



# **AusCheck Act 2007**

**No. 53, 2007**

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## About this compilation

### This compilation

This is a compilation of the *AusCheck Act 2007* that shows the text of the law as amended and in force on 23 May 2018 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to provide a regulatory framework for coordinating and conducting centralised criminal, security and other background checking, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *AusCheck Act 2007*.

### **2 Commencement**

This Act commences on the day after it receives the Royal Assent.

### **3 Object of Act**

The object of this Act is to provide a regulatory framework for coordinating and conducting certain criminal, security and other background checking.

### **4 Definitions**

(1) In this Act:

*ASIC* (short for aviation security identification card) has the same meaning as in the *Aviation Transport Security Regulations 2005*.

*AusCheck database* means the database referred to in section 14.

*AusCheck scheme* means the scheme prescribed for the purposes of section 8.

*AusCheck scheme personal information* means personal information:

(a) that is obtained under the AusCheck scheme; or

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(b) that relates to the administration of the AusCheck scheme.

**AusCheck staff member** means:

- (a) an APS employee who performs functions relating to, or for the purposes of, the AusCheck scheme; or
- (b) a person engaged as a consultant or contractor to perform functions relating to, or for the purposes of, the AusCheck scheme.

Note: For the definition of **APS employee**, see section 2B of the *Acts Interpretation Act 1901*.

**aviation-security-relevant offence** has the same meaning as in the *Aviation Transport Security Regulations 2005*.

**charged**: an individual is **charged** with a serious offence if an information is laid against the individual for the offence, whether or not:

- (a) a summons to require the attendance of the individual to answer the information has been issued; or
- (b) a warrant for the arrest of the individual has been issued.

**Commonwealth authority** means a body (whether incorporated or not) established for a public purpose by or under a law of the Commonwealth.

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

**issuing body** means:

- (a) an issuing body within the meaning of the *Aviation Transport Security Regulations 2005*; or
- (b) an issuing body within the meaning of the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

**major national event** has the meaning given by section 5A.

**maritime-security-relevant offence** has the same meaning as in the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

**MSIC** (short for maritime security identification card) has the same meaning as in the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

**national security background check**, in relation to an individual, means a background check conducted in relation to the individual under an Act or legislative instrument referred to in subparagraph 8(1)(b)(i) or (ii) for a purpose referred to in paragraph 8(2)(a), (b), (c), or (d).

**permanent resident** means a person:

- (a) who is not an Australian citizen; and
- (b) whose normal place of residence is situated in Australia; and
- (c) whose presence in Australia is not subject to any limitation as to time imposed by law; and
- (d) who is not an unlawful non-citizen.

**personal information** has the same meaning as in the *Privacy Act 1988*.

**resolved**: for when a charge for a serious offence is **resolved** in relation to an individual, see subsection (3).

**Secretary** means the Secretary of the Department.

**serious offence**:

- (a) in relation to an applicant for, or holder of, an ASIC—means an aviation-security-relevant offence of a kind specified in the regulations for the purposes of this paragraph; and
- (b) in relation to an applicant for, or holder of, an MSIC—means a maritime-security-relevant offence of a kind specified in the regulations for the purposes of this paragraph.

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**State or Territory authority** means a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory.

**unlawful non-citizen** has the same meaning as in the *Migration Act 1958*.

*Meaning of personal information*

(2) To avoid doubt:

**personal information**, in relation to an individual, includes the following:

- (a) the number of an ASIC or MSIC issued to the individual;
- (b) any other identifier assigned to the individual;
- (c) a photograph of the individual.

*When a charge is resolved*

(3) For the purposes of this Act, a charge for a serious offence is **resolved** in relation to an individual if the charge is finally dealt with in any of the following ways:

- (a) the charge is withdrawn;
- (b) the charge is dismissed by a court;
- (c) the individual is discharged by a court following a committal hearing;
- (d) the individual is acquitted of the offence by a court;
- (e) the individual is found guilty of the offence and a court:
  - (i) sentences the person for the offence; or
  - (ii) makes an order relating to the offence under section 19B of the *Crimes Act 1914*, or a corresponding provision of a law of a State or Territory.

**5 Definition of background check**

A **background check**, in relation to an individual, is an assessment of information relating to one or more of the following:

- (a) the individual's criminal history;



- (aa) if required or permitted under a regulation made under subsection 8(3):
  - (i) whether the individual has been charged with a serious offence; or
  - (ii) whether a charge for a serious offence has been resolved in relation to the individual;
- (b) matters relevant to a security assessment (as defined in subsection 35(1) of the *Australian Security Intelligence Organisation Act 1979*) of the individual;
- (c) the individual's citizenship status, residency status or the individual's entitlement to work in Australia, including but not limited to, whether the person is an Australian citizen, a permanent resident or an unlawful non-citizen;
- (d) the identity of the individual.

### **5A Declaration of major national events**

- (1) The Minister may, by legislative instrument, declare that a specified event is a *major national event* for the purposes of this Act.
- (2) The Minister must not make a declaration under subsection (1) in relation to an event unless the Minister is satisfied that it is in the national interest that the Commonwealth be involved in the conduct and coordination of background checks in connection with the accreditation of individuals in relation to the event.
- (3) In considering whether to make a declaration under subsection (1) in relation to an event, the Minister may have regard to:
  - (a) the significance of the event; and
  - (b) the need (if any) to coordinate security arrangements in relation to the event with one or more States or Territories or one or more foreign governments; and
  - (c) any risk assessment relating to the event; and
  - (d) the potential impact of any security incident relating to the event on Australia's reputation; and
  - (e) the anticipated attendees at the event; and

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(f) any other matter the Minister considers relevant.

**6 Crown to be bound**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

**7 Extension to external Territories**

This Act extends to every external Territory.

## Part 2—Establishment of AusCheck scheme

### 8 Establishment of AusCheck scheme

- (1) The regulations may provide for the establishment of a scheme (the *AusCheck scheme*) relating to the conduct and coordination of background checks of individuals if:
- (a) any of the following laws requires or permits a background check to be conducted of an individual for specified purposes:
    - (i) the *Aviation Transport Security Act 2004* or regulations under that Act;
    - (ii) the *Maritime Transport and Offshore Facilities Security Act 2003* or regulations under that Act; or
  - (b) any other Act (other than this Act) expressly:
    - (i) requires or permits a background check of an individual to be conducted under the AusCheck scheme for purposes specified in the Act; or
    - (ii) provides for the making of a legislative instrument requiring or permitting a background check of an individual to be conducted under the AusCheck scheme for purposes specified in the Act; or
  - (c) a regulation made under subsection (3) requires or permits a background check to be conducted of an individual; or
  - (d) the check is of an individual in connection with the accreditation of the individual in relation to a major national event.

#### *National security background checks*

- (2) If paragraph (1)(b) applies, the background check must be conducted for purposes related to:
- (a) Australia's national security; or
  - (b) the defence of Australia; or
  - (c) a national emergency; or

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- (d) the prevention of conduct to which Part 5.3 or 5.5 of Chapter 5 of the *Criminal Code* (which deal with terrorism, foreign incursions and recruitment) applies.

*Background checks in connection with major national events*

- (2A) If paragraph (1)(d) applies, the background check must be conducted:
  - (a) for purposes related to matters that are peculiarly adapted to the government of a nation and that cannot otherwise be carried on for the benefit of the nation; or
  - (b) for purposes involving, or for purposes related to, the collection and transmission of information by a communication using a postal, telegraphic, telephonic or other like service; or
  - (c) in, or for purposes related to, a Territory; or
  - (d) in or with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
  - (e) in the course of, or for purposes related to, trade or commerce with other countries, and among the States; or
  - (f) in relation to a person who is an employee of, an office holder in, or otherwise connected with, a corporation to which paragraph 51(xx) of the Constitution applies, where the results of the check are relevant to:
    - (i) the relationship between the person and the corporation; or
    - (ii) the protection of the corporation; or
    - (iii) the activities of the corporation; or
  - (g) for purposes related to external affairs; or
  - (h) for purposes related to the background checking of, or the protection of, aliens; or
  - (i) for purposes related to:
    - (i) Australia's national security; or
    - (ii) the defence of Australia; or
    - (iii) a national emergency; or

- (iv) the prevention of conduct to which Part 5.3 or 5.5 of the *Criminal Code* applies; or
- (j) by way of the provision of a service, for a purpose of the Commonwealth, to:
  - (i) the Commonwealth; or
  - (ii) an authority of the Commonwealth; or
- (k) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

*Background checks required or permitted under the regulations—charges for serious offences*

- (3) The regulations may require or permit a background check covering a matter referred to in paragraph 5(a), (aa) or (d) to be conducted in relation to an individual if:
  - (a) one of the following applies:
    - (i) the individual has applied to an issuing body for an ASIC or MSIC, and the issuing body has neither issued, nor refused to issue, the ASIC or MSIC;
    - (ii) the individual or an issuing body has applied under regulations made under the *Aviation Transport Security Act 2004* or the *Maritime Transport and Offshore Facilities Security Act 2003* for approval to issue an ASIC or MSIC to the individual, and the application has not been determined;
    - (iii) the individual is the holder of an ASIC or MSIC;
    - (iv) the individual or an issuing body has applied under regulations made under either of those Acts to set aside the cancellation of an ASIC or MSIC issued to the individual;
    - (v) the individual has applied to the Administrative Appeals Tribunal for review of a decision made under regulations made under either of those Acts, or a decision made under the AusCheck scheme, relating to the issue, suspension or cancellation of an ASIC or MSIC, and the application has not been determined; and

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- (b) the Secretary considers on reasonable grounds that:
  - (i) the individual has been charged with a serious offence;  
or
  - (ii) a charge for a serious offence has been resolved in relation to the individual.

Note: The matters referred to in paragraphs 5(a), (aa) and (d) cover the individual's criminal history, whether the individual has been charged with a serious offence or has had a charge for such an offence resolved, and the individual's identity.

- (4) A regulation made under subsection (3) may only require or permit a background check to be conducted for purposes related to determining whether it is appropriate for the individual to enter any area or zone to which access is restricted under:
  - (a) the *Aviation Transport Security Act 2004* or regulations under that Act; or
  - (b) the *Maritime Transport and Offshore Facilities Security Act 2003* or regulations under that Act.

### *Definitions*

- (5) A term used in subsection (2A) and the Constitution has the same meaning in that subsection as it has in the Constitution.

## **9 Matters covered by AusCheck scheme—background checks required or permitted other than under regulations made under this Act**

- (1) The AusCheck scheme may, for the purposes of paragraphs 8(1)(a) and (b), make provision for and in relation to the following:
  - (a) the making of applications for a background check by the individual to whom the background check relates;
  - (b) the making of applications for a background check by a person other than the individual to whom the background check relates, with the consent of the individual to whom the background check relates;
  - (c) the information that is to be contained in an application for a background check;

- (d) the criteria against which an application for a background check is to be assessed;
  - (e) the decision or decisions that may be made as a result of an application for a background check;
  - (f) the form of advice to be given to the applicant for a background check;
  - (g) the form of advice to be given to an individual in respect of whom a background check is conducted;
  - (h) the form of advice to be given to other persons about the outcome of a background check.
- (2) The matters referred to in subsection (1) may relate to:
- (a) all background checks to be conducted for the purposes of paragraphs 8(1)(a) and (b); or
  - (b) a specified class of background checks.
- (3) Without limiting the way in which a class of background checks may be described for the purposes of subsection (2), a class may be described by reference to a specified legislative or non-legislative scheme, a specified law of the Commonwealth, specified provisions of a law of the Commonwealth or specified purposes.
- (4) For the purposes of paragraph (1)(b), an individual is taken to have given consent to another person making an application for a background check in relation to the individual if:
- (a) the individual has applied for:
    - (i) an ASIC or MSIC; or
    - (ii) any other card, licence, permit or authorisation; and
  - (b) before making the application referred to in paragraph (a), the individual was advised by the person to whom that application was made, in accordance with the requirements (if any) specified in the regulations, that a background check was a precondition to:
    - (i) the issuing of the card, licence, permit or authorisation; or
    - (ii) if the background check is required or permitted to be conducted as referred to in paragraph 8(1)(a) in a

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particular circumstance—the individual’s continuing eligibility to hold the card in that circumstance.

**10 Matters covered by AusCheck scheme—background checks required or permitted under regulations made under this Act**

- (1) The AusCheck scheme may, for the purposes of paragraph 8(1)(c), make provision for and in relation to the following:
  - (a) the giving to the Secretary of information, relating to an individual in respect of whom a background check is conducted, that is directly necessary for the purpose of conducting the background check;
  - (b) the criteria against which a background check is to be assessed;
  - (c) the decision or decisions that may be made as a result of a background check;
  - (d) the form of advice to be given to an individual in respect of whom a background check is conducted;
  - (e) the form of advice to be given to other persons about the outcome of a background check.
- (2) The matters referred to in subsection (1) may relate to:
  - (a) all background checks to be conducted for the purposes of paragraph 8(1)(c); or
  - (b) a specified class of background checks.
- (3) The AusCheck scheme may, for the purposes of paragraph 8(1)(c), make provision for and in relation to an individual or an issuing body notifying the Secretary of specified matters if:
  - (a) one of the following applies:
    - (i) the individual has applied to an issuing body for an ASIC or MSIC, and the issuing body has neither issued, nor refused to issue, the ASIC or MSIC;
    - (ii) the individual or an issuing body has applied under regulations made under the *Aviation Transport Security Act 2004* or the *Maritime Transport and Offshore*



- Facilities Security Act 2003* for approval to issue an ASIC or MSIC to the individual, and the application has not been determined;
- (iii) the individual is the holder of an ASIC or MSIC;
  - (iv) the individual or an issuing body has applied under regulations made under either of those Acts to set aside the cancellation of an ASIC or MSIC issued to the individual;
  - (v) the individual has applied to the Administrative Appeals Tribunal for review of a decision made under regulations made under either of those Acts, or a decision made under the AusCheck scheme, relating to the issue, suspension or cancellation of an ASIC or MSIC, and the application has not been determined; and
- (b) the individual has been charged with a serious offence, or a charge for a serious offence has been resolved in relation to the individual; and
- (c) in the case of an issuing body:
- (i) the individual applied to the issuing body for the ASIC or MSIC; or
  - (ii) the issuing body issued the ASIC or MSIC to the individual.

### **10AA Matters covered by the AusCheck scheme—background checks in connection with major national events**

- (1) The AusCheck scheme may, for the purposes of paragraph 8(1)(d), make provision for and in relation to any of the following:
- (a) the giving to the Secretary of information, relating to an individual in respect of whom a background check is conducted, that is directly necessary for the purpose of conducting the background check;
  - (b) the criteria against which a background check is to be assessed;
  - (c) the decision or decisions that may be made as a result of a background check;

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- (d) the form of advice to be given to an individual in respect of whom a background check is conducted;
  - (e) the form of advice to be given to other persons about the outcome of a background check.
- (2) The matters referred to in subsection (1) may relate to:
- (a) all background checks to be conducted for the purposes of paragraph 8(1)(d); or
  - (b) a specified class of background checks.

**10A Matters covered by AusCheck scheme—online verification service**

The AusCheck scheme may make provision for and in relation to matters relating to the establishment and provision of an online verification service that will enable verification:

- (a) that an ASIC or MSIC has been issued to a particular individual and is in effect at a particular time; or
- (b) that an individual who is in possession of an ASIC or MSIC is the person to whom the card was issued; or
- (c) that a national security background check has been conducted in relation to a particular individual; or
- (d) that an individual who is in possession of a card, licence, permit or other authorisation in relation to which a national security background check has been conducted is the individual to whom the card, licence, permit or authorisation was issued.

**11 Secretary may give directions under AusCheck scheme**

- (1) The AusCheck scheme may empower the Secretary to give directions to an applicant for a background check, or to a person who is required or permitted to take action relating to matters connected with a background check.

*Directions about advising whether licence etc. has been issued to individual*

- (2) Without limiting subsection (1), the AusCheck scheme may empower the Secretary to direct a person to advise the Secretary whether or not a licence, permit or other authorisation has been issued to an individual in respect of whom a background check has been conducted.

*Directions in connection with background checks required or permitted under the regulations—charges for serious offences*

- (3) Without limiting subsection (1), the AusCheck scheme may empower the Secretary to give one or more of the following kinds of direction if the Secretary considers on reasonable grounds that an individual has been charged with a serious offence:
- (a) a direction to an issuing body to delay considering an application for an ASIC or MSIC to be issued to the individual until further direction from the Secretary in accordance with subsection (4);
  - (c) a direction to an issuing body to suspend an ASIC or MSIC issued by the issuing body to the individual until further direction from the Secretary in accordance with subsection (4).

*Giving further directions referred to in subsection (3)*

- (4) The Secretary:
- (a) must give the further direction referred to in subsection (3) to the relevant person as soon as practicable after the Secretary considers that:
    - (i) all charges for serious offences have been resolved in relation to the individual; and
    - (ii) a background check has been conducted covering the matter referred to in paragraph 5(a) (criminal history) after subparagraph (i) is satisfied, whether or not the background check also covers other matters; and

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- (b) may give the further direction at any time before paragraph (a) applies.

*Directions under subsection (3) to suspend ASICs or MSICs—other cards also taken to be suspended*

- (5) If an ASIC or MSIC is suspended as referred to in paragraph (3)(c), then any other card issued to the individual under the *Aviation Transport Security Regulations 2005* or the *Maritime Transport and Offshore Facilities Security Regulations 2003* is taken also to be suspended.

*Other matters connected with giving directions under subsection (3)*

- (6) The AusCheck scheme may make provision for matters connected with the giving of a direction under subsection (3), including the following:
- (a) preventing the individual from making any other application under the *Aviation Transport Security Regulations 2005* or the *Maritime Transport and Offshore Facilities Security Regulations 2003*, or entering any area or zone to which access is restricted under those regulations, until after the further direction referred to in subsection (3) has been given;
  - (b) preventing an issuing body or other person from issuing any card to the individual under those regulations until after the further direction referred to in subsection (3) has been given;
  - (c) preventing a person from escorting the individual in any area or zone to which access is restricted under those regulations until after the further direction referred to in subsection (3) has been given;
  - (d) returning a suspended card issued to the individual under those regulations to a specified person;
  - (e) updating registers of cards and other records kept by an issuing body;
  - (f) an issuing body or the Secretary notifying other persons of matters in connection with the giving of the direction, for the purpose of preventing:

- (i) an unlawful interference with aviation (within the meaning of the *Aviation Transport Security Act 2004*); or
- (ii) an unlawful interference with maritime transport or offshore facilities (within the meaning of the *Maritime Transport and Offshore Facilities Security Act 2003*); or
- (iii) the commission of an offence against a law of the Commonwealth or a State or Territory; or
- (iv) an incident that poses a threat to national security.

## **12 Delegation by Secretary**

- (1) The Secretary may, by writing, delegate any or all of the Secretary's functions and powers under the AusCheck scheme:
  - (a) to an SES employee, or acting SES employee, in the Department; or
  - (b) to an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

Note: The expressions *APS employee*, *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Secretary.

## Part 3—Information management

### Division 1—Collection, retention, use and disclosure of information

#### 13 Authorisation of information collection, use and disclosure

*Collection, use and disclosure of personal information other than identity verification information*

- (1) The collection, use and disclosure of personal information (other than identity verification information) about an individual is taken to be authorised by this Act for the purposes of the *Privacy Act 1988* if:
  - (aa) the collection, use or disclosure is for the purposes of, or for purposes directly relating to, determining whether a background check under the AusCheck scheme is required or permitted to be conducted in respect of a particular individual; or
  - (a) the collection, use or disclosure is for the purposes of, or for purposes directly relating to, conducting a background check or advising on the outcome of a background check in respect of the individual under the AusCheck scheme; or
  - (b) the collection, use or disclosure is for the purposes of updating information held by the Secretary in respect of an individual in respect of whom a background check has been conducted under the AusCheck scheme; or
  - (c) the collection, use or disclosure is for the purposes of providing an online verification service that will enable verification:
    - (i) that an ASIC or MSIC has been issued to a particular individual and is in effect at a particular time; or
    - (ii) that an individual who is in possession of an ASIC or MSIC is the person to whom the card was issued; or

- (iii) that a national security background check has been conducted under the AusCheck scheme in relation to a particular individual; or
- (iv) that an individual who is in possession of a card, licence, permit or other authorisation in relation to which a national security background check has been conducted under the AusCheck scheme is the individual to whom the card, licence, permit or authorisation was issued.

*Collection, use and disclosure of identity verification information*

- (2) The collection, use and disclosure of identity verification information about an individual is taken to be authorised by this Act for the purposes of the *Privacy Act 1988* if:
  - (a) the collection, use or disclosure is directly necessary for the purpose of verifying the identity of an individual in respect of whom a background check is being or has been conducted under the AusCheck scheme; and
  - (b) for a use or disclosure—the information is only used or disclosed to the extent necessary for the purpose mentioned in paragraph (a).

## **14 Authorisation of retention and subsequent use and disclosure of information**

*Establishment of AusCheck database*

- (1) The Secretary may establish and maintain a database (the **AusCheck database**) of information (other than identity verification information) that relates to the AusCheck scheme.

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

- (2) AusCheck scheme personal information about an individual (other than identity verification information):
  - (a) may be included in the AusCheck database; and

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- (b) may be used or disclosed for the following purposes:
  - (i) carrying out a subsequent background check in relation to the individual under the AusCheck scheme;
  - (ia) monitoring and enforcing compliance with a requirement under the AusCheck scheme, the *Aviation Transport Security Regulations 2005* or the *Maritime Transport and Offshore Facilities Security Regulations 2003* to notify a Secretary of a Department of a specified matter;
  - (ii) responding to an incident that poses a threat to national security;
  - (iii) the performance of functions relating to law enforcement or national security by the Commonwealth or a Commonwealth authority;
  - (iiia) the performance of functions relating to law enforcement or national security by a State or Territory or a State or Territory authority;
  - (iv) without limiting subparagraph (iii) or (iiia)—determining whether any individual referred to in paragraph 8(3)(a) has been charged with a serious offence, or whether a charge for a serious offence has been resolved in relation to any such individual.
  
- (2A) AusCheck scheme personal information about an individual (other than identity verification information) may also be used or disclosed for the purpose of verifying:
  - (a) that an ASIC or MSIC has been issued to a particular individual and is in effect at a particular time; or
  - (b) that an individual who is in possession of an ASIC or MSIC is the person to whom the card was issued; or
  - (c) that a national security background check has been conducted in relation to a particular individual; or
  - (d) that an individual who is in possession of a card, licence, permit or other authorisation in relation to which a national security background check has been conducted is the individual to whom the card, licence, permit or authorisation was issued.



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

- (2AB) AusCheck scheme personal information about an individual that is identity verification information may be used or disclosed for the purpose of verifying the identity of the individual if a subsequent background check is being conducted in respect of the individual under the AusCheck scheme.
- (2B) AusCheck scheme personal information used or disclosed for the purpose mentioned in subsection (2A) or (2AB) must be limited to personal information of a kind directly necessary for that purpose, and must only be used or disclosed to the extent necessary for that purpose.
- (3) AusCheck scheme personal information included in the AusCheck database may be used in such a way that de-identified information derived from the AusCheck scheme personal information can be used and disclosed for the following purposes:
- (a) research;
  - (b) government planning;
  - (c) industry planning.

**14A Special rule relating to collection, retention, use and disclosure of identity verification information by AusCheck staff members**

Despite sections 13 and 14, those sections only authorise the collection, retention, use and disclosure by the Secretary or an AusCheck staff member of identity verification information about an individual in relation to whom a background check is being or has been conducted, if the collection, retention, use or disclosure is directly necessary for the purpose of:

- (a) passing the information to a Commonwealth, State or Territory body, agency or organisation that is responsible for, or deals with, law enforcement, criminal intelligence, criminal investigation, fraud or security intelligence in, or in a part of, Australia for the purpose of that body, agency or

**Part 3** Information management

**Division 1** Collection, retention, use and disclosure of information

**Section 14A**

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- organisation verifying the identity of the individual for the purposes of the background check; or
- (b) providing the information to the individual.

## **Division 2—Protection of information**

### **15 Protection of information**

- (1) A person commits an offence if:
- (a) the person is or was an AusCheck staff member; and
  - (b) when the person is or was an AusCheck staff member, the person obtained information relating to the AusCheck scheme; and
  - (c) the person discloses the information to someone else.

Penalty: Imprisonment for 2 years.

- (1A) A person commits an offence if:
- (a) the person obtains information; and
  - (b) the information is AusCheck scheme personal information; and
  - (c) the person discloses the information to someone else.

Penalty: Imprisonment for 2 years.

- (2) Each of the following is an exception to subsection (1) or (1A):
- (a) a disclosure for the purposes of the AusCheck scheme;
  - (b) if the information is AusCheck scheme personal information—a disclosure with the consent of the individual to whom the AusCheck scheme personal information relates;
  - (c) if the information is AusCheck scheme personal information—a disclosure to the individual to whom the AusCheck scheme personal information relates;
  - (ca) if the information is AusCheck scheme personal information—a disclosure that is:
    - (i) taken to be authorised under section 13; or
    - (ii) authorised under section 14; or
    - (iii) required or authorised by or under another law;
  - (d) a disclosure to the Australian Federal Police for the purposes of the AusCheck scheme.

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Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) If a disclosure of information is covered by subsection (2), the disclosure is authorised by this section.
- (4) A person who is or was an AusCheck staff member is not to be required to disclose information relating to the AusCheck scheme to a court, except:
- (a) where it is necessary to do so for the purposes of giving effect to this Act or the AusCheck scheme; or
  - (b) for the purposes of a criminal proceeding for an offence against this Act or regulations under this Act (including a proceeding to determine whether a person should be tried for an offence).

For this purpose, *court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

- (5) In this section:

*information* includes, but is not limited to, AusCheck scheme personal information.

## **Part 4—Transitional provision in relation to information collected before commencement**

### **16 Authorisation of use and disclosure of personal information collected for specified purposes**

- (1) This section applies to personal information about an individual that was collected before the commencement of this section by an agency or organisation (within the meaning of the *Privacy Act 1988*) for the purposes of conducting background checking under:
  - (a) the *Aviation Transport Security Act 2004* or regulations under that Act; or
  - (b) the *Maritime Transport and Offshore Facilities Security Act 2003* or regulations under that Act.
- (2) The disclosure of the personal information to an AusCheck staff member, and the use and disclosure of the personal information by an AusCheck staff member, is taken to be authorised by this Act for the purposes of the *Privacy Act 1988* if the disclosure or use is for the purposes of the AusCheck scheme.

## Part 5—Other matters

### 17 Use of the name AusCheck

- (1) The Commonwealth is entitled to use the name “AusCheck” for the purposes of the AusCheck scheme.
- (2) If the operation of this section would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (4) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

### 18 Regulations

- (1) The Governor-General may make regulations 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.
- (2) The regulations may provide for the following:
  - (a) the charging and recovery of fees and other charges in respect of matters specified in the regulations, being matters in relation to which expenses are incurred by the

- Commonwealth under this Act or under the regulations, but not that would otherwise amount to taxation;
- (b) the review of decisions under the regulations;
  - (c) the imposition of penalties, not exceeding 100 penalty units, for a contravention of the regulations;
  - (d) the making of guidelines about matters relating to background checking;
  - (e) the establishment and conduct of a review of the AusCheck scheme.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can



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Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
AusCheck Act 2007	53, 2007	12 Apr 2007	13 Apr 2007 (s 2)	
AusCheck Amendment Act 2009	123, 2009	7 Dec 2009	7 Dec 2009 (s 2)	Sch 1 (item 7)
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 1 (items 3, 4): 1 Mar 2010 (s 2(1) item 2)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 84, 85) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (items 11, 12) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16)	Sch 6 (items 1, 15–19)
Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013	52, 2013	28 May 2013	Sch 2: 28 May 2013 (s 2(1) item 5)	Sch 2 (items 31, 32)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (item 5): 24 June 2014 (s 2(1) item 2)	—
Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014	116, 2014	3 Nov 2014	Sch 1 (items 9, 10): 1 Dec 2014 (s 2(1) item 2)	—

*AusCheck Act 2007*

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Compilation No. 11

Compilation date: 23/5/18

Registered: 24/5/18

## Endnotes

### Endnote 3—Legislation history

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Crimes Legislation Amendment (Proceeds of Crime and Other Measures) Act 2016	15, 2016	29 Feb 2016	Sch 5: 29 Aug 2016 (s 2(1) item 3)	Sch 5 (item 5)
Home Affairs and Integrity Agencies Legislation Amendment Act 2018	31, 2018	9 May 2018	Sch 2 (items 27–38, 284): 11 May 2018 (s 2(1) items 3, 7)	Sch 2 (item 284)
Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018	34, 2018	22 May 2018	Sch 11: 23 Mar 2018 (s 2(1) item 11)	—

## Endnote 4—Amendment history

**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 4 .....	am No 123, 2009; No 46, 2011; No 52, 2013; No 15, 2016; No 31, 2018; No 34, 2018
s 5 .....	am No 123, 2009; No 52, 2013
s 5A .....	ad No 34, 2018
<b>Part 2</b>	
s 8 .....	rs No 123, 2009 am No 52, 2013; No 116, 2014; No 31, 2018; No 34, 2018
s 9 .....	am No 123, 2009; No 52, 2013
s 10 .....	ad No 52, 2013 am No 31, 2018
s 10AA .....	ad No 34, 2018
s 10A .....	ad No 52, 2013
s 11 .....	am No 52, 2013; No 31, 2018
s 12 .....	am No 46, 2011
<b>Part 3</b>	
<b>Division 1</b>	
Division 1 heading.....	rs No 123, 2009
s 13 .....	am No 123, 2009; No 197, 2012; No 52, 2013
s 14 .....	am No 123, 2009; No 52, 2013; No 31, 2014; No 15, 2016; No 31, 2018
s 14A .....	ad No 123, 2009
<b>Division 2</b>	
s 15 .....	am No 123, 2009; No 8, 2010
<b>Part 4</b>	
s 16 .....	am No 197, 2012
<b>Part 5</b>	
s 18 .....	am No 52, 2013