

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

AusCheck Amendment Bill 2009

No. , 2009

(Attorney-General)

**A Bill for an Act to amend the *AusCheck Act 2007*,
and for related purposes**

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1 **A Bill for an Act to amend the *AusCheck Act 2007*,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

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

6 **2 Commencement**

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

9 **3 Schedule(s)**

10 Each Act that is specified in a Schedule to this Act is amended or
11 repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Amendments

4

AusCheck Act 2007

5

1 Subsection 4(1)

6 Insert:

7 *identity verification information*, in relation to an individual,
8 means AusCheck scheme personal information consisting of the
9 individual's fingerprints or other biometric data about the
10 individual, but does not include a photograph of the individual.

11

2 Subsection 4(1)

12 Insert:

13 *national security background check*, in relation to an individual,
14 means a background check performed in relation to the individual
15 for a purpose referred to in subparagraph 8(c)(i), (ii), (iii), (iv), (v)
16 or (vi).

17

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

18 Repeal the paragraph, substitute:

- 19 (b) any other identifier assigned to the individual;
20 (c) a photograph of the individual.
21

22

4 Paragraph 5(b)

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

25

5 Paragraph 5(d)

26 Omit “verification checks of documents relating to”.

27

6 Section 8

28 Omit “, and the verification of documents”.

29

7 At the end of section 8

30 Add:

- 1 ; and (c) for purposes related to:
2 (i) Australia's national security; or
3 (ii) the defence of Australia; or
4 (iii) a national emergency; or
5 (iv) the prevention of conduct to which Part 5.3 of Chapter 5
6 of the *Criminal Code* applies; or
7 (v) the executive power of the Commonwealth; or
8 (vi) matters incidental to the execution of any of the
9 legislative powers of the Parliament or the executive
10 power of the Commonwealth.

11 **8 At the end of paragraph 9(1)(i)**

- 12 Add:
13 ; or (iii) that a national security background check has been
14 conducted in relation to a particular individual; or
15 (iv) that an individual who is in possession of a card,
16 licence, permit or other authorisation in relation to
17 which a national security background check has been
18 conducted is the individual to whom the card, licence,
19 permit or authorisation was issued.

20 **9 At the end of section 9**

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

34 **10 Section 13**

- 35 Before "The collection," insert "(1)".

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

3 **11 Section 13**

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

6 **12 At the end of paragraph 13(c)**

7 Add:

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

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

15 **13 At the end of section 13**

16 Add:

17 *Collection, use and disclosure of identity verification information*

18 (2) The collection, use and disclosure of identity verification
19 information about an individual is taken to be authorised by law for
20 the purposes of the *Privacy Act 1988* if:

21 (a) the collection, use or disclosure is directly necessary for the
22 purpose of verifying the identity of an individual in respect of
23 whom a background check is being or has been conducted
24 under the AusCheck scheme; and

25 (b) for a use or disclosure—the information is only used or
26 disclosed to the extent necessary for the purpose mentioned
27 in paragraph (a).

28 **14 Subsection 14(2)**

29 Repeal the subsection, substitute:

30 (2) AusCheck scheme personal information about an individual may
31 be included in the AusCheck database.

1 *Use and disclosure of AusCheck personal information other than*
2 *identity verification information*

3 (2AA) AusCheck scheme personal information about an individual (other
4 than identity verification information) may be used or disclosed for
5 the following purposes:

6 (a) carrying out a subsequent background check in relation to the
7 individual under the AusCheck scheme;

8 (b) responding to an incident that poses a threat to national
9 security;

10 (c) the collection, correlation, analysis or dissemination of
11 criminal intelligence or security intelligence by the
12 Commonwealth, or by a Commonwealth authority that has
13 functions relating to law enforcement or national security, for
14 purposes relating to law enforcement or national security.

15 Note: The following heading to subsection 14(1) is inserted "*Establishment of AusCheck*
16 *database*".

17 **15 Subsection 14(2A)**

18 Omit "individual may be", substitute "individual (other than identity
19 verification information) may also be".

20 **16 At the end of subsection 14(2A)**

21 Add:

22 ; or (c) that a national security background check has been
23 conducted in relation to a particular individual; or

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

29 **17 After subsection 14(2A)**

30 Insert:

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

33 (2AB) Identity verification information about an individual may be used
34 or disclosed for the purpose of verifying the identity of the

1 individual if a subsequent background check is being conducted in
2 respect of the individual under the AusCheck scheme.

3 **18 Subsection 14(2B)**

4 After “(2A)”, insert “ or (2AB)”.

5 **19 Subsection 14(3)**

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