




Australian Government
Department of Home Affairs

A stylized blue globe with a digital grid overlay, showing the continents of North and South America. The globe is set against a dark blue background with light streaks and a diagonal blue triangle on the right side.

Department of Home Affairs submission to the Inquiry into the AusCheck Amendment (Global Entry Program) Bill 2025

Senate Legal and Constitutional Affairs Legislation
Committee

February 2025

Table of Contents

Introduction	2
Benefits for Australian travellers to the United States of America	2
Requirements of the GEP	2
Two-phased approach under the GEP	3
AusCheck to manage background checks under GEP	3
AusCheck scheme personal information	4
AusCheck Amendment (Global Entry Program) Bill 2025	5
Inflexible nature of the legislative framework for background checking schemes	5
Conclusion	5
Attachment A: Summary of Measures.....	6

Introduction

1. The Department of Home Affairs (the department) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee on the AusCheck Amendment (Global Entry Program) Bill 2025 (the Bill), and associated explanatory memorandum.
2. This submission outlines the need for amendments to the *AusCheck Act 2007* (the AusCheck Act), to establish the legislative basis for the fulfilment of Australia's background checking obligations in order to participate in the United States' Global Entry program (the GEP). These amendments are necessary as the framework for background checking restricts the ability to develop new schemes in an agile manner as and when required by Government.

Benefits for Australian travellers to the United States of America

3. Australia and the United States have an important and longstanding relationship built upon strong diplomatic, security, economic and peer-to-peer relationships. As a result, significant numbers of Australian citizens travel annually to the US and its territories. Currently, Australian citizens entering the US generally have no means of accessing expedited customs clearance, a benefit available to citizens of other nations under the GEP. Citizens of the US and some eighteen other partner countries are eligible to apply for membership in the GEP.
4. Accordingly, on 6 August 2024, the Minister for Home Affairs, the Hon Tony Burke MP, and the Minister for Foreign Affairs, Senator the Hon Penny Wong, announced that Australia would join the GEP from 2025. This would be done via a two-phased approach, delivering on Australia's participation in the GEP for the thousands of Australian travellers who visit the US frequently.

Requirements of the GEP

5. The GEP is a trusted traveller program that permits access to expedited immigration and customs clearance channels on arrival into the US for pre-approved, low risk travellers from GEP-approved countries.
6. Participation in the GEP is completely voluntary. There is no obligation for Australian citizens to apply for the GEP and they can still travel to the US as normal, without applying to the GEP. Australian citizens are still required to meet any visa (or other immigration) requirements imposed by the US, regardless of whether they are GEP members.
7. The GEP is not a reciprocal program between Australia and the US. Australia's participation in the program does not provide any equivalent benefit for US citizens traveling to, or arriving in, Australia.
8. GEP-approved countries are required to conduct background checks on their citizens who apply to the GEP to inform the US of their eligibility for the program. Following these background checks, further screening is undertaken by US authorities. For the purposes of the Australian background check, if the applicant has been convicted of any criminal offence in Australia, or has a specified Australian Defence Force Service offence history, they will be ineligible for the GEP. Applicants should ensure they are eligible for the GEP prior to applying, by considering the eligibility criteria set out by the US.
9. Australian citizens, wanting to apply for GEP membership, must do so directly to the US through United States Customs and Border Protection (USCBP). USCBP will subsequently contact GEP applicants for required information and documents covering the applicant's identity and citizenship details so it can conduct its own checks. USCBP will then notify Australia of the application so Australia can commence the Australian background checks.

10. Australia will only inform USCBP as to whether the applicant has been found eligible or not eligible, based on the criteria set by the USCBP. No further detail about the background check that has been conducted will be shared between the US and Australia. This follows the agreement between the US and Australia to share only a minimum amount of information necessary to satisfy the US of the applicant's eligibility.
11. The applicant, if conditionally approved by the US, will be required to attend an in person interview with USCBP authorities upon travelling to the US, as required by USCBP. The US are the ultimate decision-makers regarding an applicant's eligibility and membership for the GEP. If the US grants an Australian applicant access to the GEP, the Australian Government will be required to conduct annual background checks on the participant during their five-year term in the program.

Two-phased approach under the GEP

12. Australia is implementing GEP in a two-phased approach. Phase one, which commenced in mid-January 2025, limits the number of Australian citizens eligible to apply for the GEP. Phase one has been capped, with Australia processing background checks for up to 1000 individuals. In addition to US eligibility criteria, to be eligible for phase one, Australians must have travelled to the US five or more times in the preceding 12 months.
13. This phase has been met with high interest from the Australian public, and places are expected to be exhausted within six weeks from date of commencement.
14. Phase two will facilitate Australia's ongoing participation by establishing a legislative authority under the AusCheck Act to enable the undertaking of the required background checks. Phase two will be uncapped, and applicants will not be required to have travelled to the US five or more times in the preceding 12 months. The legislative and regulatory changes under phase two will also strengthen the protection of personal information collected and enable cost recovery.
15. The Australian Government has identified AusCheck as the appropriate entity through which to facilitate Australia's background checking obligations for the GEP, and the amendments in the Bill will make the required legislative changes to the AusCheck Act to fully enable background checking for that purpose.

AusCheck to manage background checks under GEP

16. AusCheck has a long history of providing background checks for various national security related background checking programs. It has well-established controls and processes in place, and the expertise and experience necessary to undertake background checks for the high volume of applicants expected to apply for the GEP.
17. Background checks are managed through AusCheck's cyber-secure system, which limits unauthorised access to applicants' information. The system features integration with checking partners to ensure a secure and efficient end-to-end process for assessing applications. Utilising the existing AusCheck framework will provide a streamlined background checking process for Australian GEP applicants.
18. Information provided to AusCheck as part of the GEP will be stored separately to all other AusCheck scheme information, information cannot be transferred across schemes. Like all AusCheck schemes, GEP information will be held securely by the department with access permitted on a need-to-know basis and only by authorised personnel.

AusCheck scheme personal information

19. All personal information collected through the AusCheck GEP background check process will be 'AusCheck scheme personal information', which enables the application of existing safeguards in the AusCheck legislation to information collected for GEP background checking purposes.
20. The use and disclosure of AusCheck scheme personal information is subject to the stringent safeguards set out under sections 13, 14 and 15 of the AusCheck Act.
 - a. Section 13 of the AusCheck Act specifies the limited circumstances in which the collection, use and disclosure of personal information about an individual is authorised by the AusCheck Act for the purposes of the *Privacy Act 1988*. These circumstances include where the collection, use or disclosure is for the purposes of or directly relating to determining whether a background check is required, conducting a background check and advising of the outcome, and to update information held by the Secretary. Collection, use and disclosure of identity verification information is authorised only to the extent that it is necessary for the purpose of verifying the identity of the individual to whom the background check relates.
 - b. Section 14 of the AusCheck Act outlines the limited circumstances where AusCheck retains information, including where it may be included in the AusCheck database, or used or disclosed to carry out a subsequent background check, monitoring or enforcing compliance with a requirement of the AusCheck scheme, responding to an incident that poses a threat to national security, and for law enforcement purposes. Section 14 also allows for de-identified information to be used for research, government planning or industry planning purposes.
 - c. Section 15 of the AusCheck Act specifies that it is an offence under the AusCheck Act for an individual to make an unauthorised disclosure of AusCheck scheme personal information, or information relating to the AusCheck scheme, punishable by two years' imprisonment.
21. The broader protections offered by the *Privacy Act 1988*, will also continue to apply and govern how personal information that is disclosed for the GEP is utilised.
22. The Bill will provide further safeguards on the limitation of the right to privacy by including express consent requirements that will apply in particular circumstances for GEP background checks. Broadly, these are:
 - a. requiring the consent of a parent or guardian for an application for a background check by an individual under the age of 18 (a minor);
 - b. requiring the consent of the individual to whom the background check relates for an application for a background check by a person other than the individual to whom the background check relates; and
 - c. requiring the consent of a parent or guardian for an application for a background check by a person other than the individual to whom the background check relates.
23. The consent requirement embedded in the Bill provides a safeguard on the limitation to the right to privacy by ensuring that there is full and express consent as to the handling of personal information as part of the background check.

AusCheck Amendment (Global Entry Program) Bill 2025

24. The Bill seeks to expand the regulation-making power in section 8 of the AusCheck Act, enabling an AusCheck scheme to be established for the purpose of GEP-related background checks. The Bill also makes a number of consequential and supporting amendments to the AusCheck Act, including:
- a. inserting a number of new definitions in subsection 4(1) of the AusCheck Act to support the amendments relating to GEP background checks;
 - b. amending the existing definition of *AusCheck scheme personal information* to include information obtained by an agency for the purposes of GEP background checks prior to the commencement of the amendments in Schedule 1 to the Bill;
 - c. amending the definition of *background check* in section 5 of the AusCheck Act to expand the types of background checks permissible under the AusCheck Scheme for the GEP to include a check for certain offences under the *Defence Force Discipline Act 1982*, to meet the GEP eligibility criteria; and
 - d. inserting new section 10AB in the AusCheck Act, which provides a regulation-making power to prescribe matters in the AusCheck Regulations to operationalise the conducting of background checks in connection with the GEP.
25. The amendments in the Bill do not impose any new expenditure and the overall financial impact is assessed as low. The ongoing costs of resourcing and administering the measures in this Bill will require ongoing departmental funding. It is the intention that the cost of background checks required under the GEP in phase two will be cost recovered from applicants; the quantum of that cost is still to be determined, and will be prescribed by regulations made under the AusCheck Act as amended.
26. Further information on the measures is provided at **Attachment A**.

Inflexible nature of the legislative framework for background checking schemes

27. Legislative amendments to the AusCheck Act are necessary for the purposes of Australia's ongoing participation in GEP due to the inflexible nature of the framework for background checks presently set out in section 8 of the AusCheck Act. If there were a broad ability to introduce additional background checking schemes, in the future the department would be able to adopt an agile approach to background checking for the benefit of Australia's security and economic benefit as and when required by Government.

Conclusion

28. Australia's participation in the GEP bolsters our strong relationship with the US and signifies the closeness and trust between the two nations.
29. The swift take up rates of phase one to date indicates that Australians want the opportunity to access expedited clearances when crossing US borders, which is already available for citizens of sixteen other nations.
30. This Bill provides an opportunity to enable Australia's ongoing participation in the GEP, and open up the program to an unlimited number of Australian citizens.

Attachment A: Summary of Measures

AusCheck Amendment (Global Entry Program) Bill 2025

Schedule 1

Item 1 – AusCheck Scheme Personal Information

- Insert a new paragraph under the current definition of *AusCheck scheme personal information*.
- This amendment ensures that information collected by AusCheck for the purpose of GEP background checks before or after the commencement of the GEP is appropriately subject to the protection of information provisions in section 15 of the AusCheck Act. Section 15 includes a number of offences relating to the unauthorised use or disclosure of AusCheck scheme personal information by AusCheck staff members. The expanded definition will ensure that information collected as part of the GEP will be subject to the same safeguards as other information collected through the AusCheck scheme and be considered AusCheck scheme personal information. The amendment of the definition will also permit this information to be retained and used for the purposes provided for in section 14 of the AusCheck Act.

Item 2 – Definitions

- Insert the new terms *Defence Force Magistrate*, *Global Entry Program*, *Schedule 1A offence* and *service offence*.
- The purpose of this amendment is to support the expanded definition of ‘background check’ provided by AusCheck. A background check for the purpose of the GEP is to consider whether the person subject to the background check has been convicted of a service offence or Schedule 1A offence by a Defence Force magistrate under the *Defence Force Discipline Act 1982*.
- This amendment also supports the use of the GEP in amended subsection 8(1) and new section 10AB of the Amendment Act, which are respectively contained in item 4 and item 5 of this Schedule, and sets out what the GEP is for the purpose of the extended regulation-making power in section 8.

Item 3 – Background check

- Insert new paragraph in section 5, which establishes a new class of information that may be assessed as part of a background check under the GEP.
- Provides that the background check may assess whether a court martial, or a Defence Force magistrate, has convicted the individual of a service offence other than a Schedule 1A offence.
- This purpose of this amendment is to establish a new class of information that may be assessed as part of a background check under an extended AusCheck scheme for the GEP. The extension to the definition of **background check** is only applicable to the AusCheck scheme as it relates to an assessment of an individual in connection with the individual's participation in the GEP.

Item 4 – Regulation making power for GEP

- Inserts a new paragraph to expand the purposes for which regulations may be made for the establishment of the GEP AusCheck scheme.

- The purpose of this amendment provides that regulations may be made to undertake background checks of individuals in connection with the individual's participation in the GEP. This will allow regulations to be made to facilitate the conduct and coordination of background checks of individuals in connection with the individual's participation in the GEP which enables the effective ongoing facilitation of Australia's GEP background checking obligations.
- It provides a head of power for the expansion of the AusCheck Scheme to facilitate background checks for the GEP, with relevant matters to be prescribed in regulations made under the Act.

Item 5 – GEP regulation

- Insert new subsection 10AB that details the matters that regulations can be made for the purpose of the GEP.
- GEP regulations can be made for the purposes of:
 - setting out the application process for an AusCheck background check for the purposes of the GEP and distinguishing it from background checks undertaken for other purposes under the AusCheck legislation;
 - specifying that consent to undertake the background check is to be provided by the parent or legal guardian of a child under the age of 18;
 - specifying that the making of applications for a background check for the purposes of the GEP by a person other than the individual to whom the background check relates, must have consent of the individual to whom the background check relates, or their parent or legal guardian;
 - specifying the information that is to be contained in an application for a GEP background check;
 - giving of information to the Secretary, relating to an individual in respect of whom a background check is conducted, that is directly necessary for the purpose of conducting the background check;
 - establishing criteria against which a background check for the purposes of the GEP is to be assessed;
 - what decision or decisions may be made as a result of a background check for the purposes of the GEP;
 - prescribing the decision-making methodology to be applied when making a decision as a result of a background check for the purposes of the GEP;
 - what form of advice to be given to an applicant for a background check for the purposes of the GEP;
 - what forms of advice can be given to an individual in respect of whom a background check is conducted for the purposes of the GEP;
 - what forms of advice can be given to other persons about the outcome of a background check for the purposes of the GEP; and
 - what forms of advice which may be given to the US about the outcome of a background check conducted for the purposes of the GEP, which includes limiting the information provided to the US to a finding that the applicant is either "Eligible" or "Not Eligible".

Item 6 – Application and transitional provisions

Subitem 6(1)

- Provides that the amendment of *AusCheck scheme personal information* applies to the use and disclosure of information by a person after the commencement of that item, whether the person obtains the information before or after commencement.

- The intention is to include all information disclosed by a person and it does not matter whether that person obtained the information before or after commencement of Schedule 1 of the Bill.

Subitem 6(2)

- Provides that information mentioned in the expanded definition of *AusCheck scheme personal information* is to be considered AusCheck scheme personal information if it is obtained by a person at the time the person obtains it, or if obtained by a person before the commencement of this item.
- The nature of these provisions means that information obtained as a result of background checks done before the commencement of Schedule 1 will be subject to the protected information framework on commencement.
- This will ensure that all information obtained by AusCheck relating to GEP background checks under phase one will be subject to the same level of protection, regardless of when it was obtained.

Subitem 6(3)

- Provides that if a conviction, inserted under Item 3, occurs before or after commencement, there is beyond doubt for the purpose of the background checks for the expanded GEP AusCheck scheme, convictions of the kind specified may be assessed as part of the background check if the conviction occurred before or after the commencement of this item.