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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AUSCHECK AMENDMENT BILL 2009**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,  
the Hon Robert McClelland, MP)

# AUSCHECK AMENDMENT BILL 2009

## OUTLINE

The main purpose of this Bill is to amend the *AusCheck Act 2007* ('the Act') to provide a capacity for background checks under the Act to be carried out for national security purposes. The current Act only allows background checks for the purposes of the *Aviation Transport Security Act 2004* and the *Maritime Transport and Offshore Facilities Security Act 2003*.

No requirement for any person to actually have a background check will be imposed as a result of the amendment to the Act. Rather, the amendments will provide a bare capacity for the Attorney-General's Department, carrying out its responsibility for conducting background checks, to conduct background checks that are required under authority of some other law. A background check under the Act could then be identified as a requirement for access to places, things, substances or employment positions as specified by a regulatory scheme.

Background checking is used worldwide in a variety of security situations. For example, in Australia, the United States and the United Kingdom, all airport personnel must undergo background checks. Background checking is generally used as one element of a personnel security framework and is part of the broader 'security culture' of an organisation consisting of staff awareness and understanding, ongoing security measures and checks, and the implementation of appropriate access controls for assets.

Where the Government decides that a background check should be a national security background check, separate legislative or other regulatory provisions would be required to establish the requirement for a check.

A national security background check could be used to implement background checking policy in a number of areas where there is a perceived national security risk. For example, the Council of Australian Governments (COAG) Review of Hazardous Materials has identified access to security sensitive biological materials as an area where activities need to be regulated to address national security risks (<http://www.health.gov.au/internet/main/publishing.nsf/Content/ssba.htm#standards>).

The amendments will also include specific provisions to authorise and protect biometric information about an individual where this is required in order to complete a background check. In conducting criminal history background checks it is sometimes necessary to confirm the identity of an individual so that police services can distinguish between people with the same or similar name and date of birth. In these circumstances, it may not be possible to complete the background check unless the identity of the individual can be confirmed through the provision of further identification information such as fingerprints. The amendments are intended to ensure that if AusCheck is required to facilitate the provision of this information to the relevant police jurisdiction, then this information will be (i) afforded all of the additional protections given to other AusCheck personal information; and (ii) not be available for any purpose other than a further background check. This is intended to

reflect the purpose of collecting this information in the first place which is the verification of a particular individual's identity only.

As a consequence of the inclusion of a capacity to conduct national security background checks, the Bill also includes amendments to the provisions that give authority for AusCheck to provide an online verification service. The online verification service is currently restricted to verifying aviation security identification cards and maritime security identification cards. With the addition of a national security background check capacity, this authority is consequently expanded so that an online verification service may be used to verify other types of cards or licences that may be issued indicating that a person has undergone a national security background check.

### **Financial Impact Statement**

The amendments in this Bill have negligible financial implications.

## NOTES ON CLAUSES

### **Clause 1: Short Title**

1. Clause 1 is a formal provision specifying the short title of the Bill.

### **Clause 2: Commencement**

2. The Bill will commence on the day on which it receives Royal Assent.

### **Clause 3: Schedule(s)**

3. This is a machinery provision that enables the Schedule to amend Acts simply by including amendments under the title of the relevant Act.

## **Schedule 1 – Amendments**

### *AusCheck Act 2007*

#### **Item 1 – Subsection 4(1)**

4. This item inserts a new definition of *identity verification information*. This definition is used in the amendments to section 14 of the Act so that identity verification information that is biometric information, other than a photograph, is only available for the purpose of conducting a subsequent background check. Biometric information is not defined in the Act and hence will take on its ordinary meaning. A photograph is excluded from the definition of *identity verification information* as it is necessary for the operation of the online verification service. For example, an authorised user may need to use the online verification service in order to visually compare the photograph of an individual recorded on the database as holding an aviation security identification card (ASIC) with the individual who is presenting that ASIC.

#### **Item 2 – Subsection 4(1)**

5. This item includes a new definition of *national security background check*. This definition is included as a consequence of the amendments to section 8.

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

6. This item amends the definition of personal information for the purposes of the Act so that it is broad enough to cover identifiers other than an aviation security identification card or a maritime security identification card. This amendment is made as a consequence of the inclusion of the national security background check capacity.

#### **Item 4 – Paragraph 5(b)**

7. This item clarifies that the reference to security assessment in the definition of *background check* refers to a security assessment within the meaning of the *Australian Security Intelligence Organisation Act 1979*.

#### **Item 5 – Paragraph 5(d)**

8. This item amends the definition of *background check* for the purposes of the Act, by omitting the specific reference to the verification of documents in relation to

the identity of an individual. This amendment is made so that an individual's identity may be confirmed other than through verifying documentation.

**Item 6 – Section 8**

9. This item amends section 8 as a consequence of the amendment to paragraph 5(d).

**Item 7 – At the end of section 8**

10. This item adds national security to the purposes for which the regulations may establish the AusCheck scheme. These purposes are intended to permit the use of background checks as part of a strategy to protect the nation against attack, including domestic attack.

**Item 8 – At the end of paragraph 9(1)(i)**

11. This item amends the description of the online verification service that may be provided for in the AusCheck scheme to include verification that an individual has undergone a national security background check.

**Item 9 – At the end of section 9**

12. This item amends paragraph 9(1)(b) to recognise and clarify that where an individual has applied for a particular card, licence, permit or authorisation then they are background checked as a result of proceeding with that application. In this situation, the background check is a condition of that application rather than something to which the individual has separately consented.

**Item 10 – Section 13**

13. This item amends section 13 as a consequence of the inclusion of the amendment to insert a new subsection 13(2).

**Item 11 – Section 13**

14. This item excludes *identity verification information* from the operation of subsection 13(1) as a consequence of the separate treatment of this subset of personal information under new subsection 13(2).

**Item 12 – At the end of paragraph 13(c)**

15. This item amends the authority for the Secretary to provide an online verification service. The amendment is consequential to the inclusion of the national security background check capacity, and provides that an online verification service may be used to verify other types of authorities that may be issued indicating that a person has undergone a national security background check.

**Item 13 – At the end of section 13**

16. This item inserts a new subsection 13(2) to provide that the collection, use and disclosure of *identity verification information* is taken to be authorised under the *Privacy Act 1988* for a much narrower range of purposes than other personal information.

**Item 14 – Subsection 14(2)**

17. This item and following items amend the provision that authorises the use and or disclosure of AusCheck scheme personal information so that *identity verification*

*information* (for example, fingerprints) is given enhanced protection. The amendments do this through separating out identity verification information so this information is restricted to use or disclosure for the purpose of subsequent background checking only. The intention of the amendments is that biometric information is only used for background checking purposes – that is, to make sure of the identity of the person – and not for other purposes associated with the AusCheck scheme. This is achieved by splitting the provisions in current subsection 14(2) with the following effect.

- Under proposed new subsection 14(2) AusCheck scheme personal information may be included in the AusCheck database (as it may be currently).
- Under proposed new subsection 14(2AA), the inclusion of the words ‘(other than *identity verification information*)’ has the effect of excluding identity verification information from disclosure under that provision. That is, biometric data such as fingerprints cannot be disclosed for the purposes of responding to an incident that poses a threat to national security and cannot be used for the collection, correlation, etc of criminal intelligence or security intelligence information for law enforcement or national security purposes.

#### **Item 15 – Subsection 14(2A)**

18. This item amends the authority for the use or disclosure of AusCheck scheme personal information for the purpose of verifying that a person has been issued with an aviation security identification card or maritime security identification card so that *identity verification information* may not be used for this purpose. Because photographs are excluded from the definition of identity verification information, photographs may continue to be used for online verification service purposes.

#### **Item 16 – At the end of subsection 14(2A)**

19. This item amends the authority for the use or disclosure of AusCheck scheme personal information to include use or disclosure for the purpose of verifying that an individual has undergone a national security background check.

#### **Item 17 – After subsection 14(2A)**

20. This item inserts new subsection 14(2AB). In contrast to new subsection 14(2AA), *identity verification information* is not excluded from proposed new subsection 14(2AB) with the effect that use of biometric data such as fingerprints may only be used or disclosed for the purpose of carrying out a subsequent background check under the AusCheck scheme.

#### **Item 18 – Subsection 14(2B)**

21. This item amends subsection 14(2B) to ensure that information disclosed under new subsection 14(2AB) is the minimum necessary for the purposes of carrying out a subsequent background check.

#### **Item 19 – Subsection 14(3)**

22. This item is intended to ensure *identity verification information* may not be de-identified so that it can be used in such a way that de-identified information may be used.