Privacy Principle contained in section 14). The amendment uses the higher standard of ‘required’ rather than the Privacy Act standard of ‘required or authorised’ due to the nature of the information that may be disclosed under section 336E. It is also consistent with existing paragraph 336D(2)(h) of the Act, which allows access of identifying information to be authorised for the purpose of complying with the laws of the Commonwealth or the States or Territories.

Item 42 Paragraph 336E(2)(f)

This item amends paragraph 336E(2)(f) by omitting ‘non-citizen’ and substituting ‘person’.

Subparagraph 336E(2)(f) of the Act permits a disclosure of identifying information for the purpose of a proceeding, before a court or tribunal, relating to the non-citizen to whom the identifying information relates.

This amendment ensures that no offence is committed under section 336E if identifying information, collected from a non-citizen, is disclosed under paragraph (f) after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). The current wording of paragraph (f) would make it an offence to disclose the information to such a person.

Item 43 Paragraph 336E(2)(g)

This item repeals paragraph 336E(2)(g) and replaces it with new paragraphs (g) and (ga).

Existing paragraph (g) of the Act permits the disclosure of identifying information where the disclosure is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to the carrying out of an identification test or the requiring of the provision of a personal identifier. New paragraph (g) expands this ground to cover any investigations of the Privacy Commissioner or Ombudsman relating to action taken by the Department of Immigration and Citizenship (‘DIAC’). This will allow for information held by DIAC, which may contain identifying information, to be disclosed to the Ombudsman or Privacy Commissioner where it is relevant to an investigation into action taken by the DIAC.

New paragraph (ga) permits disclosures for the purpose of facilitating or expediting the exercise of powers, or performance of functions, of the Migration Agents Registration Authority (‘the MARA’). This is a new ground, and allows for the disclosure of material, which contains identifying information, to the MARA. For example, where the MARA is investigating the conduct of a migration agent, it had been DIAC’s normal practice to provide

to the MARA files relating to the clients of the agent, to assist the MARA in its investigations. Those files will often contain signatures and photographs of the clients, collected, for example, for the purposes of visa applications for which the agent was representing the clients. The disclosure of those photos and signatures is an offence under current section 336E. This amendment will ensure such disclosures are not an offence.

New paragraph (ga) complements section 321 of the Act, which allows DIAC to disclose personal information to the MARA for the purpose of facilitating or expediting the exercise of powers, or performance of functions, of the MARA.

Item 44 Paragraph 336E(2)(i)

This item amends paragraph 336E(2)(i) by omitting ‘non-citizen’ and substituting ‘person’.

Paragraph (i) permits the disclosure of identifying information where it takes place with the written consent of the non-citizen to whom the identifying information relates.

This amendment ensures that no offence is committed under section 336E if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). Even where the person has given written consent to the disclosure, it would still constitute an offence under the current provision in such circumstances.

Torres Strait Fisheries Act 1984

Item 45 Paragraphs 26(3)(a) and (b) of Schedule 2

This item amends paragraphs 26(3)(a) and (b) by omitting ‘non-citizen’ and substituting ‘person’.

The purposes set out in paragraphs (a) and (b) are relevant to the grounds for which access of identifying information may be authorised under clause 52 and the grounds for which disclosure is permitted under clauses 53 and 54.

This amendment ensures that no offence is committed under clauses 52 or 53 if identifying information, collected from a non-citizen, is accessed or disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’).

Item 46 Clause 49 of Schedule 2 (definition of *disclose*)

This item substitutes new wording for the definition of ‘disclose’ in clause 49.

This amendment inserts the word “unauthorised” after the word “provide” in the definition of “disclose”. The amendment makes clear the intention that providing an authorised access to a personal identifier (under clause 52) is not a ‘disclosure’ within the meaning in clause 53 (which makes it an offence to disclose identifying information where the disclosure is not a

permitted disclosure). However, the provision of an unauthorised access to a personal identifier (i.e. an access not authorised by clause 52) is a disclosure, and may be an offence under clause 53 if the disclosure is not a permitted disclosure.

The new wording also makes a technical amendment to the definition to provide that the definition applies to personal identifiers provided under clause 28 of the TSFA.

Item 47 Clause 49 of Schedule 2 (definition of *identifying information*)

This item repeals the definition of ‘identifying information’ in clause 49 and replaces it with a new definition.

The new definition clarifies that the definition of “identifying information” applies only to personal identifiers which have been provided under clause 28 of the TSFA, and not to any personal identifier (i.e. any photograph or signature). The purpose of this amendment is to put it beyond doubt that the offences in clauses 51, 53, 55 and 56 apply only where the identifying information in question is a personal identifier provided under clause 28, or is information derived from such a personal identifier.

Item 48 After subclause 51(1) of Schedule 2

This item inserts new subclause 51(1A).

Subclause 51(1) creates an offence related to unauthorised access of identifying information. The term “identifying information” is defined in clause 49 as amended by item 47 of the bill.

New subclause 51(1A) provides that the offence in 51(1) does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

This exception to the offence mirrors the Information Privacy Principle 10.1(b) of the *Privacy Act 1988*, which allows for the use of personal information in these circumstances. Information Privacy Principle 11.1(c) also allows for disclosure of personal information in these circumstances.

The note included at the end of this subclause specifies that the defendant bears an evidential burden in relation to the matter in subclauses (1A) and refers the reader to subsection 13.3(3) of the *Criminal Code*.

Item 49 Paragraph 52(2)(g) of Schedule 2

This item omits paragraph 52(2)(g) and substitutes new paragraph (g). New paragraph (g) permits authorisation of access to identifying information for the purposes of the TSFA. Currently, paragraph (g) limits access to where it is for the purposes of ‘making a decision under’ the Act. The new, wider ground will ensure identifying information can be accessed for the purposes of exercising powers or performing functions under the TSFA, including where the power or function is not strictly concerned with making a decision under the TSFA.

Item 50 After subclause 53(1) of Schedule 2

This item inserts new subclause 53(1A).

New subclause 53(1A) provides that clause 53 does not apply if the person making the disclosure believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

This exception to the offence mirrors the Information Privacy Principle 11.1(c) of the *Privacy Act 1988* which allows for the use of personal information in these circumstances. It also mirrors new subclause 51(1A) (inserted by item 48) relating to accessing identifying information.

The Note at the end of new subclause 53(1A) states that the defendant bears an evidential burden in relation to the matter in subsection (1A). The reader is directed to subsection 13.3(3) of the *Criminal Code*.

Item 51 Subparagraph 53(2)(a)(i) of Schedule 2

This item omits ‘non-citizen’ and inserts ‘person’ in subparagraph 53(2)(a)(i).

Subparagraph 53(2)(a)(i) provides that a disclosure for the purpose of data-matching in order to identify, or authenticate the identity of, a non-citizen, is a permitted disclosure.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). There is a particular risk that this may occur where there is a large-scale disclosure of identifying information for the purposes of data-matching.

Item 52 Subparagraph 53(2)(a)(ii) of Schedule 2

This item omits ‘non-citizens’ and inserts ‘persons’ in subparagraph 53(2)(a)(ii).

Subparagraph 53(2)(a)(ii) provides that a disclosure for the purpose of data-matching in order to facilitate the processing of non-citizens entering or departing from Australia is a permitted disclosure.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). There is a particular risk that this may occur where there is a large-scale disclosure of identifying information for the purposes of data-matching.

Item 53 Paragraph 53(2)(d) of Schedule 2

This item omits ‘non-citizen’ and inserts ‘person’ in paragraph 53(2)(d).

Paragraph 53(2)(d) provides that a disclosure of identifying information for the purpose of making the information available to the non-citizen to whom it relates, is a permitted disclosure.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). For example, a citizen may request a copy of identifying information obtained from that person before they became a citizen. The current wording of paragraph (d) would make it an offence to disclose the information to such a person.

Item 54 After paragraph 53(2)(d) of Schedule 2

This item inserts new paragraph 53(2)(da).

New paragraph (da) inserts a new permitted disclosure ground, where the disclosure is to a Commonwealth, State or Territory agency, in order to verify that a person is an Australian citizen or holds a visa of a particular class.

This amendment enables greater disclosure between Commonwealth, State or Territory agencies, and ensures persons receive any benefits they are entitled to because of their immigration status as soon as practicable. For example, this will allow AFMA to provide a photograph or signature provided by a detainee, to another agency to verify that the detainee is not a citizen or permanent resident.

Item 55 After paragraph 53(2)(e) of Schedule 2

This item inserts new paragraphs 53(2)(ea) and (eb).

New paragraph (ea) inserts a new permitted disclosure ground where the disclosure is reasonably necessary for the enforcement of the criminal law of a Commonwealth or of a State or Territory.

This mirrors a similar provision which permits the disclosure of personal information under the *Privacy Act 1988* (paragraph (1)(e) of Information Privacy Principle 11 contained in section 14). For example, the amendment will allow AFMA to disclose a photograph or signature to the Australian Federal Police, or Commonwealth Department of Public Prosecutions, to assist in their investigation of a suspected offence. It complements existing paragraph 53(2)(f) of the TSFA, which allows identifying information to be disclosed for the purpose of court or tribunal proceedings.

New paragraph (eb) permits disclosure of identifying information where the disclosure is required by or under a law of the Commonwealth or of a State or Territory. This is consistent with existing paragraph 52(2)(h) of the TSFA, which allows access of identifying information

to be authorised for the purpose of complying with the laws of the Commonwealth or the States or Territories.

Item 56 Paragraph 53(2)(f) of Schedule 2

This item amends paragraph 53(2)(f) by omitting ‘non-citizen’ and substituting ‘person’. Paragraph 53(2)(f) of the Act permits a disclosure of identifying information for the purpose of a proceeding, before a court or tribunal, relating to the non-citizen to whom the identifying information relates.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed under paragraph (f) after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). The current wording of paragraph (f) would make it an offence to disclose the information to such a person.

Item 57 Paragraph 53(2)(g) of Schedule 2

This item repeals paragraph 53(2)(g) and replaces it with new paragraph (g).

Existing paragraph (g) of the TSFA permits the disclosure of identifying information where the disclosure is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to the carrying out of an identification test or the requiring of the provision of a personal identifier.

New paragraph (g) expands this ground to cover any investigations of the Privacy Commissioner or Ombudsman relating to action taken by AFMA. This will allow for information held by AFMA, which may contain identifying information, to be disclosed to the Ombudsman or Privacy Commissioner where it is relevant to an investigation of action taken by AFMA.

Item 58 After paragraph 53(2)(h) of Schedule 2

This item inserts new paragraph 53(2)(ha). The new paragraph permits disclosure of audio and video recordings where the disclosure is for the purposes of the Act or regulations and is for the purpose of transcribing or translating the recording, or conducting language or accent analysis of the recording. This new permitted disclosure ground will allow the disclosure of tapes of interviews with detainees to companies providing transcription and translation services, so that the tape of interview can be transcribed and translated or both. Currently, such a disclosure would constitute an offence under section 53.

Item 59 Paragraph 53(2)(i) of Schedule 2

This item amends paragraph 53(2)(i) by omitting ‘non-citizen’ and substituting ‘person’.

Paragraph (i) permits the disclosure of identifying information where it takes place with the written consent of the non-citizen to whom the identifying information relates.

This amendment ensures that no offence is committed under clause 53 if identifying information, collected from a non-citizen, is disclosed after the person has become an Australian citizen (and so no longer fits the description of ‘non-citizen’). Even where the person has given written consent to the disclosure, it would still constitute an offence under the current provision in such circumstances.

Item 60 Transitional—Authorisations

This item provides for transitional arrangements for authorisations made under clause 52 of Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*, clause 52 of Schedule 1A to the *Fisheries Management Act 1991* or clause 52 of Schedule 2 to the *Torres Strait Fisheries Act 1984*. These clauses allow the Secretary to authorise persons to have access to identifying information for certain purposes.

Item 60 applies to any such authorisations in force immediately before item 60 commences. Item 60 commences along with all of Part 1 of Schedule 1 to the bill, on a single day to be fixed by proclamation (unless the provisions are not proclaimed to commence within 6 months from the day of Royal assent, in which case they comment 6 months after Royal Assent – see clause 2 to the bill).

Such authorisations may specify access under existing paragraph 52(2)(g) of the relevant Act. Items 5, 20 and 49 amend those paragraphs to substitute new paragraphs (g). The new paragraphs (g) are worded more widely. They allow for access ‘for the purposes of this Act’ rather than the current paragraphs (g) which are limited to ‘for the purposes of making decisions under this Act’.

The effect of item 60 is that any such authorisations will continue in force after commencement of item 60 as if they authorised access ‘for the purposes of’ the relevant Act, ie as if they were made under the wider new paragraph (g).

Item 61 Application

This item provides that the amendments made by items 1 to 59 of Schedule 1 to the bill apply to access to, or disclosure of, identifying information after those items commence.

Clause 2 to the bill provides that items 1 to 59 commence on a single day to be fixed by proclamation (unless they are not proclaimed to commence within 6 months from the day of Royal assent, in which case they comment 6 months after Royal Assent).

Item 61 makes clear that the amendments do not apply to conduct taken before commencement.

Part 2— Amendments contingent on the Australian Citizenship (Transitionals and Consequentials) Act 2007

Division 1 - Amendments that commence if the Australian Citizenship (Transitionals and Consequentials) Act 2007 has not yet commenced

Migration Act 1958

Item 62 Paragraph 336D(2)(g)

This item omits paragraph 336D(2)(g) and substitutes new paragraph (g). New paragraph (g) permits authorisation of access to identifying information for the purposes of the Migration Act or regulations or for the purposes of the *Australian Citizenship Act 1948* or regulations made under that Act.

Currently, paragraph (g) limits access to where it is for the purposes of ‘making a decision under’ those pieces of legislation. The new, wider ground will ensure identifying information can be accessed for the purposes of exercising powers or performing functions under the legislation, including where the power or function is not strictly concerned with making a decision under the legislation.

A note is inserted after new paragraph (g) advising readers that the amendment to paragraph (g) does not commence if Schedule 1 to the *Australian Citizenship (Transitionals and Consequentials) Act 2007* (“the AC(TC)A”) commences before Part 1 of this Schedule.

The AC(TC)A repeals the *Australian Citizenship Act 1948* (“the ACA 1948”), at the time when the new *Australian Citizenship Act 2007* (“the ACA 2007”) commences. The reference to the ACA 1948 in new paragraph (g) will therefore be incorrect if the AC(TC)A commences before the bill. In that case, the same amendment to paragraph (g) (with reference to the ACA 2007) will be made by item 68 of Schedule 1 to the bill.

Item 63 After paragraph 336E(2)(h)

This item inserts new paragraph 336E(2)(ha). The new paragraph permits disclosure of audio and video recordings where the disclosure is for the purposes of the Migration Act or regulations or for the purposes of the *Australian Citizenship Act 1948* or regulations made under that Act. In addition, the disclosure must be for the purpose of transcribing or translating the recording, or conducting language or accent analysis of the recording. This new permitted disclosure ground will allow the Department to disclose tapes of interviews with detainees to companies providing transcription and translation services, so that the tape of interview can be transcribed and translated or both. Currently, such a disclosure would constitute an offence under section 336E.

A note is inserted after new paragraph (ha) advising readers that the amendment to paragraph (g) does not commence if Schedule 1 to the *Australian Citizenship (Transitionals and Consequentials) Act 2007* commences before Part 1 of this Schedule.

The AC(TC)A repeals the *Australian Citizenship Act 1948* (“the ACA 1948”), at the time when the new *Australian Citizenship Act 2007* (“the ACA 2007”) commences. The reference

to the ACA 1948 in new paragraph (ha) will therefore be incorrect if the AC(TC)A commences before the bill. In that case, the same amendment (but with reference to the ACA 2007) will be made by item 69 of Schedule 1, Part 2 Division 3 to the bill. If the ACA 2007 commences after this Act, the amendment to change the reference in paragraph (ha) from ACA 1948 to ACA 2007 will be made by item 70 of Schedule 1.

Item 64 Transitional—Authorisations

This item provides for transitional arrangements for authorisations made under section 336D of the Act. Section 336D allows the Secretary to authorise persons to have access to identifying information for certain purposes.

Such authorisations may specify access under paragraph 336D(g) of the Act. Item 62 amends paragraph (g) to substitute a new paragraph (g). New paragraph (g) is worded more widely. The effect of item 64 is that any such authorisations will continue in force after commencement of item 64 as if they authorised access for the new wider grounds in paragraph (g) as amended by item 62.

A note is inserted after item 64 advising readers that the item does not commence if Schedule 1 to the *Australian Citizenship (Transitional and Consequential) Act 2007* commences before Part 1 of this Schedule. This is because the AC(TC)A repeals the *Australian Citizenship Act 1948* when the *Australian Citizenship Act 2007* commences. If the AC(TC)A commences first, a similar provision, referring to the *Australian Citizenship Act 2007*, will be made by the AC(TC)A. Once the main personal identifier amendment commence (table item 2), item 71 of Schedule 1 to the bill will commence at the same time (table item 8).

Item 65 Application

This item provides that the amendments made by items 62 and 63 of Schedule 1 to the bill apply to access to, or disclosure of, identifying information after those items commence.

Item 65 makes clear that the amendments do not apply to conduct taken before commencement.

A note is inserted after item 65 advising readers that the item does not commence if Schedule 1 to the *Australian Citizenship (Transitional and Consequential) Act 2007* (“the AC(TC)A”) commences before Part 1 of this Schedule.

This is because items 62 and 63 will not commence if the AC(TC)A commences before the main personal identifier amendments (see table item 3). The equivalent provisions to items 62 and 63, should the AC(TC)A commence first, are items 68, 69 and 70, and the application provision (equivalent to item 65) is item 72 of Schedule 1 to the bill.

Division 2—Other amendments contingent on the Australian Citizenship (Transitionals and Consequentials) Act 2007

Australian Citizenship (Transitionals and Consequentials) Act 2007

Item 66 Item 39 of Schedule 1

This item repeals item 39 of Schedule 1 of the *Australian Citizenship (Transitionals and Consequentials) Act 2007*.

A note is inserted after the item advising readers that this item does not commence if Schedules 1 and 3 to the *Australian Citizenship (Transitionals and Consequentials) Act 2007* (“the AC(TC)A”) commence before Part 1 of this Schedule.

Item 39 updates the reference to the *Australian Citizenship Act 1948*, in paragraph 336D(2)(g), to “the *Australian Citizenship Act 2007*”. If the AC(TC)A commences after the main personal identifier amendments, item 39 will be redundant, as the same change will have been already effected by item 62 of Schedule 1.

Item 67 Item 22 of Schedule 3

This item repeals item 22 of Schedule 3 of the *Australian Citizenship (Transitionals and Consequentials) Act 2007*.

A note is inserted after the item advising readers that this item does not commence if Schedules 1 and 3 to the *Australian Citizenship (Transitionals and Consequentials) Act 2007* (“the AC(TC)A”) commence before Part 1 of this Schedule.

Item 22 provides a transitional provision for the purposes of the personal identifier provisions of the Migration Act, to cater for the repeal of the *Australian Citizenship Act 1948* (by the AC(TC)A) and the commencement of the new *Australian Citizenship Act 2007*. If the AC(TC)A commences after the main personal identifier amendments, item 22 will be redundant, as the same effect will have been already achieved by item 64 of Schedule 1.

Migration Act 1958

Item 68 Paragraph 336D(2)(g)

This item omits paragraph 336D(2)(g) and substitutes new paragraph (g). New paragraph (g) permits authorisation of access to identifying information for the purposes of the Migration Act or regulations or for the purposes of the *Australian Citizenship Act 2007* or regulations made under that Act.

Currently, paragraph (g) limits access to where it is for the purposes of ‘making a decision under’ those pieces of legislation. The new, wider ground will ensure identifying information can be accessed for the purposes of exercising powers or performing functions under the

legislation, including where the power or function is not strictly concerned with making a decision under the legislation.

This item commences at the later of the time the main personal identifier amendments commence (subsection 2(2) table item 2), or immediately after the commencement of the *Australian Citizenship (Transitionals and Consequentials) Act 2007* (see subsection 2(2) table item 5).

Item 69 After paragraph 336E(2)(h)

This item inserts new paragraph 336E(2)(ha). The new paragraph permits disclosure of audio and video recordings where the disclosure is for the purposes of the Migration Act or regulations or for the purposes of the *Australian Citizenship Act 2007* or regulations made under that Act. In addition, the disclosure must be for the purpose of transcribing or translating the recording, or conducting language or accent analysis of the recording.

This new permitted disclosure ground will allow the Department to disclose tapes of interviews with detainees to companies providing transcription and translation services, so that the tape of interview can be transcribed and translated or both. Currently, such a disclosure would constitute an offence under section 336E.

A note is inserted after new paragraph (ha) advising readers that the new paragraph does not commence at all if Schedule 1 to the *Australian Citizenship (Transitionals and Consequentials) Act 2007* (“the AC(TC)A”) does not commence before Part 1 of this Schedule. In that case, the same amendment, referring to the *Australian Citizenship Act 1948*, will be made by item 63 of Schedule 1 to the bill, and the reference to ACA 1948 will be updated to ACA 2007 by item 70.

Item 70 Subparagraph 336E(2)(ha)(i)

This item repeals subparagraph 336E(2)(ha)(i) and substitutes a new subparagraph (i). A note is inserted advising readers that this item does not commence at all if Schedule 1 to the *Australian Citizenship (Transitionals and Consequentials) Act 2007* (“the AC(TC)A”) commences before Part 1 of this Schedule.

Item 70 repeals and substitutes subparagraph 336E(2)(ha)(i) of the Migration Act, inserted by item 63 of Schedule 1, Part 2 Division 2 of this Act. It changes the reference from ACA 1948 to ACA 2007. (Item 63 commences when the main personal identifier amendments commence, provided the AC(TC)A has not already commenced at that time – see subsection 2(2), table item 3). Item 70 only takes effect if the AC(TC)A commences after the bill. If that occurs, the amendment made by item 70 will commence immediately after the AC(TC)A commences. The AC(TC)A repeals the *Australian Citizenship Act 1948*, at the time that the *Australian Citizenship Act 2007* commences.

Item 71 Transitional—Authorisations

This item provides for transitional arrangements for authorisations made under section 336D of the Migration Act. Section 336D allows the Secretary to authorise persons to have access to identifying information for certain purposes.

Such authorisations may specify access under paragraph 336D(2)(g) of the Act. Item 68 amends paragraph (g) to substitute a new paragraph (g). New paragraph (g) is worded more widely. It allows for access ‘for the purposes of this Act’ rather than the more limited ‘for the purposes of making decisions under this Act’.

The effect of item 71 is that any such authorisations will continue in force after commencement of item 68 as if they authorised access ‘for the purposes of’ the relevant Act, ie as if they were made under the wider new paragraph (g).

Item 71 commences when the main personal identifier amendments commence (see subclause 2(2), table item 8).

Item 72 Application

This item provides that the amendments made by items 68, 69 or 70 of Schedule 1 to the bill apply to access to, or disclosure of, identifying information after those items commence.

Item 72 makes clear that the amendments do not apply to conduct taken before commencement.

Item 72 commences when the main personal identifier amendments commence (see subclause 2(2), table item 8).

Schedule 2—Authorisations relating to movement records

Migration Act 1958

Item 1 After paragraph 488(2)(a)

This item inserts new paragraph 488(2)(aa).

The new paragraph provides that the Minister may authorise an officer, for the purpose of making a movement record available to, and for the use of either the person to whom the record relates or the duly appointed agent of that person, to perform one or more of the actions listed in subsection 488(1).

Subsection 488(1) makes it an offence for a person to read, examine, reproduce by any means, or use or disclose by any means, any part of a client's movement records, otherwise than in accordance with an authority given under subsection 488(2).

The authorisations in subsection 488(2) do not currently provide for the disclosure of movement records to an individual to whom the record relates or to his or her duly appointed agent.

This amendment will authorise the disclosure of movement records to an individual to whom the record relates or to his or her duly appointed agent. This will ensure consistency with the objectives of the *Freedom of Information Act 1982* and the Ombudsman's view that government agencies should facilitate access by an individual to his or her own information. The amendment will also ensure the Department can respond to client requests in a more efficient manner.

Item 2 Application provision

This item provides that the amendment made by item 1 of Schedule 2 to the bill applies in relation to any request made to the Department for access to a movement record by the person to whom the record relates or by the duly appointed agent of that person, on or after the commencement of Schedule 2 to the bill.

Schedule 3—Other amendments

Migration Act 1958

Item 1 **Subsection 5(1) (paragraph (a) of the definition of *fisheries detention offence*)**

New paragraph (a) of the definition of *fisheries detention offence* in subsection 5(1) adds two new offences from the *Fisheries Management Act 1991* to the list of offences that are defined as fisheries detention offences for the purposes of the Migration Act.

Currently, by operation of section 164B of the Act, enforcement visas are granted to non-citizens on foreign boats when a fisheries officer makes a certain requirement of the master of the vessel or exercises certain powers under the fisheries legislation, because the fisheries office has reasonable grounds to believe the boat has been used, is being used, or is intended to be used, in the commission of a “fisheries detention offence” or upon taking the person into fisheries detention after arrival in the migration zone.

The term *fisheries detention offence* is defined in subsection 5(1) by simply listing relevant offences contained in the *Fisheries Management Act*, the *Torres Strait Fisheries Act* and the *Crimes Act*.

In the Winter 2006 Parliamentary sittings Parliament passed the *Fisheries Legislation Amendment (Foreign Fishing Offences) Act 2006* which inserted new offences into the *Fisheries Management Act 1991* and the *Torres Strait Fisheries Act 1984*.

The new offences provide for custodial penalties for foreign fishing offences in those parts of Australia’s territorial sea that are within the Australian Fishing Zone, within the meaning of the FMA, or within any ‘area of Australian jurisdiction’, within the meaning of the TSFA.

New subsection 5(1) (paragraph (a) of the definition of *fisheries detention offence*) adds the new cross-reference to the *Fisheries Management Act 1991* offences contained in sections 100B and 101AA by omitting the phrase “100A, 101, 101A” and substituting the phrase “100A, 100B, 101, 101A and 101AA”.

Item 2 **Subsection 5(1) (paragraph (b) of the definition of *fisheries detention offence*)**

New paragraph (b) of the definition of *fisheries detention offence* in subsection 5(1) adds two new offences from the *Torres Strait Fisheries Act 1984* to the list of offences that are defined as fisheries detention offences for the purposes of the Migration Act.

The operation of the new definition of *fisheries detention offence* is discussed above.

New subsection 5(1) (paragraph (b) of the definition of *fisheries detention offence*) adds the new cross-reference to the *Torres Strait Fisheries Act 1984* offences contained in sections 46A, 46B, 46C, 46D, 49A and 51A by omitting the phrase “45, 48, 49 or 51” and substituting the phrase “45, 46A, 46B, 46C, 46D, 48, 49, 49A, 51 or 51A”.