



**Australian
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AusCheck Amendment Bill 2009

Submission to

Senate Legal & Constitutional Committee

June 2009

The Australian Privacy Foundation

The Australian Privacy Foundation (APF) is the leading non-governmental organisation dedicated to protecting the privacy rights of Australians. We aim to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians.

Since 1987 the Australian Privacy Foundation has led the defence of the rights of individuals to control their personal information and to be free of excessive intrusions. We use the Australian Privacy Charter as a benchmark against which laws, regulations and privacy invasive initiatives can be assessed.

For further information about the Foundation, see www.privacy.org.au

Introduction and General Comments

Our comments on this Bill need to be read in the context of our original concerns about the AusCheck scheme, as set out in our submission to the Committee on the AusCheck Bill 2006, in February 2007.

We note that many of our concerns were also reflected in the Privacy Impact Assessment (PIA) on the AusCheck scheme by Salinger Consulting ([http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(756EDFD270AD704EF00C15CF396D6111\)~Privacy+Impact+Assessment+-+Auscheck.pdf/\\$file/Privacy+Impact+Assessment+-+Auscheck.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(756EDFD270AD704EF00C15CF396D6111)~Privacy+Impact+Assessment+-+Auscheck.pdf/$file/Privacy+Impact+Assessment+-+Auscheck.pdf)). We have only just become aware that a further PIA on the proposed amendments was tabled in the House of Representatives in March 2009. We have had a brief opportunity to review this PIA and the Department's response (http://www.ag.gov.au/www/agd/agd.nsf/Page/OrganisationalStructure_NationalSecurityandCriminalJustice_AusCheck_PrivacyImpactAssessmentandCommentary).

As we predicted in 2007, it is clear that the AusCheck scheme is now being expanded far beyond the initial focus on maritime and aviation security.

We remain concerned about the risk that this centralised multi-purpose identification and checking scheme adopts a 'highest common requirement' meaning that individuals' privacy is intruded on unnecessarily in contexts where a lower standard would suffice.

We submitted in 2007 that a fundamental design element of the AusCheck scheme must be a layered approach, rather than a single 'one-size-fits-all' approach. We remain concerned that it is the latter approach that has been taken.

As usual, our ability to assess the impact of the proposed amendments is hindered by a lack of detailed information on how the AusCheck scheme has actually been working since its introduction. We

acknowledge that there is material available on the Department's website at http://www.ag.gov.au/www/agd/agd.nsf/Page/OrganisationalStructure_NationalSecurityandCriminalJustice_AusCheck_AusCheck and in the Annual Report, but we have not had the resources to analyse this material. We submit that the Department should be required to summarise the operational experience of AusCheck as an essential context for the proposed amendments.

We remain concerned that the amendments again rely too much on Regulations. We submit that this leaves too much discretion to the Minister and Department, and that more of the basic parameters of the Scheme need to be specified in the primary legislation.

Specific Comments

We are concerned that the definition of 'national security' remains so broad as to impose no meaningful limits on the range of background checks to be undertaken by AusCheck that could be authorized by other legislation. Recommendation 11 of the March 2009 PIA has not been adopted.

We are concerned about the authority which the Bill provides for collection of biometric information for use in identity checking (contrary to Recommendation 3 of the March 2009 PIA). The Department's response to the PIA seeks to re-assure that only fingerprints will be used and only in exceptional circumstances. However the provisions are so broad as to allow for *any* biometric, presumably including DNA as well as fingerprints, voiceprints, iris/retina scans etc, and there is no guarantee that this will not become routine. We submit that the use of some of these biometrics for background checks would be a disproportionate and unnecessary privacy intrusion, and will also result in another centralized storage of personalised biometric data, with all of the vulnerabilities, risks of unauthorized access and use and possibilities for function creep that such a database inevitably involves.

The restriction on secondary use of biometric information for purposes unconnected with background checks is welcome, but is effectively undermined by the range of circumstances in which background checks can be authorised.

We are disappointed that the Government has not accepted Recommendation 7 of the March 2009 PIA to avoid misuse of the term 'consent'. While this may seem to be a merely semantic issue, as explained in the PIA, it is an endemic problem across both government and the private sector and does much to undermine public trust and confidence. Mere provision of notice should not be misrepresented as implying consent in circumstances where an individual has no practical choice not to enter a transaction.

For further contact on this submission please contact
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Please note that postal correspondence takes some time due to re-direction – our preferred mode of communication is by email, which should be answered without undue delay.