

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

---

*(As read a first time)*

**AUSTRALIA CARD BILL 1986**

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1985-86

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 22 October 1986

*(Minister for Health)*

A BILL

FOR

An Act to provide for a national identification system  
involving the issue of a card to be known as the Australia  
Card

BE IT ENACTED by the Queen, and the Senate and the House of  
Representatives of the Commonwealth of Australia, as follows:

**PART I—PRELIMINARY**

**Short title**

5 1. This Act may be cited as the *Australia Card Act 1986*.

**Commencement**

2. (1) Part I shall come into operation on the day on which this Act  
receives the Royal Assent.

10 (2) The remaining provisions of this Act shall come into operation on  
such day as is, or on such respective days as are, fixed by Proclamation.

**Objects**

3. The objects of this Act (other than Part VI) are, by the establishment of a national system of identification of persons—

(a) to facilitate the administration and execution of the laws of the Commonwealth relating to—

- (i) taxation;
- (ii) social security;
- (iii) hospital and medical benefits; and
- (iv) immigration; and

(b) to prevent the obtaining of benefits under laws relating to the matters referred to in sub-paragraphs (a) (ii) and (iii)—

- (i) by persons not entitled to those benefits; or
- (ii) at rates exceeding those at which particular persons are entitled to receive those benefits.

**Interpretation**

4. (1) In this Act, unless the contrary intention appears—

“Agency” means the Data Protection Agency established by section 87;

“appoint” includes re-appoint;

“Australia Card number” means—

(a) in relation to a Card—the number endorsed on the Card pursuant to paragraph 17 (3) (c); and

(b) in relation to a person, being a Card-subject—the number so endorsed on the Card issued in respect of the Card-subject;

“Authority” means the administering authority under section 6;

“BDM Register” means the National Births, Deaths and Marriages Register established under sub-section 71 (1);

“Card” means an Australia Card;

“Card-subject” means the person in respect of whom a current Card has been issued;

“chief executive officer of the Authority” means the General Manager of the Commission;

“Commission” means the Health Insurance Commission established by section 4 of the *Health Insurance Commission Act 1973*;

“current Card” means a Card that has not ceased, by virtue of section 18, to be effective and has not been cancelled under section 19, 20 or 30;

“de facto spouse”, in relation to a person, means a person of the opposite sex to the first-mentioned person who lives with the first-mentioned person as the husband or wife of that person on a *bona fide* domestic basis although not legally married to that person;

“Department” has the same meaning as it has for the purposes of the *Public Service Act 1922* and includes the Commission;

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“eligible applicant”, in relation to a minor, or in relation to a Card-subject, being a minor, means—

- (a) a parent or guardian of the minor; or
- (b) any other person with whom, or with persons including whom, the minor ordinarily lives, and by whom, or by persons including whom, the minor is ordinarily cared for;

5 “employee”, except in sections 49 and 148, has the same meaning as in the *Public Service Act 1922*;

“Federal Court” means the Federal Court of Australia;

10 “functions” includes duties;

“incorrect” includes incomplete or misleading;

“Information Privacy Principles” means the Information Privacy Principles set out in section 12 of the *Privacy Act 1986*;

“Minister” means—

- 15 (a) in relation to a State—a Minister of the Crown of that State; or
- (b) in relation to the Northern Territory—the person holding Ministerial office within the meaning of the *Northern Territory (Self-Government) Act 1978*;

20 “minor” means a person who has not attained the age of 18 years;

“name”, in relation to a person, includes a recognised name of the person;

“officer”, except in sections 144 and 148, has the same meaning as in the *Public Service Act 1922*;

25 “parent”, in relation to a minor, means a person who is—

- (a) a natural parent of the minor;
- (b) an adoptive parent of the minor; or
- (c) a person of whom the minor is, by virtue of sub-section (2), to be deemed to be a child;

30 “passport”, in relation to a person, means, in a case where the person does not hold a passport, another official travel document held by the person;

35 “permanent resident” means a person who has been granted, or who is included in, an entry permit under the *Migration Act 1958* that is in force, other than a temporary entry permit within the meaning of that Act;

40 “photograph” includes an image, in the likeness of a photograph, reproduced from data acquired by electronic, photographic or similar means and stored by means of a computer or other like instrument;

“power” includes authority;

“prescribed representative”, in relation to a Card-subject, means, subject to sub-section 9 (7)—

- (a) the person, or either of the persons, to whom the current Card in respect of the Card-subject has been issued pursuant to an application under sub-section 11(5), (6) or (7); or
- (b) a person who, according to a statement entered in the Register under paragraph 27 (7) (a), is a prescribed representative of the Card-subject;

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“President” means the President of the Agency;

“recognised name” means—

- (a) in relation to a person—a name specified by or on behalf of the person as a name by which the person wishes to be known for the purposes of the operation of the Australia Card identification system, not being a name that cannot lawfully be used as the person’s name; and
- (b) in relation to a Card issued in respect of a person—the name endorsed on the Card as the name specified by or on behalf of the person as a name by which the person wishes to be known for the purposes of the operation of the Australia Card identification system, not being a name that cannot lawfully be used as the person’s name;

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“Register” means the Australia Card Register established under subsection 23 (1);

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“Secretary”, in relation to a Department, means a person who, under the *Public Service Act 1922* or any other Act, has, in relation to that Department, the powers exercisable by a Secretary under the *Public Service Act 1922*, and includes, in relation to the Commission, the General Manager of the Commission;

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“signature” includes an image, in the likeness of a signature, reproduced from data acquired by the obtaining of a specimen signature and stored by means of a computer or other like instrument;

“taxation law” means—

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- (a) an Act of which the Commissioner of Taxation has the general administration (other than an Act prescribed for the purposes of paragraph (b) of the definition of “taxation law” in section 2 of the *Taxation Administration Act 1953*); or
- (b) regulations under an Act referred to in paragraph (a) of this definition;

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“this Act” includes the regulations.

(2) A child born to a woman as a result of the carrying out, during the period in which the woman was married to a man, of a medical procedure in relation to that woman, being a child who is not biologically the child of that man, shall, for the purposes of this Act, be deemed to be a child of that man, and of no other man, if—

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- (a) the medical procedure was carried out with the consent of that man; or

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(b) under an Act or under a law of a State or Territory the child is deemed to be the child of that man.

5 (3) Sub-section (2) applies in relation to a purported marriage that is void as if the purported marriage were a marriage and as if the parties to the purported marriage were husband and wife unless, at the time of the carrying out of the medical procedure referred to in that sub-section, neither party to the purported marriage believed on reasonable grounds that the purported marriage was valid.

10 (4) For the purposes of sub-section (2), a woman who is at a particular time a de facto spouse of a man shall be deemed to be married at that time to that man, and to no other man.

(5) In sub-section (2), "medical procedure" means artificial insemination or the implantation of an embryo in the body of a woman.

(6) Where a person states—

15 (a) in an application under sub-section 11 (5) for the issue of a Card in respect of a minor; or  
(b) in an application under sub-section 27 (1) to become a prescribed representative of a Card-subject who is a minor,

20 that the person is a parent of the minor, the Authority shall, unless and until it has reasonable grounds to believe that the person is not a parent of the minor, assume for the purposes of this Act that the person is a parent of the minor.

25 (7) A reference in this Act to the Department responsible for matters arising under a particular Act is a reference to the Department administered by the Minister administering that Act.

30 (8) Where the administration of an Act is divided between 2 or more Ministers, the Minister who is to be taken, for the purposes of sub-section (7), to administer the Act is the Minister specified in relation to that Act in an order made by the Governor-General for the purposes of this sub-section.

(9) For the purposes of this Act, a Card shall be taken to be issued to the person or persons who applied for the Card—

35 (a) when it is given by the Authority into the custody of; or  
(b) when it is sent out of the custody of the Authority for delivery, by certified mail, to,

that person, or either of those persons, as the case may be.

40 (10) Where an applicant under a provision of this Act is unable to provide particular information required by a form approved for the purposes of that provision, but submits to the person to whom the application is or was delivered or made a notice in writing that—

(a) states that, and sets out the reasons why, the applicant is unable to provide the information; and

(b) sets out other information that, having regard to those reasons and to the purpose for which the form requires the first-mentioned information, is, in the opinion of that person, an adequate substitute for the first-mentioned information,  
 the application shall not be taken not to be, or not to have been, in accordance with that form merely because of failure to provide the first-mentioned information. 5

#### Act to bind Crown

5. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island, but nothing in this Act renders the Crown in right of the Commonwealth, of any of the States, of the Northern Territory or of Norfolk Island liable to be prosecuted for an offence. 10

#### Administering authority

6. (1) The Commission is the administering authority for the purposes of this Act. 15

(2) There are conferred on the Commission the functions in relation to the administration of the Australia Card identification system, and the other functions, that are required by this Act to be performed by the Authority.

#### Extension of Act to external Territories

7. This Act extends to every external Territory. 20

## PART II—AUSTRALIA CARD

### *Division 1—Preliminary*

#### No obligation to carry Card

8. (1) Nothing in this Act requires a person to carry a Card at all times. 25

(2) Nothing in this Act, other than a provision requiring, or authorising a requirement, that a Card be produced, delivered or surrendered, requires a person to carry a Card at any time.

(3) Subject to sub-section (4), a person in respect of whom a Card has been issued is entitled to use the Card as a means of identification of the person as the person thinks fit. 30

(4) A Card issued to a person in respect of another person may be used as a means of identification of the other person as the first-mentioned person thinks fit.

#### Rights and duties of prescribed representatives

9. (1) In this section, “relevant documents”, in relation to a person, means— 35

(a) documents relating solely to an application, request or objection under this Act made by, or in the name of, the person; or

(b) transcripts, issued under section 26, 28, 56 or 57, of information relating to the person.

(2) Where there is only one prescribed representative of a Card-subject, the prescribed representative is entitled to have possession of—

5 (a) the current Card of the Card-subject; and  
(b) any relevant documents of the Card-subject held by or on behalf of the Card-subject.

(3) Where there are 2 prescribed representatives of a Card-subject, they are, subject to the operation of an order of a federal court or a court of a 10 State or Territory, jointly entitled to have possession of—

10 (a) the current Card of the Card-subject; and  
(b) any relevant documents of the Card-subject held by or on behalf of the Card-subject.

(4) Subject to sub-section (5), where there is a prescribed representative 15 of a Card-subject—

15 (a) an application, request or objection under this Act that, but for this sub-section, could have been made by the Card-subject may be made, and (except in the case of a request under section 56 or 57) may only be made, in the name of the Card-subject by a prescribed representative of the Card-subject;

20 (b) a document that, but for this sub-section, would have been required to be given, in relation to such an application, request or objection, by or to the Card-subject shall be given by or to—

25 (i) if the application, request or objection has not yet been made or if the person who made the application, request or objection has ceased to be such a prescribed representative—such a prescribed representative; or

(ii) otherwise—the person by whom the application, request or objection was made; and

30 (c) a Card renewed in respect of the Card-subject on application by a prescribed representative of the Card-subject shall be delivered to the last-mentioned prescribed representative.

(5) Nothing in sub-section (4) affects the entitlement of a person to make an application under section 11 for the issue of a Card.

35 (6) For the purposes of this Act, other than Part VIII—

(a) an act done in the name of a Card-subject by a prescribed representative of the Card-subject shall be deemed to have been done by the Card-subject; and

40 (b) a document given to a prescribed representative of a Card-subject in the capacity of a prescribed representative of the Card-subject shall be deemed to have been given to the Card-subject.

(7) A person ceases to be a prescribed representative of a particular Card-subject if, and only if—

- (a) in any case—the person notifies the Authority in writing that the person has withdrawn from being a prescribed representative of the Card-subject;
- (b) in any case—a Card in respect of the Card-subject is issued to the Card-subject or to a third person;
- (c) in a case where the Card-subject is a minor—the person ceases to be an eligible applicant in relation to the minor; or
- (d) in a case where the Card-subject is a minor and the person and another person are the prescribed representatives of the Card-subject—by virtue of the operation of an order of a federal court or a court of a State or Territory, the other person becomes solely entitled to have possession of the current Card issued in respect of the minor.

(8) A person shall, as soon as practicable after becoming aware of having ceased (otherwise than by virtue of paragraph (7) (a)) to be a prescribed representative of a particular Card-subject, notify the Authority in writing that the person has ceased to be a prescribed representative of the Card-subject.

(9) A person shall, as soon as practicable after ceasing by virtue of paragraph (7) (a), or becoming aware of having ceased otherwise than by virtue of paragraph (7) (a), to be a prescribed representative of a particular Card-subject, deliver—

- (a) if the person still has possession of the Card issued in respect of the Card-subject—the Card; and
- (b) any relevant documents in relation to the Card-subject of which the person has possession,

to the Authority or to a prescribed representative of the Card-subject.

(10) The fact that a person is, for the purposes of this Act, a prescribed representative of a Card-subject does not confer on that person any right or power, or impose on that person any duty or obligation, to act on behalf of the Card-subject, other than a right, power, duty or obligation conferred or imposed on the person for the purposes of this Act.

#### *Division 2—Issue of Australia Card*

##### **Eligibility for Card**

10. A person is eligible for the issue or renewal of a Card if, and only if, the person is—

- (a) an Australian citizen;
- (b) a person who has been granted, or who is included in, an entry permit under the *Migration Act 1958* that is in force;
- (c) a person to whom sub-section 8 (1) of the *Migration Act 1958* applies;
- (d) a resident of Norfolk Island within the meaning of the *Immigration Act 1980* of Norfolk Island; or

(e) a person who is the holder of a general entry permit or temporary entry permit within the meaning of the Immigration Act 1980 of Norfolk Island or who, by virtue of that Act, is to be deemed to be the holder of such a permit.

5 Application for Card

11. (1) An application for the issue of a Card—

(a) shall be in writing in accordance with a form approved by the Authority; and

(b) shall be delivered—

10 (i) to the Authority at an office of the Authority in Australia; or

(ii) to a person approved by the Authority, by notice published in the *Gazette*, for the purposes of this sub-paragraph, at the address specified in that notice as the address of that person.

15 (2) The Authority shall not approve for the purposes of paragraph

(1) (a) a form that requires or invites the giving of information other than—

(a) information of a kind that sub-section 25 (1) requires the Authority to enter in the Register as part of the information in the Register in relation to the person in respect of whom the application is made; or

(b) information that is directly relevant to information of such a kind.

(3) Subject to sub-section (4), an application may be made by a person for the issue of a Card in respect of that person whether or not a Card in respect of that person has already been issued to another person.

25 (4) An application for the issue of a Card in respect of a minor shall not be made by the minor unless—

(a) the minor has attained the age of 16 years; or

(b) the Authority, or the person of a kind referred to in sub-paragraph (1) (b) (ii) to whom the application is delivered, is satisfied that the minor—

30 (i) is living independently of any other person; or

(ii) is, or but for section 54 would be, entitled to receive a pension, benefit or allowance under the *Social Security Act 1947*.

35 (5) An application for the issue of a Card in respect of a minor who has not made an application under sub-section (3)—

(a) may be made by an eligible applicant in relation to the minor; or

(b) may be jointly made by 2 eligible applicants in relation to the minor.

40 (6) An application for the issue of a Card in respect of a person who has not made an application under sub-section (3) may be made by another person if—

- (a) the other person holds a power of attorney that is in force, that was given by the first-mentioned person and that authorises the making of the application;
- (b) the first-mentioned person has freely requested the other person to make the application and has not since withdrawn the request; or
- (c) the other person is included in a class of persons declared by the regulations to be empowered to make applications for the issue of Cards in respect of persons included in a class of persons that is specified in the regulations and that includes the first-mentioned person.

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(7) An application for the issue of a Card in respect of a person may be made by another person if—

- (a) the first-mentioned person does not have the mental capacity to manage his or her own affairs and the other person is the trustee or guardian of the first-mentioned person; or
- (b) the first-mentioned person does not have the physical capacity to make an application under sub-section (3) and the other person is the trustee or guardian of the first-mentioned person.

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**Provision of photograph and specimen signature and attendance for interview**

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**12. (1) In this section—**

“independent application” means an application for the issue of a Card in respect of the person making the application;

“issuing agency” means the Authority or a person approved by the Authority for the purpose of sub-paragraph 11 (1) (b) (ii);

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“representative application” means an application under sub-section 11 (6) or (7) by a person for the issue of a Card in respect of another person (other than a minor).

**(2) An applicant under an independent application shall—**

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- (a) comply with the reasonable requirements of an issuing agency with respect to the making, by that agency, of a photograph of the applicant for incorporation in the Card to be issued to the applicant; and
- (b) provide to an issuing agency, in accordance with the reasonable requirements of that agency, a specimen of the usual signature of the applicant.

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**(3) An applicant under a representative application shall comply with the reasonable requirements of an issuing agency with respect to—**

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- (a) the making, by that agency, of a photograph of the person in respect of whom a Card is to be issued for incorporation in that Card; and
- (b) the provision to that agency of a specimen of the usual signature of the person in respect of whom a Card is to be issued.

**(4) An issuing agency—**

(a) shall not, under sub-section (2), (3) or (7), impose a requirement; or  
(b) shall dispense with a requirement imposed under sub-section (2), (3) or (7),  
5 as to the making of a photograph of a person if the issuing agency or the Authority is satisfied that the making of the photograph may reasonably be expected to cause an unreasonable amount of distress to the person or to a member of the person's family.

10 (5) Where an independent application, or a representative application, is delivered to an issuing agency, the applicant may request the issuing agency not to impose a requirement as to the making of a photograph of the applicant, or of the person in respect of whom the application is made, as the case may be, or to dispense with such a requirement that has been imposed, on the ground that the making of such a photograph would cause an unreasonable amount of distress to the applicant or a member of the 15 applicant's family, or to the person or a member of the person's family, as the case may be.

(6) Where—

20 (a) an applicant has made a request under sub-section (5) in relation to the making of a photograph of a person; and  
(b) the issuing agency decides that the ground on which the request was made has not been established,

the issuing agency shall, as soon as practicable, notify the applicant in writing of its decision.

25 (7) Where—

30 (a) because of sub-section (4), a Card issued in respect of a person does not contain a photograph of the person; and  
(b) at some time after the issue of the Card, the Authority becomes satisfied that the making of a photograph of the person would cause an unreasonable amount of distress neither to the person nor to a member of the person's family,

35 the Authority may, by notice in writing given to the person to whom the Card was issued, impose reasonable requirements on that person with respect to the making by the Authority of a photograph of the person referred to in paragraph (a) for incorporation in a new Card to be issued in respect of the person.

(8) An issuing agency—

40 (a) shall not, under sub-section (2), (3) or (11), impose a requirement; or  
(b) shall dispense with a requirement imposed under sub-section (2), (3) or (11),

as to the provision of a specimen of a person's signature, if the issuing agency or the Authority is satisfied that the person is suffering from a

disability or illness, whether physical or mental, whose nature is such that it would be unreasonable to require the provision of such a specimen.

(9) Where an independent application, or a representative application, is delivered to an issuing agency, the applicant may request the issuing agency not to impose a requirement as to the provision of a specimen of the signature of the applicant, or of the person in respect of whom the application is made, as the case may be, or to dispense with such a requirement that has been imposed, on the ground that the applicant, or the person, as the case may be, is suffering from a disability or illness, whether physical or mental, whose nature is such that it would be unreasonable to require the provision of such a specimen.

(10) Where—

- (a) an applicant has made a request under sub-section (9) in relation to the provision of a specimen of a person's signature; and
- (b) the issuing agency decides that the ground on which the request was made has not been established,

the issuing agency shall, as soon as practicable, notify the applicant in writing of its decision.

(11) Where—

- (a) because of sub-section (8), a Card issued in respect of a person does not have incorporated in it a specimen of the person's signature; and
- (b) at some time after the issue of the Card, the Authority becomes satisfied that the person does not suffer from such a disability or illness, whether physical or mental, that it would be unreasonable to require the provision of such a specimen,

the Authority may, by notice in writing given to the person to whom the Card was issued, impose reasonable requirements on that person with respect to the provision to the Agency of such a specimen for incorporation in a new Card to be issued in respect of the person referred to in paragraph (a).

(12) A person who makes an application for the issue of a Card shall comply with the reasonable requirements of an issuing agency with respect to the attendance of that person for interview by the agency or a member of the staff of the agency or with respect to the attendance of a member of the staff of the agency upon the person for the purposes of interview.

(13) Where a person makes an application for the issue of a Card in respect of another person, an issuing agency, or a member of the staff of an issuing agency, may, whether or not the first-mentioned person has been interviewed in compliance with the requirements of an issuing agency under sub-section (12), notify the first-mentioned person that, with the consent of the first-mentioned person, the other person will be obliged to comply with the reasonable requirements of the issuing agency with respect to the attendance of the other person for interview by the agency or a member of

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the staff of the agency or with respect to the attendance of a member of the staff of the agency upon the person for the purposes of interview.

5 (14) For the purposes of sub-section (16), a person who makes an application for the issue of a Card in respect of another person shall be deemed to have failed to comply with a requirement of an issuing agency in relation to the application if—

- (a) the person does not consent to the other person being obliged under sub-section (13) to comply with the reasonable requirements of the issuing agency in relation to an interview; or
- 10 (b) the other person does not comply with those reasonable requirements.

(15) A person is not obliged to comply with a requirement under this section if—

- (a) the Minister has, by notice published in the *Gazette*, declared that persons included in a class of persons specified in the notice need not comply with that requirement; and
- 15 (b) the first-mentioned person is included in that class of persons.

20 (16) An application for the issue of a Card shall not be taken to have been made in accordance with this Act if the applicant has failed to comply with a requirement of an issuing agency under this section in relation to the application to the extent to which the applicant is obliged by this section to comply with the requirement.

#### **Requirement of further information or documents**

25 13. (1) Where an application has been made for the issue of a Card, the Authority may, by notice in writing given to the applicant, require the applicant to give to the Authority, within the period specified in the notice, such information or documents as are specified in the notice, being information or documents reasonably required to enable—

- (a) the identity of the person in respect of whom the application is made to be verified;
- 30 (b) a statement made in the application to be verified; or
- (c) the Authority to decide whether the person is eligible for the issue of a Card.

35 (2) A notice given to a person under sub-section (1) (otherwise than pursuant to a decision made under sub-section (4)) shall contain a statement to the effect that—

- (a) if dissatisfied with the notice, the person may, by giving to the Authority a written objection in accordance with this section, seek a reconsideration by the Authority of the notice; and
- 40 (b) if the Authority reconsiders the notice and the person is dissatisfied with the decision of the Authority upon that reconsideration, the person may seek in accordance with this Act a review by the Agency of the decision.

(3) Where the Authority has, under sub-section (1), given a notice to a person, the person may, at any time before the end of the period specified in the notice as the period within which information or documents are to be given to the Authority, give to the Authority a written objection concerning either or both of—

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- (a) the length of that period; and
- (b) the information or documents specified in the notice,

and specifying the grounds of objection.

(4) Where a person makes an objection under sub-section (3) to a notice under sub-section (1), the Authority shall reconsider the notice and—

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- (a) decide to cancel the notice;
- (b) decide to cancel the notice and give to the person a fresh notice in accordance with sub-section (1);
- (c) decide to vary the notice; or
- (d) decide to confirm the notice,

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and shall, as soon as practicable, notify the person of its decision.

(5) Where the Authority decides in relation to a notice as mentioned in paragraph (4) (b), (c) or (d), the Authority shall include in its notice under sub-section (4) relating to the decision—

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- (a) the reasons for the decision; and
- (b) a statement to the effect that the person may, if dissatisfied with the decision, seek in accordance with this Act a review by the Agency of the decision.

**Authority may obtain information from other Departments, &c.**

14. (1) Subject to sub-section (3), the Authority is entitled to be provided with eligible information to such extent as is reasonably necessary for the purpose of—

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- (a) identifying persons to be invited to apply for the issue of Cards;
- (b) inviting persons to apply for the issue of Cards;
- (c) verifying statements made in applications for the issue of Cards; or
- (d) deciding whether to issue Cards,

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or for any other purpose related to the performance of the Authority's functions under this Act.

(2) In sub-section (1) and this sub-section—

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“eligible information” means information that—

- (a) is held by the Commissioner of Taxation and was acquired for purposes connected with the administration of the *Income Tax Assessment Act 1936*;

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- (b) is held by a Department for which a Minister administering a relevant law is responsible and was acquired for purposes connected with the administration of that relevant law;

5 (c) is held by the Commission and was acquired for purposes connected with the administration of the *Health Insurance Act 1973*;

(d) is held by a Department that deals principally with matters concerning defence, being information that forms part of personnel records of members or former members of the Permanent Forces of the Defence Force; or

10 (e) is held by the Crown in right of Norfolk Island and was acquired for purposes connected with the administration of the *Immigration Act 1980* of Norfolk Island;

15 "relevant law" means—

(a) the *Social Security Act 1947*;

(b) the *Veterans' Entitlements Act 1986*;

(c) the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*;

(d) the *Seamen's War Pensions and Allowances Act 1940*;

(e) the *Student Assistance Act 1973*;

(f) the *Australian Citizenship Act 1948*;

20 (g) the *Passports Act 1938*; or

(h) the *Migration Act 1958*.

25 (3) The Minister may give a direction in writing about the provision to the authority under sub-section (1) of information, or of information of a specified kind, and, if the Minister does so, information, or information of that kind, as the case may be, shall not be so provided except in accordance with the direction.

30 (4) For the purposes of the performance of its functions under this Act, the Authority is entitled to be provided, to such extent as is reasonably necessary and in accordance with arrangements made by the Authority with the Australian Electoral Commission, with information that is held by the Australian Electoral Commission and was acquired for purposes connected with the administration of the *Commonwealth Electoral Act 1918*.

#### Issue of Card

35 15. (1) Where the Authority is satisfied that—

(a) an application for the issue of a Card in respect of a person has been made in accordance with this Act;

(b) the person is eligible for the issue of a Card;

(c) the identity of the person under which the application was made is the true identity of the person; and

40 (d) the requirements of each notice (if any) given by the Authority under section 13 in relation to the application have been satisfied,

the Authority shall, subject to this section, issue a Card in respect of the person to the person who made the application.

(2) Where a person has made an application to the Authority in accordance with this Act for the issue of a Card in respect of the person, the Authority shall not issue a Card in respect of that person to another person unless and until the Authority refuses the application.

(3) The Authority shall not issue a Card in respect of a person to another person unless—

(a) the Authority has given to any third person who has made an application in accordance with this Act for the issue of a Card in respect of the first-mentioned person a notice to the effect that another application for the issue of a Card in respect of the first-mentioned person has been made and stating the name of the other applicant;

(b) the third person has been given a reasonable opportunity to submit to the Authority reasons why a Card in respect of the first-mentioned person should not be issued to the other applicant; and

(c) in the opinion of the Authority, a Card should, in all the circumstances, be issued in respect of the first-mentioned person to that other person rather than to the third person.

(4) Where there is a prescribed representative of a Card-subject, the Authority shall not issue a new Card in respect of the Card-subject to another person (including the Card-subject) other than a prescribed representative of the Card-subject unless—

(a) the Authority has given the first-mentioned prescribed representative a notice to the effect that an application for the issue of a new Card in respect of the Card-subject has been made and stating the name of the applicant;

(b) the prescribed representative has been given a reasonable opportunity to submit to the Authority reasons why a new Card should not be issued in respect of the Card-subject to that applicant; and

(c) in the opinion of the Authority, a new Card should, in all the circumstances, be issued in respect of the Card-subject to that applicant.

(5) Where a person has applied for the issue of a Card in respect of the person, the Authority shall not issue a Card to the person pursuant to the application if—

(a) because of sub-section 12 (4), no photograph of the person has been made; and

(b) because of sub-section 12 (8), no specimen of the usual signature of the person has been provided,

in accordance with section 12, in relation to the application.

(6) Where, by virtue of the operation of an order of a federal court or of a court of a State or Territory, a person is solely entitled to have possession of the current Card issued in respect of a minor, the Authority shall not issue a Card in respect of the minor to another person.

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(7) Where, by virtue of the operation of an order of a federal court or of a court of a State or Territory, a person is awarded custody of, or is appointed guardian of, a minor, the Authority shall not issue a Card in respect of the minor to another person unless—

5 (a) the other person is, by virtue of the same order or a later such order, awarded custody of, or appointed guardian of, the minor; or  
(b) the first-mentioned person has agreed to the issue of the Card to the other person.

10 (8) The Authority shall not issue a Card in respect of a person to another person unless there is a current Card issued in respect of that other person.

#### **Notice of decision in relation to issue of Card**

15 16. (1) Where, on an application for the issue of a Card in respect of a person, the Authority decides not to issue a Card in respect of the person to the applicant, the Authority shall, as soon as reasonably practicable, give to the applicant—

(a) notice in writing of the decision; and  
(b) in the case of an eligible application—a statement of the reasons for the decision.

20 (2) In sub-section (1), “eligible application” means—

(a) an application by a person for the issue of a Card in respect of the person where there is a current Card in respect of the person that was issued to another person; or  
(b) an application by a person for the issue of a Card in respect of another person where there is a current Card in respect of the other person that was issued to the other person.

25 30 (3) Where there has been issued to a person a current Card in respect of a Card-subject and the Authority issues a new Card in respect of the Card-subject to a person other than the first-mentioned person, the Authority shall, as soon as reasonably practicable, give to the first-mentioned person notice in writing of the issue of the new Card.

(4) Where—

35 (a) an application for the issue of a Card has been made in accordance with this Act;  
(b) a period of 28 days has elapsed since the day on which the application was made;  
(c) a period of 14 days has elapsed since the applicant complied with the requirements of each notice (if any) given by the Authority to the applicant under section 13; and  
40 (d) notice of a decision on the application has not been given to the applicant,

the Authority shall, for the purposes of Part VII be deemed to have given to the applicant, on the last day of the period referred to in paragraph (b), notice that it has decided to refuse to issue a Card.

#### Form of Card

17. (1) Subject to this section, a Card shall be of such material and dimensions, and in such form, as the Minister, by notice published in the *Gazette*, determines. 5

(2) Subject to this section, the Minister may, by notice published in the *Gazette*, determine that Cards issued in respect of persons whose continued presence in Australia is subject to a limitation of time imposed by law, or to whom sub-section 8 (1) of the *Migration Act 1958* applies, are to be in a form that is specified in the notice and that is different from the form determined under sub-section (1). 10

(3) A Card issued in respect of a Card-subject shall have endorsed on it particulars of— 15

- (a) the recognised name of the Card-subject for the purposes of that Card;
- (b) the last day of the period for which the Card will be effective;
- (c) a number distinctive of the Card-subject;
- (d) the number of times that a Card has been issued or renewed in respect of the Card-subject; 20
- (e) in relation to each prescribed representative (if any) of the Card-subject—the name and the Australia Card number of the prescribed representative;
- (f) if the Card-subject is a minor—the date of birth of the Card-subject; and
- (g) if the Card-subject is a minor and did not make the application for the issue of the Card—the sex of the Card-subject. 25

(4) A Card issued in respect of a Card-subject whose continued presence in Australia is subject to a limitation of time imposed by law, or to whom sub-section 8 (1) of the *Migration Act 1958* applies, may have endorsed on it particulars of the Card-subject's eligibility to receive medicare benefits and to obtain employment. 30

(5) A Card issued in respect of a Card-subject of whom a photograph has been made in accordance with section 12 shall have incorporated in it a photograph so made. 35

(6) A Card issued in respect of a Card-subject in relation to whom a specimen of the Card-subject's usual signature has been provided in accordance with section 12 shall have incorporated in it a specimen of that usual signature. 40

(7) A Card issued in respect of a Card-subject may have incorporated in it material on which information can be recorded by electronic means, and particulars of—

- (a) the Australia Card number of the Card;
- (b) the recognised name of the Card-subject for the purposes of that Card;
- (c) the last day of the period for which the Card will be effective;
- 5 (d) the number of times that a Card has been issued or renewed in respect of the Card-subject; and
- (e) a batch number relating to the production and the geographical distribution of the Card,

10 may be recorded on that material, together with such security devices as the Authority thinks necessary.

(8) A determination by the Minister under sub-section (1) or (2) shall not relate to material incorporated in the Card under sub-section (7) or to the form of matters recorded on that material under sub-section (7).

15 (9) Where particulars of a person's name that are to be endorsed on a Card are of such length that they cannot conveniently be endorsed in full on the Card, particulars of the given names of the person may be endorsed in an abbreviated form on the Card.

(10) In this section, "Australia" includes the external Territories.

### ***Division 3—Duration of Card***

#### **20 Period for which Card effective**

18. (1) Subject to this Division, a Card is effective for such period as the Authority fixes, being a period that—

- (a) commences on such day as the Authority fixes, being a day that is not later than the day on which the Card is issued;
- 25 (b) where the Card is issued within 5 years after the commencement of this section—is not less than 3 years nor more than 7 years; and
- (c) where the Card is not issued within 5 years after the commencement of this section—is not less than 5 years nor more than 6 years.

30 (2) Subject to sub-section (3), a Card issued in respect of a minor on the application of another person ceases to be effective if—

- (a) the Card held by the person who made the application ceases to be effective;
- (b) the Card-subject attains the age of 18 years; or
- 35 (c) a Card is issued to the Card-subject on an application by the Card-subject.

(3) Subject to this Division (other than sub-section (1) of this section), a Card issued in respect of a person other than a prescribed person is effective for such period as the Authority fixes, being a period that commences on such day as the Authority fixes, being a day that is not later than the day on which the Card is issued.

(4) The Authority may, before or after the end of a period fixed for the purposes of sub-section (3), extend the period.

(5) Where—

- (a) the Authority has decided to issue a Card in respect of a person who is present in Australia or an external Territory but is not a prescribed person; and
- (b) the continued presence of the person in Australia, or in that Territory, as the case may be, is subject to a limitation of time imposed by law,

the period fixed by the Authority in relation to the Card for the purposes of sub-section (3) shall not be a period that would extend beyond the limitation of time referred to in paragraph (b), and shall not be extended under sub-section (4) in such a way that it would become such a period.

(6) A Card issued in respect of a Card-subject ceases to be effective if another Card is issued in respect of the Card-subject unless—

- (a) the Card-subject is a prescribed person;
- (b) neither Card was issued pursuant to an application made under sub-section 11 (5) or (7);
- (c) the recognised name of the Card-subject for the purposes of the first-mentioned Card is not the recognised name of the Card-subject for the purposes of the other Card;
- (d) the Authority is satisfied that the Card-subject uses each of those recognised names; and
- (e) at no time after the issue of the first-mentioned Card and before the issue of the other Card was a Card issued in respect of the Card-subject.

(7) Where—

- (a) a Card issued in respect of a Card-subject ceases to be effective under sub-section (6) because of the issue of another Card in respect of the Card-subject; and
- (b) the recognised name of the Card-subject for the purposes of the first-mentioned Card is not the recognised name of the Card-subject for the purposes of the other Card,

the Authority shall notify in writing the person to whom the first-mentioned Card was issued that the first-mentioned Card has ceased to be effective.

(8) In this section, “prescribed person” means—

- (a) an Australian citizen;
- (b) a permanent resident;
- (c) a resident of Norfolk Island within the meaning of the Immigration Act 1980 of Norfolk Island; or
- (d) a person who is the holder of a general entry permit within the meaning of the Immigration Act 1980 of Norfolk Island or who, by

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virtue of that Act, is to be deemed to be the holder of such a permit.

### Cancellation of Card

19. (1) The Authority shall cancel a Card issued in respect of a person

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- (a) the Card was issued in respect of the person under an identity that is not the true identity of the person;
- (b) the person was not, when the Card was issued, and has not since become, eligible for the issue of a Card;
- 10 (c) the person is no longer eligible for the issue of a Card;
- (d) the person to whom the Card was issued has been given a notice under sub-section 12 (7) or (11) and—
  - (i) the reasonable requirements of the notice have not been complied with; and
  - 15 (ii) the notice is no longer subject to reconsideration or review under this Act;
- (e) the person to whom the Card was issued has been given a notice under sub-section 28 (2) that—
  - (i) has not been complied with; and
  - 20 (ii) is no longer subject to reconsideration or review under this Act; or
- (f) the Card has been surrendered under section 21.

25 (2) Where the Authority cancels a Card by virtue of paragraph (1) (a), (b), (c), (d) or (e), the Authority shall give to the person to whom the Card was issued a written notice stating that the Card has been cancelled.

(3) Where—

- (a) a Card has been cancelled by virtue of paragraph (1) (a);
- (b) the Authority is able to ascertain the true identity of the person in respect of whom the Card was issued;
- 30 (c) the person is eligible for the issue of a Card; and
- (d) the cancelled Card has been delivered to the Authority or the Authority is satisfied that the cancelled Card has been lost, stolen or destroyed,

the Authority shall issue a Card under the true identity of the person.

### 35 Replacement of lost Card, &c.

20. (1) A Card-subject may, in accordance with the regulations, apply to the Authority for the issue of a Card to replace a current Card that was issued in respect of the Card-subject and has been—

- (a) lost, stolen or destroyed; or
- 40 (b) defaced so as to render illegible or unrecognisable writing, printing or images on the Card,

not being a Card that will, by virtue of section 18 (other than sub-section 18 (6)), cease to be effective within 12 months after the application.

(2) Regulations made for the purpose of sub-section (1) may require that an application be verified by statutory declaration.

(3) Where an application under sub-section (1) in relation to a Card has been made in accordance with the regulations and—

(a) the Authority is satisfied that the Card has been lost, stolen or destroyed; or

(b) the Card has been surrendered to the Authority and the Authority is satisfied that the Card has been defaced so as to render illegible or unrecognisable writing, printing or images on the Card,

the Authority shall cancel the Card and issue to the applicant a Card to replace the first-mentioned Card.

(4) A Card issued under this section to replace another Card is effective for the remainder of the period for which the other Card would have been effective.

#### Surrender of expired or cancelled Card

21. (1) Where—

(a) by virtue of section 18 a Card has ceased to be effective;

(b) a Card has been cancelled under section 19, 20 or 30,

the Authority may, by notice in writing given to a person who has, or is entitled to have, possession of the Card, require the last-mentioned person to deliver the Card to the Authority within 7 days after the day on which the notice is given.

(2) An officer or employee of the Department responsible for matters arising under the *Migration Act 1958* may require a person who has, or is entitled to have, possession of a Card issued in respect of a person—

(a) who is a prohibited non-citizen within the meaning of that Act, or in relation to whom a deportation order within the meaning of that Act is in force; and

(b) who is not eligible for the issue or renewal of a Card, to surrender the Card to the officer or employee.

(3) An authorised person within the meaning of the *Immigration Act 1980* of Norfolk Island may require a person who has, or is entitled to have, possession of a Card issued in respect of a person—

(a) who is a prohibited immigrant within the meaning of that Act, or in relation to whom a deportation order within the meaning of that Act is in force; and

(b) who is not eligible for the issue or renewal of a Card, to surrender the Card to the authorised person.

(4) Where—

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- (a) a person is about to leave Australia; and
- (b) a Card issued in respect of the person has ceased to be effective, has been cancelled or will, if the person leaves Australia, cease to be effective,

5 the person may surrender the Card to—

- (c) a member of the Australian Federal Police;
- (d) a member of the staff of the Australian Customs Service;
- (e) a member of the staff of the Authority;
- (f) a member of the Police Force of Norfolk Island; or
- (g) a person who is, within the meaning of the law in force in Norfolk Island relating to customs, an officer administering that law,

10 who is performing duty at a port or airport from which the person is to leave Australia.

(5) In sub-section (4), "Australia" includes the external Territories.

15 (6) A person shall not, without reasonable excuse, fail to comply with a requirement under this section.

Penalty: \$1,000 or imprisonment for 6 months, or both.

**Renewal of Card**

22. (1) A person to whom a Card has been issued may—

- (a) if the Card has been lost, stolen or destroyed or has been defaced so as to render illegible or unrecognisable writing, printing or images on the Card—within 12 months; or
- (b) otherwise—within 3 months,

25 before the day on which the Card will cease to be effective by virtue of section 18 (other than sub-section 18 (6)), apply to the Authority for the renewal of the Card.

(2) An application for the renewal of a Card shall be in writing in accordance with a form approved by the Authority.

30 (3) Subject to sub-section (2), sections 11, 12 and 13 apply, in relation to an application for the renewal of a Card, as if the application were an application for the issue of a Card.

(4) Where—

- (a) an application for the renewal of a Card in respect of a Card-subject has been made in accordance with this Act;
- (b) the Card-subject is eligible for the renewal of the Card; and
- (c) either—
  - (i) the information in the Register that is of a kind specified in Schedule 1 and that relates to the Card-subject is still accurate; or
  - (ii) the applicant has given to the Authority the information necessary to correct that information in the Register,

the Authority shall renew the Card by issuing a new Card.

(5) This Act applies to and in relation to a Card issued under sub-section (4) in the same way as it applies to a Card issued under section 15.

(6) A Card shall not be issued under sub-section (4) unless the Card to be renewed has been delivered to the Authority or the Authority is satisfied that the Card has been lost, stolen or destroyed.

(7) Sections 16, 17 and 18 apply in relation to the renewal of a Card as if references in those sections to the issue of a Card were references to the renewal of a Card.

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### PART III—AUSTRALIA CARD REGISTER

#### **Australia Card Register**

23. (1) For the purposes of this Act, there shall be a Register, to be known as the Australia Card Register, in which shall be entered all matters required or permitted by this Act to be entered in the Register.

(2) The Register shall be established and kept by the Authority.

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#### **Manner of keeping Register**

24. (1) The Register may be kept by electronic means.

(2) The Authority shall comply with a direction given by the Agency in relation to the form and manner in which the Register is to be kept.

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(3) In the performance of its functions under this Act, the Authority shall observe such procedures as are reasonably necessary to prevent unauthorised access to, or disclosure of, information contained in the Register.

(4) The Authority shall comply with guidelines issued by the Agency under paragraph 88 (1) (h) in relation to the Authority's procedures for preventing unauthorised access to, or disclosure of, information contained in the Register.

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#### **Entry of information in Register**

25. (1) Where an application has been made for the issue of a Card in respect of a person, the Authority shall, as soon as reasonably practicable after—

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(a) in any case—receiving, in relation to the person, information of a kind specified in relation to the person in Schedule 1 (other than clause 8 of that Schedule); or

(b) in a case where the application was made by another person or other persons—receiving, in relation to that other person, or either of those other persons, information of a kind specified in clause 8 of Schedule 1,

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enter that information in the Register as part of the information in the Register in relation to the first-mentioned person.

5 (2) The Authority may, in relation to a person in respect of whom a Card has been issued or an application for the issue of a Card has been made, enter in the Register such information as is reasonably necessary for the efficient performance by the Authority of its functions and duties under this Act, being information relating to—

- (a) the issue of a Card to the person and the administration of the Australia Card identification system;
- (b) the operation of sections 67 and 180 in respect of information in the Register in relation to the person;
- 10 (c) the performance of the Authority's functions under Part VI;
- (d) the management of any computer system used in connection with the keeping of the Register;
- (e) the auditing of information contained in the Register;
- (f) any system adopted by the Authority for checking the continued 15 eligibility of the person for the issue or renewal of Cards or the continued accuracy of information contained in the Register; and
- (g) dealings between the Authority and the person.

(3) Where access is obtained to information in the Register in relation to a person, being information of a kind specified in sub-section (1) or (2) 20 or information recorded under this sub-section, the Authority shall, as soon as practicable after the access is obtained, enter, or cause to be entered, in the Register, as part of the information in the Register in relation to the person, a record of particulars of the access.

25 (4) Where—

- (a) a record of particulars of access to information in the Register has been entered in the Register under sub-section (3); and
- (b) the record has remained in the Register for a continuous period of not less than 2 years,

30 the Authority may, with the approval of the President and after consulting with the Director-General of the Australian Archives, destroy the record.

(5) Except as provided by sub-section (1), (2) or (3), the Authority shall not enter in the Register information in relation to a person.

35 (6) The provisions of this Act (other than sub-section (1) of this section, sections 26 and 28 and sub-sections 55 (1) and (3)) apply in relation to the following documents held by the Authority as if they were part of the Register:

- (a) applications and requests made to the Authority under this Act;
- (b) documents given to the Authority, or containing information given to the Authority, in response to a notice under section 13;
- 40 (c) documents containing information obtained by the Authority for the purpose of verifying the identity or eligibility of persons in respect of whom applications for the issue of a Card have been or may be made.

**Amendment of Register on application**

**26. (1) In this section—**

“applicant” means the person, or either or both of the persons, by whom a request has been made;

“request” means a request made in accordance with this section. 5

(2) A Card-subject may, by writing given to the Authority, request that information in the Register in relation to the Card-subject, being information that relates to the Card-subject or to a prescribed representative of the Card-subject and that was entered in the Register under sub-section 25 (1), be amended on the ground that, at the time of making the request, the information is incorrect. 10

(3) Where a person has made, or 2 persons have jointly made, an application for the issue of a Card in respect of a person (in this sub-section referred to as the “relevant person”), the applicant, or either or both of the applicants, as the case may be, may, by writing given to the Authority, request that information in the Register in relation to the relevant person, being information that relates to— 15

(a) the relevant person; or

(b) the applicant, or to either or both of the applicants, as the case may be, 20

and that was entered in the Register under sub-section 25 (1), be amended on the ground that, at the time of making the request, the information is incorrect.

(4) A request in relation to information shall include particulars of the matter in respect of which the applicant believes the information to be incorrect and of the amendment of the information that the applicant requests. 25

(5) The Authority may, by notice in writing given to an applicant, require the applicant to give to the Authority, within the period specified in the notice, such information or documents relating to the request as are specified in the notice. 30

(6) Where—

(a) a request has been made in relation to information;

(b) the requirements of each notice (if any) given by the Authority under sub-section (5) in relation to the request have been satisfied;

(c) the information is incorrect; and

(d) an amendment of the information set out in the request would render the information complete, correct and not misleading, 35

the Authority shall, within 21 days after the day on which the request was made, make that amendment.

(7) Within 28 days after a request in relation to information has been made, the Authority shall give to the applicant— 40

(a) if the Authority has, under sub-section (6), amended the information as requested by the applicant—notice in writing of the amendment and, if the applicant has requested, or requests, a transcript of the information as amended, such a transcript; or

5 (b) if the Authority has decided not to so amend the information—notice in writing of the decision.

(8) Where the Authority—

(a) decides not to amend information under sub-section (6) pursuant to a request but to amend the information under section 28; and

10 (b) within 28 days after the request, gives to the applicant under sub-section 28 (2) notice of the Authority's intention to amend the information together with a transcript of the information as proposed to be amended,

15 the Authority shall be deemed to have complied with sub-section (7) in relation to the request.

(9) Where the Authority fails to comply with sub-section (7) in relation to a request, the Authority shall, for the purposes of Part VII, be deemed to have given to the applicant, on the twenty-eighth day after the request was made, notice of a decision not to amend the information to which the 20 request relates.

#### **Application to become a prescribed representative of a minor Card-subject**

25 27. (1) Where a current Card issued in respect of a Card-subject who is a minor was issued to a person other than the Card-subject, an eligible applicant (in this section referred to as the "relevant person") in relation to the Card-subject may, by an instrument in writing that is in accordance with a form approved by the Authority, apply to the Authority to become a prescribed representative of the Card-subject and, if the relevant person does so, the succeeding provisions of this section have effect.

30 (2) If sub-section 15 (6), (7) or (8) would prohibit the Authority from issuing a Card in respect of the Card-subject to the relevant person, the Authority shall refuse the application.

(3) If there are already 2 prescribed representatives of the Card-subject, the Authority shall refuse the application.

(4) If—

35 (a) there is already one prescribed representative of the Card-subject; or  
(b) there is no prescribed representative of the Card-subject but at least one other person has made in accordance with this section an application to become such a prescribed representative that has not 40 been finally determined or otherwise disposed of,

the Authority may, subject to sub-section (2), grant or refuse the relevant person's application.

(5) Otherwise, the Authority shall grant the application.

(6) Within 14 days after deciding to grant, or deciding to refuse, the relevant person's application, the Authority shall notify the relevant person in writing of the decision.

(7) If the Authority grants the relevant person's application, the Authority shall—

- (a) enter in the Register, as part of the information in the Register in relation to the Card-subject, a statement to the effect that the relevant person is a prescribed representative of the Card-subject; and
- (b) as soon as reasonably practicable after receiving, in relation to the relevant person, information of a kind specified in clause 8 of Schedule 1, enter the last-mentioned information in the Register as part of the information in the Register in relation to the Card-subject.

#### Amendment of Register by Authority

28. (1) Subject to sub-section (7), where—

- (a) there are reasonable grounds for believing that information in the Register in relation to a person, being information of a kind specified in Schedule 1, is incorrect; and
- (b) the matter in respect of which the information is incorrect is such as to render it desirable that the information be amended,

the Authority may, without any request being made under section 26 in relation to the information, make such amendment of the information in the Register as is necessary to render the information complete, correct and not misleading.

(2) The Authority may, by notice in writing given to a person to whom a Card has been issued, require the person to give to the Authority, within the period specified in the notice, such information or documents as are specified in the notice and are reasonably required to enable the Authority to decide whether information in the Register in relation to the person in respect of whom the Card was issued is incorrect.

(3) A notice given to a person under sub-section (2) (otherwise than pursuant to a decision made under sub-section (5)) shall contain a statement to the effect that—

- (a) if dissatisfied with the notice, the person may, by giving to the Authority a written objection in accordance with this section, seek a reconsideration by the Authority of the notice; and
- (b) if the Authority reconsiders the notice and the person is dissatisfied with the decision of the Authority upon that reconsideration, the person may seek in accordance with this Act a review by the Agency of the decision.

(4) Where the Authority has, under sub-section (2), given a notice to a person, the person may, at any time before the end of the period specified

in the notice as the period within which information or documents are to be given to the Authority, give to the Authority a written objection concerning either or both of—

- (a) the length of that period; and
- 5 (b) the information or documents specified in the notice, and specifying the grounds of objection.

(5) Where a person makes an objection under sub-section (4) to a notice under sub-section (2), the Authority shall reconsider the notice and—

- (a) decide to cancel the notice;
- 10 (b) decide to cancel the notice and give to the person a fresh notice in accordance with sub-section (2);
- (c) decide to vary the notice; or
- (d) decide to confirm the notice,

and shall, as soon as practicable, notify the person of its decision.

15 (6) Where the Authority decides in relation to a notice as mentioned in paragraph (5) (b), (c) or (d), the Authority shall include in its notice under sub-section (5) relating to the decision—

- (a) the reasons for the decision; and
- (b) a statement to the effect that the person may, if dissatisfied with the decision, seek in accordance with this Act a review by the Agency of the decision.

20 (7) The Authority shall not, under sub-section (1), amend information in the Register in relation to a person unless the Authority has, at least 14 days before it makes the amendment, given, to a person who is entitled to make a request under section 26 in relation to information in the Register in relation to the first-mentioned person, notice of the Authority's intention to amend the information together with a transcript of the information as proposed to be amended.

25 (8) Where a proposed amendment, under sub-section (1), of information in the Register is the subject of an objection made under section 31 that has not been finally dealt with or otherwise disposed of, the Authority shall not amend the information in the Register, but the Authority may enter in the Register an indication that the information is under review.

#### **Notification to Authority of changes to certain information**

30 29. (1) A Secretary of a Department (other than the chief executive officer of the Authority) who is entitled to have access to the Register under Part V may, on being requested to do so by the Authority, enter into an arrangement with the Authority under which that Secretary, or a person entitled to have access to the Register for the purposes for which the Secretary is entitled to have access to the Register, is to inform the Authority, or to ensure that the Authority is informed, of changes to relevant information held by the Department.

(2) In sub-section (1), "relevant information" means information—

- (a) that relates to a person in respect of whom a Card has been issued; and
- (b) that is information of a kind referred to in Schedule 1.

(3) A Secretary of a Department who has entered into an arrangement under sub-section (1) shall comply with the arrangement while it remains in effect. 5

(4) An arrangement with the Authority entered into under sub-section (1) by the Secretary of a Department ceases to have effect if—

- (a) the Secretary of that Department ceases to be entitled to have access to the Register under Division 3 of Part V; or
- (b) the Authority cancels the arrangement. 10

**Replacement of Card where Register amended**

30. (1) Subject to this section, where—

- (a) the Authority has amended information in the Register in relation to a person; and
- (b) before the amendment, the information was or included information endorsed or recorded on a Card issued in respect of the person, then—
- (c) unless paragraph (d) applies—the Authority may cancel the Card and issue a new Card to the person to whom the Card was issued; or
- (d) if the amendment was made within 12 months before the day on which the Card will cease to be effective by virtue of section 18 (other than sub-section 18 (6))—the person to whom the Card was issued shall be deemed to have applied in accordance with section 22 for the renewal of the Card. 20

(2) This Act applies in relation to a new Card issued under sub-section (1) in the same way as it applies in relation to a Card issued under section 15. 25

(3) A new Card shall not be issued under sub-section (1) unless the Card to be cancelled has been delivered to the Authority or the Authority is satisfied that the Card has been lost, stolen or destroyed. 30

(4) Where the Authority, being entitled by paragraph (1) (c) to cancel a Card and issue a new Card to the person to whom the first-mentioned Card was issued, decides not to do so, the Authority shall give to the person notice in writing of its decision. 35

(5) Where the Authority cancels a Card and issues a new Card under sub-section (1), the new Card is effective for the remainder of the period for which the cancelled Card would have been effective, had it not been cancelled. 40

**Objection to amendment of Register by Authority**

31. (1) Where the Authority has, under sub-section 28 (7), given to a person a notice of an intention to amend information in the Register under sub-section 28 (1), the person may, by writing given to the Authority within 5 14 days of receiving the notice, object to the proposed amendment.

(2) An objection under sub-section (1) shall specify—

(a) the grounds on which the objection is made; and

(b) the amendment (if any) that the person giving the notice contends should be made.

10 (3) Where an objection is made under sub-section (1), the Authority shall forthwith reconsider the proposed amendment to which the objection relates and make a fresh decision.

(4) Sub-section (1) does not apply in relation to a decision made on a reconsideration under this section.

15 (5) Where the decision to which an objection under sub-section (1) relates was made by a delegate of the Authority, a reconsideration of the decision shall not be carried out by that delegate.

20 (6) Where an amendment of the Register is made, under section 28, by the chief executive officer of the Authority as a delegate of the Authority, the person to whom the amended entry relates is not entitled to apply under this section in relation to the decision.

(7) Where the Authority makes a decision under sub-section (3) in relation to information in the Register, the Authority shall give to the person to whom the information relates notice in writing of the decision.

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**PART IV—PRODUCTION OF AUSTRALIA CARD***Division 1—Preliminary***Interpretation**

32. (1) In this Part, unless the contrary intention appears—

“Australia” includes the external Territories;

30 “bank” means a body corporate that carries on the business of banking, whether or not that business is part of, or is carried on in conjunction with, any other business;

“body” means a body corporate, an unincorporated association or a partnership;

35 “building society” means a society registered or incorporated as a building society, co-operative housing society or similar society under a law relating to such societies that is in force in a State or Territory;

“credit union” means a society or other body of persons—

- (a) that is registered or incorporated as a credit union or a credit society under a law in force in a State or a Territory relating to credit unions or credit societies; or
- (b) the principal business of which consists of borrowing moneys from its members or intended members and lending those moneys to its members and which is incorporated under the law in force in a State or a Territory;

“current Card”, in relation to a person, in relation to a particular time, means a Card issued in respect of the person that, as at that time, has not ceased, by virtue of section 18, to be effective and has not been cancelled under section 19, 20 or 30;

“financial institution” means—

- (a) a body corporate that is, or that, if it had been incorporated in Australia, would be, a financial corporation within the meaning of paragraph 51 (xx) of the Constitution;
- (b) a bank;
- (c) a building society; or
- (d) a credit union;

“first relevant day” means a day declared by the regulations to be the first relevant day for the purposes of this Part, not being a day that is earlier than 1 March 1989;

“interest”, except in sub-section 42 (1) or section 45, includes any amount in the nature of interest;

“legal practitioner” means a solicitor, barrister and solicitor or legal practitioner of the High Court or of the Supreme Court of a State or Territory;

“liquidator” includes a provisional liquidator;

“person” includes an unincorporated association, a partnership and a person acting in the capacity of trustee of a trust estate;

“relevant provision of this Part” means a provision of this Part that prohibits the doing of an act unless there has been produced the current Card of a person as at the time of production;

“second relevant day” means a day declared by the regulations to be the second relevant day for the purposes of this Part, being a day that is later than the first relevant day and later than 30 June 1990;

“statutory authority” means a body corporate that is incorporated for a public purpose by a law of the Commonwealth or of a State or Territory;

“tax file number”, in relation to a person, means, in a case where the Commissioner of Taxation has on at least one occasion notified the person of a number that the Commissioner of Taxation has assigned to an annual return furnished by the person under section 161 of the *Income Tax Assessment Act 1936*, the last such number of which the Commissioner of Taxation has notified the person.

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(2) Except so far as the contrary intention appears, a reference in a provision of this Part to a person recording a matter or thing is a reference to the person recording that matter or thing, in the manner prescribed for the purposes of that provision, in the person's records.

5 (3) A reference in this Part to giving to the Commissioner of Taxation notice of a matter or thing is a reference to so giving notice of that matter or thing in such manner, and in such form, as the Commissioner of Taxation approves.

10 (4) A relevant provision of this Part does not apply so as to prohibit the doing of an act in a case where, but for this sub-section, the provision would require the production of a Card in respect of the Crown in right of the Commonwealth, a State or a Territory or in respect of a statutory authority.

(5) A contravention of this Part—

15 (a) affects neither the validity nor the enforceability of an agreement;  
(b) does not affect the validity of any act or thing; and  
(c) does not entitle a person to recover the amount of a payment.

(6) Where—

20 (a) a provision of this Part prohibits a person from doing an act or thing in relation to another person unless the first-mentioned person requires the production of a current Card of the other person as at the time of production; and  
(b) the first-mentioned person makes such a requirement in accordance with that provision,  
25 then, notwithstanding any other law and notwithstanding any agreement, the other person is not entitled to have that act or thing done unless and until the requirement is complied with, but if that act or thing is done without the requirement being complied with, nothing in this sub-section—  
(c) affects the validity of that act or thing; or  
30 (d) in the case of a payment—entitles a person to recover the amount of the payment.

#### Eligible representatives of bodies

33. (1) For the purposes of this section—

35 (a) a person is an eligible representative of a body corporate for so long as the person is any one or more of the following:  
(i) the public officer of the body corporate for the purposes of the *Income Tax Assessment Act 1936*;  
(ii) an officer of the body corporate within the meaning of section 8Y of the *Taxation Administration Act 1953*;  
40 (iii) a receiver of property of the body corporate, whether appointed by a court or otherwise and whether or not also a manager;

- (iv) a liquidator of the body corporate appointed by a court;
- (v) in the case of a foreign company within the meaning of the *Companies Act 1981* or of a law of a State or Territory that corresponds to that Act—an agent of the body corporate as defined in section 510 of that Act or in a provision of a law of a State or Territory that corresponds to that section;
- (vi) an employee of the body corporate in relation to whom there is in force a written authorisation to act as an eligible representative of the body corporate, being an authorisation by a person who, when the authorisation was given, was an eligible representative of the body corporate by virtue of one or more of the preceding sub-paragraphs;

(b) a person is an eligible representative of an unincorporated association for so long as the person is any one or more of the following:

- (i) the public officer of the unincorporated association for the purposes of the *Income Tax Assessment Act 1936*;
- (ii) a director, secretary, office-holder, liquidator, receiver or trustee of the association;
- (iii) an employee or member of the unincorporated association in relation to whom there is in force a written authorisation to act as an eligible representative of the unincorporated association, being an authorisation by a person who, when the authorisation was given, was an eligible representative of the unincorporated association by virtue of either or both of the preceding sub-paragraphs; and

(c) a person is an eligible representative of a partnership for so long as the person is any one or more of the following:

- (i) a partner in the partnership;
- (ii) a trustee in bankruptcy of the estate of a partner in the partnership, or of the joint and separate estates of 2 or more partners in the partnership;
- (iii) a receiver or liquidator of the partnership.

(2) A reference in this Part to the production of a current Card of a person as at a particular time shall be deemed, in the case of a body, to be a reference to the production of—

- (a) a current Card of a person who is at that time an eligible representative of the body; and
- (b) a notice in writing that—
  - (i) sets out the body's name;
  - (ii) if the body has a tax file number—sets out that number;
  - (iii) otherwise—states why the body has no tax file number; and
  - (iv) is signed by the eligible representative.

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(3) A reference in this Part to recording a person's Australia Card number shall be deemed, in the case of a body, to be a reference to recording—

- 5 (a) the Australia Card number of a person who is an eligible representative of the body;
- (b) the body's name;
- (c) if the body has a tax file number—that number; and
- 10 (d) otherwise—the reasons, as set out in a notice of a kind referred to in paragraph (2) (b) that relates to the body and was signed by a person who was at the time of production of the notice an eligible representative of the body, why the body has no tax file number.

(4) A reference in this Part to giving notice of a person's Australia Card number shall be deemed, in the case of a body, to be a reference to giving notice of—

- 15 (a) the Australia Card number of a person who is an eligible representative of the body;
- (b) the body's name; and
- (c) if the body has a tax file number—that number.

(5) Where—

- 20 (a) a Card issued in respect of a person is produced to an authority because the person is at the time of production an eligible representative of the body; and
- (b) the person ceases at a later time to be an eligible representative of that body,

25 sub-sections (6), (7) and (8) have effect.

(6) The body shall, within 14 days after that time—

- (a) notify the authority in writing that the person has ceased to be an eligible representative of the body; and
- 30 (b) cause a person who is still an eligible representative of the body to produce to the authority a current Card of the last-mentioned person as at the time of production.

(7) Unless and until the body complies with sub-section (6), the authority is entitled to treat, for the purposes of this Part, the Australia Card number of the person referred to in paragraph (5) (a) as the Australia Card number of an eligible representative of the body.

(8) Where, pursuant to sub-section (6), a person (in this sub-section referred to as the "new representative") who is still an eligible representative of the body produces to the authority a current Card of the new representative as at the time of production, the authority shall record the new representative's Australia Card number in each place in the authority's records where the Australia Card number of the person referred to in paragraph (4) (a) was recorded because the last-mentioned person was an eligible representative of the body.

(9) In this section, "authority" includes a person.

### Trustees

34. (1) Where—

- (a) a provision of this Part prohibits a person from doing an act or thing in relation to another person unless the first-mentioned person requires the production of a current Card of the other person as at the time of production; and
- (b) if that act or thing is done, the other person will, in connection with the doing of that act or thing, be acting in the capacity of trustee (other than a bare trustee) of a trust estate,

the other person shall, if and when such a requirement made in accordance with that provision is complied with, give to the first-mentioned person a notice in writing that—

- (c) states that, in connection with the doing of that act or thing, the other person is acting in the capacity of trustee of that trust estate;
- (d) if the other person has, or the other person and another trustee, or other trustees, of the trust estate together have, in the capacity of trustee or trustees of that trust estate, a tax file number—sets out that number;
- (e) otherwise—states why no trustee of that trust estate has, in the capacity of trustee of that trust estate, a tax file number; and
- (f) is signed by the other person.

(2) Where a person receives from another person a notice that purports to be a notice of a kind referred to in sub-section (1) and that relates to the other person, the first-mentioned person shall, when recording the other person's Australia Card number, record the matters stated and set out in the notice.

Penalty: \$20,000.

### Production of current Card

35. A reference in this Part to the production of a current Card of a person as at a particular time is a reference to—

- (a) unless paragraph (b) applies—the production by the person of a current Card of the person as at that time; or
- (b) if the current Card of the person as at that time was issued to another person—the production, by a prescribed representative of the first-mentioned person, of—
  - (i) a current Card of the first-mentioned person; and
  - (ii) a current Card of the prescribed representative, as at that time.

**Certificates of identity**

36. (1) In this section—

- (a) “prescribed person” means a person who—
  - (i) is an Australian citizen; and
  - (ii) is included in a class of persons prescribed for the purposes of this paragraph; and
- (b) a reference to a requirement that a Card be produced is a reference to a requirement of a provision of this Part that an act be not done unless there has been produced the current Card issued in respect of a particular person (in this section called “the relevant Card-subject”).

(2) A requirement that a Card be produced shall be taken to be complied with if there is delivered to the person to whom a current Card is required to be produced a certificate purporting to be signed by a prescribed person, specifying the respective Australia Card numbers of the relevant Card-subject and the prescribed person and stating—

- (a) that there has been produced to the prescribed person the current Card issued in respect of the relevant Card-subject;
- (b) that, to the best of the knowledge of the prescribed person, the relevant Card-subject is not related to the prescribed person by birth or marriage;
- (c) that the prescribed person is satisfied that it is not reasonably practicable for the relevant Card-subject to attend for the purpose of complying with the requirement that a Card be produced; and
- (d) such other matter or matters (if any) as are required by the regulations.

(3) A prescribed person shall not sign a certificate under sub-section (2) unless—

- (a) there has been produced to the prescribed person a current Card of the relevant Card-subject as at the time of production; and
- (b) if that current Card was so produced by a prescribed representative of that Card-subject—there has been produced to the prescribed person the current Card of that prescribed representative as at the time of the last-mentioned production.

35 Penalty: \$5,000 or imprisonment for 2 years, or both.

(4) If the regulations prescribe a form for a certificate under sub-section (2), such a certificate shall be in accordance with the prescribed form.

**Recently-arrived visitors to Australia**

37. (1) A reference in this Part to the production of a current Card of a person as at a particular time includes, in the case of a visitor, a reference to the production of a passport held by the visitor.

(2) A reference in this Part to recording, or to giving notice of, a person's Australia Card number includes, in the case of a visitor, a reference to recording, or to giving notice of—

- (a) the visitor's name;
- (b) particulars (including the serial number and the country of issue) of a passport held by the visitor;
- (c) the visitor's usual residential address; and
- (d) the visitor's residential address during his or her stay in Australia.

(3) In this section, "visitor" means a natural person who is neither an Australian citizen nor a permanent resident, who is in Australia and who has been in Australia for a total of less than 6 weeks during the immediately preceding 12 months.

#### **Non-residents**

38. (1) A reference in this Part to the production of a current Card of a person as at a particular time includes, in the case of a non-resident, a reference to the furnishing of a notice in writing that—

- (a) sets out the name and usual residential address of the person;
- (b) states that the person is a non-resident within the meaning of this section; and
- (c) is signed by the person.

(2) A reference in this Part to recording, or to giving notice of, a person's Australia Card number includes, in the case of a non-resident, a reference to recording, or to giving notice of, the name and usual residential address of the non-resident as set out in a notice of the kind referred to in sub-section (1) that relates to, and has been prepared or furnished by, the non-resident.

(3) Where, in purported compliance with a requirement made pursuant to this Part, a person furnishes to another person a notice that relates to the first-mentioned person and purports to be a notice of the kind referred to in sub-section (1), the other person is entitled, unless and until the other person has reasonable grounds to believe that the first-mentioned person is not a non-resident, to assume for the purposes of this Part that the first-mentioned person is a non-resident.

(4) In this section, "non-resident" means a natural person who is not present in Australia and who is neither an Australian citizen nor a permanent resident.

(5) A person shall not furnish to another person a notice that—

- (a) purports to be a notice of the kind referred to in sub-section (1); and
- (b) contains a statement that the first-mentioned person knows to be false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for 2 years, or both.

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**Application of Part in relation to certain external Territories**

39. (1) The regulations may make provision for the modification of this Part in its application in, or in relation to persons or matters connected with, Norfolk Island or the Territory of Cocos (Keeling) Islands.

5 (2) In sub-section (1), "modification" includes the addition or omission of a provision or the substitution of a provision for another provision.

***Division 2—When Card to be produced*****Deposits and accounts with financial institutions**

40. (1) A financial institution shall not—

10 (a) on or after the first relevant day, accept a deposit of money by a person, or permit the opening by a person of an account, with the financial institution;

(b) permit, or give effect to, the taking by a person of an assignment of money deposited, or an account opened, on or after the first relevant day, with the financial institution;

15 (c) repay to a person money deposited, on or after the first relevant day, with the financial institution;

(d) permit a person to make a deposit in, or withdrawal from, an account opened, on or after the first relevant day, with the financial institution; or

20 (e) pay interest to a person in respect of money deposited, or an account opened, on or after the first relevant day, with the financial institution,

unless—

25 (f) the financial institution requires, or has at some previous time required, in respect of that money or account, the production of a current Card of the person as at the time of production;

(g) the requirement is or was, as the case may be, complied with; and

30 (h) the financial institution records, or has at some previous time recorded, in respect of that money or account, the person's Australia Card number.

Penalty: \$20,000.

(2) A financial institution shall not, on or after the second relevant day—

35 (a) permit, or give effect to, the taking by a person of an assignment of money deposited, or an account opened, before the first relevant day, with the financial institution;

(b) repay to a person money deposited, before the first relevant day, with the financial institution;

- (c) permit a person to make a deposit in, or withdrawal from, an account opened, before the first relevant day, with the financial institution; or
- (d) pay interest to a person in respect of money deposited, or an account opened, before the first relevant day, with the financial institution,

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unless—

- (e) the financial institution requires, or has at some previous time required, in respect of that money or account, the production of a current Card of the person as at the time of production;
- (f) the requirement is or was, as the case may be, complied with; and
- (g) the financial institution records, or has at some previous time recorded, in respect of that money or account, the person's Australia Card number.

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Penalty: \$20,000.

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## (3) Where—

- (a) either—

- (i) a financial institution pays or credits to a person interest in respect of money deposited, or an account opened, on or after the first relevant day, with the financial institution; or
- (ii) on or after the second relevant day, a financial institution pays or credits to a person interest in respect of money deposited, or an account opened, before the first relevant day, with the financial institution; and

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- (b) by reason of paying or crediting that interest, the financial institution is required by or under a taxation law to provide information to the Commissioner of Taxation,

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the financial institution shall, when so providing the information, give to the Commissioner of Taxation notice of—

- (c) the person's Australia Card number; and

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- (d) if—

- (i) when the financial institution so paid or credited that interest, another person was the legal owner of the deposit, or maintained the account, as the case may be; and
- (ii) the financial institution has recorded, in respect of that money or that account, the other person's Australia Card number,

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the other person's Australia Card number.

Penalty: \$20,000.

## (4) Where, before the second relevant day—

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- (a) a person is the legal owner of a deposit of money, or maintains an account, with a financial institution, being a deposit made, or an account opened, before the first relevant day; and

5 (b) the person produces to the financial institution, in respect of that money or account, a current Card of the person as at the time of production,  
the financial institution shall record, in respect of that money or account, the person's Australia Card number.

Penalty: \$20,000.

10 (5) A financial institution shall, as soon as practicable, and in any event within 2 months, after the second relevant day, give to the Commissioner of Taxation a notice setting out particulars of each deposit of money made, and of each account opened, before the first relevant day, with the financial institution, being money or an account in respect of which the financial institution has not, as at a day that is specified in the notice and is not earlier than the second relevant day, recorded a person's Australia Card number pursuant to sub-section (2) or (4).

15 Penalty: \$20,000.

(6) A reference in this section to depositing money with a financial institution does not include a reference to making a deposit in an account maintained with the financial institution.

### **Investments**

20 41. (1) In this section, "prescribed borrower" means—

- (a) the Commonwealth;
- (b) a State;
- (c) the Northern Territory; or
- (d) a body corporate.

25 (2) A prescribed borrower shall not—

- (a) on or after the first relevant day, borrow money from a person;
- (b) repay to a person, or pay interest to a person in respect of, money lent, on or after the first relevant day, to the prescribed borrower; or
- (c) on or after the second relevant day, repay to a person, or pay interest to a person in respect of, money lent, before the first relevant day, to the prescribed borrower,

unless—

- (d) the prescribed borrower requires, or has at some previous time required, in respect of that money, the production of a current Card of the person as at the time of production;
- (e) the requirement is or was, as the case may be, complied with; and
- (f) the prescribed borrower records, or has at some previous time recorded, in respect of that money, the person's Australia Card number.

40 Penalty: \$20,000.

(3) Where—

(a) either—

(i) a prescribed borrower pays or credits interest to a person in respect of money lent, on or after the first relevant day, to the prescribed borrower; or

(ii) on or after the second relevant day, a prescribed borrower pays or credits interest to a person in respect of money lent, before the first relevant day, to the prescribed borrower; and

(b) by reason of paying or crediting that interest, the prescribed borrower is required by or under a taxation law to provide information to the Commissioner of Taxation,

the prescribed borrower shall, when so providing the information, give to the Commissioner of Taxation notice of—

(c) the person's Australia Card number; and

(d) if—

(i) when the prescribed borrower so paid or credited that interest, another person was the legal owner of the debt owed by the prescribed borrower in respect of that money; and

(ii) the prescribed borrower has recorded, in respect of that money, the other person's Australia Card number,

the other person's Australia Card number.

Penalty: \$20,000.

(4) Where a person deposits money with, or makes a deposit of money in an account maintained with, a financial institution, then, for the purposes of sub-sections (2) and (3)—

(a) the financial institution shall not be taken to borrow that money from a person; and

(b) that money shall not be taken to have been lent by a person to the financial institution.

(5) Except as provided by sub-section (4), nothing in section 40 limits the generality of this section.

(6) For the purposes of sub-section (7) or (8), a legal practitioner shall be taken to accept money for an eligible purpose if, and only if, the legal practitioner accepts the money from a person for the purpose of—

(a) investment by the legal practitioner on behalf of the person; or

(b) being lent under an agreement to be arranged by or on behalf of the legal practitioner.

(7) A legal practitioner shall not—

(a) on or after the first relevant day, accept money from a person for an eligible purpose;

(b) repay to a person money accepted, on or after the first relevant day, by the legal practitioner for an eligible purpose;

(c) pay to a person money received by the legal practitioner that represents income arising from the investment or loan of money

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accepted, on or after the first relevant day, by the legal practitioner for an eligible purpose; or

5 (d) on or after the second relevant day—

(i) repay to a person money accepted, before the first relevant day, by the legal practitioner for an eligible purpose; or

(ii) pay to a person money received by the legal practitioner that represents income arising from the investment or loan of money accepted, before the first relevant day, by the legal practitioner for an eligible purpose,

10 unless—

(e) the legal practitioner requires, or has at some previous time required pursuant to this sub-section, the production of a current Card of the person as at the time of production;

(f) the requirement is or was, as the case may be, complied with; and

15 (g) the legal practitioner records, or has at some previous time recorded pursuant to this sub-section, the person's Australia Card number.

Penalty: \$20,000.

(8) Where—

(a) either—

20 (i) a legal practitioner pays or credits to a person money received by the legal practitioner that represents income arising from the investment or loan of money accepted, on or after the first relevant day, by the legal practitioner for an eligible purpose; or

25 (ii) on or after the second relevant day, a legal practitioner pays or credits to a person money received by the legal practitioner that represents income arising from the investment or loan of money accepted, before the first relevant day, by the legal practitioner for an eligible purpose; and

30 (b) by reason of paying or crediting that money, the legal practitioner is required by or under a taxation law to provide information to the Commissioner of Taxation,

the legal practitioner shall, when so providing the information, give to the Commissioner of Taxation notice of—

35 (c) the person's Australia Card number; and

(d) if—

40 (i) when the legal practitioner so paid or credited that money, the legal practitioner held the investment or loan on behalf of another person, or another person was the legal owner of the investment or loan; and

(ii) the legal practitioner has recorded, in respect of the money accepted as mentioned in paragraph (a), the other person's Australia Card number,

the other person's Australia Card number.

Penalty: \$20,000.

### Income from certain trusts

42. (1) In this section—

“credit” means credit or cause to be credited;

“eligible trust” means an arrangement that is included in—

- (a) a class of arrangements declared by the regulations to be cash management trusts for the purposes of this section;
- (b) a class of arrangements declared by the regulations to be property trusts for the purposes of this section; or
- (c) a class of arrangements declared by the regulations to be unit trusts for the purposes of this section;

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“pay” means pay or cause to be paid;

“unit” includes an interest of any kind.

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(2) A manager of an eligible trust shall not—

- (a) at a particular time on or after the first relevant day, issue to a person a unit in the eligible trust;
- (b) at a particular time, purchase from a person, or pay to a person income relating to, a unit in the eligible trust that was issued on or after the first relevant day; or
- (c) at a particular time on or after the second relevant day, purchase from a person, or pay to a person income relating to, a unit in the eligible trust that was issued before the first relevant day,

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unless either—

- (d) the manager requires, in respect of that unit, the production of a current Card of the person as at the time of production;
- (e) the requirement is complied with; and
- (f) the manager records, in respect of that unit, the person's Australia Card number,

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or—

- (g) the manager has at some previous time required, in respect of a unit in the eligible trust that was about to be acquired, or was then held, by the person, the production of a current Card of the person as at the time of production;
- (h) the requirement was complied with;
- (j) the manager has at some previous time recorded, in respect of the unit referred to in paragraph (g), the person's Australia Card number; and
- (k) the person has, throughout the period beginning when the person acquired the unit referred to in paragraph (g), or at the time referred to in paragraph (g), as the case may be, and ending immediately after the time referred to in paragraph (a), (b) or (c), held at least one unit in the eligible trust.

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Penalty: \$20,000.

(3) Where—

(a) either—

5 (i) a manager of an eligible trust pays or credits to a person income relating to a unit in the eligible trust that was issued on or after the first relevant day; or  
(ii) on or after the second relevant day, a manager of an eligible trust pays or credits to a person income relating to a unit in the eligible trust that was issued before the first relevant day; and

10 (b) by reason of paying or crediting that income, the manager is required by or under a taxation law to provide information to the Commissioner of Taxation,

the manager shall, when so providing the information, give to the Commissioner of Taxation notice of—

15 (c) the person's Australia Card number; and

(d) if—

20 (i) when the trust manager so paid or credited that income, another person was the holder of the unit; and  
(ii) the trust manager has recorded, in respect of that unit, the other person's Australia Card number,

the other person's Australia Card number.

Penalty: \$20,000.

#### **Primary production income and rental income**

43. (1) In this section—

25 “marketing authority” means a statutory authority having functions that include marketing, or the regulation of marketing of, primary produce;

30 “produce agent” means a person carrying on a business that includes acting as agent of primary producers for or in connection with the sale of primary produce;

“real estate agent” means a person who carries on business as a real estate agent.

35 (2) A marketing authority or produce agent shall not, on or after the first relevant day, make to a person a payment representing the proceeds, or part of the proceeds, of sale of primary produce unless—

40 (a) the marketing authority or produce agent requires, or has at some previous time required pursuant to this sub-section, the production of a current Card of the person as at the time of production;  
(b) the requirement is or was, as the case may be, complied with; and  
(c) the marketing authority or produce agent records, or has at some previous time recorded pursuant to this sub-section, the person's Australia Card number.

Penalty: \$20,000.

## (3) Where—

(a) on or after the first relevant day, a marketing authority or produce agent makes to a person a payment representing the proceeds, or part of the proceeds, of sale of primary produce; and

(b) by reason of making the payment, the marketing authority or produce agent is required by or under a taxation law to provide information to the Commissioner of Taxation,

the marketing authority or produce agent shall, when so providing the information, give to the Commissioner of Taxation notice of the person's Australia Card number.

Penalty: \$20,000.

(4) A real estate agent who is acting as the agent of a person in connection with the letting of premises shall not, on or after the first relevant day, make to the person a payment representing rent in respect of those premises unless—

(a) the real estate agent requires, or has at some previous time required pursuant to this sub-section, the production of a current Card of the person as at the time of production;

(b) the requirement is or was, as the case may be, complied with; and

(c) the real estate agent records, or has at some previous time recorded pursuant to this sub-section, the person's Australia Card number.

Penalty: \$20,000.

## (5) Where—

(a) on or after the first relevant day, a real estate agent who is acting as the agent of a person in connection with the letting of premises makes to the person a payment representing rent in respect of those premises; and

(b) by reason of making that payment, the real estate agent is required by or under a taxation law to provide information to the Commissioner of Taxation,

the real estate agent shall, when so providing the information, give to the Commissioner of Taxation notice of the person's Australia Card number.

Penalty: \$20,000.

(6) Sub-section (2) or (4) does not prohibit the making of a payment if a taxation law—

(a) imposes a withholding tax by reference to, or to matters including, the making of the payment; or

(b) requires the person making the payment to deduct an amount from the payment and to deal with that amount in a manner prescribed by a taxation law.

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**Foreign remittances**

44. (1) Except as permitted by sub-section (2) or (3), a financial institution shall not, on or after the first relevant day, effect a remittance of funds overseas for another person.

5      Penalty: \$20,000.

(2) A financial institution may effect a remittance of funds overseas for a person if—

- (a) the financial institution requires the production of a current Card of the person as at the time of production;
- (b) the requirement is complied with; and
- (c) the financial institution records, in the prescribed manner, in respect of that remittance, the Australia Card number of the person in the records of the financial institution.

10     (3) A financial institution may effect a remittance of funds overseas for a person if—

- (a) the funds are withdrawn from an account opened with the financial institution;
- (b) there has been produced, in accordance with a requirement made under section 40 in respect of that account, a current Card of the person as at the time of production; and
- (c) the financial institution has recorded, in respect of that account, the person's Australia Card number.

15     (4) Where, by reason of effecting a remittance of funds overseas for a person, a financial institution is required by or under a taxation law to provide information to the Commissioner of Taxation, the financial institution shall, when so providing the information, give to the Commissioner of Taxation notice of the person's Australia Card number.

20     Penalty: \$20,000.

25     (5) A reference in this section to effecting a remittance of funds overseas for a person is a reference to effecting for the person a remittance of funds to a place outside Australia and includes a reference to providing a bank draft or similar instrument to the person in circumstances where it is reasonable to expect that the bank draft or other instrument will be sent to such a place.

**30     Land transactions**

35     (1) In this section, "Registrar of Land Titles", in relation to a State or Territory, means an official who, or a body that, under a law of that State or Territory, is responsible for the registration of, or of instruments relating to, interests in land situated in that State or Territory.

40     (2) A person shall not, on or after the first relevant day, become a party to a transaction under which a transfer of an interest in land is effected, or is to be effected, unless—

- (a) the person has completed a declaration that—
  - (i) is in the prescribed form;
  - (ii) sets out the person's name;
  - (iii) records the person's Australia Card number; and
  - (iv) sets out such other matters relating to the transaction, or to the transfer or proposed transfer of that interest, as are prescribed; and
- (b) that declaration has been delivered to the Registrar of Land Titles of the State or Territory in which the land is situated.

Penalty: \$5,000.

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**(3) Where—**

- (a) a Registrar of Land Titles of a State or Territory is required by or under a taxation law to provide to the Commissioner of Taxation information about—
  - (i) a transaction of a kind referred to in sub-section (2) relating to; or
  - (ii) a transfer or proposed transfer of, an interest in land situated in that State or Territory; and
- (b) declarations relating to the transaction, transfer, or proposed transfer, as the case may be, have been delivered to that Registrar under sub-section (2),

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that Registrar shall, when so providing the information, give to the Commissioner of Taxation notice of the Australia Card numbers, as set out in the declarations, of the persons who completed the declarations.

**Safety deposit box services and similar services**

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**46. (1)** A financial institution shall not, on or after the first relevant day, make available to a person a safety deposit box service or similar service unless—

- (a) the financial institution requires, in respect of the making available of the service, the production of a current Card of the person as at the time of production;
- (b) the requirement is complied with; and
- (c) the financial institution records, in respect of the making available of the service, the person's Australia Card number.

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**(2)** A financial institution shall not, on or after the first relevant day, permit a person to have access on a particular occasion to a safety deposit box or other facility pursuant to a safety deposit box service or similar service (whether that service was made available to the person before, on or after that day) unless—

- (a) the financial institution requires, in respect of that access, the production of a current Card of the person as at the time of production;
- (b) the requirement is complied with; and

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(c) the financial institution records, in respect of that access, the person's Australia Card number.

(3) Where, before the first relevant day, the person to whom a financial institution has made available a safety deposit box service or similar service produces to the financial institution, in respect of that service, a current Card of the person as at the time of production, the financial institution shall record, in respect of that service, the person's Australia Card number.

5 Penalty: \$20,000.

(4) A financial institution shall, as soon as practicable, and in any event within 2 months, after the first relevant day, give to the Commissioner of Taxation a notice setting out particulars of each safety deposit box service; and of each similar service—

10 (a) that was made available to a person before that day;  
15 (b) that was still available to the person immediately before that day; and  
(c) in respect of which the financial institution has not, as at a day that is specified in the notice and is not earlier than the first relevant day, recorded a person's Australia Card number pursuant to sub-section (2) or (3).

20 Penalty: \$20,000.

### Shares in public companies

47. (1) In this section—

“dealer” means a person who is a dealer for the purposes of the *Securities Industry Act 1980* or for the purposes of a law of a State or Territory that corresponds to that Act;

“public company” means a body corporate that is a public company for the purposes of the *Companies Act 1981* or for the purposes of a law of a State or Territory that corresponds to that Act.

(2) A dealer shall not, on or after the first relevant day, effect a purchase of shares on behalf of a person unless—

30 (a) the dealer requires, or has at some previous time required pursuant to this sub-section, the production of a current Card of the person as at the time of production;  
35 (b) the requirement is or was, as the case may be, complied with; and  
(c) the dealer records, or has at some previous time recorded pursuant to this sub-section, the person's Australia Card number.

(3) Where a purchase of shares in a public company is effected on or after the first relevant day, a person shall not submit to the public company for registration an instrument of transfer giving effect to the purchase unless the transferee's Australia Card number has been recorded on the instrument.

## (4) Where—

(a) on or after the first relevant day, an instrument of transfer of shares in a public company is submitted to the public company for registration of the transfer; and

(b) the instrument of transfer does not have recorded on it a number purporting to be the transferee's Australia Card number,

the company shall not register the transfer unless—

(c) the company requires the production of a current Card of the transferee as at the time of production;

(d) the requirement is complied with; and

(e) the company records the transferee's Australia card number on the instrument.

## (5) Where—

(a) an instrument of transfer of shares in a public company has been submitted to the public company, on or after the first relevant day, for registration;

(b) on or after that day, the public company pays to the transferee a dividend in respect of those shares; and

(c) by reason of paying that dividend, the public company is required by or under a taxation law to provide information to the Commissioner of Taxation,

the public company shall, when so providing the information, give to the Commissioner of Taxation notice of the transferee's Australia Card number, as recorded on the instrument.

Penalty: \$20,000.

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**Dealings in futures contracts****48. (1) In this section—**

“broker” means a person who is a futures broker for the purposes of the *Futures Industry Act 1986* or for the purposes of a law of a State or Territory that corresponds to that Act;

“futures contract” means a futures contract within the meaning of the *Futures Industry Act 1986* or of a law of a State or Territory that corresponds to that Act.

(2) A broker shall not, on or after the first relevant day, acquire, dispose of, or otherwise deal in, a futures contract on behalf of a person unless—

(a) the broker requires, or has at some previous time required pursuant to this sub-section, the production of a current Card of the person as at the time of production;

(b) the requirement is or was, as the case may be, complied with; and

(c) the broker records, or has at some previous time recorded, pursuant to this sub-section, the person's Australia Card number.

Penalty: \$20,000.

(3) Where a broker is required by or under a taxation law to provide to the Commissioner of Taxation information about a futures contract acquired, disposed of, or otherwise dealt in, by the broker on behalf of a

person, the broker shall, when so providing the information, give to the Commissioner of Taxation notice of the person's Australia Card number.

Penalty: \$20,000.

### Employment

5 49. (1) Where, on or after the first relevant day, a person is to become an employee of an employer, the employer shall—

(a) require, in respect of that employment, the production of a current Card of the person; and

10 (b) if the requirement is complied with—record, in respect of that employment, the first-mentioned person's Australia Card number.

(2) Where, on or after the first relevant day—

(a) an employee is to be paid salary or wages in connection with the employee's employment by an employer; and

15 (b) on no previous occasion has there been produced to the employer in respect of that employment a current Card of the employee as at the time of production,

the employer shall—

(c) require, in respect of that employment, the production of a current Card of the employee as at the time of production; and

20 (d) if the requirement is complied with—record, in respect of that employment, the employee's Australia Card number.

(3) Where—

(a) on or after the first relevant day, an employer—

25 (i) proposes to issue a document, being a group certificate, tax stamp sheet or statement of earnings, to a person who is, or who was at some time on or after the relevant day but is no longer, an employee of the employer; or

(ii) receives from an employee of the employer a declaration made for the purposes of a taxation law; and

30 (b) the employer has, in accordance with sub-section (1) or (2), recorded, in respect of the employment by the employer of the person or employee referred to in sub-paragraph (a) (i) or (ii), as the case may be, of this sub-section, the person's or employee's Australia Card number,

35 the employer shall record that Australia Card number on the document or declaration.

(4) An expression used in this section and in Division 2 of Part VI of the *Income Tax Assessment Act 1936* has the same meaning in this section as in that Part.

40 Penalty: \$20,000.

### Prescribed payments system

50. (1) A person who is an eligible paying authority in relation to a prescribed payment that the person is liable to make to a payee shall not, on or after the first relevant day, make the payment to the payee unless—

- (a) the person requires the production of a current Card of the payee as at the time of production; or
- (b) the person has at some previous time required, in accordance with this sub-section, the production of a current Card of the payee as at the time of production and that requirement was complied with.

(2) Where there is produced, pursuant to a requirement made by a person in accordance with sub-section (1), a current Card of a payee as at the time of production, the person shall record the payee's Australia Card number.

(3) Where—

- (a) a person who is an eligible paying authority in relation to a prescribed payment to a payee is to complete the part of a deduction form applicable to the eligible paying authority, being a deduction form relating to that payment; and
- (b) the person has, in accordance with sub-section (2), recorded the payee's Australia Card number,

the person shall, when completing that part, record that Australia Card number in that part.

(4) Where—

- (a) sub-section 221YHR (3) of the *Income Tax Assessment Act 1936* requires a person to forward to the Commissioner of Taxation a reporting exemption declaration received by the person from another person; and
- (b) the first-mentioned person has, in accordance with sub-section (2), recorded the other person's Australia Card number,

the first-mentioned person shall record that Australia Card number on the declaration before so forwarding the declaration.

(5) Where, as at the time when a person who is an eligible paying authority in relation to a prescribed payment makes the payment to a payee—

- (a) the person has on one occasion, or on 2 or more occasions, required, in accordance with sub-section (1), the production of a current Card of the payee as at the time of production; and
- (b) that requirement has not been complied with, or none of those requirements has been complied with, as the case may be,

then, for the purposes of determining an amount that the person is to deduct, under a provision of Division 3A of Part VI of the *Income Tax Assessment Act 1936*, from the payment, the payee shall be deemed not to have properly furnished a deduction form to the person in relation to the payment.

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(6) An expression used in this section and in Division 3A of Part VI of the *Income Tax Assessment Act 1936* has the same meaning in this section as in that Part.

(7) Without limiting the generality of sub-section (6), section 221YHA and 221YHZ of the *Income Tax Assessment Act 1936* have effect for the purposes of this section as if this section were a provision of Division 3A of Part VI of that Act.

Penalty: \$20,000.

#### Production to the Commissioner of Taxation

5 10 15 51. (1) For a purpose related to the performance or exercise by the Commissioner of Taxation of a function or power under a taxation law, the Commissioner of Taxation, or an officer authorised in writing by the Commissioner of Taxation for the purposes of this section, may, by notice in writing served on a person on or after the first relevant day, require the production of a current Card of the person as at the time of production.

(2) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made of the person in accordance with sub-section (1).

Penalty: \$20,000.

#### Claims for Medicare benefits

20 52. (1) In this section, "Act" means the *Health Insurance Act 1973*.

(2) Where, on or after the first relevant day, a claim for a benefit under the Act is presented by the claimant personally, or by another person on behalf of the claimant, at an office of the Commission or of an agent of the Commission, the benefit shall not be paid in cash to the claimant or other person unless—

25 30 (a) the Commission or agent requires the production of a current Card of the claimant, or the other person, as the case may be, as at the time of production; and

(b) the requirement is complied with.

(3) A benefit under the Act in respect of the rendering, on or after the first relevant day, of a service to a person shall not be paid to a claimant, or to a person acting on behalf of a claimant, unless—

35 (a) the first-mentioned person's Australia Card number is recorded on the claim for the benefit, or the Commission identifies an entry in the Register as the entry relating to the first-mentioned person;

(b) the claimant's Australia Card number is recorded on the claim; and

(c) the Commission identifies an entry in the Register as the entry relating to the claimant.

40 (4) Where a right to a benefit under the Act in respect of the rendering, on or after the first relevant day, of a service to a person is assigned to another person in accordance with section 20A of the Act—

(a) the other person or an employee of the other person may require the production of a current Card of the first-mentioned person as at the time of production, and

(b) if such a requirement is made and complied with—the person who made the requirement shall record the first-mentioned person's Australia Card number on any claim by the other person for a benefit under the Act in respect of the rendering of that service.

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(5) Where—

(a) before the first relevant day, a claim for a benefit under the Act is presented by the claimant personally, or by another person on behalf of the claimant, at an office of the Commission or of an agent of the Commission; and

(b) as at the time when the claim is presented, there is a current Card of the claimant or other person, as the case may be,

the Commission or agent—

(c) may require the production of a current Card of the claimant or other person, as the case may be, as at the time of production; and

(d) may, if such a requirement is made, refuse to pay the benefit in cash to the claimant or other person, as the case may be, unless the requirement is complied with.

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(6) Where—

(a) a claim for a benefit under the Act is made in respect of the rendering, before the first relevant day, of a service to a person; and

(b) as at the time when the claim is made, there is a current Card of the person,

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the Commission may refuse to pay the benefit unless—

(c) the person's Australia Card number is recorded on the claim; or

(d) the Commission identifies an entry in the Register as the entry relating to the person.

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(7) Where a claim for a benefit under the Act is made in respect of the rendering, before the first relevant day, of a service, the Commission may refuse to pay the benefit to the claimant, or to a person acting on behalf of the claimant, unless—

(a) the claimant's Australia Card number is written on the claim; and

(b) the Commission identifies an entry in the Register as the entry relating to the claimant.

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(8) Where—

(a) a right to a benefit under the Act in respect of the rendering, before the first relevant day, of a service to a person is assigned to another person in accordance with section 20A of the Act; and

(b) as at the time of the assignment, there is a current Card of the first-mentioned person,

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then—

- (c) the other person or an employee of the other person may require the production of a current Card of the first-mentioned person as at the time of production; and
- 5 (d) if such a requirement is made and complied with—the person who made the requirement shall record the first-mentioned person's Australia Card number on any claim by the other person for a benefit under the Act in respect of the rendering of that service.

10 (9) Sub-sections (2), (3), (5), (6) and (7) do not apply in relation to a benefit payable under the Act in respect of the rendering of a service to a person who is a minor living in a relevant institution, and sub-sections (4) and (8) do not apply in respect of an assignment of such a benefit.

15 (10) In sub-section (9), “relevant institution” means an establishment for the institutional care of minors that is prescribed, or that is included in a class of establishments that is prescribed, for the purposes of this sub-section.

### **Hospital patients**

20 53. (1) Where a person has been admitted to a recognised hospital as an in-patient, the recognised hospital may require the production of a current Card of the person as at the time of production.

(2) A recognised hospital shall, as soon as practicable after the admission of a person to the recognised hospital as an in-patient, notify the Commission of the Australia Card number of the person.

25 (3) In this section, “in-patient” and “recognised hospital” have the same respective meanings as in the *Health Insurance Act 1973*.

### **Social security benefits**

54. (1) In this section—

“Act” means the *Social Security Act 1947*;

30 “eligible person” means a person who is eligible for the issue or renewal of a Card;

“officer” has the same meaning as in the Act;

“pension” means a pension, benefit or allowance under the Act;

“pensioner” means an eligible person who is receiving a pension;

35 “Secretary” means the Secretary of the Department responsible for matters arising under the Act.

(2) Subject to sub-section (6), an eligible person shall not, on or after the first relevant day, become entitled to receive a pension unless and until—

- 40 (a) the Secretary requires, in respect of that pension, the production of a current Card of the person as at the time of production and the requirement is complied with; or
- (b) the Secretary identifies, in respect of that pension, an entry in the Register as the entry relating to the person.

## (3) Where—

- (a) a person would, if sub-section (2) had not been enacted, have become entitled to receive a pension; and
- (b) the Secretary is satisfied that the person will suffer hardship unless sub-section (4) or (5) has effect, or unless sub-sections (4) and (5) have effect,

that sub-section, or those sub-sections, have effect.

(4) The Secretary shall authorise in writing the payment to the person of the first instalment of the pension.

(5) The Secretary shall, if satisfied that an application has been made in accordance with this Act for the issue of a Card in respect of the person, authorise in writing the payment to the person of each instalment of the pension that would, if sub-section (2) had not been enacted, have become payable during a period specified in the authorisation, not being a period beginning before the authorisation is given or ending after the application has been finally dealt with or otherwise disposed of.

(6) Where an authorisation under sub-section (4) or (5) is in force in relation to an instalment of a pension, sub-section (2) does not prevent the payment of that instalment.

(7) Where an eligible person was, throughout the period commencing immediately before the first relevant day and ending immediately before the second relevant day, entitled to receive a pension, the person is not, on or after the second relevant day, entitled to receive that pension unless and until—

- (a) there has, in respect of that pension, been produced to the Secretary, in accordance with a requirement of the Secretary or otherwise, a current Card of the person as at the time of production; or
- (b) the Secretary has identified, in respect of that pension, an entry in the Register as the entry relating to the person.

(8) Where, on or after the first relevant day, a person who immediately before the first relevant day was not an eligible person and who is entitled to receive a pension becomes an eligible person, the person is not, on or after—

- (a) the twenty-eighth day after the day on which the person becomes an eligible person; or
- (b) the second relevant day,

whichever is the later, entitled to receive the pension unless and until—

- (c) there has, in respect of that pension, been produced to the Secretary, in accordance with a requirement of the Secretary or otherwise, a current Card of the person as at the time of production; or
- (d) the Secretary has identified, in respect of that pension, an entry in the Register as the entry relating to the person.

(9) If the first relevant day is earlier than—

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- (a) unless paragraph (b) applies—1 July 1991; or
- (b) if regulations in force at the commencement of 1 July 1991 specify for the purposes of this sub-section a day that is later than 1 July 1991—the specified day,

5 sub-section (2) applies in relation to special benefit under Part VII of the Act as if the reference in that sub-section to the first relevant day were a reference to 1 July 1991, or to the specified day, as the case may be.

(10) If the second relevant day is earlier than—

- (a) unless paragraph (b) applies—1 July 1991; or
- (b) if regulations in force at the commencement of 1 July 1991 specify for the purposes of this sub-section a day that is later than 1 July 1991—the specified day,

10 sub-section (7) applies in relation to special benefit under Part VII of the Act as if the reference in that sub-section to the second relevant day were a reference to 1 July 1991, or to the specified day, as the case may be.

15 (11) The Secretary may, on or after the first relevant day, refuse to deal with an inquiry or request made by a person claiming to be, or to represent, a pensioner unless there has been produced to the Secretary a current Card of the pensioner as at the time of production.

20 (12) The Secretary may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Secretary, delegate to an officer all or any of the Secretary's functions or powers under this section, other than this power of delegation.

25 (13) A delegation under this section does not prevent the performance of a function, or the exercise of a power, by the Secretary.

## PART V—ACCESS TO INFORMATION

### Division 1—Preliminary

#### Operation of *Freedom of Information Act 1982* and *Archives Act 1983*

30 55. (1) The *Freedom of Information Act 1982* does not apply to or in relation to—

- (a) the Register;
- (b) the BDM Register; or
- (c) a document that is held by the Authority or by the Agency and contains information obtained under an arrangement made under section 73, to the extent that the document contains such information.

35 (2) Subject to sub-section (1), nothing in this Part—

- (a) affects the operation of the *Freedom of Information Act 1982*; or
- (b) affects any right of a person to make a request under that Act in respect of documents in the possession of the Authority or the Agency.

40 (3) The *Archives Act 1983* does not apply to or in relation to—

- (a) the Register, except to the extent that the Register contains information that relates only to persons who are dead;
- (b) the BDM Register; or
- (c) a document that is held by the Authority or by the Agency and contains information obtained under an arrangement made under section 73, to the extent that the document contains such information.

(4) Subject to sub-section (3), nothing in this Part—

- (a) affects the operation of the *Archives Act 1983*; or
- (b) affects any right of a person to access a record under that Act.

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### *Division 2—Access by Card-subjects, &c.*

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#### **Access to Register**

**56. (1)** A Card-subject may, by writing given to the Authority, request access to information in the Register in relation to the Card-subject.

**(2)** Where a person has made, or 2 persons have jointly made, an application for the issue of a Card in respect of a person (in this sub-section referred to as the “relevant person”), the applicant, or either or both of the applicants, as the case may be, may, by writing given to the Authority, request access to information in the Register in relation to the relevant person.

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**(3)** Subject to sub-section (4), where a request has been made in accordance with sub-section (1) or (2) for access to information in the Register in relation to a person, the Authority shall, within 21 days after the day on which the request was made, give access to such of the information in the Register in relation to the person as was entered in the Register pursuant to sub-section 25 (1), (2) or (3)—

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- (a) by giving a transcript of the information to the person, or either or both of the persons, who made the request; or
- (b) by providing the person, or either or both of the persons, who made the request with a reasonable opportunity of reading the information by means of equipment provided by the Authority.

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**(4)** Where the parent of a minor has made a request under sub-section (1) or (2) for access to information in the Register in relation to the minor, the Authority shall take all necessary steps to ensure that the parent is not given access to information in the Register in relation to the minor that—

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- (a) except in a case where the parent’s current residential address, as entered in the Register, is the same as the minor’s, as so entered—concerns the minor’s current residential address;
- (b) except in a case where the parent’s current postal address, as entered in the Register, is the same as the minor’s, as so entered—concerns the minor’s current postal address; or
- (c) in any case—is information of a kind referred to in paragraph 2 (q) or (r) of Schedule 1.

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**Access to information recorded on Card**

57. A Card-subject (in this section referred to as the "applicant") may, by writing given to the Authority, request access to information recorded, in such a form as not to be legible, on the Card issued in respect of the applicant and, if the applicant does so, the Authority shall, within 21 days after the day on which the request was made, give the applicant access to information (if any) recorded on the Card pursuant to paragraphs 17(7)(a) to (d), inclusive—

- (a) by giving to the applicant a transcript of the information; or
- 10 (b) by providing the applicant with a reasonable opportunity of reading the information by means of equipment provided by the Authority.

**Fee payable in respect of certain requests**

58. (1) Subject to sub-section (3), the Authority is not obliged to comply with a request under section 56 for access to information in the Register in relation to a person if—

- (a) the request is made within 12 months after the day on which a previous request under that section was made for access to information in the Register in relation to that person; and
- 20 (b) since the Authority complied with that previous request, the person making the request has not been given notice of any change in the information to which the request relates.

(2) Subject to sub-section (3), the Authority is not obliged to comply with a request under section 57 for access to information recorded on a Card if the request is made within 12 months after the day on which a previous request under that section was made for access to information recorded on the Card.

(3) Sub-section (1) or (2) does not apply in relation to a request under section 56 or 57, as the case may be, if the person making the request pays to the Authority the fee prescribed for the purpose of this sub-section.

**30 Division 3—Access by officials****Nature and method of access**

59. (1) A reference in this Division to access to the Register is a reference to access to no more of the information contained in the Register than is reasonably necessary, having regard to the purpose for which access is given.

(2) For the purposes of this Division, access to the Register may be given to a person—

- (a) by furnishing the person with a transcript of information contained in the Register; or

- 40 (b) by providing the person with equipment, or with access to equipment, by means of which information contained in the Register may be read by the person.

**Taxation matters**

60. The Commissioner of Taxation is entitled to have access to the Register for purposes related to the performance by the Commissioner of Taxation of a function under a taxation law.

**Social security matters**

61. The Secretary of the Department responsible for matters arising under the *Social Security Act 1947* is entitled to have access to the Register for purposes related to the performance of a function under the *Social Security Act 1947*.

**Health insurance matters**

62. The General Manager of the Commission is entitled to have access to the Register for purposes related to the performance by the Commission of a function conferred on the Commission by or under the *Health Insurance Act 1973* or the *Health Insurance Commission Act 1973* (other than Part IIA of the last-mentioned Act).

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**Administration of Australia Card identification system**

63. The chief executive officer of the Authority is entitled to have access to the Register for the purposes of the performance by the Authority of its functions under this Act.

**Agency purposes**

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64. The President is entitled to have access to the Register for the purposes of the performance by the Agency of its functions under this Act.

**Authorisation of other persons to have access to Register**

65. (1) In this section, "Secretary" means a Secretary of a Department who is entitled under a preceding provision of this Division to have access to the Register.

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(2) A Secretary may, by instrument in writing, declare offices or positions to be relevant offices for the purposes of section 66.

(3) A Secretary (other than the chief executive officer of the Authority) who makes an instrument under sub-section (2) shall give to the Authority a copy of the instrument together with a statement in writing that sets out, in relation to each office or position to which the instrument relates, the extent to which a person holding or occupying the office or position is to have access to the Register.

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(4) On receiving under sub-section (3) a copy of an instrument together with a statement, the Authority shall, subject to sub-section (5), give the copy and the statement to the Agency, together with the Authority's recommendation as to whether the Agency should decide in relation to the instrument as mentioned in paragraph (7) (a) or sub-paragraph (7) (b) (i) or (ii).

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5 (5) Unless it has consulted with the Secretary who made an instrument under sub-section (2) or with an authorised representative of that Secretary, the Authority shall not recommend to the Agency under sub-section (4) that the Agency decide in relation to the instrument as mentioned in sub-paragraph (7) (b) (i) or (ii).

10 (6) The chief executive officer of the Authority shall, on making an instrument under sub-section (2), give to the Agency a copy of the instrument together with a statement in writing that sets out, in relation to each office or position to which the instrument relates, the extent to which a person holding or occupying the office or position is to have access to the Register.

15 (7) The Agency shall, within 14 days after receiving under sub-section (4) or (6) a copy of an instrument made by a Secretary—

- (a) decide to approve the instrument; or
- (b) after consulting with that Secretary or with an authorised representative of that Secretary—
  - (i) decide to reject the instrument; or
  - (ii) decide to reject the instrument so far as it relates to some offices or positions, but to approve the remainder of the instrument,

20 and give written notice of its decision to that Secretary and, unless that Secretary is the chief executive officer of the Authority, to the chief executive officer.

25 (8) In performing its functions under sub-section (7), the Agency shall ensure that the number of persons who are at any one time entitled, by virtue of instruments made under sub-section (2) by a particular Secretary, to have access to the Register is not greater than is reasonably necessary for the carrying out of the purposes for which that Secretary is entitled to have access to the Register.

30 (9) Where the Agency decides in relation to an instrument as mentioned in sub-paragraph (7) (b) (i) or (ii) and gives notice of its decision to the Secretary who made the instrument, that Secretary shall be deemed—

- (a) to have revoked the instrument under sub-section (10); or
- (b) to have varied the instrument under sub-section (10) by omitting the offices or positions in relation to which the Agency has rejected the instrument,

35 as the case may be, at the time when the notice was so given, and to have complied with sub-section (11) in relation to the revocation or variation.

(10) A Secretary may, by instrument in writing—

- (a) revoke an instrument made by the Secretary under sub-section (2); or
- (b) vary an instrument made by the Secretary under sub-section (2) by omitting offices or positions.

(11) A Secretary shall give a copy of an instrument under sub-section (10) to the Agency.

**Access to Register by authorised persons**

66. (1) In this section, "relevant office", in relation to a Department, means an office or position in relation to which there is in force an instrument—

- (a) that was made under sub-section 65 (2) by the Secretary of that Department; and
- (b) in relation to which the Agency has decided as mentioned in paragraph 65 (7) (a) or sub-paragraph 65 (7) (b) (ii).

(2) A Secretary of a Department who is entitled under a preceding provision of this Division to have access to the Register shall cause to be prepared and maintained a record that sets out, in relation to each relevant office in relation to the Department, the name of the person who holds or occupies that relevant office.

(3) A Secretary of a Department (other than the chief executive officer of the Authority) who has caused a record to be prepared under sub-section (2) shall give to the Authority a copy of the record, and of each variation made to the record, as soon as practicable after the record is prepared, or the variation is made, as the case may be.

(4) For so long as—

- (a) a person holds or occupies a relevant office in relation to a Department; and
- (b) the person's name is included in a copy of a record, or a copy of a variation of a record, being a copy given to the Authority under sub-section (2) by the Secretary of that Department,

the person is entitled to have access to the Register for the purposes for which that Secretary is entitled to have access to the Register.

**Division 4—Miscellaneous**

**Notification to certain persons of changes to Register**

67. (1) The Authority may, on being requested to do so by a Secretary of a Department who is entitled to have access to the Register under this Part, enter into an arrangement with the Secretary under which the Authority is to inform—

- (a) the Secretary; or
- (b) a person entitled to have access to the Register for the purposes for which the Secretary is entitled to have access to the Register,

or to ensure that the Secretary or such a person is informed, of any additions or changes to information in the Register in relation to a person or in relation to a specified class of persons, being additions or changes to such information that are relevant to any purpose for which the Secretary is entitled to have access to the Register.

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(2) The Authority shall comply with an arrangement entered into under sub-section (1) while the arrangement remains in effect.

5 (3) The chief executive officer of the Authority may make a separate record of any additions or changes to information in the Register in relation to a person or in relation to a specified class of persons, being additions or changes to such information that are relevant to any purpose for which the chief executive officer is entitled to have access to the Register.

10 (4) An arrangement entered into under sub-section (1) by the Authority and the Secretary of a Department ceases to have effect if—

- 10 (a) the Secretary of that Department ceases to be entitled to have access to the Register under Division 3; or
- 10 (b) the Secretary cancels the arrangement.

#### **Disposal of records on change of administrative arrangements**

15 68. (1) In this section, “relevant records” means records of information obtained from the Register.

(2) Where—

- (a) the Secretary of a Department is, by virtue of that Department having responsibility for a particular matter, authorised to have access to the Register; and
- 20 (b) that Department ceases to have responsibility for that matter, the Secretary shall cause all relevant records held in that Department and relating to that matter to be delivered—
- 25 (c) if another Department has become responsible for that matter—to the Secretary of that Department; and
- (d) in any other case—to the Agency.

(3) Where a Department is abolished, the Agency is entitled to possession of all relevant records held by that Department immediately before its abolition.

30 (4) Where relevant records have been delivered to the Agency under sub-section (2) or are in the possession of the Agency in accordance with sub-section (3), the President may, after consulting with the Director-General of the Australian Archives—

- (a) cause the records to be delivered to the Department having responsibility for the matters to which the records relate; or
- 35 (b) if there is no Department that has responsibility for that matter—
  - (i) where the records contain only information obtained from the Register—cause the records to be destroyed; and
  - (ii) in any other case—cause the records to be amended by the deletion of information obtained from the Register and the records as so amended to be delivered into such custody as the Agency thinks appropriate.

**PART VI—NATIONAL BIRTHS, DEATHS AND MARRIAGES  
REGISTER**

**Objects of this Part**

69. The objects of this Part are, by the establishment of a National Births, Deaths and Marriages Register—

- (a) to promote the objects referred to in section 3;
- (b) to facilitate the administration and execution of the other Parts of this Act;
- (c) to provide for a continually updated census of the population of Australia and the external Territories;
- (d) to provide for the continuing collection of data from which statistics relating to that population can be compiled as and when required;
- (e) to facilitate the administration and execution of the other laws of the Commonwealth relating to census and statistics;
- (f) to facilitate the administration and execution of the laws of the Commonwealth relating to—
  - (i) marriage;
  - (ii) divorce and matrimonial causes and, in relation thereto, parental rights and the custody and guardianship of minors; and
  - (iii) passports; and
- (g) to enable the Commonwealth, as the national government of Australia, to co-ordinate and otherwise assist the establishment and maintenance of a uniformly administered national system of registration of births, deaths, marriages, adoptions, legitimations, acknowledgments of paternity and changes of name.

**Interpretation**

70. (1) In this Part—

“appropriate officer”, in relation to a jurisdiction, means—

- (a) in the case of a State or of the Northern Territory—a Minister of that State or Territory; or
- (b) in the case of Norfolk Island—the Administrator of Norfolk Island;

“arrangement” includes an agreement;

“change of name” means a change of name of a natural person;

“jurisdiction” means a State, the Northern Territory or Norfolk Island;

“relevant registration law”, in relation to a State or Territory, means a law of that State or Territory relating to the registration of births, deaths, marriages, adoptions, legitimations, acknowledgments of paternity or changes of name;

“relevant Territory” means a Territory, other than the Northern Territory or Norfolk Island.

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(2) A reference in this Part to making an arrangement includes a reference to entering into an agreement.

(3) A reference in this Part to the part of the BDM Register that relates to a State or Territory is a reference to so much of the BDM Register as is concerned with births, deaths, marriages, adoptions, legitimations, acknowledgments of paternity, and changes of name, in that State or Territory.

#### **Establishment and keeping of BDM Register**

71. (1) There shall be a Register to be known as the National Births, Deaths and Marriages Register.

(2) The BDM Register shall be established and kept by the Authority.

(3) The BDM Register may be kept by electronic means.

(4) The BDM Register may consist of 2 or more registers, each of which contains so much of the information that is required to be entered in the BDM Register as the Authority determines.

(5) In the performance of its functions under this Part, the Authority shall observe such procedures as are reasonably necessary to prevent unauthorised access to, or disclosure of, information contained in the BDM Register.

(6) The Authority shall comply with guidelines issued by the Agency under paragraph 88 (1) (h) in relation to the Authority's procedures for preventing unauthorised access to, or disclosure of, information contained in the BDM Register.

#### **Delegation by Authority of certain functions**

72. (1) The Minister may make an arrangement with an appropriate officer of a jurisdiction for and in relation to the delegation, either generally or as otherwise provided by the arrangement, to a person nominated by that appropriate officer, of functions or powers of the Authority in relation to the keeping of the part of the BDM Register that relates to that jurisdiction.

(2) Where an arrangement made in accordance with sub-section (1) is in force, the Authority shall be deemed to have delegated under this section, as provided by the arrangement, the functions and powers to which the arrangement relates.

(3) The Minister may by writing direct the Authority to delegate, either generally or as otherwise provided by the direction, functions or powers of the Authority in relation to the keeping of the part of the BDM Register that relates to a relevant Territory.

(4) The Authority shall comply with a direction under sub-section (3).

(5) Where—

(a) the Authority has delegated functions or powers in compliance with a direction under sub-section (4); and

(b) the direction is varied or revoked,  
the Authority shall vary or revoke the delegation accordingly.

(6) The Authority shall not perform a function, or exercise a power, to the extent that a delegation under this section is in force in relation to the function or power. 5

(7) An act or thing done in the performance of a function, or in the exercise of a power, by a person to whom that function or power has been delegated under this section has the same force and effect as if the function or power had not been delegated and the act or thing had been done by the Authority. 10

#### Access to State and Territory registers

73. (1) The Minister may make an arrangement with an appropriate officer of a jurisdiction for and in relation to access by the Authority to a register kept under a relevant registration law of that jurisdiction. 15

(2) An arrangement made under sub-section (1) shall not provide for access by the Authority to a register of a kind referred to in that sub-section except for the purpose of compiling and maintaining the BDM Register.

(3) For the purpose of compiling and maintaining the BDM Register, the Authority is entitled, subject to sub-section (4), to have access to a register kept under a relevant registration law of a relevant Territory. 20

(4) The Minister may give a direction in writing concerning access by the Authority under sub-section (3) to a register and, if the Minister does so, the Authority shall not have access under that sub-section to that register except in accordance with the direction.

#### Entry of information in BDM Register

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74. The Authority shall, as soon as practicable after receiving, whether by virtue of an arrangement under section 73 or otherwise, information relating to a birth, death, marriage, adoption, legitimisation, acknowledgment of paternity, or change of name, in Australia or an external Territory, whether occurring before, at or after the commencement of this section, enter in the BDM Register particulars of that birth, death, marriage, adoption, legitimisation, acknowledgment of paternity, or change of name. 30

#### Nature and method of access to BDM Register

75. (1) A reference in this Part to access to the BDM Register is a reference to access to no more of the information contained in the BDM Register than is reasonably necessary, having regard to the purpose for which access is given. 35

(2) For the purposes of this Part, access to the BDM Register may be given to a person—

(a) by furnishing the person with a document that sets out or contains information contained in the BDM Register; or 40

(b) by providing the person with, or with access to, equipment by means of which information contained in the BDM Register may be read, recorded or stored by the person.

5 (3) A reference in this section to the BDM Register includes a reference to a part of the BDM Register.

**Australia Card matters, &c.**

76. The chief executive officer of the Authority is entitled to have access to the BDM Register—

10 (a) for the purpose of obtaining assistance in the identification of persons in respect of whom applications for the issue of Cards have been made, and persons who have made applications for the issue of Cards;

(b) for the purpose of verifying statements made in applications for the issue of Cards;

15 (c) for the purpose of obtaining assistance in the verification of the identity of persons in respect of whom Cards have been issued, and of persons to whom Cards have been issued; and

(d) for the purpose of performing the functions of the Authority under this Part.

20 **Delegates of the Authority**

77. (1) Where a delegation to a person under section 72 is in force, the person—

25 (a) is entitled to have access, for the purposes of the performance or exercise by the person, pursuant to the delegation, of functions or powers, to the part of the BDM Register in relation to which the person is so performing those functions or exercising those powers; and

(b) may authorise persons in writing to have access as mentioned in paragraph (a).

30 (2) A person authorised in accordance with paragraph (1) (b) is entitled to have access in accordance with the authorisation.

**Passport matters**

78. The Secretary of the Department responsible for matters arising under the *Passports Act 1938* is entitled to have access to the BDM Register—

35 (a) for the purpose of obtaining assistance in the identification of persons in relation to whom applications for the issue of Australian passports under that Act have been made or persons in relation to whom Australian passports have been issued under that Act; or

40 (b) for the purpose of facilitating the recalling of Australian passports issued under that Act to persons who have since died.

### Statistical matters

79. The Australian Statistician is entitled to have access to the BDM Register for the purposes of—

- (a) extraction from the BDM Register of data for statistical coding and aggregation; and
- (b) insertion in the BDM Register of statistical codes of classification, including codes relating to causes of death,

in connection with the performance of the functions of the Australian Bureau of Statistics under the *Australian Bureau of Statistics Act 1975*.

### Epidemiological studies

80. (1) The Secretary of the Department responsible for matters arising under the *National Health Act 1953* is entitled to have access to the BDM Register for the purpose of obtaining information necessary for the conduct of any epidemiological study approved in accordance with guidelines published under section 13 of the *Privacy Act 1986*.

(2) The Secretary of the Department referred to in sub-section (1) or a person authorised by the Secretary under section 81 to have access to the BDM Register may communicate to a person involved in the conduct of a study of a kind referred to in sub-section (1) information obtained from the BDM Register, for the conduct of that study, under sub-section (1).

### Authorisation of other persons to have access to BDM Register

81. (1) In this section, “Secretary” means a Secretary of a Department who is entitled under a preceding provision of this Division to have access to the BDM Register.

(2) A Secretary may, by instrument in writing, declare offices or positions to be relevant offices for the purposes of section 82.

(3) A Secretary (other than the chief executive officer of the Authority) who makes an instrument under sub-section (2) shall give to the Authority a copy of the instrument together with a statement in writing that sets out, in relation to each office or position to which the instrument relates, the extent to which a person holding the office or occupying the position is to have access to the BDM Register.

(4) Subject to sub-section (5), on receiving under sub-section (3) a copy of an instrument together with a statement, the Authority shall give the copy and the statement to the Agency, together with the Authority’s recommendation as to whether the Agency should decide in relation to the instrument as mentioned in paragraph (7) (a) or sub-paragraph (7) (b) (i) or (ii).

(5) Unless it has consulted with the Secretary who made an instrument under sub-section (2) or with an authorised representative of that Secretary, the Authority shall not recommend to the Agency that the Agency decide in relation to the instrument as mentioned in sub-paragraph (7) (b) (i) or (ii).

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5 (6) The chief executive officer of the Authority shall, on making an instrument under sub-section (2), give to the Agency a copy of the instrument together with a statement in writing that sets out, in relation to each office or position to which the instrument relates, the extent to which a person holding the office or occupying the position is to have access to the BDM Register.

(7) The Agency shall, within 14 days after receiving under sub-section (4) or (6) a copy of an instrument made by a Secretary—

10 (a) decide to approve the instrument; or

10 (b) after consulting with that Secretary or with an authorised representative of that Secretary—

15 (i) decide to reject the instrument; or

15 (ii) decide to reject the instrument so far as it relates to some offices or positions, but to approve the remainder of the instrument,

and give written notice of its decision to that Secretary and, unless that Secretary is the chief executive officer of the Authority, to the chief executive officer.

20 (8) In performing its functions under sub-section (7), the Agency shall ensure that the number of persons who are at any one time entitled, by virtue of instruments made under sub-section (2) by a particular Secretary, to have access to the BDM Register is not greater than is reasonably necessary for the carrying out of the purposes for which that Secretary is entitled to have access to the BDM Register.

25 (9) Where the Agency decides in relation to an instrument as mentioned in sub-paragraph (7) (b) (i) or (ii) and gives notice of its decision to the Secretary who made the instrument, that Secretary shall be deemed—

30 (a) to have revoked the instrument under sub-section (10); or

30 (b) to have varied the instrument under sub-section (10) by omitting the offices or positions in relation to which the Agency has rejected the instrument,

as the case may be, at the time when the notice was so given, and to have complied with sub-section (11) in relation to the revocation or variation.

(10) A Secretary may, by instrument in writing—

35 (a) revoke an instrument made by the Secretary under sub-section (2); or

(b) vary an instrument made by the Secretary under sub-section (2) by omitting offices or positions.

(11) A Secretary shall give to the Agency a copy of an instrument under sub-section (10).

### Access to BDM Register by authorised persons

82. (1) In this section, "relevant office", in relation to a Department, means an office or position in relation to which there is in force an instrument—

- (a) that was made under sub-section 81 (2) by the Secretary of that Department; and
- (b) in relation to which the Agency has decided as mentioned in paragraph 81 (7) (a) or sub-paragraph 81 (7) (b) (ii).

(2) A Secretary of a Department who is entitled under a preceding provision of this Division to have access to the BDM Register shall cause to be prepared and maintained a record that sets out, in relation to each relevant office in relation to the Department, the name of the person who holds or occupies that relevant office.

(3) A Secretary of a Department (other than the chief executive officer of the Authority) who has caused a record to be prepared under sub-section (1) shall give to the Authority a copy of the record, and of each variation made to the record, as soon as practicable after the record is prepared, or the variation is made, as the case may be.

(4) For so long as—

- (a) a person holds or occupies a relevant office in relation to a Department; and
- (b) the person's name is included in a copy of a record, or a copy of a variation of a record, being a copy given to the Authority under sub-section (2) by the Secretary of that Department,

the person is entitled to have access to the BDM Register for the purposes for which that Secretary is entitled to have access to the BDM Register.

### State and Territory officials

83. (1) The Minister may make an arrangement with an appropriate officer of a jurisdiction for and in relation to access, by persons authorised by a person nominated by that appropriate officer, to the part of the BDM Register that relates to that jurisdiction, for the purposes of the administration of the laws of that jurisdiction.

(2) The Minister responsible for the administration of a relevant Territory may authorise persons in writing to have access, for the purposes of the administration of the laws of that or another relevant Territory, to that part of the BDM Register that relates to the first-mentioned Territory.

(3) The Minister responsible for the administration of a relevant Territory may make an arrangement with an appropriate officer of a jurisdiction for and in relation to—

- (a) access, by persons authorised by that Minister, to the part of the BDM Register that relates to that jurisdiction, for the purposes of the administration of the laws of that relevant Territory; or

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(b) access, by persons authorised by a person nominated by that appropriate officer, to the part of the BDM Register that relates to that relevant Territory, for the purposes of the administration of the laws of that jurisdiction.

5 (4) A person authorised, in accordance with an arrangement in force under sub-section (1) or (3), to have access to a part of the BDM Register is entitled to have access in accordance with the arrangement.

10 (5) A person authorised under sub-section (2) to have access to a part of the BDM Register is entitled to have access in accordance with the authorisation.

15 (6) Where the Authority is satisfied that an arrangement in force between an appropriate officer of a jurisdiction and an appropriate officer of another jurisdiction provides for access, by persons authorised by a person nominated by the first-mentioned appropriate officer, to the part of the BDM Register that relates to the other jurisdiction, for the purposes of the administration of the laws of the first-mentioned jurisdiction, the Authority may permit such access.

#### **Provisions relating to arrangements under this Part**

20 84. (1) An arrangement under this Part made by a Minister with an appropriate officer of a jurisdiction may contain such incidental or supplementary provisions as that Minister and the appropriate officer think necessary.

25 (2) Where an arrangement under this Part made by a Minister with an appropriate officer of a jurisdiction is in force, that Minister may arrange with the appropriate officer for the variation or revocation of the arrangement.

30 (3) An arrangement under this Part, or the variation or revocation of such an arrangement, shall be in writing and a copy of each instrument by which an arrangement under this Part has been made, varied or revoked shall be published in the *Gazette*.

## **PART VII—THE DATA PROTECTION AGENCY AND THE DATA PROTECTION ADVISORY COMMITTEE**

### ***Division 1—Preliminary***

#### **Interpretation**

35 85. In this Part, unless the contrary intention appears—

“eligible body” means—

- (a) a Department;
- (b) the Commission, acting otherwise than in its capacity as the Authority; or
- (c) any other body or person who—

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- (i) is entitled to require a Card to be produced to the body or person;
- (ii) is entitled to record the Australia Card number of a Card; or
- (iii) is entitled to have access to the Register, but does not include—
- (d) the Authority or a member of the staff of the Authority; or
- (e) the Auditor-General or a person referred to in sub-section 187 (2);

“office-holder” means the President, a member of the Agency or an Associate Commissioner appointed under section 92. 10

### *Division 2—Establishment and functions of Agency*

#### **Interpretation**

86. In this Division, unless the contrary intention appears, “member”, except in relation to a Division of the Agency, means a member of the Agency and includes the President. 15

#### **Establishment**

87. A Data Protection Agency is established.

#### **Functions**

88. (1) The functions of the Agency are—

- (a) to review, in accordance with this Act, decisions made by the Authority under this Act;
- (b) to investigate cases where the Authority may have performed or exercised a function or power conferred on the Authority by this Act in such a manner as to infringe unduly the privacy of a person and, in cases where the Authority has so performed or exercised such a function or power, to give to the Authority such directions concerning the performance or exercise of that function or power as the Agency thinks necessary; 25
- (c) without limiting the generality of paragraph (b) or (d), to investigate cases where the Authority may have exceeded its entitlement under section 14 and, in cases where the Authority has exceeded that entitlement, to give to the Authority such directions concerning the destruction or amendment of records of the Authority that include information obtained by exceeding that entitlement as the Agency thinks necessary; 30
- (d) from time to time, to examine the records of the Authority, or such of those records as the Agency thinks fit, in order to ascertain whether the entitlement conferred on the Authority by section 14 is being exercised within the limitation imposed by that sub-section and, if the Agency concludes that the entitlement is being exercised in contravention of that limitation, to give to the Authority such 40

directions as are necessary to ensure observance by the Authority of that limitation;

5 (e) to investigate any act or practice of an eligible body that may involve a contravention of this Act (other than an offence) or a contravention of guidelines issued by the Agency pursuant to this Act, and—

10 (i) where the Agency considers it appropriate to do so—to endeavour, by conciliation, to effect a settlement of the matter that gave rise to the investigation; and

15 (ii) where the Agency is of the opinion that the act or practice does constitute or involve such a contravention, and the Agency has not considered it appropriate to endeavour to effect a settlement of that matter or has endeavoured without success to effect such a settlement—to report to the Minister about the results of the investigation and about the endeavours (if any) of the Agency to effect such a settlement;

(f) to supervise and, where necessary, to investigate the keeping by the Authority of the Register and the BDM Register;

(g) to issue guidelines concerning—

20 (i) the use of information obtained from the production of a Card to a person, an eligible body or the Authority; and

(ii) the making of records of such information;

(h) to issue such guidelines as the Agency considers necessary to ensure that—

25 (i) the Register is kept in such a form, and in such a manner, as will best maintain the accuracy, completeness and confidentiality of the information in the Register;

(ii) the Authority's procedures are adequate to prevent unauthorised access to, or disclosure of, information in the Register or the BDM Register;

30 (iii) information derived directly or indirectly from the Register is not communicated by bodies or persons except as permitted by this Act; and

(iv) information derived directly or indirectly from the BDM Register (otherwise than as a result of access to the BDM Register permitted under section 83) is not communicated by bodies or persons except as permitted by this Act;

35 (j) to issue guidelines concerning—

40 (i) the procedures to be adopted, by persons authorised to obtain information from the Register, for maintaining the confidentiality of records of information so obtained;

(ii) the procedures to be adopted by such persons for regular review of the accuracy of such records and of the need for their further retention; and

- (iii) the circumstances in which, and the means by which, such records are to be destroyed;
- (k) to issue guidelines concerning—
  - (i) the procedures to be adopted, by persons authorised (otherwise than by virtue of section 83) to obtain information from the BDM Register, for maintaining the confidentiality of records so obtained;
  - (ii) the procedures to be adopted by such persons for regular review of the accuracy of such records and of the need for their further retention; and
  - (iii) the circumstances in which, and the means by which, such records are to be destroyed;
- (m) to maintain a continuing evaluation of, and, where necessary, to investigate and to give directions concerning—
  - (i) compliance by persons authorised to obtain information from the Register, and by other persons under their control, with guidelines issued pursuant to paragraph (j); and
  - (ii) the practices of such persons in relation to such information;
- (n) to maintain a continuing evaluation of, and, where necessary, to investigate and to give directions concerning—
  - (i) compliance by persons authorised (otherwise than by virtue of section 83) to obtain information from the BDM Register, and by other persons under their control, with guidelines issued pursuant to paragraph (k); and
  - (ii) the practices of such persons in relation to such information;
- (p) to issue guidelines on policies and practices to be adopted by the Authority in reconsidering decisions of the Authority under this Act;
- (q) to issue directions to the Authority on the collection, storage and handling (including data-matching and data-linkage) by the Authority of personal information acquired or to be acquired by the Authority as a result of the exercise by a person (other than a member of the staff of the Authority) under another Act of a power to communicate the information to the Authority;
- (r) to make decisions under sections 65 and 81 concerning authorisations granted under those sections;
- (s) subject to sub-section (2), to maintain, and to publish annually, a record of all computer databases that—
  - (i) are maintained by or on behalf of the Commonwealth, a Territory (other than the Northern Territory) or an authority or instrumentality of the Commonwealth or of such a Territory; and
  - (ii) contain information derived directly or indirectly from the Register, from the BDM Register, or from any other record of personal information held by the Commonwealth or by an authority, instrumentality or officer of the Commonwealth,

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being a record that includes, in relation to each of those databases, particulars of—

- (iii) the information contained in the database; and
- (iv) the persons who are entitled to have access to information contained in the database, and the conditions under which those persons are entitled to have such access;

- 5 (t) to monitor, and where necessary to investigate, the accuracy of, and the need for, particular databases (in this paragraph referred to as "relevant databases") that are maintained as mentioned in subparagraph (s) (i) (otherwise than by the Australian Bureau of Statistics) and contain information derived directly or indirectly from the Register or the BDM Register and, where the Agency thinks it necessary, to give directions about the content of, or requiring amendment of, particular relevant databases;
- 10 (u) having, where necessary, investigated the action concerned, to report to the Minister, on its own initiative, or when requested by the Minister, on action that should be taken by the Commonwealth, whether in order to comply with the Information Privacy Principles or for any other reason, on matters relating to the operation of this Act;
- 15 (w) to undertake research into, and to monitor developments in, data processing and computer technology (including data-matching and data-linkage) to ensure that any adverse effects of such developments upon individuals are minimised, and to report to the Minister the results of such research and monitoring;
- 20 (y) for the purpose of promoting the protection of individual privacy, to undertake educational programs on its own behalf or in co-operation with other persons or authorities acting on behalf of the Commonwealth;
- 25 (z) when requested by the Minister, the Authority or an eligible body, to provide advice to the Minister, the Authority or the eligible body on any matter relevant to the operation of this Act;
- (za) to perform such other functions as are conferred on the Agency by Act, regulation or Ordinance; and
- 30 (zb) in the performance of its other functions, to consult and co-operate, as the Agency thinks appropriate, with the Advisory Committee and any other person, authority or body.

(2) Paragraph (1) (s) does not apply in relation to a computer database that—

- 40 (a) constitutes a document or facility the existence of which is not required to be disclosed in a statement published under paragraph 8 (1) (a) of the *Freedom of Information Act 1982*; or
- (b) is maintained by the Australian Federal Police or by a body or authority that, in respect of its acts and practices in relation to that database, is not subject to the obligations of the *Privacy Act 1986*.

**Powers**

89. Subject to this Act, the Agency has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

**Agency to have regard to certain matters**

90. In the performance of its functions, and the exercise of its powers, under this Act, the Agency shall—

(a) have due regard for the protection of important human rights and social interests that compete with privacy, including the general desirability of a free flow of information and the recognition of the right of government and business to achieve their objectives in an efficient way;

(b) ensure that its decisions, directions, recommendations and guidelines—

(i) are compatible with international obligations accepted by Australia, including those concerning the international technology of communications; and

(ii) are, so far as is possible, compatible with developing general international guidelines relevant to the better protection of individual privacy;

(c) ensure that its recommendations and guidelines are, within the limitations of the powers of the Commonwealth, capable of acceptance, adaptation and extension throughout Australia;

(d) ensure that its directions and guidelines are consistent with the Information Privacy Principles; and

(e) ensure that its decisions, directions, recommendations and guidelines are developed with proper attention to the need to balance costs against benefits.

**Membership**

91. (1) The Agency shall consist of the following members: 30

(a) a President;

(b) 2 Commissioners.

(2) A member shall be appointed by the Governor-General.

(3) A member shall, except in the case of a person who is, and is expected to continue to be, a Judge, be appointed as a full-time member.

(4) A member holds office, subject to this Act, for such period, not exceeding 5 years, as is specified in the instrument of the member's appointment, but is eligible for re-appointment.

(5) A person who has attained the age of 65 years shall not be appointed as a member.

(6) A person shall not be appointed as a member for a period that extends beyond the time when the person will attain the age of 65 years.

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(7) In the case of a person who is, and is expected to continue to be, a Judge, a reference in sub-section (5) or (6) to the age of 65 years shall be deemed to be a reference to the age of 70 years.

5 (8) A member, other than a member who is a Judge, holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined, in writing, by the Governor-General.

10 (9) Subject to this Part, the exercise of a power, or the performance of a function, of the Agency is not affected by reason of there being a vacancy or vacancies in the membership of the Agency or by reason of the number of members falling below 3 for not longer than 12 months.

#### **Associate Commissioners**

92. (1) The Governor-General may appoint persons to be Associate Commissioners.

15 (2) An Associate Commissioner may be appointed on a full-time or part-time basis.

(3) An Associate Commissioner shall be appointed for such period, not exceeding 5 years, as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

20 (4) An Associate Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined, in writing, by the Governor-General.

#### **Appointment of Judge as office-holder not to affect tenure, &c.**

93. (1) The appointment of the holder of a judicial office as an office-holder, or service as an office-holder by the holder of a judicial office, does not affect the person's tenure of that judicial office or the person's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, the person's service as an office-holder shall be taken to be service as the holder of that judicial office.

30 (2) In this section, "judicial office" means—

- (a) an office of judge of a court created by the Parliament; or
- (b) an office the holder of which has, by virtue of holding that office, the same status as a judge of a court created by the Parliament.

#### **Arrangement concerning holder of State or Northern Territory office**

94. (1) The Minister may, for the purpose of appointing as an office-holder a person who is the holder of a judicial or other office of a State or of the Northern Territory, enter into such arrangement with a Minister of that State or Territory as is necessary to secure that person's services.

40 (2) An arrangement under sub-section (1) may provide for the Commonwealth to reimburse a State or the Northern Territory with respect to the services of the person to whom the arrangement relates.

### Remuneration and allowances

95. (1) Subject to sub-section (4), an office-holder shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, an office-holder shall be paid such remuneration as is prescribed. 5

(2) An officer-holder shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

(4) If a person who is a Judge is appointed as officer-holder, the person is not, while the person receives salary or annual allowance as Judge, entitled to remuneration under this Act. 10

**Leave of absence**

96. (1) The Minister may grant leave of absence to the President on such terms and conditions as to remuneration or otherwise as the Minister determines. 15

(2) The President may grant leave of absence to a Commissioner, or to an Associate Commissioner appointed on a full-time basis, on such terms and conditions as to remuneration or otherwise as the President determines.

(3) The President may, on such terms and conditions as the President determines, grant to an Associate Commissioner appointed on a part-time basis leave to be absent from a meeting of the Agency. 20

**Resignation**

97. A person may resign the office of President, Commissioner or Associate Commissioner by writing signed by the person and delivered to the Governor-General. 25

**Termination of appointment**

98. (1) The Governor-General may terminate the appointment of an office-holder for misbehaviour or physical or mental incapacity.

(2) If an office-holder—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; 30
- (b) being an Associate Commissioner appointed on a part-time basis, is absent, except on leave granted by the President, from 3 consecutive meetings of a Division of the Agency of which the Associate Commissioner is a member; or
- (c) contravenes section 99 without reasonable excuse, the Governor-General may terminate the appointment of the office-holder. 35

(3) If an office-holder (other than an Associate Commissioner appointed on a part-time basis)— 40

(a) engages in paid employment outside the duties of an office of member without the consent of the Minister; or

(b) is absent from duty, except on leave granted—

(i) in the case of the President—by the Minister; and

5 (ii) in any other case—by the President,

for 14 consecutive days, or for 28 days in any period of 12 months, the Governor-General shall terminate the appointment of the office-holder.

10 (4) The Governor-General may, with the consent of an office-holder who is an eligible employee for the purposes of the *Superannuation Act* 1976, retire the office-holder from office on the ground of incapacity.

#### Disclosure of interests

15 99. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Agency shall, as soon as possible after the relevant facts have come to the member's notice, disclose the existence of the interest at a meeting of the Agency.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Agency and, unless the Minister or the Agency otherwise determines, the member shall not—

20 (a) be present during any deliberation of the Agency with respect to that matter; or

(b) take part in any decision of the Agency with respect to that matter.

25 (3) For the purpose of the making of a determination by the Agency under sub-section (2) in relation to a member who has made a disclosure under sub-section (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

(a) be present during any deliberation of the Agency for the purpose of making the determination; or

(b) take part in the making by the Agency of the determination.

30 (4) Where an office-holder is, or is to be, a member of a Division of the Agency as constituted for the purpose of reviewing a decision and the office-holder has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the office-holder's functions in relation to the review of that decision—

35 (a) the office-holder shall disclose the interest to the applicant for the review and to the person or body whose decision is to be reviewed; and

(b) except with the consent of the applicant and that person or body, the office-holder shall not take part in the review of the decision.

**Divisions**

100. (1) The President may direct that specified functions or powers of the Agency shall, either generally or in relation to a specified matter or class of matters, be performed or exercised by a Division of the Agency constituted by a specified office-holder or specified office-holders.

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(2) The President shall give a direction under sub-section (1) establishing a Division of the Agency to be known as the Research and Community Education Division.

(3) A direction under sub-section (1) establishing a Division of the Agency shall, if the President is not a member of the Division, declare a member of the Division to be the President of the Division.

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(4) Where the President has given a direction under sub-section (1) establishing a Division of the Agency, the President may, at any time, revoke the direction or amend the direction in relation to the membership of the Division or in any other respect.

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(5) Where—

- (a) a Division of the Agency established by a direction under sub-section (1) has, in relation to a particular matter, commenced but not completed the performance of the functions, and the exercise of the powers, specified in the direction; and
- (b) the direction is amended by the President, under sub-section (4), so as to change the membership of the Division,

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the Division as constituted after the change of membership may complete the performance of those functions, and the exercise of those powers, in relation to that matter.

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(6) For the purposes of the performance of the functions, and the exercise of the powers, specified in a direction under sub-section (1)—

- (a) the Agency shall be deemed to consist of the Division of the Agency specified in the direction;
- (b) subject to sub-section (7), a meeting of the Division shall be deemed to be a meeting of the Agency;
- (c) if the President is not a member of the Division, the member specified by the President under sub-section (3) shall be deemed to be the President; and
- (d) a member of the Division who neither is, nor is to be deemed to be, the President shall be deemed to be a Commissioner.

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(7) Sub-section 101 (4) applies in relation to a meeting of a Division of the Agency as if the reference in that sub-section to both Commissioners were a reference to 2 or more Commissioners.

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(8) The Agency, or a Division of the Agency, may perform functions or exercise powers of the Agency notwithstanding that a Division, or another Division of the Agency, as the case may be, is performing functions or exercising powers of the Agency at the same time.

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**Meetings**

**101. (1)** The Agency shall hold such meetings as are necessary for the efficient performance of its functions (other than the function referred to in paragraph 88 (1) (a)).

5           **(2)** The President may at any time convene a meeting of the Agency.

**(3)** Subject to sub-section (4), at a meeting of the Agency—

10           (a) a quorum is constituted by the President and one Commissioner;

          (b) the President shall preside;

          (c) subject to paragraph (d), questions arising shall be determined by a majority of the votes of the members present and voting;

          (d) a decision by the Agency to issue guidelines or a direction shall be unanimous; and

          (e) the President has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

15           **(4)** Where sub-section 99 (2) or (3) prohibits the President from being present at a meeting of the Agency during a deliberation with respect to a matter but both Commissioners are present, then, for the purposes of any deliberation or decision of the Agency at that meeting with respect to that matter—

20           (a) the Commissioners constitute a quorum;

          (b) a Commissioner chosen jointly by the Commissioners shall preside; and

          (c) all decisions shall be unanimous.

25           **(5)** If the Agency so determines, a member or members may participate in, and form part of a quorum at, a meeting of the Agency by means of any of, or by means of a combination of any 2 or more of, the following methods of communication:

30           (a) telephone;

          (b) closed-circuit television;

          (c) a method or methods of communication determined by the Agency.

**(6)** A determination made by the Agency for the purposes of sub-section (5) may be made in respect of a particular meeting, or particular meetings, of the Agency or in respect of all meetings of the Agency.

**Acting appointments**

35           **102. (1)** The Minister may appoint a person to act in the office of President—

          (a) during a vacancy in that office, whether or not an appointment has previously been made to that office; or

40           (b) during any period, or during all periods, when the person holding that office is absent from duty or from Australia or is, for any other reason, unable to perform the functions of that office,

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

(2) The Minister may appoint a person to act as a Commissioner during any period, or during all periods, when a Commissioner is absent from duty or from Australia, or is, for any other reason (including the reason that the Commissioner is acting as President), unable to perform the duties of a Commissioner.

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(3) The Minister may appoint a person to act as an Associate Commissioner during any period, or during all periods, when an Associate Commissioner is absent from duty or from Australia, or is, for any other reason (including the reason that the Associate Commissioner is acting as President or as a Commissioner), unable to perform the duties of an Associate Commissioner.

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(4) While a person is acting pursuant to an appointment under sub-section (1), (2) or (3), the person has and may exercise all the powers, and shall perform all the functions, of the President, a Commissioner or an Associate Commissioner, as the case may be.

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(5) An appointment of a person under sub-section (1), (2) or (3) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

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(6) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances (if any), of a person acting under this section; and

(b) terminate such an appointment at any time.

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(7) Where a person is acting pursuant to an appointment under sub-section (1) and the office of President becomes vacant while the person is so acting, then, subject to sub-section (5), the person may continue to act until the Minister otherwise directs, the vacancy is filled, or a period of 12 months from the day on which the vacancy occurred comes to an end, whichever first occurs.

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(8) Where a person is acting in the office of a Commissioner pursuant to an appointment under sub-section (2) and that office becomes vacant while the person is so acting, then, subject to sub-section (5), the person may continue to act until the Minister otherwise directs, the vacancy is filled, or a period of 12 months from the day on which the vacancy occurred comes to an end, whichever first occurs.

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(9) The appointment of a person under this section ceases to have effect if the person resigns the appointment by written instrument delivered to the Minister.

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(10) Nothing done by or in relation to a person purporting to act under this section is invalid on the ground that—

(a) the occasion for the person's appointment had not arisen;

- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

5      ***Division 3—Establishment and functions of Advisory Committee***

**Interpretation**

**103.** In this Division, unless the contrary intention appears—

“Advisory Committee” means the Data Protection Advisory Committee established by sub-section 104 (1);

10     “member” means a member of the Advisory Committee and includes the Convenor.

**Establishment and membership**

**104. (1)** A Data Protection Advisory Committee is established.

(2) The Advisory Committee shall consist of the following members:

15     (a) a Convenor;

(b) not fewer than 6 nor more than 12 other members.

(3) A member—

(a) shall be appointed by the Governor-General; and

(b) shall be appointed as a part-time member.

20     (4) A member holds office, subject to this Act, for such period, not exceeding 5 years, as is specified in the instrument of the member's appointment, but is eligible for re-appointment.

(5) The Governor-General shall appoint as Convenor a Commissioner of the Agency.

25     (6) The Governor-General shall so exercise the power of appointment conferred by sub-section (3) that a majority of members are persons who are neither officers, nor employees, nor members of the staff of an authority or instrumentality of the Commonwealth.

(7) Of the members—

30     (a) at least one shall be a person who has had, for not less than 5 years, experience at a high level in industry, commerce, industrial relations, public administration or the service of a government or an authority of a government;

(b) at least one shall be a person who has had extensive experience in electronic data-processing;

(c) at least one shall be appointed to represent general community interests;

35     (d) at least one shall be a person who has had, for not less than 5 years, experience in employee organisations, industrial relations and industrial democracy; and

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(e) at least one shall be a person appointed under sub-section (8).

(8) An organisation formed to promote civil liberties may submit to the Minister a list containing the names of not less than 3 persons from which the organisation recommends that a selection be made of a person to be appointed as a member, and the Governor-General may appoint as a member a person selected from any list so submitted. 5

(9) A person who has attained the age of 65 years shall not be appointed as a member.

(10) A person shall not be appointed as a member for a period that extends beyond the time at which the person will attain the age of 65 years. 10

(11) A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined, in writing, by the Governor-General.

(12) The exercise of a power, or the performance of a function, of the Advisory Committee is not affected by reason of there being a vacancy or vacancies in the membership of the Advisory Committee or by reason of the number of members falling below 7 for not longer than 12 months. 15

### Functions

**105.** The functions of the Advisory Committee are—

- (a) on its own initiative, or when requested by the President, to advise the Agency on matters relevant to the Agency's functions (other than the functions referred to in paragraphs 88 (1) (a), (b), (c), (d), (e), (q), (r) and (zb) ); 20
- (b) to recommend material to the Agency for inclusion in guidelines to be issued by the Agency pursuant to its functions; and 25
- (c) subject to any direction given by the President, to engage in and promote community education, and community consultation, in relation to the protection of individual privacy.

### Acting Convenor

**106.** Where a person is, by virtue of section 102, acting as a Commissioner who is the Commissioner appointed as Convenor under section 104, the person shall, for the purposes of this Division, be deemed to have been appointed to act as Convenor— 30

- (a) for so long as the person continues to act as that Commissioner; and 35
- (b) under the same terms and conditions of appointment as the terms and conditions under which the person is appointed to act as that Commissioner.

### Leave of absence

**107.** (1) The President may, on such terms and conditions as the President thinks fit, grant to the Convenor leave to be absent from a meeting of the Advisory Committee. 40

(2) The Convenor may, on such terms and conditions as the Convenor thinks fit, grant to another member leave to be absent from a meeting of the Advisory Committee.

#### **Removal and resignation of members**

5 108. (1) The Governor-General may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) The Governor-General shall terminate the appointment of a member if the member—

10 (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit;

(b) fails, without reasonable excuse, to comply with the member's obligations under section 109;

15 (c) being the Convenor, is absent, without the leave of the President, from 3 consecutive meetings of the Advisory Committee; or

(d) being a member other than the Convenor, is absent, without the leave of the Convenor, from 3 consecutive meetings of the Advisory Committee.

20 (3) A member may resign from office by writing signed by the member and delivered to the Governor-General.

#### **Disclosure of interests of members**

25 109. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Advisory Committee, being an interest that could conflict with the proper performance of that member's functions in relation to the consideration of the matter, shall, as soon as practicable after the relevant facts have come to the knowledge of that member, disclose the nature of that interest at a meeting of the Advisory Committee.

30 (2) A disclosure under sub-section (1) at a meeting of the Advisory Committee shall be recorded in the minutes of the meeting.

#### **Meetings of Advisory Committee**

35 110. (1) The Convenor may convene such meetings of the Advisory Committee as the Convenor considers necessary for the performance of its functions.

(2) Meetings of the Advisory Committee shall be held at such places and at such times as the Convenor determines.

(3) The Convenor shall preside at all meetings of the Advisory Committee at which the Convenor is present.

(4) If, at a meeting of the Advisory Committee, the Convenor is not present, the members who are present shall elect one of their number to preside at the meeting.	
(5) At a meeting of the Advisory Committee—	
(a) 5 members constitute a quorum;	5
(b) all questions shall be decided by a majority of votes of the members present and voting; and	
(c) the person presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.	
(6) The Advisory Committee shall keep a record of its proceedings.	10
<b>Remuneration and allowances</b>	
111. (1) A member shall be paid such remuneration and such allowances as are determined by the Remuneration Tribunal but, if no determination of that remuneration by the Remuneration Tribunal is in operation, the member shall be paid such remuneration as is prescribed.	15
(2) A member shall be paid such other allowances as are prescribed.	
(3) This section has effect subject to the <i>Remuneration Tribunals Act 1973</i> .	
<b>Division 4—Review by Agency of certain decisions</b>	
<b>Interpretation</b>	20
112. (1) In this Division—	
“decision of the Authority” includes a decision made under this Act by a person approved by the Authority for the purposes of subparagraph 11 (1) (b) (ii);	
“eligible decision” means a decision of the Authority, being—	25
(a) a decision made under sub-section 12 (6) or (10);	
(b) a requirement made of a person under sub-section 12 (7) or (11);	
(c) the cancellation of a Card by virtue of paragraph 19 (1) (a), (b) or (c);	30
(d) a decision not to renew a Card under sub-section 22 (4);	
(e) a decision not to amend the Register pursuant to a request under section 26;	
(f) a requirement made of a person under sub-section 26 (5);	
(g) a decision to refuse an application made under sub-section 27 (1);	35
(h) a decision not to cancel a Card, and issue a new Card, under sub-section 30 (1);	
(j) a reviewable decision; or	

5 (k) any other decision made by the Authority under this Act, other than—

(i) a requirement made of a person under sub-section 13 (1) or 28 (2);

(ii) the cancellation of a Card by virtue of paragraph 19 (1) (d), (e) or (f); or

(iii) a decision made under sub-section 28 (1),

but does not include an excluded decision;

“excluded decision” means a decision of the Authority, being—

10 (a) a decision made under this Act by the chief executive officer of the Authority;

(b) a decision made under sub-section 13 (4), 28 (5) or 31 (3); or

(c) a decision made under section 115;

15 “reviewable decision” means—

(a) an excluded decision;

(b) a decision not to issue a Card under section 15;

(c) a decision to issue a Card under section 15 where, as a result of issuing the Card, the Authority is obliged to give to a person a notice under sub-section 16 (3); or

20 (d) a decision not to issue a Card under section 20.

(2) A failure to comply with section 113 or paragraph 115 (5) (b) does not affect the validity of a decision.

#### **Notification of rights of persons affected by certain decisions**

25 **113.** Where a person is notified under this Act of the making of a decision, being an eligible decision or an excluded decision, the notice shall—

(a) in a case where the notice neither contains, nor is accompanied by, a statement of the reasons for the decision—contain a statement to the effect that the person may apply to the Authority in accordance with this Act for a statement of the reasons for the decision;

30 (b) in the case of an eligible decision that is also a reviewable decision—contain a statement to the effect that—

(i) the person may, if dissatisfied with the decision, seek in accordance with this Act either a reconsideration by the Authority, or a review by the Agency, of the decision; and

35 (ii) the person may, if the Authority reconsiders the decision and the person is dissatisfied with the fresh decision of the Authority upon that reconsideration, seek in accordance with this Act a review by the Agency of the fresh decision;

40 (c) in the case of any other eligible decision—contain a statement to the effect that—

- (i) the person may, if dissatisfied with the decision, seek in accordance with this Act a reconsideration by the Authority of the decision; and
- (ii) the person may, if the Authority reconsiders the decision and the person is dissatisfied with the fresh decision of the Authority upon that reconsideration, seek in accordance with this Act a review by the Agency of the fresh decision; and
- (d) in the case of an excluded decision—contain a statement to the effect that the person may, if dissatisfied with the decision, seek in accordance with this Act a review by the Agency of the decision.

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#### Statements of reasons for certain decisions

114. (1) A person may, within 28 days after being notified under this Act of the making of a decision, being an eligible decision or an excluded decision, apply to the Authority for a statement of the reasons for the decision.

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(2) The Authority shall, as soon as practicable, and in any event within 28 days, after receiving an application by a person under sub-section (1) in relation to a decision, give to the person a written statement of the reasons for the decision.

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#### Reconsideration by Authority of eligible decisions

115. (1) Where it appears to a member of the staff of the Authority that a person—

- (a) wishes to apply to the Authority under this section for a reconsideration of a decision of the Authority; and
- (b) requires assistance to make the application,

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it is the duty of the member of the staff of the Authority to take reasonable steps to provide appropriate assistance to the person.

(2) A person may, within 12 months after being notified under this Act of the making of an eligible decision, apply in writing to the Authority for a reconsideration of the decision and, if the person does so, the succeeding provisions of this section have effect.

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(3) The Authority shall forthwith reconsider the decision and make a fresh decision.

(4) If the decision was made by a delegate of the Authority, that delegate shall not carry out the reconsideration of the decision.

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(5) The Authority shall—

- (a) as soon as is reasonably practicable after the decision has been reconsidered and a fresh decision has been made, notify the person in writing of the fresh decision and of the reasons for the fresh decision; and

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(b) include in the notice a statement to the effect that the person may, if dissatisfied with the fresh decision, seek in accordance with this Act a review by the Agency of the fresh decision.

(6) If the Authority fails, within 21 days after the application is made, to notify the person of a fresh decision made in relation to the application, the Authority shall be deemed, for the purposes of this Division—

(a) to have made such a fresh decision under sub-section (3) in terms identical to the terms of the decision in relation to which the application was made; and

(b) to have notified the person under sub-section (5) accordingly.

#### **Application for review by Agency**

**116.** (1) A person may apply in writing to the Agency for review of a reviewable decision of which the person has been notified under this Act.

(2) Where it appears to a person, being an office-holder or a member of the staff assisting the Agency, that another person—

(a) wishes to apply under sub-section (1) for review of a decision; and

(b) requires assistance to make the application,

it is the duty of the first-mentioned person to take reasonable steps to provide appropriate assistance to the other person.

(3) The Agency may approve a form in which written applications under sub-section (1) are to be made.

(4) Subject to sub-section (5), an application by a person under sub-section (1) for review of a decision shall be made within 28 days after the day on which the person was notified under this Act of the decision.

(5) The Agency may, upon application made by a person orally or in writing, extend the period within which the person may make an application under sub-section (1) for review of a decision, whether or not the period prescribed by sub-section (4) had elapsed before the first-mentioned application was made.

#### **30 Procedure of Agency**

**117.** (1) Where an application has been made under sub-section 116 (1), the Agency shall, subject to section 119, conduct an inquiry in respect of the decision to which the application relates.

(2) Subject to sub-section (4), on an inquiry under this section—

(a) the procedure of the Agency is, subject to this Act, within the discretion of the Agency;

(b) the inquiry shall be conducted with as much expedition and as little formality and technicality as the requirements of this Act and a proper consideration of the matters raised by the application permit; and

(c) the Agency is not bound by the rules of evidence but may inform itself on any matter and in such manner as it thinks appropriate.

(3) An inquiry by the Agency shall be conducted in private.

(4) Subject to sub-section (5)—

(a) the Agency may dismiss an application for review of a decision on the ground that the application is frivolous, vexatious or trivial; and

(b) the Agency may conduct an inquiry without any of the parties, or representatives of the parties, appearing before it.

(5) Where an application has been made under sub-section 116 (1), the Agency shall not make a decision—

(a) affirming the decision under review; or

(b) setting aside the decision under review and making a new decision unfavourable to the applicant in any respect,

unless it has afforded the applicant a reasonable opportunity to—

(c) put to the Agency the applicant's view in relation to the decision under review;

(d) inspect any documents to which the Agency proposes to have regard in reaching its decision; and

(e) make submissions in relation to those documents.

(6) For the purposes of an inquiry—

(a) the applicant may appear in person or be represented by some other person; and

(b) the Authority may be represented by a member of the staff of the Authority.

#### **Parties entitled to appear before Agency**

**118.** (1) At an inquiry held by the Agency under this Division to review a decision of the Authority, the following parties are, subject to paragraph 117 (4) (b), entitled to appear:

(a) the person who applied for review by the Agency of the decision;

(b) the Authority;

(c) any other person who has been made a party to the inquiry by the Agency on application by the person in accordance with sub-section (2).

(2) Where an application has been made by a person for a review by the Agency of a decision of the Authority, any other person whose interests are affected by the decision may apply, in writing, to the Agency to be made a party to the inquiry, and the Agency may, in its discretion, by order, make that person a party to the inquiry.

(3) Where it is necessary for the purposes of this Act to decide whether the interests of a person are affected by a decision of the Authority, that matter shall be decided by the Agency and, if the Agency decides that the interests of a person are affected by a decision of the Authority, the decision of the Agency is conclusive.

**Preliminary conferences**

5 119. (1) Where an application is made to the Agency under sub-section 116 (1) for a review of a decision, the President may, if the President thinks it desirable to do so after consideration of any material that has been lodged by the parties, direct the holding of a conference of the parties or their representatives presided over by the President, by another office-holder or by an officer of the Agency.

10 (2) Where a conference is held in accordance with sub-section (1) and—  
(a) at or after the conference, agreement is reached between the parties or their representatives as to the terms of a decision of the Agency under this Division that would be acceptable to the parties;  
(b) the terms of the agreement are reduced to writing, signed by or on behalf of the parties and lodged with the Agency; and  
15 (c) the Agency is satisfied that a decision in those terms would be within the powers of the Agency,

the Agency shall, without holding an inquiry, make a decision in accordance with those terms.

20 (3) At an inquiry held by the Agency under section 117, unless the parties otherwise agree, evidence shall not be given, and statements shall not be made, concerning any words spoken or act done at a conference held in accordance with sub-section (1) if the words spoken or act done related to any question to be determined by the Agency at the inquiry.

25 (4) If—  
(a) a conference held in accordance with sub-section (1) in respect of an application to the Agency for a review of a decision was presided over by an office-holder;  
(b) a party to the inquiry held under section 117 in relation to the application, or a representative of such a party, was present at the conference; and  
30 (c) that party notifies the Agency before, or at the commencement of, the inquiry that that party objects to that office-holder participating in the inquiry,

that office-holder is not entitled to participate in the performance by the Agency of its functions in relation to the inquiry.

35 **Lodging of material documents with Agency**

120. (1) Where an application is made under section 116 for the Agency to review a decision of the Authority, the Authority shall, within 28 days of being informed by the Agency that an application for review of that decision has been made, lodge with the Agency the prescribed number of copies of—

40 (a) a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision; and

(b) every other document or part of a document that is in the possession or under the control of the Authority and is considered by the Authority to be relevant to the review by the Agency of the decision.

(2) If it appears to the Agency that a party to a proceeding before the Agency for a review of a decision would or might suffer hardship unless the period prescribed by sub-section (1) for lodging with the Agency for the purposes of the review the copies of the documents mentioned in that sub-section is shortened, the Agency may, upon request being made, as prescribed, by that party, make an order directing that those copies be lodged with the Agency within such period (being a period of less than 28 days) after the person who made the decision becomes or became aware of the application as is specified in the order.

(3) Where an application that has been made under section 116 for a review by the Agency of a decision was not lodged within the time within which it was required by section 116 to be lodged, the reference in sub-section (1) to the period of 28 days after the Authority becomes aware of the application for a review shall be deemed to be a reference to the period of 28 days after the day on which the Authority so becomes aware or after the day on which the Agency makes a determination extending the time for the making of the application for a review, whichever is the later.

(4) The Agency may, upon request being made, as prescribed, by a party to an inquiry before the Agency for a review of a decision, direct, by order, that sub-section (3) shall have effect in relation to an application for a review of the decision as if the last reference in that sub-section to a period of 28 days were a reference to such shorter period as is specified in the order.

(5) This section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of documents.

#### Power to obtain information and documents

121. (1) Subject to sections 158 and 160, where an office-holder has reason to believe that a person is capable of furnishing information or producing documents or other records relevant to the subject matter of an application made under sub-section 116 (1) or of an inquiry under this Division, the office-holder may, by notice in writing served on the person, require that person, at such place, and within such period or on such date and at such time, as are specified in the notice—

(a) to furnish to the Agency, by writing signed by that person or, in the case of a body corporate, by an officer of the body corporate, any such information; or

(b) to produce to the Agency such documents or other records as are specified in the notice.

(2) Where documents or other records are produced to the Agency in accordance with a requirement under sub-section (1), the Agency—

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5 (a) may take possession of, and may make copies of, or take extracts from, the documents or other records;

(b) may retain possession of the documents or other records for such period as is necessary for the purposes of an inquiry under this Division to which the documents or other records relate; and

10 (c) during that period shall permit a person who would be entitled to inspect any one or more of the documents or other records if they were not in the possession of the Agency to inspect at all reasonable times such of the documents or other records as that person would be so entitled to inspect.

15 (3) Where an office-holder has reason to believe that a person is able to give information relevant to an inquiry under this Division, the office-holder may, by notice in writing served on the person, require the person to attend before the Agency, on such date and at such time and place as are specified in the notice, to answer questions relevant to the inquiry.

**Powers of Agency to take evidence, &c., in conducting an inquiry**

**122. (1)** For the purposes of reviewing a decision, the Agency may—

20 (a) take evidence on oath or affirmation;

(b) proceed in the absence of a party who has had reasonable notice of the proceeding; and

(c) adjourn the proceeding from time to time.

25 (2) For the purposes of the conduct by the Agency of an inquiry, an officer of the Agency shall, if directed to do so by the President, or by another office-holder who is to preside, or presides, at the hearing, summon a person to appear before the Agency at that hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

(3) The office-holder who presides at an inquiry by the Agency—

30 (a) may require a person appearing before the Agency at that inquiry to give evidence either to take an oath or to make an affirmation; and

(b) may administer an oath or affirmation to a person so appearing before the Agency.

35 (4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give to questions directed to the person will be true.

(5) A person summoned to appear before the Agency may request to be represented by counsel or a solicitor and upon such a request being made the Agency may allow such a person to be so represented.

40 (6) The power of the Agency under paragraph (1) (a) to take evidence on oath or affirmation may, in relation to an inquiry, be exercised on behalf of the Agency by the office-holder who is to preside at the inquiry or by another person (whether an office-holder or not) authorised by the first-

mentioned office-holder, and that power may be so exercised within or outside Australia, but the Agency may direct that the power is to be exercised subject to limitations specified by the Agency.

(7) Where a person other than the office-holder who is to preside at an inquiry is authorised to take evidence in relation to the proceeding in accordance with sub-section (6)—

- (a) the person has, for the purpose of taking that evidence, all the powers under sub-section (1) of the Agency and all the powers under sub-section (3) of the office-holder who is to preside at the inquiry; and
- (b) for the purpose of the exercise of those powers by that person, this Act has effect (except where the context otherwise requires) as if a reference to the Agency or to the office-holder who is to preside at an inquiry included a reference to that person.

#### Office-holder presiding

123. (1) At an inquiry conducted by 2 or more office-holders who include the President, the President shall preside.

(2) At an inquiry conducted by 2 or more office-holders none of whom is the President, that one of those office-holders who is nominated for the purpose by the President shall preside.

#### Decision on review

124. (1) On an application under sub-section 116 (1) for review of a decision of the Authority, the Agency shall, subject to section 117, make a decision in writing—

- (a) affirming the decision of the Authority;
- (b) setting aside the decision of the Authority; or
- (c) setting aside the decision of the Authority and making a new decision in substitution for the decision so set aside.

(2) The Agency shall cause a copy of its decision on an application under sub-section 116 (1), together with a statement of its reasons for decision, to be given to the applicant and to the Authority.

(3) A decision made by the Agency in substitution for a decision of the Authority shall, for all purposes (other than the purposes of an application to the Agency for review), be taken to be a decision of the Authority and to have been made on the day on which the decision under review was made.

#### Publication of decisions

125. (1) Notwithstanding sub-section 117 (3), the President may, subject to sub-section (2), publish, or authorise the publication of, decisions of the Agency made under section 124, together with the reasons for those decisions.

- (2) The President shall ensure that—

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- (a) decisions and reasons for decisions are published under sub-section (1) in a form that does not enable identification of the individuals to whom the decisions relate; and
- (b) the decisions and reasons for decisions are modified accordingly.

5      **Decision on questions**

126. Where an inquiry is conducted by 2 or more office-holders and the office-holders are divided in opinion as to the decision to be made on any question, then—

- (a) if there is a majority of the one opinion—the question shall be decided according to the opinion of the majority; and
- (b) in any other case—the question shall be decided according to the opinion of the office-holder presiding.

**Operation and implementation of decision subject to review**

15      127. (1) Subject to this section, the making of an application to the Agency for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

20      (2) The Agency or an office-holder may, on request being made, as prescribed, by a party to an inquiry before the Agency (in this section referred to as the “relevant inquiry”), if the Agency or office-holder is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review, make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the relevant inquiry relates or a part of that decision as the Agency or office-holder considers appropriate for the purpose of securing 25 the effectiveness of the inquiry and determination of the application for review.

30      (3) Where an order is in force under sub-section (2) (including an order that has previously been varied under this sub-section on at least one occasion), the Agency or an office-holder may, on request being made, as prescribed, by a party to the relevant inquiry, make an order varying or revoking the first-mentioned order.

35      (4) Subject to sub-section (5), the Agency or an office-holder—

- (a) shall not make an order under sub-section (2) unless the Authority has been given a reasonable opportunity to make a submission to the Agency or office-holder in relation to the matter; and
- (b) shall not make an order varying or revoking an order in force under sub-section (2) (including an order that has previously been varied under sub-section (3) on at least one occasion) unless—
  - (i) the Authority;
  - (ii) the person who requested the making of the order under sub-section (2); and

(iii) if the order under sub-section (2) has previously been varied by an order or orders under sub-section (3)—the person or persons who requested the making of the last-mentioned order or orders,

have been given a reasonable opportunity to make submissions to the Agency or office-holder, as the case may be, in relation to the matter.

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(5) Sub-section (4) does not prohibit the Agency or an office-holder from making an order without giving to a person referred to in that sub-section a reasonable opportunity to make a submission to the Agency or member in relation to a matter if the Agency or office-holder is satisfied that, by reason of the urgency of the case or otherwise, it is not practicable to give that person such an opportunity but, where an order is so made without giving such an opportunity to the person who made the decision to which the relevant inquiry relates, the order does not come into operation until a notice setting out the terms of the order is served on that person.

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(6) An order in force under sub-section (2) (including an order that has previously been varied on at least one occasion under sub-section (3))—

(a) is subject to such conditions as are specified in the order; and

(b) has effect until—

(i) where a period for the operation of the order is specified in the order—the end of that period or, if the application for review is decided by the Agency before the end of that period, the decision of the Agency on the application for review comes into operation; or

(ii) if no period is so specified—the decision of the Agency on the application for review comes into operation.

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#### Return of documents, &c., at completion of inquiry

##### 128. (1) Where—

(a) a proceeding before the Agency has concluded; and

(b) the time within which an appeal from the decision of the Agency in the proceeding may be instituted, or, if that time has been extended, the period of the extension, has elapsed but no such appeal has been instituted,

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the President may cause a document or any other object furnished to the Agency for the purposes of the proceeding to be returned to the person by whom it was so furnished.

(2) Where the Federal Court causes a document sent to that Court in accordance with paragraph 132 (1) (a) in connection with a proceeding before that Court to be returned to the Agency, the President may cause the document to be returned to the person by whom it was furnished to the Agency.

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**Appeals to Federal Court from decisions of the Agency**

129. (1) A person affected by a decision the subject of a review under this Division may appeal to the Federal Court, on a question of law, from any decision of the Agency in that review.

5 (2) Where a person has applied to the Agency for a review of a decision and the Agency decides that the person is not entitled to make the application, the person may appeal to the Federal Court from the decision of the Agency.

10 (3) An appeal by a person under sub-section (1) or (2) shall be instituted—

- (a) not later than the twenty-eighth day after the day on which a document setting out the terms of the decision of the Agency is furnished to the person or within such further time as the Federal Court (whether before or after the end of that day) allows; and
- 15 (b) in such manner as is prescribed by rules of court made under the *Federal Court of Australia Act 1976*.

(4) The Federal Court shall hear and determine an appeal and may make such orders as it thinks appropriate by reason of its decision.

20 (5) The orders that may be made by the Federal Court on an appeal include an order affirming or setting aside the decision of the Agency and an order remitting the matter to be dealt with again, either with or without the taking of evidence, by the Agency in accordance with the directions of the Court.

**Operation of decision subject to appeal**

25 130. (1) Subject to sub-section (2), the institution of an appeal to the Federal Court from a decision of the Agency does not affect the operation of the decision or prevent the taking of action to implement the decision.

30 (2) Where an appeal is instituted in the Federal Court from a decision of the Agency, that Court or a Judge of that Court may make such order or orders staying or otherwise affecting the operation or implementation of any or all of the following:

- (a) the decision of the Agency or a part of that decision;
- (b) the decision to which the review by the Agency related or a part of that decision,

35 as that Court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

40 (3) Where an order is in force under sub-section (2) (including an order that has previously been varied under this sub-section on at least one occasion), the Federal Court or a Judge of that Court may make an order varying or revoking the first-mentioned order.

(4) An order in force under sub-section (2) (including an order that has previously been varied under sub-section (3) on at least one occasion)—

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect until—
  - (i) where a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision; or
  - (ii) where no period is so specified—the giving of a decision on the appeal.

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#### Reference of question of law to Federal Court

131. (1) The Agency may, of its own motion or at the request of a party at an inquiry conducted by the Agency, refer a question of law arising in the inquiry to the Federal Court for decision, but—

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- (a) in the case of an inquiry conducted by the Agency constituted by 2 or more members—a question shall not be so referred without the concurrence of the member presiding at the inquiry; or
- (b) in the case of a proceeding before the Agency constituted by one member, not being the President—a question shall not be so referred without the concurrence of the President.

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(2) Where a question of law arising in any proceeding has been referred to the Federal Court under this section, the Agency shall not, in that proceeding—

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- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the Federal Court on the question.

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#### Sending of documents to, and disclosure of documents by, Federal Court

132. (1) When an appeal to the Federal Court is instituted in accordance with section 129—

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- (a) the Agency shall, notwithstanding any other provision of this Act, cause to be sent to the Court all documents that were before the Agency in connection with the review to which the appeal relates; and
- (b) at the conclusion of the proceedings before the Federal Court in relation to the appeal, the Court shall cause the documents to be returned to the Agency.

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(2) If there is in force in respect of any of the documents a certificate by the Attorney-General in accordance with sub-section 160 (1) certifying that the disclosure of matter contained in the document would be contrary to the public interest, the Federal Court shall, subject to sub-section (3), do all things necessary to ensure that the matter is not disclosed to any person other than a member of the Court as constituted for the purposes of the proceeding.

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(3) If—

(a) the certificate referred to in sub-section (2) relating to matter contained in the document specifies none of the reasons referred to in paragraphs 160 (1) (a), (b), (c) and (d);

5 (b) a question for the decision by the Federal Court is whether the matter should be disclosed to some or all of the parties to the proceeding before the Agency in respect of which the appeal was instituted or the reference was made; and

(c) the Court decides that the matter should be so disclosed,

10 the Court shall permit the part of the document in which the matter is contained to be inspected accordingly.

(4) Nothing in this section prevents the disclosure of information or of matter contained in a document to an officer of the Federal Court in the course of the performance of the officer's duties as an officer of the Federal Court.

#### **Protection of office-holders, &c.**

133. (1) An office-holder has, in the performance of the duties of an office-holder, the same protection and immunity as a Justice of the High Court.

20 (2) A barrister, solicitor or other person appearing before the Agency on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

25 (3) Subject to this Act, a person summoned to attend, or appearing, before the Agency as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

#### **Confidential information not to be disclosed**

134. (1) A person who is, or has been, an office-holder or an officer of the Agency is not competent, and shall not be required, to give evidence to a court relating to evidence given to the Agency in the course of the conduct of an inquiry, or to produce in a court a document produced to the Agency in the course of the conduct of an inquiry.

(2) In sub-section (1)—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to.

#### **Legal assistance**

135. (1) A person who—

(a) has made, or proposes to make, an application to the Agency for a review of a decision of the Authority;

(b) is a party to an inquiry under this Division conducted by the Agency and instituted by another person; or

(c) proposes to institute a proceeding, or is a party to a proceeding instituted, before a court in respect of a matter arising under this Division,

may apply to the Attorney-General for the provision of assistance under this section in respect of the proceeding.

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(2) Where an application is made by a person under sub-section (1), the Attorney-General may, if satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application should be granted, authorise the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance in relation to the proceeding as the Attorney-General determines.

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### *Division 5—Investigation by Agency of complaints*

#### **Certain matters deemed to be the subject of complaints**

136. (1) The Agency shall perform the functions referred to in paragraph 88 (1) (b), (c), (e), (f), (m), (n), (t) or (u)—

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- (a) when the Agency is requested by the Minister to do so;
- (b) when a complaint is made to the Agency under sub-section 137 (1) or (2) or section 138, as the case may be; or
- (c) when it appears to the Agency to be desirable to do so.

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(2) Where, in relation to a particular matter, the Agency performs the functions of investigation referred to in paragraph 88 (1) (b), (c), (e), (f), (m), (n), (t) or (u) at the request of the Minister or of its own motion, then, for the purposes of the performance of those functions by the Agency in relation to that matter, this Division has effect, with such modifications as the circumstances require, as if that matter were a matter to which a complaint made to the Agency under sub-section 137 (1) or (2) or section 138, as the case may be, relates.

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#### **Complaints about the Authority**

137. (1) Subject to this Division, where—

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- (a) a complaint is made to the Agency that the Authority has performed or exercised a function or power conferred on the Authority by or under this Act in such a manner as to infringe unduly the privacy of the complainant or any other person; and
- (b) the complaint does not relate to a decision in relation to which a person may make to the Agency under Division 4 an application for review,

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the Agency shall investigate the matter to which the complaint relates and decide whether or not to give to the Authority under sub-section 150 (1) directions concerning the performance of that function or the exercise of that power.

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5 (2) Without limiting the generality of sub-section (1), but subject to this Division, where a complaint is made to the Agency that the Authority has exceeded its entitlement under section 14, the Agency shall investigate the matter to which the complaint relates and decide whether or not to give directions to the Authority under sub-section 150 (2).

#### **Complaints about eligible bodies**

10 138. Subject to this Division, where a complaint is made to the Agency that an eligible body has done an act, or engaged in a practice, that involves a conduct of a kind referred to in paragraph 88 (1) (e), (m) or (n), the Agency shall investigate the matter to which the complaint relates and, unless the Agency does not consider it appropriate to do so, endeavour to effect, by conciliation, a settlement of the matter.

#### **Discretion not to investigate certain complaints**

15 139. (1) Where a complaint has been made to the Agency about a matter, the Agency may, in its discretion, decide not to investigate the matter or, if the Agency has commenced to investigate the matter, decide not to investigate the matter further—

20 (a) if the Agency is satisfied that the complainant became aware of the matter more than 12 months before the complaint was made to the Agency; or

(b) if, in the opinion of the Agency—

25 (i) the complaint is frivolous or vexatious or was not made in good faith;

(ii) the complainant does not have a sufficient interest in the matter; or

(iii) an investigation, or further investigation, of the matter is not warranted having regard to all the circumstances of the case.

30 (2) Where a person who makes a complaint to the Agency about the Authority or about an eligible body has complained to the Authority, or to the eligible body, as the case may be, about the matter to which the complaint to the Agency relates, the Agency may, in its discretion, decide not to investigate the matter unless and until the complainant informs the Agency that no redress has been granted to the complainant in respect of the matter, or that redress has been so granted but the redress is not, in the opinion of the complainant, adequate.

35 (3) Where—

40 (a) a person who has made a complaint to the Agency about the Authority or about an eligible body and who has complained to the Authority, or to the eligible body, as the case may be, about the matter to which the complaint to the Agency relates informs the Agency pursuant to sub-section (2) that no redress, or no adequate redress, has been granted to the complainant in respect of the matter; and

(b) the Agency is of the opinion—

- (i) if no redress has been granted—that, since the complainant complained to the Authority, or to the eligible body, as the case may be, a reasonable period has elapsed in which redress could have been granted; or
- (ii) if redress has been granted—that the redress was not reasonably adequate,

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the Agency shall, subject to this section, investigate the matter.

(4) Where a person who has made a complaint to the Agency has exercised, or exercises, a right to cause the matter to which the complaint relates to be reviewed by a court or by a tribunal constituted by or under an enactment, the Agency shall not investigate, or further investigate, as the case may be, the matter unless the Agency is of the opinion that there are special reasons justifying the investigation, or further investigation, as the case may be, of the matter.

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(5) Where the Agency is of the opinion that a person who has made a complaint to the Agency has or had a right to cause the matter to which the complaint relates to be reviewed by a court or by a tribunal constituted by or under an enactment but has not exercised that right, the Agency may decide not to investigate the matter, or not to investigate the matter further, if the Agency is of the opinion that, in all the circumstances of the case, it would be reasonable for the complainant to exercise, or would have been reasonable for the complainant to have exercised, as the case may be, that right.

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(6) Where, before the Agency commences, or after the Agency has commenced, to investigate a matter to which a complaint relates, the Agency becomes of the opinion that adequate provision for the review of that matter is made under an administrative practice, the Agency may decide not to investigate, or not to further investigate, as the case may be, the matter, if—

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- (a) the matter has been, is being, or is to be, reviewed under that practice at the request of the complainant; or
- (b) the Agency is satisfied that the complainant is entitled to cause the matter to be reviewed under that practice and that it would be reasonable for the complainant to cause it to be so reviewed.

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(7) Where a complaint is made to the Agency by a person at the request of another person or of a body of persons, this section applies as if a reference to the complainant were a reference to the other person, or to that body, as the case may be.

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#### Reference of matters to other authorities

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**140. (1) In this section—**

“Commission” means the Human Rights and Equal Opportunity Commission established by the Commission Act, or a person performing functions of that Commission;

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“Commission Act” means the *Human Rights and Equal Opportunity Commission Act 1986*;

“Merit Protection Act” means the *Merit Protection (Australian Government Employees) Act 1984*;

“Merit Protection Agency” means the Merit Protection and Review Agency established by the Merit Protection Act;

5 “Ombudsman” means the Commonwealth Ombudsman.

(2) Where, before the Agency commences, or after the Agency has commenced, to investigate a matter to which a complaint relates, the Agency becomes of the opinion that—

10 (a) a complaint relating to that matter has been, or could have been, made by the complainant—

(i) to the Commission under Division 3 of Part II of the Commission Act; or

(ii) to the Ombudsman under the *Ombudsman Act 1976*; or

15 (b) an application with respect to that matter has been, or could have been, made by the complainant to the Merit Protection Agency under section 47 of the Merit Protection Act,

and that that matter could be more conveniently or effectively dealt with by the Commission, the Ombudsman, or the Merit Protection Agency, as the case may be, the Agency may decide not to investigate the matter, or 20 not to investigate the matter further, as the case may be, and, if the Agency so decides, the Agency shall—

(c) transfer the complaint to the Commission, the Ombudsman or the Merit Protection Agency;

(d) forthwith give notice in writing to the complainant stating that the complaint has been so transferred; and

(e) give to the Commission, the Ombudsman or the Merit Protection Agency any information or documents that relate to the complaint and are in the possession, or under the control, of the Agency.

(3) A complaint transferred under sub-section (2) shall be deemed to 30 be—

(a) a complaint made—

(i) to the Commission under Division 3 of Part II of the Commission Act; or

(ii) to the Ombudsman under the *Ombudsman Act 1976*; or

35 (b) an application made to the Merit Protection Agency under section 47 of the Merit Protection Act,

as the case requires.

#### **Effect of investigations by Auditor-General**

40 141. Where an office-holder becomes aware that a matter in relation to which the Agency is performing functions or exercising powers under this Division is, or is related to, a matter that is under investigation by the Auditor-General, the Agency shall not, unless the President and Auditor-General agree to the contrary, continue to perform functions or exercise

powers under this Division in relation to the first-mentioned matter until the investigation by the Auditor-General has been completed.

#### Manner of making complaints

142. (1) Subject to sub-section (2), a complaint to the Agency may be made orally or in writing. 5

(2) Where a complaint to the Agency is made orally, the Agency may reduce the complaint to writing or at any time require the complainant to reduce the complaint to writing and, if the Agency makes such a requirement of the complainant, the Agency may decline to investigate, or to investigate further, as the case requires, the matter to which the complaint relates, until the complainant reduces the complaint to writing. 10

(3) Where it appears to a person, being a member, an Associate Commissioner or a member of the staff assisting the Agency, that another person—

- (a) wishes to make a complaint to the Agency, or has made a complaint to the Agency and has been required by the Agency to reduce the complaint to writing; and
- (b) requires assistance to formulate the complaint, to reduce the complaint to writing, or both,

it is the duty of the first-mentioned person to take reasonable steps to provide appropriate assistance to the other person. 20

#### Preliminary inquiries

143. (1) Where a complaint about the Authority or about an eligible body has been made to the Agency, the Agency may, for the purposes of—

- (a) determining whether or not the Agency has power to investigate the matter to which the complaint relates; or
- (b) if the Agency has power to investigate the matter to which the complaint relates—determining whether or not the Agency may, in its discretion, decide not to investigate the matter,

make inquiries of the Authority, or of the eligible body, as the case may be, or, if an arrangement with the Authority, or with the eligible body, is in force under sub-section (2), of such officers as are referred to in the arrangement. 30

(2) The Agency may from time to time make with the Authority, or with an eligible body, an arrangement relating to the officers of whom all inquiries, or inquiries included in a class or classes of inquiries specified in the arrangement, are to be made by the Agency under sub-section (1) in relation to complaints about the Authority, or about that eligible body, as the case may be. 35

**Conduct of investigations**

5        144. (1) The Agency shall, before commencing an investigation of a matter to which a complaint about the Authority or about an eligible body relates, inform the Authority, or the eligible body, as the case may be, that the matter is to be investigated.

10        (2) The Agency may from time to time make with the Authority, or with an eligible body, an arrangement relating to the manner in which, and the period within which, the Agency is to inform the Authority, or the eligible body, as the case may be, that the Agency proposes to investigate a complaint about the Authority, or about the eligible body, being a complaint included in a class or classes of complaints specified in the arrangement.

15        (3) An investigation under this Division shall be conducted in private and, subject to this Act, in such manner as the Agency thinks fit.

20        (4) Subject to this Act, the Agency may, for the purposes of this Act, obtain information from such persons, and make such inquiries, as it thinks fit.

25        (5) Subject to sub-section (6), it is not necessary for a complainant or any other person to be afforded an opportunity to appear before the Agency or any other person in connection with an investigation under this Division.

30        (6) The Agency shall not make in respect of an investigation under this Division a report setting out opinions that are, expressly or impliedly, critical of the Authority, an eligible body or any other person unless, before completing the investigation, the Agency has afforded the Authority, eligible body or other person, as the case may be, an opportunity to appear before the Agency and to make submissions, orally, in writing or both, in relation to the matter to which the investigation relates.

35        (7) Where the Agency affords the Authority or an eligible body an opportunity to appear before the Agency under sub-section (6), the Authority, or the eligible body, as the case may be, may so appear in person or by an authorised representative.

40        (8) Where the Agency affords a person (other than the Authority or an eligible body) an opportunity to appear before the Agency under sub-section (6), the person may, with the approval of the Agency, be represented by another person.

35        (9) Where, in connection with an investigation of a matter under this Division, the Agency proposes to afford a person or body an opportunity to appear before the Agency and to make submissions under sub-section (6), or proposes to make a requirement of a person under section 145, then—

40        (a) if a complaint about the matter has been made orally and has not been reduced to writing—the complaint shall be reduced to writing; and

(b) the Agency shall, if it has not previously informed the responsible Minister (if any) that the matter is being investigated, inform that Minister accordingly.

(10) The Agency may, either before or after the completion of an investigation under this Division, discuss any matter that is relevant to the investigation with a Minister concerned with the matter.

(11) Where the Agency becomes of the opinion, either before or after completing an investigation under this Division, that there is evidence that an officer of the Authority or of an eligible body has been guilty of a breach of duty or of misconduct and that the evidence is, in all the circumstances, of sufficient force to justify the Agency doing so, the Agency shall bring the evidence to the notice of—

(a) if the Agency is of the opinion that there is no officer of the Authority, or of the eligible body, as the case may be, to whose notice the evidence may appropriately be drawn—an appropriate Minister; or

(b) unless paragraph (a) applies—an appropriate officer of the Authority, or of the eligible body, as the case may be.

#### **Power to obtain information and documents**

145. (1) Subject to sections 158 and 160, where an office-holder has reason to believe that a person is capable of furnishing information or producing documents or other records relevant to an investigation under this Division, the office-holder may, by notice in writing served on the person, require the person, at such place, and within such period or on such day and at such time, as are specified in the notice—

(a) to furnish to the Agency, by writing signed by that person or, in the case of a body corporate, by an officer of the body corporate, any such information; or

(b) to produce to the Agency such documents or other records as are specified in the notice.

(2) Where documents or other records are produced to the Agency in accordance with a requirement under sub-section (1), the Agency—

(a) may take possession of, and may make copies of, or take extracts from, the documents or other records;

(b) may retain possession of the documents or other records for such period as is necessary for the purposes of an investigation under this Division to which the documents or other records are relevant; and

(c) during that period, shall permit a person who would be entitled to inspect any one or more of the documents or other records if they were not in the possession of the Agency to inspect at all reasonable times such of the documents or other records as that person would be so entitled to inspect.

(3) Where an office-holder has reason to believe that a person is able to give information relevant to an investigation under this Division, the office-

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holder may, by notice in writing served on the person, require the person to attend before the Agency, on such date and at such time and place as are specified in the notice, to answer questions relevant to the investigation.

(4) Notwithstanding the provisions of any enactment, an officer or employee is not excused from furnishing any information, producing a document or other record or answering a question when required to do so under this Division on the ground that the furnishing of the information, the production of the document or record or the answer to the question would contravene another Act, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty if the Attorney-General or the Director of Public Prosecutions has given to the officer or employee an undertaking in writing that any information furnished, document or other record produced or answer given, as the case may be, or any information, document or other record obtained as a direct or indirect consequence of the furnishing of the information, the production of the document or other record or the giving of the answer, will not be used in evidence in any proceedings for an offence, or any disciplinary proceedings, against the officer or employee, other than proceedings for an offence against section 154, and the Attorney-General or the Director of Public Prosecutions states in the undertaking—

- (a) that, in his or her opinion, there are special grounds that in the public interest require that information be furnished, documents or other records be produced or answers be given by the officer or employee; and
- (b) the general nature of those grounds.

(5) Sub-section (4) does not apply in relation to the furnishing of information, the production of a document or other record or the giving of an answer by a person that would tend to incriminate the person in respect of an offence with which the person has been charged if the charge has not been finally dealt with by a court or otherwise disposed of.

(6) A person is not liable to a penalty under the provisions of any other enactment because of furnishing information, producing a document or other record or answering a question when required to do so under this Division.

#### **Power to examine witnesses**

146. (1) An office-holder may administer an oath or affirmation to a person required under section 145 to attend before the Agency and may examine such a person on oath or affirmation.

(2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

#### **Directions to persons to attend compulsory conference**

147. (1) For the purposes of performing the Agency's functions in relation to a complaint about the Authority or an eligible body, the Agency may, by notice in writing, direct—

(a) the complainant;  
 (b) the Authority or eligible body; and  
 (c) any other person who, in the opinion of the Agency, is likely to be able to provide information relevant to the matter to which the complaint relates or whose presence at the conference is, in the opinion of the Agency, likely to assist in connection with the performance of those functions in relation to the complaint,  
 to attend, at a time and place specified in the notice, a conference presided over by an office-holder.

(2) A person who has been given a direction under sub-section (1) to attend a conference and, without reasonable excuse—  
 (a) fails to attend as required by the direction; or  
 (b) fails to attend and report from day to day unless excused, or released from further attendance, by the person presiding at the conference,  
 is guilty of an offence punishable on conviction—  
 (c) in the case of a natural person—by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both; or  
 (d) in the case of a body corporate—by a fine not exceeding \$5,000.

(3) A person who has been given a direction under sub-section (1) to attend a conference is entitled to be paid by the Commonwealth a reasonable sum for the person's attendance at the conference.

(4) The Agency may, in a notice given to a person under sub-section (1), require the person to produce such documents at the conference as are specified in the notice.

**Conduct of compulsory conference**

148. (1) The person presiding at a conference held under this Division may require a person attending the conference to produce a document.

(2) A conference under this Division shall be held in private and, subject to this Act, shall be conducted in such manner as the person presiding at the conference thinks fit.

(3) A body of persons, whether corporate or unincorporate, that is directed under section 147 to attend a conference shall be deemed to attend if a member, officer or employee of that body attends on behalf of that body.

(4) Except with the consent of the person presiding at a conference under this Division—  
 (a) a natural person is not entitled to be represented at the conference by another person; and  
 (b) a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than a member, officer or employee of that body.

**Complainant and certain other persons to be informed of various matters**

5        149. (1) Where the Agency decides not to investigate, or not to investigate further, a matter to which a complaint about the Authority or an eligible body relates, the Agency shall, as soon as practicable and in such manner as the Agency thinks fit, inform the complainant and, except where there is in force under sub-section (2) an arrangement with the Authority or eligible body relating to a class of complaints that includes the first-mentioned complaint, the Authority or eligible body, of the decision and of the reasons for the decision.

10        (2) The Agency may from time to time make with the Authority or an eligible body an arrangement relating to complaints that have been made to the Agency about the Authority or eligible body and that are included in a class or classes of complaints specified in the arrangement, being an arrangement that provides—

15        (a) for the manner in which, and the period within which, the Agency is to inform the Authority or eligible body of the Agency's decision not to investigate, or not to investigate further, such complaints and of the reasons for the decision; or

20        (b) that the Agency is not required to inform the Authority or eligible body of the Agency's decision not to investigate, or not to investigate further, such complaints and of the reasons for the decision.

25        (3) Where the Agency completes an investigation of a matter to which a complaint about the Authority or an eligible body relates, the Agency shall, in such manner and at such times as the Agency thinks fit, furnish to the complainant and to the Authority or eligible body particulars of the investigation.

30        (4) The Agency may, if it thinks fit, furnish comments or suggestions about any matter relating to, or arising out of, an investigation under this Division to the Authority, an eligible body or any other body or person, unless the Agency has furnished to the Authority, eligible body or other body or person a report under section 151 relating to that matter or to matters including that matter.

**Directions to Authority following investigation**

35        150. (1) Where, having investigated the matter to which a complaint of a kind referred to in sub-section 137 (1) relates, the Agency is satisfied that the Authority has so performed or exercised a function or power conferred on the Authority by or under this Act as to infringe unduly the privacy of a person, the Agency may give to the Authority directions concerning the performance of that function or the exercise of that power.

40        (2) Where, having investigated the matter to which a complaint of a kind referred to in sub-section 137 (2) relates, the Agency is satisfied that the Authority has exceeded its entitlement under sub-section 14 (1), the Agency may, after consulting with the Director-General of the Australian Archives, give to the Authority directions concerning the destruction or

amendment of records of the Authority that include information obtained by exceeding that entitlement.

(3) The Authority shall comply with a direction given under this section.

(4) Where the Agency gives to the Authority a direction under this section and the Authority—

- (a) refuses to comply with the direction; or
- (b) fails to comply with the direction within a reasonable time after being given the direction,

the Agency shall give to the Minister a report concerning the refusal or failure to comply, being a report that includes the reasons (if any) that the Authority has given for its refusal or failure to comply.

**Reports to be prepared where no settlement of complaint about eligible body**

**151.** (1) Where, having investigated the matter to which a complaint about an eligible body relates, being a complaint of the kind referred to in section 138—

- (a) the Agency is satisfied that the eligible body has done an act, or engaged in a practice, that constitutes or involves a contravention of a kind referred to in paragraph 88 (1) (e); and
- (b) the Agency—
  - (i) has not considered it appropriate to endeavour to effect a settlement of the matter; or
  - (ii) has endeavoured without success to effect such a settlement,

the Agency—

- (c) shall prepare a report setting out its findings and the reasons for those findings;
- (d) may include in the report any recommendations by the Agency for the purpose of preventing a repetition of the act or a continuation of the practice;
- (e) in the case of a complaint about a Department, a Commonwealth authority, an officer, an employee or a member of the staff of a Commonwealth authority—may include in the report a recommendation by the Agency for either or both of the following:
  - (i) the payment of compensation to, or in respect of, a person who has suffered loss or damage as a result of the act or practice;
  - (ii) the taking of other action to remedy or reduce loss or damage suffered by a person as a result of the act or practice; and
- (f) shall give a copy of the report to the complainant, to the eligible body, to the Minister and to any other Minister to whom, in the opinion of the Agency, it is appropriate to furnish such a copy.

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(2) Where, at the end of 60 days after a copy of a report under sub-section (1) relating to an act or practice of an eligible body was furnished by the Agency to the eligible body, the Agency—

5 (a) is still of the opinion that the act or practice constitutes or involves a contravention of a kind referred to in paragraph 88 (1) (e); and

(b) is not satisfied that reasonable steps have been taken to prevent a repetition of the act or a continuation of the practice,

the Agency shall—

10 (c) prepare a further report that incorporates the first-mentioned report and any document that the Agency has received, in response to the first-mentioned report, from the eligible body or from any person on behalf of the eligible body, and states—

15 (i) whether, to the knowledge of the Agency, any action has been or is being taken as a result of the findings set out in the first-mentioned report and, if so, the nature of that action; and

(ii) why the Agency is not satisfied that reasonable steps have been taken to prevent a repetition of the act or a continuation of the practice; and

20 (d) give to the Minister a copy of the further report.

#### **Certain reports to be laid before the Parliament**

152. The Minister shall cause a copy of a report given to the Minister by the Agency under sub-section 150 (4) or 151 (2) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

#### **Division 6—Miscellaneous**

##### **Agency not to be sued**

153. Subject to section 169, neither the Agency nor a person acting under its direction or authority is liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise or purported exercise of any power or authority conferred by this Act.

##### **Offences**

154. (1) A person shall not refuse or fail, without reasonable excuse—

(a) to attend before the Agency;

(b) to be sworn or make an affirmation;

(c) to furnish information; or

(d) to answer a question or produce a document or record,

when so required under this Act.

Penalty: \$2,000 or imprisonment for 12 months, or both.

40 (2) It is a reasonable excuse for the purposes of sub-section (1) for a person to refuse or fail to furnish information, answer a question or produce

a document or record on the ground that the information furnished, the answer to the question or the production of the document or other record might tend to incriminate the person.

(3) A person shall not—

- (a) without reasonable excuse, wilfully obstruct, hinder or resist the Agency or any other person in the exercise of its functions under this Act; or
- (b) furnish information or make a statement to the Agency knowing that it is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

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#### Protection from civil actions

155. Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:

- (a) the making of a complaint to the Agency under this Act;
- (b) the making of a statement to, or the furnishing of a document or information to, the Agency, whether or not pursuant to a requirement under section 121 or 145.

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#### Powers of Agency in relation to certain eligible bodies

156. (1) The Agency may, by notice in writing, require a body or person who—

- (a) is entitled to have a Card produced to the body or person; or
- (b) is entitled to record the number of a Card,

to give to the Agency such information as is specified in the notice, being information reasonably required by the Agency for the performance of any of its functions under this Act.

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(2) The Agency may, by notice in writing, require a body or person who is entitled under this Act to have access to the Register to give to the Agency such information as is specified in the notice, being information reasonably required by the Agency for the performance of the function referred to in paragraph 88 (1) (j) or (m).

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(3) A body or person to whom a notice is given by the Agency under this section shall, as soon as is reasonably practicable and so far as the person has, or is able to obtain, the information specified in the notice, comply with the notice.

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Penalty: \$2,000 or imprisonment for 12 months, or both.

#### Power to enter premises

157. (1) Subject to sub-section (3), for the purposes of the performance by the Agency of its functions under this Act, a person authorised by the Agency for the purposes of this section may, at any reasonable time of the day arranged with an appropriate officer of the Authority or of an eligible

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body, enter premises occupied by the Authority or eligible body and inspect any documents that are kept at those premises and that are relevant to the performance of those functions, other than documents in respect of which the Attorney-General has furnished a certificate under sub-section 160 (1) or (2).

5 (2) The occupier or person in charge of premises that a person authorised by the Agency enters under sub-section (1) shall provide the authorised person with all reasonable facilities and assistance for the effective exercise of the authorised person's powers under that sub-section.

10 (3) A person shall not enter under sub-section (1) premises that are occupied neither by the Commonwealth nor by a Commonwealth authority unless—

- (a) the occupier of the premises has consented to the person entering the premises; or
- 15 (b) the person is authorised, pursuant to a warrant issued under sub-section (4), to enter the premises.

20 (4) If, on an application made by a person authorised by the Agency under sub-section (1), a Magistrate or a Justice of the Peace is satisfied, by information on oath, that it is reasonably necessary that the person should, for the purpose of exercising the person's powers under that sub-section, be empowered to enter the premises, the Magistrate or Justice of the Peace may issue a warrant authorising the person, with such assistance as the person thinks necessary, to enter the premises, if necessary by force, for the purpose of exercising those powers.

25 (5) A warrant issued under sub-section (4) shall state—

- (a) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- 30 (b) a day, not being later than one month after the day on which the warrant was issued, at the end of which the warrant ceases to have effect.

(6) Nothing in sub-section (1) restricts the operation of any other provision of this Part.

#### Restrictions on Agency obtaining personal information and documents

35 158. (1) Information relating to a person shall not be furnished, in connection with an application or complaint, in such a manner as to reveal the person's identity, unless the person has made the application or complaint or has consented to the information being so furnished.

40 (2) A document that contains information relating to a person and that reveals the person's identity shall not be produced, in connection with an application or complaint, unless—

- (a) the person has made the application or complaint or has consented to the document being so produced; or

(b) the document is a copy of another document and has had deleted from it such information as reveals the identity of the person.

(3) A person shall not furnish, in connection with a complaint, prescribed information that relates to a person other than the complainant and does not also relate to the complainant. 5

(4) A person shall not furnish, in connection with a complaint, prescribed information that relates both to the complainant and to another person, unless the information is so furnished in such a manner as not to reveal the identity of the other person.

(5) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates to a person other than the complainant and does not also relate to the complainant, unless the document is a copy of another prescribed document and has had that information deleted from it. 10

(6) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates both to the complainant and to another person, unless the document is a copy of another prescribed document and has had deleted from it such information as reveals the identity of the other person. 15

(7) This section has effect notwithstanding any other provision of this Part. 20

(8) A reference in this section to furnishing information, or to producing a document, in connection with an application or complaint is a reference to furnishing the information, or to producing the document, as the case may be, to the Agency in connection with the performance or exercise by the Agency, in relation to that application or complaint, of the Agency's functions or powers. 25

(9) In this section—

“application” means an application under section 116;

“complaint” means a complaint under section 137 or 138; 30

“document” includes any other record;

“prescribed document” means a document that was furnished or obtained under or for the purposes of a relevant law or a copy of such a document;

“prescribed information” means information that the person furnishing the information acquired by reason of holding or having held an office, or being or having been employed, under or for the purposes of a relevant law; 35

“relevant law” means a taxation law or a law of the Commonwealth relating to census and statistics. 40

**Publication of guidelines**

159. (1) The Agency shall cause guidelines that it issues under this Part to be published in the *Gazette*.

(2) Guidelines issued under this Part shall come into effect on the day on which they are published in the *Gazette* or on such later day as is specified in the guidelines.

**Certain documents and information not required to be disclosed**

160. (1) Where the Attorney-General furnishes to the Agency a certificate certifying that the giving to the Agency of information concerning a specified matter (including the giving of information in answer to a question), or the production to the Agency of a specified document or other record, would be contrary to the public interest because it would—

- (a) prejudice the security, defence or international relations of Australia;
- (b) involve the disclosure of communications between a Minister of the Commonwealth and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State;
- (c) involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;
- (d) involve the disclosure of deliberations or advice of the Executive Council;
- (e) prejudice the conduct of an investigation or inquiry into crime or criminal activity that is currently being pursued, or prejudice the fair trial of any person;
- (f) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement of the criminal law;
- (g) prejudice the effectiveness of the operational methods or investigative practices or techniques of agencies responsible for the enforcement of the criminal law; or
- (h) endanger the life or physical safety of any person,

an office-holder is not entitled to require a person to give any information concerning the matter or to produce the document or other record.

(2) Without limiting the operation of sub-section (1), where the Attorney-General furnishes to the Agency a certificate certifying that the giving to the Agency of information as to the existence or non-existence of information concerning a specified matter (including the giving of information in answer to a question) or as to the existence or non-existence of any document or other record required to be produced to the Agency would be contrary to the public interest—

- (a) by reason that it would prejudice the security, defence or international relations of Australia; or
- (b) by reason that it would prejudice the proper performance of the functions of the National Crime Authority,

the Agency is not entitled, pursuant to this Act, to require a person to give any information as to the existence or non-existence of information concerning that matter or as to the existence or non-existence of that document or other record.

### Staff

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161. (1) The staff required to assist the Agency in the performance of its functions shall be persons appointed or employed under the *Public Service Act 1922*.

(2) The President has all the powers of, or exercisable by, a Secretary of a Department of the Australian Public Service under the *Public Service Act 1922*, so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in sub-section (1) as if that branch were a separate Department of the Australian Public Service.

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### Annual report

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162. (1) The Agency shall within 3 months, after the end of each financial year, prepare and give to the Minister a report of—

- (a) the operations and effectiveness of the Agency;
- (b) the activities of the Advisory Committee; and
- (c) the administration of the Australia Card identification system, during that financial year.

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(2) The Minister shall cause a report of the Agency to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Minister.

(3) The Agency's report under sub-section (1) in relation to a financial year shall include the text of all guidelines issued under paragraphs 88 (1) (g), (h), (j), (k) and (p), and all reports made under paragraph 88 (1) (u), by the Agency during that financial year.

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#### (4) Where—

- (a) the Advisory Committee has recommended material to the Agency for inclusion in guidelines to be issued by the Agency pursuant to its functions; and
- (b) during a particular financial year, the Agency decides not to include the material in such guidelines,

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the Agency shall include in the Agency's report relating to that financial year the text of the material and the Agency's reasons for not so including the material.

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## PART VIII—OFFENCES

### Card not to be defaced or altered

163. A person shall not intentionally deface or alter a Card.

Penalty: \$5,000 or imprisonment for 2 years, or both.

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**False Cards**

164. A person who, without reasonable excuse, is in possession or control of a document, not being a Card issued under this Act, that—

- (a) purports to be an Australia Card; or
- (b) so nearly resembles an Australia Card as to be capable of being mistaken for an Australia Card,

is guilty of an offence.

Penalty: \$10,000 or imprisonment for 5 years, or both.

**Dishonest use, or improper possession, of Card**

165. (1) A person who, with intent to deceive, produces to an officer of the Commonwealth, or of an authority of the Commonwealth, a Card that was issued to another person is guilty of an offence.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(2) A person who, without reasonable excuse—

- (a) is in possession of a Card that was issued to another person; or
- (b) is in possession of a Card that the person knows, or could reasonably be expected to know, to have been altered,

is guilty of an offence.

Penalty: \$10,000 or imprisonment for 5 years, or both.

**False statements**

166. (1) A person shall not, in connection with an application for the issue or renewal of a Card, make concerning the identity of the person a statement or representation that the person knows to be false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(2) A person shall not, for the purpose of obtaining a Card or the renewal of a Card—

- (a) make an application that includes a statement or representation; or
- (b) make to a member of the staff of the Authority a statement or representation,

not being a statement or representation of a kind referred to in sub-section (1), that is, to the knowledge of the person, false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for 2 years, or both.

**Unauthorised requirement that Card be produced**

167. (1) Except as authorised by this Act, a person shall not require another person to produce a Card.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(2) Without limiting the generality of sub-section (1), that sub-section prohibits a person from requiring another person to produce a Card in connection with—

- (a) the supply of goods or services;
- (b) the conferring of any right, title or benefit;
- (c) the admission of a person to, or the modification or cancellation of, any status;
- (d) the admission of a person to, or the renewal or continuation of, membership of an association or body, whether incorporated or unincorporated;
- (e) an application by a person for appointment to an office or place; or
- (f) the making of an agreement.

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(3) For the purposes of sub-sections (1) and (2), a person who makes to another person a statement that the other person could reasonably understand to mean that the other person is required to produce a Card shall be taken to require the other person to produce a Card.

#### **Unauthorised access to Register or BDM Register**

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**168.** A person shall not obtain access to the Register or the BDM Register except as permitted by or under this Act.

Penalty: \$5,000 or imprisonment for 2 years, or both.

#### **Secrecy**

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**169.** (1) This section applies to a person who is, or has been—

- (a) a member of the Authority or the Agency; or
- (b) a member of the staff of the Authority or the Agency.

(2) Subject to sub-section (4), a person to whom this section applies shall not, directly or indirectly, except for the purposes of this Act, for the purposes of the performance or exercise of the functions or powers of the Authority or the Agency or otherwise in connection with the performance of the person's duties under this Act—

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- (a) make a record of any information; or

- (b) divulge or communicate to any person any information,

being information obtained by the person—

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- (c) in the course of performing duties under this Act; and

- (d) otherwise than in connection with the performance by the Agency of its function under paragraph 88 (1) (y).

Penalty: \$5,000 or imprisonment for 2 years, or both.

(3) Nothing in sub-section (2) applies in relation to information that has been lawfully published or is lawfully available to every member of the public, whether on payment or otherwise.

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(4) A person to whom this section applies shall not be required to produce in a court any document that has come into the custody or control of the person in the course of, or by reason of, the performance of duties under this Act, or to divulge or communicate to a court any matter or thing

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that has come to the notice of the person in the performance of duties under this Act, except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

5 (5) In sub-section (4)—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions; “produce” includes permit access to.

### Use of information acquired under this Act

10 170. (1) A person who is entitled under Part IV to require a person to produce a Card shall not communicate to any other person any of the information endorsed on or incorporated in the Card unless the first-mentioned person is required or permitted by this Act to communicate that information to the other person.

Penalty: \$5,000 or imprisonment for 2 years, or both.

15 (2) Subject to sub-section (8), a person who is entitled under Division 3 of Part V to have access to the Register shall not communicate to any other person information obtained from the Register unless—

- (a) the first-mentioned person is required or permitted by this Act to communicate the information to the other person; or
- (b) the other person is performing duties for a purpose that is the same purpose as the purpose for which the first-mentioned person is entitled to have access to the Register.

Penalty: \$5,000 or imprisonment for 2 years, or both.

20 (3) Subject to sub-section (8), a person who is entitled under Part VI, or under an arrangement made under that Part, to have access to the BDM Register shall not communicate to any other person information obtained from the BDM Register unless—

- (a) the first-mentioned person is required or permitted by this Act to communicate the information to the other person; or
- (b) the other person is performing duties for a purpose that is the same purpose as the purpose for which the first-mentioned person is entitled to have access to the Register.

Penalty: \$2,000 or imprisonment for 12 months, or both.

25 (4) A person who is entitled under Part IV to require a person to produce a Card shall not record any of the information endorsed on or incorporated in the Card, or maintain such a record, except to the extent required or permitted by this Act or reasonably necessary in order to comply with another obligation imposed by this Act.

Penalty: \$2,000 or imprisonment for 12 months, or both.

30 (5) Subject to sub-section (8), a person who is entitled under Division 3 of Part V to have access to the Register shall not record information contained in the Register unless to do so is required or permitted by this

Act or is reasonably necessary for the purpose for which the information was obtained from the Register.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(6) Subject to sub-section (8), a person who is entitled under Division 3 of Part V to have access to the Register shall not identify, by the use of a reference to an Australia Card number of a person, a person to whom information contained in the Register relates, unless to do so is required or permitted by this Act or is reasonably necessary for the purpose for which the information was obtained from the Register.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(7) Subject to sub-section (8), a person who is entitled under Part VI, or under an arrangement made under that Part, to have access to the BDM Register shall not record information contained in the BDM Register unless to do so is required or permitted by this Act or is reasonably necessary for the purpose for which the information was obtained from that Register.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(8) A person referred to in this section shall not be required to produce in a court a record of information obtained from the Register or the BDM Register or to divulge or communicate to a court information obtained from the Register or the BDM Register, whether by that person or by another person, except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

(9) In sub-section (8), "court" and "produce" have the same respective meanings as in sub-section 169 (4).

(10) A person to whom a Card is produced in circumstances where the person was not entitled under Part IV to require the Card to be produced may record the fact that the Card was produced but shall not—

- (a) retain the Card;
- (b) use for the purpose of making a record information endorsed on, or incorporated in, the Card; or
- (c) communicate to any other person information endorsed on, or incorporated in, the Card.

Penalty: \$5,000 or 2 years imprisonment, or both.

#### **Penalties for bodies corporate**

171. Where a body corporate is convicted of an offence against this Act, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

#### **Prosecution of offences**

172. (1) Subject to sub-section (2), an offence against any of the following provisions of this Act is an indictable offence:

- (a) sub-section 36 (3);

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5 (b) sections 38, 40 to 44 (inclusive) and 46 to 51 (inclusive);  
(c) sections 163 and 164;  
(d) sub-section 165 (2);  
(e) sections 166, 167 and 168;  
(f) sub-section 169 (2);  
(g) sub-sections 170 (1), (2) and (10);  
(h) sub-section 173 (2).

10 (2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence of a kind referred to in sub-section (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

15 (3) Where, in accordance with sub-section (2), a court of summary jurisdiction convicts a person of an offence referred to in sub-section (1), the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both.

(4) An offence against this Act that is not an offence of a kind referred to in sub-section (1) is a summary offence.

## **PART IX—MISCELLANEOUS**

### **Retention of information acquired under this Act**

20 173. (1) Subject to sub-section (2), a person who is entitled under Part IV to require a person to produce a Card, or who is entitled under Division 3 of Part V to have access to the Register, may make and retain, for so long as is reasonably necessary, a record of the information endorsed on, or incorporated in, the Card, or a record of the information contained in the part of the Register to which the person is entitled to have access, as the case may be.

25 (2) A person who retains a record of information under sub-section (1) shall destroy that record when it is no longer reasonably necessary for the record to be retained.

30 Penalty: \$5,000 or imprisonment for 2 years, or both.

(3) A person who makes a record of information under sub-section (1) shall comply with any guidelines issued by the Agency under paragraph 88 (1) (g) or (j) in relation to such a record of information.

### **Release of information to police, &c.**

35 174. (1) Nothing in this Act prevents the communication by the Authority, the Agency, or the secretary responsible for matters arising under a relevant Act, to a member or special member of the Australian Federal Police, or to the Director of Public Prosecutions or a member of the staff of the Office of the Director of Public Prosecutions, of information reasonably

required for the investigation or prosecution of an offence under this Act, a relevant Act or a taxation law.

(2) In sub-section (1), "relevant Act" means—

- (a) the *Social Security Act 1947*;
- (b) the *Migration Act 1958*; or
- (c) the *Health Insurance Act 1973*.

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#### Publication of statistics

175. Nothing in this Act prevents the publication of statistics by the Authority, the Agency or by the Australian Statistician, but such statistics shall not be published in a manner that is likely to enable an individual to be identified.

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#### Provision of statistical information to Australian Statistician

176. (1) Subject to sub-section (2), the Authority may from time to time extract from the Register statistical information relating to population sizes and movements, and may provide such statistical information to the Australian Statistician.

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(2) The Authority shall not provide information to the Australian Statistician under sub-section (1) in a manner that is likely to enable an individual to be identified.

#### Operation of certain laws not affected

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177. (1) Nothing in this Act affects the operation of a relevant law.

(2) The issue of a Card in respect of a person does not affect the status of the person or any powers conferred, or liabilities or obligations imposed, in relation to the person, by a relevant law.

(3) In this section, "relevant law" means the *Migration Act 1958*, the *Australian Citizenship Act 1948* or the *Immigration Act 1980* of Norfolk Island.

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#### Giving of notices

178. (1) A document may be given to the Authority by sending the document by pre-paid post addressed to the Authority at the prescribed address of the Authority in the State or Territory in which the person giving the document resides.

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(2) A document may be given to a person approved for the purpose of sub-paragraph 11 (1) (b) (ii) by sending the document by pre-paid post addressed to the person at the address specified as the address of the person in a notice published in the *Gazette* for the purpose of that sub-paragraph.

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(3) The Authority may give a document to a person by sending the document by pre-paid post addressed to the person at the address of the person for the receipt of notices.

5 (4) Where a person has made, or 2 persons have jointly made, an application for the issue of a Card but a Card has not yet been issued pursuant to the application, the address of the person or persons for the receipt of notices in relation to the application is the address shown in the application as the address to which the person requires, or the persons require, notices to be sent.

(5) The regulations may make provision in relation to the address that is to be the address of a Card-subject, or of a prescribed representative of a Card-subject, for the receipt of notices.

10 (6) This section has effect for the purposes of this Act, but without prejudice to any other method of giving a document to a person.

#### Authority to be notified of loss, theft or destruction of Card

15 179. A person to whom a Card has been issued shall, within 21 days after becoming aware of the loss, theft or destruction of the Card, notify the Authority of the loss, theft or destruction.

Penalty: \$500.

#### Reports to Department administering Migration Act

20 180. (1) The Secretary of the Department responsible for matters arising under the *Migration Act 1958* may from time to time give to the Authority a statement specifying the names of persons whom the Secretary reasonably suspects to be prohibited non-citizens within the meaning of that Act and, on receiving such a statement, the Authority shall give to the Secretary a report setting out, in relation to each person specified in the statement—

25 (a) the residential address of the person last known to the Authority; and

(b) any other information in the Register in relation to the person that the Authority considers reasonably necessary in order to verify the identity of the person.

30 (2) Subject to guidelines issued by the Agency under paragraph 88 (1) (j), the Secretary of the Department referred to in sub-section (1), and such other persons as the Secretary authorises in writing, may incorporate the information contained in a report given to the Secretary under sub-section (1) in such records, and may make such use of the information, as the Secretary directs in writing.

35 181. (1) Protection of the “Australia Card” name and symbol

181. (1) A person who—

(a) uses the expression “Australia Card”, or a prescribed symbol, in connection with a business, trade, profession or occupation;

(b) sells, offers for sale or exposes for sale, or otherwise has in the possession of the person for sale, goods to which the expression “Australia Card” or a prescribed symbol has been applied;

- (c) uses the expression "Australia Card" or a prescribed symbol in relation to goods or services or in relation to the promotion, by any means, of the supply or use of goods or services; or
- (d) imports into Australia for sale, or for use for the purposes of any business, trade, profession or occupation, any article to which the expression "Australia Card" or a prescribed symbol has been applied outside Australia,

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is guilty of an offence against this section.

(2) Where the expression "Australia Card" or a prescribed symbol—

- (a) is used as, or as part of, the name or emblem of an association;
- (b) is used as, or as part of, the name or emblem of a newspaper or magazine owned by, or published by or on behalf of, an association; or
- (c) is used by an association in connection with any activity of the association so as to imply that the association is in any way connected with the Commonwealth or the Authority or Agency,

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then—

- (d) if the association is a body corporate—the association; or
- (e) if the association is not a body corporate—every member of the committee of management or other governing body of the association,

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is guilty of an offence against this section.

(3) A person who is guilty of an offence against this section is punishable upon conviction—

- (a) in the case of a person not being a body corporate—by a fine not exceeding \$2,000; or
- (b) in the case of a person being a body corporate—by a fine not exceeding \$4,000.

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(4) The conviction of a person of an offence against this section in respect of the use of an expression or prescribed symbol does not prevent a further conviction of that person in respect of the use of that expression or prescribed symbol at any time after the first-mentioned conviction.

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(5) For the purposes of this section—

- (a) a reference to the expression "Australia Card" includes a reference to an expression that so nearly resembles the expression "Australia Card" as to be capable of being mistaken for the expression "Australia Card";
- (b) a reference to an official "Australia Card" symbol is a reference to a symbol declared by the regulations to be an official "Australia Card" symbol;
- (c) a reference to a prescribed symbol is a reference to an emblem, brand, design, symbol, logo or mark that—
  - (i) is identical to an official "Australia Card" symbol; or

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5 (ii) so nearly resembles an official "Australia Card" symbol as to be capable of being mistaken for an official "Australia Card" symbol;

(d) an expression or a prescribed symbol shall be deemed to be applied to goods if—

- (i) it is printed on, impressed on, worked into or affixed to the goods; or
- (ii) it is applied to a covering, label or thing in or with which the goods are supplied;

10 (e) an expression or a prescribed symbol shall be deemed to be used in relation to goods, or to the promotion of the supply or use of goods, if it is used in a sign, advertisement (whether printed, broadcast or televised), invoice, catalogue, price list or other document in relation to goods; and

15 (f) the reference in paragraph (d) to a covering includes a reference to a box, case or wrapper and the reference in that paragraph to a label includes a reference to a band or ticket.

(6) Proceedings under this section shall not be instituted without the consent in writing of the Attorney-General.

20 (7) Subject to sub-section (9), nothing in this section affects any rights conferred by law on a person in respect of—

- (a) a trade mark registered under the *Trade Marks Act 1955*, being a trade mark that was so registered before the date of commencement of this section; or
- (b) a design registered under the *Designs Act 1906*, being a design that was so registered before the commencement of this section.

(8) Subject to sub-section (9), nothing in this section affects the use, or any rights conferred by law relating to the use, of a symbol on or after the date of commencement of this section if—

25 (a) within the prescribed period before that date, the person used the symbol in good faith in a manner mentioned in sub-section (1) or (2); or

30 (b) immediately before that date, the person would have been entitled to prevent another person from passing off, by means of the use of that symbol or of a similar symbol, goods or services as the goods or services of that first-mentioned person.

35 (9) No action or proceeding, whether civil or criminal, lies against the Commonwealth or the Authority for or in relation to the use by the Commonwealth or the Authority of the expression "Australia Card" or of an official "Australia Card" symbol.

40 (10) To the extent that sub-section (9) results in an acquisition of property from any person, the Commonwealth is liable to pay to that person such compensation as is agreed upon between them or, in default of agreement, as is determined by the Federal Court.

(11) The Federal Court has jurisdiction with respect to matters arising under sub-section (10).

**Property in Australia Card**

182. The property in a Card remains in the Commonwealth.

**Modification of Register to protect safety, &c., of persons**

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183. (1) Where the chief executive officer of the Authority is of the opinion that, in the exceptional circumstances of a particular case, it is necessary, in order to preserve the safety or well-being of a person or to protect a person from prejudicial actions, that—

- (a) certain information that relates to the person and is in the Register be modified or omitted; or
- (b) certain information that relates to the person and is proposed to be included in the Register not be so included, or not be so included except in a modified form,

sub-section (2) has effect.

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(2) The chief executive officer shall—

- (a) if paragraph (1) (a) applies—cause that information to be modified or omitted accordingly;
- (b) if paragraph (1) (b) applies—cause that information not to be so included, or not to be so included except in that form; and
- (c) cause the person to be informed of the action taken pursuant to paragraph (a) or (b) of this sub-section.

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(3) A person may request the chief executive officer of the Authority to exercise his or her powers under this section in relation to information relating to—

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- (a) the person; or
- (b) a person of whom the first-mentioned person is a prescribed representative or in respect of whom the first-mentioned person has applied for the issue of a Card.

(4) The chief executive officer of the Authority shall, as soon as practicable after deciding not to exercise his or her powers under this section pursuant to a request made by a person under sub-section (2), notify the person in writing of the decision.

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**Authority to record refusals of access to Register**

184. The Authority shall, as soon as practicable after access to information in the Register is refused—

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- (a) record, or cause to be recorded, particulars of the refusal; and
- (b) send, or cause to be sent, to the Agency a copy of that record.

**Authority to record access and refusals of access to BDM Register**

185. (1) The Authority shall maintain records of—

- (a) particulars of each occasion on which access to information contained in the BDM Register was obtained; and
- 5 (b) particulars of each occasion on which access to information contained in the BDM Register was refused.

10 (2) The Agency, the Minister or a person authorised by the Minister for the purposes of this section may make a request to the Authority to be provided with a copy of all or part of a record maintained under sub-section (1), and the Authority shall provide such a copy accordingly.

15 (3) A Minister of a State or of the Northern Territory, or a person authorised by a Minister of a State or the Northern Territory for the purposes of this section, may make a request to the Authority to be provided with a copy of all or part of so much of a record maintained under sub-section (1) as relates to that State or Territory, and the Authority shall provide such a copy accordingly.

20 (4) The Administrator of Norfolk Island, or a person authorised by the Administrator for the purposes of this section, may make a request to the Authority to be provided with a copy of all or part of so much of a record maintained under sub-section (1) as relates to Norfolk Island, and the Authority shall provide such a copy accordingly.

**Delegation**

25 186. (1) The chief executive officer of the Authority, or the President, may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her, delegate to a person all or any of his or her powers under this Act (other than section 183), other than this power of delegation.

30 (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the chief executive officer of the Authority, or by the President, as the case requires.

(3) A delegation under this section does not prevent the exercise of a power by the chief executive officer of the Authority or by the President.

**Saving of rights of Auditor-General and Director-General of Archives**

35 187. (1) Nothing in this Act limits a right under any other Act of the Auditor-General, or the Director-General of the Australian Archives, to have access to information or to a document where such access is reasonably necessary for the performance of a function of the Auditor-General, or of the Director-General, as the Case may be.

40 (2) The reference in sub-section (1) to a right of the Auditor-General to have access to information or a document includes a reference to a right of—

- (a) an authorised officer within the meaning of section 14B of the *Audit Act 1901*; or
- (b) an authorised person within the meaning of section 48E of the *Audit Act 1901*,

to have access to information or a document.

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(3) In this section, "document" includes—

- (a) a document to which sub-section 25 (6) applies; and
- (b) a document containing information derived from the Register.

#### Conduct engaged in on behalf of body corporate

**188.** (1) For the purposes of this Act, conduct engaged in on behalf of a body corporate—

- (a) by a director, employee or agent of the body corporate within the scope of the director's, employee's or agent's actual or apparent authority; or
- (b) by any other person at the direction, or with the consent or agreement (whether express or implied), of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the director's, employee's or agent's actual or apparent authority,

shall, in addition to having been engaged in by the director, employee, agent, or by the other person, as the case may be, be deemed to have been engaged in by the body corporate.

(2) Where, in proceedings for an offence against this Act in respect of conduct engaged in by a body corporate, it is necessary to establish the body corporate's state of mind, it is sufficient to show that a director, employee or agent of the body corporate by whom the conduct was engaged in within the scope of the director's, employee's or agent's actual or apparent authority, had that state of mind.

(3) A reference in sub-section (2) to a person's state of mind includes a reference to the person's knowledge, intention, opinion, belief or purpose, and to the person's reasons for that intention, opinion, belief or purpose.

#### Regulations

**189.** The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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**SCHEDULE 1**

Sub-sections 25 (1) and 27 (7)

**INFORMATION TO BE ENTERED IN THE REGISTER UNDER SUB-SECTIONS 25 (1) AND 27 (7)****1. In this Schedule—**

“Card-subject” includes a person in respect of whom an application for the issue of a Card has been made; “prescribed representative”, in relation to a Card-subject, includes a person who has made, or who has made jointly with another person, an application for the issue of a Card in respect of the Card-subject.

**2. In respect of a Card-subject—**

- (a) surname and given name;
- (b) if a recognised name of the Card-subject is different from the Card-subject's surname and given name—that recognised name;
- (c) date of birth;
- (d) sex;
- (e) current residential address;
- (f) current postal address;
- (g) any title by which the Card-subject is entitled to be known and which he or she requests to be recorded;
- (h) status of the person as an Australian citizen, or other status;
- (j) record of the person's eligibility to receive medicare benefits under the *Health Insurance Act 1973*;
- (k) record of the person's right (if any) to obtain employment in Australia;
- (m) name given at birth, if born in Australia;
- (n) name on arrival in Australia, if born outside Australia;
- (p) each other name (if any) used by the person;
- (q) the address of each place at which the Card-subject has previously resided during the period since first application for a Card, or during the period of the last 2 years, whichever is the shorter;
- (r) each previous postal address that the Card-subject has used during the period since first application for a Card, or during the period of the last 2 years, whichever is the shorter;
- (s) Australia Card number (where applicable);
- (t) if the Card-subject has died—
  - (i) the date of death; and
  - (ii) reference to entry in Register of Deaths;
- (u) nature of documents (if any) produced to establish identity; and
- (w) details of access under section 14, in connection with an invitation to apply, or in connection with an application, for the issue of a card in respect of the Card-subject, to information held by a Department or other authority of the Commonwealth.

**3. In respect of a Card-subject who is an Australian citizen—**

- (a) either—
  - (i) reference to entry in Register of Births; or
  - (ii) mother's name, father's name and place of birth; and
- (b) if the Card-subject has obtained citizenship under the *Australian Citizenship Act 1948*—

**SCHEDULE 1—continued**

- (i) reference to any entry in the Register of Persons granted citizenship; and
- (ii) date citizenship granted.

4. In respect of a Card-subject who is a permanent resident—
  - (a) the date of the Card-subject's arrival in Australia;
  - (b) particulars (including the number) of the passport held by the Card-subject on arrival in Australia; and
  - (c) the date permanent residence granted.
5. In respect of a Card-subject who is a person visiting Australia—
  - (a) the date of the Card-subject's arrival in Australia;
  - (b) particulars (including the number) of the passport held by the Card-subject on arrival in Australia;
  - (c) record of entry status;
  - (d) entry permit expiry date;
  - (e) proposed date of departure; and
  - (f) actual date of departure.
6. In respect of a Card-subject in respect of whom a Card incorporating a photographic image is issued—a digitised image of the Card-subject.
7. In respect of a Card-subject in respect of whom a Card incorporating a specimen signature is issued—a digitised image of the specimen signature provided by the Card-subject.
8. In respect of a prescribed representative of a Card-subject—
  - (a) either the surname and given name, or the recognised name, of the prescribed representative;
  - (b) the Australia Card number (if any) of the prescribed representative; and
  - (c) details of access under section 14, in connection with an invitation to apply, or in connection with an application, for the issue of a Card in respect of the Card-subject, to information held by a Department or other authority of the Commonwealth, being information relating to the prescribed representative.

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