

CHAPTER 2

PROVISIONS

2.1 AusCheck, the Australian Background Checking Service, is responsible for coordinating the background criminal and security checks on applicants for Aviation Security Identification Cards (ASIC) and Maritime Security Identification Cards (MSIC). Schedule 1 of the Bill sets out the proposed amendments to the AusCheck Act 2007. Amendments in the Schedule are dealt with in order of item number.

2.2 Items 1 through 5 would make changes or additions to definitions in sections 4 and 5 of the Act. Item 1 inserts a definition for 'identity verification information' to include, in the context of an AusCheck scheme, an individual's fingerprints or other biometric data about the individual, but not the individual's photograph. Item 2 inserts a definition for 'national security background check' as being a check carried out for the purpose set out in various new subparagraphs in section 8 of the Act. These two concepts are expanded upon later in this chapter.

2.3 Existing subsection 4(2), read together with the relevant part of subsection 4(1), aims to define 'personal information'. The current provision specifically identifies an individual's MSIC or ASIC card number, or the photograph on their card, as personal information. The Bill would remove reference to ASIC and MSIC cards, and substitute another provision so that 'any other identifier' and/or a photograph of the individual would fall within the definition of 'personal information'.

2.4 Paragraph 5(b) would clarify the meaning of 'security assessment' for the purposes of a background check taking place under the Act. The Bill would import the meaning of 'security assessment' from the *Australian Security Intelligence Organisation Act 1979*.

2.5 Items 5 and 6 would amend the definition of 'background check'. Currently, the term is defined by reference to a number of areas of inquiry, such as criminal history, a previous security assessment, citizenship status, and 'verification of documents relating to ... identity'. This rather confusing clause, at paragraph 5(d) would be amended to refer simply to 'the identity of the individual'. This would broaden the meaning of 'background check' to encompass any assessment of information relating to the identity of an individual.

2.6 Section 8 deals with the establishment of checking schemes under AusCheck, and currently refers only to MSIC and ASIC cards, established under the relevant Acts.¹ The circumstances in which a scheme may be established are dramatically broadened by the amendment, which would add 6 further grounds upon which regulations may provide for the establishment of a scheme. These are:

- Australia's national security;

1 *Maritime Transport and Offshore Facilities Security Act 2003* and *Aviation Transport Act 2004*, respectively.

- The defence of Australia;
- A national emergency;
- The prevention of conduct to which Part 5.3 of Chapter 5 of the *Criminal Code* applies;²
- The executive power of the Commonwealth; and
- Matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.³

2.7 Section 9 addresses the matters that an AusCheck scheme may make provision for. These include, for example, the information that should be contained in an application for a check, how that information should be assessed, and the manner and form given to the subject of the check.⁴ The section also provides for a scheme to address matters relating to the establishment and provisions of an online verification service to verify that an identification card has been issued to a person, is in effect, and that the owner and holder of the card are the same person.⁵

2.8 The amendments would see these verification powers extended to cover individuals and identification cards that have been subject to national security background checking. However, the extension would provide for the verification service to verify not merely whether a card or other identification has been issued, but whether a background check has been conducted on an individual.

2.9 Item 9 would deem an individual to have consented to the conduct of a background check upon their application for not only a MSIC or ASIC card, but 'any other card, license, permit or authorisation' provided they were advised that the background check was a 'precondition' of the identification being issued.

2.10 Amendments to Section 13 create a distinction between the treatment of personal information and 'identity verification information'. In addition to existing purposes, the collection, use and disclosure of personal information would be allowed when determining whether a check has been conducted on a person, and whether the holder and subject of a form of identification is the same person. The collection, use and disclosure of identity verification information would be taken to be lawful when it is 'directly necessary for the purpose of verifying the identity of an individual' who is the subject of a background check, provided that the information is used or disclosed only to the extent necessary.⁶

2.11 Items 14 through 19 go to the uses to which personal and 'identity verification' information may be put. The amendments would repeal the existing subsection 14(2), which goes to the uses that may be made of 'personal information' under an AusCheck

2 This Part of the *Criminal Code* relates to terrorism offences.

3 Item 7.

4 See, for example, paragraphs 9(1)(c), (d) and (g).

5 Paragraph 9(1)(i)

6 Items 11, 12 and 13.

scheme. The effect of the amendment would be to impose additional restrictions on the use of the newly-defined identity verification information. Whereas under the existing arrangements personal information may be used for a variety of purposes including threats to national security, the new provision would isolate identity verification information from being used for those purposes. The Explanatory Memorandum states that:

The intention of the amendments is that biometric [identity verification] information is used only for background checking purposes – that is, to make sure of the identity of a person – and not for other purposes associated with the AusCheck scheme ... data such as fingerprints cannot be disclosed for the purposes of responding to an incident that poses a threat to national security and cannot be used for the collection, correlation etc. of criminal intelligence or security intelligence information for law enforcement or national security purposes.⁷

7 Explanatory Memorandum, p. 6.

