



Australian Border Force Act 2015

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About this compilation

This compilation

This is a compilation of the *Australian Border Force Act 2015* that shows the text of the law as amended and in force on 30 October 2017 (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). 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1 Short title.....	1
2 Commencement.....	1
3 Simplified outline of this Act.....	1
4 Definitions.....	2
5 Consultants and contractors etc.	8
6 Act binds the Crown.....	9
7 Extraterritorial application.....	9
Part 2—Australian Border Force Commissioner	10
Division 1—Simplified outline of this Part	10
8 Simplified outline of this Part.....	10
Division 2—Office and role of the Australian Border Force Commissioner	11
9 Establishment.....	11
10 Powers of Australian Border Force Commissioner.....	11
Division 3—Appointment of the Australian Border Force Commissioner	12
11 Appointment.....	12
12 Term of appointment.....	12
13 Oath or affirmation by Australian Border Force Commissioner.....	12
14 Acting Australian Border Force Commissioner.....	13
15 Application of finance law.....	13
Division 4—Terms and conditions for the Australian Border Force Commissioner	14
16 Remuneration and allowances.....	14
17 Leave of absence.....	14
18 Outside work.....	14
19 Disclosure of interests.....	14
20 Resignation of appointment.....	15
21 Suspension or termination of appointment.....	15
22 Other terms and conditions.....	16
Division 5—Ministerial directions	17
23 Minister may give directions to Australian Border Force Commissioner.....	17

Division 6—Oaths or affirmations by Immigration and Border Protection workers	18
24 Oaths or affirmations by Immigration and Border Protection workers	18
Division 7—Delegation and directions	19
25 Delegation	19
26 Directions—administration and control of the operations of the Australian Border Force.....	20
27 Directions—performance of functions or exercise of powers under laws of the Commonwealth	22
Part 3—Resignation from the Department	24
28 Simplified outline of this Part.....	24
29 Resignation—general	24
30 Resignation in anticipation of termination of employment.....	24
Part 4—Termination of employment in the Department for serious misconduct	27
31 Simplified outline of this Part.....	27
32 Termination of employment for serious misconduct	27
Part 5—Alcohol and drug tests	30
33 Simplified outline of this Part.....	30
34 Alcohol screening test—suspicion that Immigration and Border Protection worker under the influence of alcohol	30
35 Alcohol screening, breath or blood test or prohibited drug test—general.....	31
36 Alcohol screening, breath or blood test or prohibited drug test—certain incidents	32
37 Performing duties on board a vessel.....	34
38 Conduct of tests and provision of samples to be in accordance with the rules	34
39 Rules for purposes of this Part.....	35
40 Admissibility of test results etc. in legal proceedings.....	36
Part 6—Secrecy and disclosure provisions	37
41 Simplified outline of this Part.....	37
42 Secrecy	37
43 Records or disclosure for the purposes of this Act or the <i>Law Enforcement Integrity Commissioner Act 2006</i>	38
44 Disclosure to certain bodies and persons	39

45	Disclosure in accordance with agreements	41
46	Permitted purposes	42
47	Disclosure with consent.....	44
48	Disclosure to reduce threat to life or health	44
49	Disclosure of publicly available information.....	45
50	Exceptions operate independently	45
50A	Information must be certified as appropriately classified before proceedings can be initiated	45
51	Interaction with Privacy Act.....	45
Part 7—Other matters		46
52	Simplified outline of this Part.....	46
53	Delegation by Secretary.....	46
54	Delegation by Comptroller-General of Customs	48
55	Directions by Secretary—administration and control of the Department	49
56	Directions by Secretary—performance of functions or exercise of powers under laws of the Commonwealth.....	51
57	Termination of engagement of consultant or contractor	52
57A	Act not to apply so as to exceed Commonwealth power	53
58	Rules.....	53
Endnotes		55
Endnote 1—About the endnotes		55
Endnote 2—Abbreviation key		57
Endnote 3—Legislation history		58
Endnote 4—Amendment history		59

An Act relating to the Australian Border Force, the Australian Border Force Commissioner and persons performing work for the Department, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Australian Border Force Act 2015*.

2 Commencement

This Act commences on 1 July 2015.

3 Simplified outline of this Act

- There is an Australian Border Force within the Department.
- There is to be an Australian Border Force Commissioner of the Australian Border Force, who is to have the control of the operations of the Australian Border Force.
- The Australian Border Force Commissioner and APS employees in the Australian Border Force are able to exercise powers under the *Customs Act 1901*, the *Migration Act 1958*, the *Maritime Powers Act 2013* and other Commonwealth laws.

Section 4

- The Australian Border Force Commissioner may give directions to Immigration and Border Protection workers to do with the administration and control of the operations of the Australian Border Force or the performance of functions or exercise of powers by such workers under a law of the Commonwealth.
- There are resignation and termination provisions that apply to all APS employees in the Department in circumstances involving serious misconduct.
- All Immigration and Border Protection workers may be required to undergo an alcohol screening test, an alcohol breath test, an alcohol blood test or a prohibited drug test.
- There are secrecy and disclosure provisions covering information obtained by the Secretary, the Australian Border Force Commissioner and Immigration and Border Protection workers.
- The Secretary may give directions to Immigration and Border Protection workers to do with the administration and control of the Department or the performance of functions or exercise of powers by such workers under a law of the Commonwealth.

4 Definitions

(1) In this Act:

alcohol blood test means a test of a person's blood to determine the amount of alcohol (if any) in the person's blood.

alcohol breath test means a test of a person's breath to determine the amount of alcohol (if any) in the person's blood.

alcohol screening test means a test of a person's breath to determine whether alcohol is present in the person's breath.

Australian Border Force means that part of the Department known as the Australian Border Force.

Note: Immigration and Border Protection workers may perform work for the Australian Border Force. The Australian Border Force Commissioner has the control of the operations of the Australian Border Force.

Australian Border Force Commissioner means the Australian Border Force Commissioner of the Australian Border Force.

authorised person means:

- (a) the Secretary; or
- (b) the Australian Border Force Commissioner; or
- (c) an Immigration and Border Protection worker who is authorised in an instrument under subsection (2).

body sample means any of the following:

- (a) any human biological fluid;
- (b) any human biological tissue (whether alive or otherwise);
- (c) any human breath.

corrupt conduct: see ***engages in corrupt conduct***.

duty of confidence means any duty or obligation arising under the common law or at equity pursuant to which a person is obliged not to disclose information.

engages in corrupt conduct: an Immigration and Border Protection worker ***engages in corrupt conduct*** if the worker, while an Immigration and Border Protection worker, engages in:

- (a) conduct that:
 - (i) involves; or
 - (ii) is engaged in for the purpose (or for purposes including the purpose) of;
the worker abusing his or her position as an Immigration and Border Protection worker; or
- (b) conduct that:
 - (i) perverts; or

Section 4

- (ii) is engaged in for the purpose (or for purposes including the purpose) of perverting;
the course of justice; or
- (c) conduct that, having regard to the duties and powers of the worker as an Immigration and Border Protection worker:
 - (i) involves; or
 - (ii) is engaged in for the purpose (or for purposes including the purpose) of;
corruption of any other kind.

entrusted person means:

- (a) the Secretary; or
- (b) the Australian Border Force Commissioner (including in his or her capacity as the Comptroller-General of Customs); or
- (c) an Immigration and Border Protection worker.

Immigration and Border Protection information means information of any of the following kinds that was obtained by a person in the person's capacity as an entrusted person:

- (a) information the disclosure of which would or could reasonably be expected to prejudice the security, defence or international relations of Australia;
- (b) information the disclosure of which would or could reasonably be expected to prejudice the prevention, detection or investigation of, or the conduct of proceedings relating to, an offence or a contravention of a civil penalty provision;
- (c) information the disclosure of which would or could reasonably be expected to prejudice the protection of public health, or endanger the life or safety of an individual or group of individuals;
- (d) information the disclosure of which would or could reasonably be expected to found an action by a person (other than the Commonwealth) for breach of a duty of confidence;
- (e) information the disclosure of which would or could reasonably be expected to cause competitive detriment to a person;

- (f) information of a kind prescribed in an instrument under subsection (7).

Note: See also subsections (4) to (7).

Immigration and Border Protection worker means:

- (a) an APS employee in the Department; or
- (b) a person covered by paragraph (d), (e) or (f) of the definition of ***officer of Customs*** in subsection 4(1) of the *Customs Act 1901*; or
- (c) a person covered by paragraph (f) or (g) of the definition of ***officer*** in subsection 5(1) of the *Migration Act 1958*; or
- (d) a person who is:
 - (i) an employee of an Agency (within the meaning of the *Public Service Act 1999*); or
 - (ii) an officer or employee of a State or Territory; or
 - (iii) an officer or employee of an agency or authority of the Commonwealth, a State or a Territory; or
 - (iv) an officer or employee of the government of a foreign country, an officer or employee of an agency or authority of a foreign country or an officer or employee of a public international organisation;and whose services are made available to the Department; or
- (e) a person who is:
 - (i) engaged as a consultant or contractor to perform services for the Department; and
 - (ii) specified in a determination under subsection 5(1); or
- (f) a person who is:
 - (i) engaged or employed by a person to whom paragraph (e) or this paragraph applies; and
 - (ii) performing services for the Department in connection with that engagement or employment; and
 - (iii) specified in a determination under subsection 5(2).

intelligence agency means:

- (a) the Australian Geospatial-Intelligence Organisation; or

Section 4

- (b) the Australian Secret Intelligence Service; or
- (c) the Australian Security Intelligence Organisation; or
- (d) the Australian Signals Directorate; or
- (e) the Defence Intelligence Organisation; or
- (f) the Office of National Assessments; or
- (g) a government body or authority responsible for intelligence gathering for, or the security of, a foreign country.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

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

prohibited drug means:

- (a) a narcotic substance (within the meaning of the *Customs Act 1901*); or
- (b) any drug prescribed in an instrument under subsection (3).

prohibited drug test means a test of a body sample of a person to determine the presence (if any) of a prohibited drug in the sample.

public international organisation has the meaning given by section 70.1 of the *Criminal Code*.

rules means the rules made under section 58.

Secretary means the Secretary of the Department.

serious misconduct, by an Immigration and Border Protection worker, means:

- (a) corrupt conduct engaged in, a serious abuse of power, or a serious dereliction of duty, by the worker; or
- (b) any other seriously reprehensible act or behaviour by the worker, whether or not acting, or purporting to act, in the course of his or her duties as an Immigration and Border Protection worker.

unauthorised maritime arrival has the same meaning as in the *Migration Act 1958*.

Authorised person instrument

- (2) The Secretary or the Australian Border Force Commissioner may, by writing, authorise an Immigration and Border Protection worker for the purposes of paragraph (c) of the definition of ***authorised person*** in subsection (1).

Prohibited drug instrument

- (3) The Secretary or the Australian Border Force Commissioner may, by legislative instrument, prescribe drugs for the purposes of paragraph (b) of the definition of ***prohibited drug*** in subsection (1).

Immigration and Border Protection information

- (4) Without limiting the definition of ***Immigration and Border Protection information*** in subsection (1), information obtained by an entrusted person in the course of performing duties, or in performing functions or exercising powers, under a law of the Commonwealth:
- (a) as an officer of Customs, or an authorised officer, within the meaning of the *Customs Act 1901*; or
 - (b) as an officer, or an authorised officer, within the meaning of the *Migration Act 1958*; or
 - (c) as a maritime officer within the meaning of the *Maritime Powers Act 2013*; or
 - (d) as a delegate of someone else; or
 - (e) in any other capacity;
- is taken to be information obtained by the person in the person's capacity as an entrusted person.
- (5) Without limiting the definition of ***Immigration and Border Protection information*** in subsection (1), the following kinds of information are taken to be information the disclosure of which
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Section 5

would or could reasonably be expected to prejudice the security, defence or international relations of Australia:

- (a) information that has a security classification;
 - (b) information that has originated with, or been received from, an intelligence agency.
- (6) Without limiting the definition of ***Immigration and Border Protection information*** in subsection (1), information that was provided to the Commonwealth pursuant to a statutory obligation or otherwise by compulsion of law is taken to be information the disclosure of which would or could reasonably be expected to found an action by a person (other than the Commonwealth) for breach of a duty of confidence.
- (7) The Minister may, by legislative instrument, prescribe a kind of information for the purposes of paragraph (f) of the definition of ***Immigration and Border Protection information*** in subsection (1) if the Minister is satisfied that disclosure of the information would or could reasonably be expected to:
- (a) prejudice the effective working of the Department; or
 - (b) otherwise harm the public interest.

5 Consultants and contractors etc.

Consultants and contractors

- (1) The Secretary or the Australian Border Force Commissioner may, by written determination, specify a person for the purposes of subparagraph (e)(ii) of the definition of ***Immigration and Border Protection worker*** in subsection 4(1).

Other persons

- (2) The Secretary or the Australian Border Force Commissioner may, by written determination, specify a person for the purposes of subparagraph (f)(iii) of the definition of ***Immigration and Border Protection worker*** in subsection 4(1).

Determinations are not legislative instruments

- (3) A determination under this section is not a legislative instrument.

6 Act binds the Crown

This Act binds the Crown in each of its capacities.

7 Extraterritorial application

This Act extends to acts, omissions, matters and things outside Australia.

Part 2 Australian Border Force Commissioner

Division 1 Simplified outline of this Part

Section 8

Part 2—Australian Border Force Commissioner

Division 1—Simplified outline of this Part

8 Simplified outline of this Part

- There is to be an Australian Border Force Commissioner of the Australian Border Force.
- The Australian Border Force Commissioner has the control of the operations of the Australian Border Force.
- The Australian Border Force Commissioner and APS employees in the Australian Border Force are able to exercise powers under the *Customs Act 1901*, the *Migration Act 1958*, the *Maritime Powers Act 2013* and other Commonwealth laws.
- The Australian Border Force Commissioner is also known as the Comptroller-General of Customs.
- The Australian Border Force Commissioner may give directions to Immigration and Border Protection workers to do with the administration and control of the operations of the Australian Border Force or the performance of functions or exercise of powers by such workers under a law of the Commonwealth.

Division 2—Office and role of the Australian Border Force Commissioner

9 Establishment

- (1) There is to be an Australian Border Force Commissioner of the Australian Border Force.

Note: Many Commonwealth laws confer functions and powers on the Australian Border Force Commissioner.

- (2) The Australian Border Force Commissioner has, under the Minister, the control of the operations of the Australian Border Force.

10 Powers of Australian Border Force Commissioner

The Australian Border Force Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.

Division 3—Appointment of the Australian Border Force Commissioner

11 Appointment

- (1) The Australian Border Force Commissioner is to be appointed by the Governor-General by written instrument.
- (2) The Australian Border Force Commissioner is to be appointed on a full-time basis.

Comptroller-General of Customs

- (3) While a person holds office as the Australian Border Force Commissioner the person is also the Comptroller-General of Customs.

Note: Many Commonwealth laws confer functions and powers on the Comptroller-General of Customs.

12 Term of appointment

The Australian Border Force Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Australian Border Force Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

13 Oath or affirmation by Australian Border Force Commissioner

- (1) The Australian Border Force Commissioner must, before beginning to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form prescribed by the rules for the purposes of this subsection.
- (2) The Australian Border Force Commissioner must make and subscribe the oath or affirmation before the Minister.

Compliance

- (3) The Australian Border Force Commissioner must not engage in conduct that is inconsistent with an oath or affirmation he or she has made and subscribed under this section.

14 Acting Australian Border Force Commissioner

- (1) The Minister may, by written instrument, appoint a person to act as the Australian Border Force Commissioner:
- (a) during a vacancy in the office of the Australian Border Force Commissioner (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Australian Border Force Commissioner:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.

Comptroller-General of Customs

- (2) A person appointed to act as the Australian Border Force Commissioner is taken, while the person is so acting, to also be the Comptroller-General of Customs.

15 Application of finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the Australian Border Force Commissioner (including in his or her capacity as the Comptroller-General of Customs) is an official of the Department.

Division 4—Terms and conditions for the Australian Border Force Commissioner

16 Remuneration and allowances

- (1) The Australian Border Force Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed by the rules.
- (2) The Australian Border Force Commissioner is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

17 Leave of absence

- (1) The Australian Border Force Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Australian Border Force Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

18 Outside work

The Australian Border Force Commissioner must not engage in paid work outside the duties of his or her office without the Minister's approval.

19 Disclosure of interests

- (1) The Australian Border Force Commissioner must give written notice to the Minister of any direct or indirect pecuniary interest

that the Commissioner has or acquires and that conflicts or could conflict with the proper performance of the Commissioner's functions.

- (2) Subsection (1) applies in addition to section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).

20 Resignation of appointment

- (1) The Australian Border Force Commissioner may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

21 Suspension or termination of appointment

- (1) The Governor-General may suspend or terminate the appointment of the Australian Border Force Commissioner:
- (a) for misbehaviour; or
 - (b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Governor-General may suspend or terminate the appointment of the Australian Border Force Commissioner if:
- (a) the Commissioner:
 - (i) becomes bankrupt; or
 - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with one or more of his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
 - (b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

Section 22

- (c) the Commissioner engages in conduct that is inconsistent with an oath or affirmation he or she made and subscribed under section 13; or
 - (d) the Commissioner engages, except with the Minister's approval, in paid work outside the duties of his or her office (see section 18); or
 - (e) the Commissioner fails, without reasonable excuse, to comply with:
 - (i) section 19; or
 - (ii) section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made under that Act for the purposes of that section; or
 - (f) the Commissioner fails, without reasonable excuse, to comply with a direction under section 23.
- (3) The suspension of the appointment of the Australian Border Force Commissioner under this section does not affect any entitlement of the Commissioner to be paid remuneration, and allowances, in accordance with this Act.

Statement in Parliament

- (4) If the Governor-General suspends or terminates the appointment of the Australian Border Force Commissioner, the Minister must cause a statement of the grounds of the suspension or termination to be laid before each House of the Parliament within 7 sitting days of that House after the suspension or termination.

22 Other terms and conditions

The Australian Border Force Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Division 5—Ministerial directions

23 Minister may give directions to Australian Border Force Commissioner

- (1) The Minister may, after obtaining and considering the advice of the Australian Border Force Commissioner and the Secretary, give written directions to the Australian Border Force Commissioner about policies that should be pursued, or priorities that should be followed, in relation to the operations of the Australian Border Force.
- (2) If the Minister gives a direction under subsection (1), the Minister must cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.
- (3) The Australian Border Force Commissioner must comply with all directions under subsection (1).
- (4) A direction under subsection (1) is not a legislative instrument.

Division 6—Oaths or affirmations by Immigration and Border Protection workers

24 Oaths or affirmations by Immigration and Border Protection workers

- (1) The Australian Border Force Commissioner may request the following persons to make and subscribe an oath or affirmation in accordance with the form prescribed by the rules for the purposes of this subsection:
 - (a) a person who is covered by paragraph (a) of the definition of *Immigration and Border Protection worker* in subsection 4(1) and who is in the Australian Border Force;
 - (b) a person who is covered by paragraph (b), (c) or (d) of that definition and whose services are made available to, or who is performing services for, the Australian Border Force.
- (2) A person must make and subscribe the oath or affirmation before the Australian Border Force Commissioner or a person authorised by the Commissioner.

Compliance

- (3) An Immigration and Border Protection worker who has made and subscribed an oath or affirmation under this section must not engage in conduct that is inconsistent with the oath or affirmation.

Note: See subsection 13(4) and sections 15, 28 and 29 of the *Public Service Act 1999* for the consequences of an APS employee in the Department not complying with subsection (3) of this section.

- (4) Subsection (3) extends to an Immigration and Border Protection worker who has made and subscribed an oath or affirmation under this section but who is no longer a person mentioned in paragraph (1)(a) or (b).

Division 7—Delegation and directions

25 Delegation

- (1) The Australian Border Force Commissioner may, by writing, delegate any of his or her functions or powers under a law of the Commonwealth to the following:
 - (a) the Secretary;
 - (b) a person who is covered by paragraph (a) of the definition of ***Immigration and Border Protection worker*** in subsection 4(1) and who is in the Australian Border Force;
 - (c) a person who is covered by paragraph (b), (c), (d), (e) or (f) of that definition and whose services are made available to, or who is performing services for, the Australian Border Force.
- (2) However, subsection (1) does not apply in relation to:
 - (a) section 30 (resignation in anticipation of termination of employment); or
 - (b) section 32 (termination of employment for serious misconduct).

Directions to delegates

- (3) An Immigration and Border Protection worker must, in performing functions or exercising powers under a delegation under subsection (1), comply with any written directions of the Australian Border Force Commissioner.

Subdelegation by Secretary

- (4) If the Secretary is delegated functions or powers under subsection (1), the Secretary may, by writing, delegate any of those functions or powers to any Immigration and Border Protection worker.

Section 26

- (5) An Immigration and Border Protection worker must, in performing functions or exercising powers under a delegation under subsection (4), comply with any written directions of the Secretary.
- (6) The Secretary must not give directions under subsection (5) in relation to particular functions or powers that are inconsistent with any directions given under subsection (3) in relation to those functions or powers.
- (7) A function that is performed or a power that is exercised by an Immigration and Border Protection worker under a delegation under subsection (4) is taken, for the purposes of the law referred to in subsection (1), to have been performed or exercised by the Australian Border Force Commissioner.

26 Directions—administration and control of the operations of the Australian Border Force

- (1) The Australian Border Force Commissioner may, by writing, give directions to the following persons in connection with the administration and control of the operations of the Australian Border Force:
 - (a) a person who is covered by paragraph (a) of the definition of *Immigration and Border Protection worker* in subsection 4(1) and who is in the Australian Border Force;
 - (b) a person who is covered by paragraph (b), (c), (d), (e) or (f) of that definition and whose services are made available to, or who is performing services for, the Australian Border Force.

Essential qualifications

- (2) Without limiting subsection (1), directions under that subsection may relate to the essential qualifications for persons mentioned in paragraph (1)(a) or (b) for performing their duties.

Note 1: See section 23 of the *Public Service Act 1999* for the reduction in the classification of an APS employee in the Department if the employee lacks, or has lost, an essential qualification for performing his or her duties.

Note 2: See section 29 of the *Public Service Act 1999* for the termination of the employment of an APS employee in the Department if the employee lacks, or has lost, an essential qualification for performing his or her duties.

- (3) Without limiting subsection (2), essential qualifications may have one or more of the following components:
- (a) physical or psychological health or fitness;
 - (b) professional or technical qualifications;
 - (c) learning and development requirements.

Reporting of serious misconduct or criminal activity

- (4) Without limiting subsection (1), directions under that subsection may relate to the reporting by persons mentioned in paragraph (1)(a) or (b) of the following:
- (a) serious misconduct by such a person;
 - (b) criminal activity involving such a person;
- where the serious misconduct or criminal activity affects, or is likely to affect, the operations, responsibilities or reputation of the Department.

Compliance with directions

- (5) A person mentioned in paragraph (1)(a) or (b) must comply with a direction under this section.

Note 1: See subsection 13(4) and sections 15, 28 and 29 of the *Public Service Act 1999* for the consequences of an APS employee in the Department not complying with subsection (5) of this section.

Note 2: See section 57 of this Act for the termination of a person's engagement as a consultant or contractor, or for the arranging of a person to cease to perform services for the Department, if the person does not comply with subsection (5) of this section.

Directions are not legislative instruments

- (6) A direction under this section is not a legislative instrument.

Section 27

No limit on other powers to give directions

- (7) This section does not limit any other power of the Australian Border Force Commissioner to give directions to any person.

Self-incrimination

- (8) If a person mentioned in paragraph (1)(a) or (b) is required by a direction of the kind mentioned in subsection (4) to give information, answer a question or produce a document, the person is not excused from:
- (a) giving the information; or
 - (b) answering the question; or
 - (c) producing the document;
- on the ground that the information, the answer to the question or the production of the document might tend to incriminate the person or expose the person to a penalty.
- (9) However:
- (a) the information given, the answer given or the document produced; or
 - (b) giving the information, answering the question or producing the document;
- is not admissible in evidence against the person in any proceedings.
- (10) Subsection (9) has effect subject to section 40.

27 Directions—performance of functions or exercise of powers under laws of the Commonwealth

- (1) The Australian Border Force Commissioner may, by writing, give directions to the following persons in relation to the performance of functions, or the exercise of powers, by those persons under a law of the Commonwealth:
- (a) a person who is covered by paragraph (a) of the definition of *Immigration and Border Protection worker* in subsection 4(1) and who is in the Australian Border Force;

(b) a person who is covered by paragraph (b), (c), (d), (e) or (f) of that definition and whose services are made available to, or who is performing services for, the Australian Border Force.

(2) However, subsection (1) does not apply in relation to the *Migration Act 1958*.

Note: Section 499 of the *Migration Act 1958* allows the Minister to give directions to a person or body about the performance of functions or the exercise of powers under that Act.

Compliance with directions

(3) A person mentioned in paragraph (1)(a) or (b) must comply with a direction under this section.

Note 1: See subsection 13(4) and sections 15, 28 and 29 of the *Public Service Act 1999* for the consequences of an APS employee in the Department not complying with subsection (3) of this section.

Note 2: See section 57 of this Act for the termination of a person's engagement as a consultant or contractor, or for the arranging of a person to cease to perform services for the Department, if the person does not comply with subsection (3) of this section.

Directions are not legislative instruments

(4) A direction under this section is not a legislative instrument.

No limit on other powers to give directions

(5) This section does not limit any other power of the Australian Border Force Commissioner to give directions to any person.

Part 3—Resignation from the Department

28 Simplified outline of this Part

- An APS employee in the Department must give at least 14 days' notice of his or her resignation from the Department.
- If an APS employee in the Department resigns in circumstances where the employee may have engaged in serious misconduct, the Secretary or the Australian Border Force Commissioner may delay the employee's resignation by up to 90 days to allow further investigation of that conduct.

29 Resignation—general

- (1) A person may resign as an APS employee in the Department if, and only if:
 - (a) he or she gives written notice to the Secretary of his or her resignation; and
 - (b) the notice specifies, in accordance with subsection (2), the day his or her resignation is to take effect.
- (2) The day specified in a notice under paragraph (1)(a) must not:
 - (a) be earlier than 14 days, or such shorter period as the Secretary allows; or
 - (b) be later than 4 months;
after the day on which the notice is given to the Secretary.
- (3) This section is subject to section 30.

30 Resignation in anticipation of termination of employment

- (1) This section applies if:

- (a) an APS employee in the Department gives the Secretary written notice of the employee's resignation under paragraph 29(1)(a); and
 - (b) either:
 - (i) the Secretary or the Australian Border Force Commissioner reasonably believes that the employee has engaged in serious misconduct and the Secretary is considering terminating the employee's employment; or
 - (ii) the employee is being investigated for serious misconduct and the Secretary is not in a position to decide whether to terminate the employee's employment because the findings of the investigation are not yet known.
- (2) The Secretary or the Australian Border Force Commissioner may, by written notice given to the APS employee, substitute a day, no later than 90 days after the day specified in the employee's notice of resignation, as the day on which the employee's resignation is to take effect.
- (3) Subsection (2) has effect subject to subsection (7).

Multiple notices

- (4) The Secretary or the Australian Border Force Commissioner may give more than one notice under subsection (2) to the APS employee in relation to the notice of resignation.

Timing of first notice

- (5) To be effective, the first notice given under subsection (2) in relation to the notice of resignation must be given to the APS employee before the day specified in the notice of resignation.

Section 30

Employee's resignation takes effect or employee's employment terminated

- (6) The Secretary must, on or before the day substituted in the most recent notice given under subsection (2) in relation to the notice of resignation:
- (a) notify the APS employee that the employee's resignation takes effect; or
 - (b) terminate the APS employee's employment.

Note: See section 29 of the *Public Service Act 1999* for the termination of the employment of an APS employee in the Department.

- (7) If under paragraph (6)(a) the Secretary notifies the APS employee that the employee's resignation takes effect, the employee's resignation takes effect on the day of that notification.

Part 4—Termination of employment in the Department for serious misconduct

31 Simplified outline of this Part

- If the Secretary terminates the employment of an APS employee in the Department and the Secretary or the Australian Border Force Commissioner reasonably believes that the employee's conduct or behaviour amounts to serious misconduct, the Secretary or the Commissioner may make a declaration to that effect.
- The effect of the declaration is that provisions of the *Fair Work Act 2009* dealing with unfair dismissal, and notice of termination or payment in lieu, will not apply to the APS employee.

32 Termination of employment for serious misconduct

- (1) This section applies if the Secretary terminates the employment of an APS employee in the Department and the Secretary or the Australian Border Force Commissioner reasonably believes that the employee's conduct or behaviour or any part of it:
- (a) amounts to serious misconduct by the APS employee; and
 - (b) is having, or is likely to have, a damaging effect on:
 - (i) the professional self-respect or morale of some or all of the APS employees in the Department; or
 - (ii) the reputation of the Department with the public or any section of the public, with an Australian or overseas government or with a person or body to whom information may be disclosed under Part 6.

Note: See section 29 of the *Public Service Act 1999* for the termination of the employment of an APS employee in the Department.

Section 32

- (2) The Secretary or the Australian Border Force Commissioner may make a written declaration that he or she has the belief referred to in subsection (1) in relation to the APS employee.

Timing of declaration

- (3) A declaration under subsection (2) must be made within 24 hours of the Secretary's decision to terminate the APS employee's employment.

Copy of declaration to be given to APS employee

- (4) If the Secretary or the Australian Border Force Commissioner makes the declaration for the APS employee, the Secretary or the Commissioner must give the APS employee a copy of the declaration.

Effect of declaration on Fair Work Act

- (5) If the Secretary or the Australian Border Force Commissioner makes the declaration for the APS employee, the *Fair Work Act 2009* (other than Part 3-1 and Division 9 of Part 3-3 of that Act) does not apply in relation to:
- (a) the termination of the APS employee's employment; or
 - (b) the making of the declaration.

Note 1: This means, for example, that the provisions of the *Fair Work Act 2009* dealing with unfair dismissal, and notice of termination or payment in lieu, do not apply in relation to the APS employee.

Note 2: Part 3-1 of the *Fair Work Act 2009* deals with general protections, and Division 9 of Part 3-3 of that Act deals with payments relating to periods of industrial action.

- (6) To avoid doubt, subsection (5) applies despite section 8 of the *Public Service Act 1999*.

Report to Minister

- (7) The Secretary or the Australian Border Force Commissioner must give the Minister a written report containing the following, as soon as practicable after making the declaration:
- (a) the grounds for the Secretary's or Commissioner's belief referred to in subsection (1) in relation to the APS employee;
 - (b) the nature and findings of any investigation of, or inquiry into, the APS employee's conduct or behaviour;
 - (c) details of any other matter the Secretary or Commissioner considers relevant.

Declaration not a legislative instrument

- (8) A declaration under subsection (2) is not a legislative instrument.

Part 5—Alcohol and drug tests

33 Simplified outline of this Part

- Immigration and Border Protection workers may be required to undergo an alcohol screening test, an alcohol breath test, an alcohol blood test or a prohibited drug test.

34 Alcohol screening test—suspicion that Immigration and Border Protection worker under the influence of alcohol

- (1) An authorised person may require an Immigration and Border Protection worker to undergo an alcohol screening test if:
 - (a) the worker is in the course of performing his or her duties as an Immigration and Border Protection worker; and
 - (b) the authorised person reasonably suspects that the worker is under the influence of alcohol.

Compliance with requirement

- (2) The worker must comply with a requirement given to him or her under subsection (1).

Note 1: See subsection 13(4) and sections 15, 28 and 29 of the *Public Service Act 1999* for the consequences of an APS employee in the Department not complying with subsection (2) of this section.

Note 2: See section 57 of this Act for the termination of a person's engagement as a consultant or contractor, or for the arranging of a person to cease to perform services for the Department, if the person does not comply with subsection (2) of this section.

Return to duties

- (3) If the result of the alcohol screening test shows that alcohol is not present in the worker's breath, he or she may return to his or her duties immediately.

Relationship with section 35

- (4) This section does not limit section 35.

**35 Alcohol screening, breath or blood test or prohibited drug test—
general**

- (1) An authorised person may give an Immigration and Border Protection worker who is in the course of performing his or her duties as an Immigration and Border Protection worker a written direction requiring the worker to do one or more of the following:
- (a) undergo an alcohol screening test;
 - (b) undergo an alcohol breath test;
 - (c) provide a body sample of a kind specified in the direction for a prohibited drug test.

Blood sample if alcohol breath test indicates presence of alcohol

- (2) If:
- (a) the worker undergoes an alcohol breath test in accordance with a direction under subsection (1); and
 - (b) the alcohol breath test indicates the presence of alcohol;
- the worker may provide a sample of his or her blood for the purpose of an alcohol blood test.

Compliance with direction

- (3) An Immigration and Border Protection worker must comply with a direction given to him or her under this section.

Note 1: See subsection 13(4) and sections 15, 28 and 29 of the *Public Service Act 1999* for the consequences of an APS employee in the Department not complying with subsection (3) of this section.

Note 2: See section 57 of this Act for the termination of a person's engagement as a consultant or contractor, or for the arranging of a person to cease to perform services for the Department, if the person does not comply with subsection (3) of this section.

Section 36

**36 Alcohol screening, breath or blood test or prohibited drug test—
certain incidents**

- (1) An authorised person may give an Immigration and Border Protection worker a written direction requiring the worker to do one or more of the following if subsection (2) or (3) applies:
- (a) undergo an alcohol screening test;
 - (b) undergo an alcohol breath test;
 - (c) provide a body sample of a kind specified in the direction for a prohibited drug test.

Person killed or seriously injured in an incident involving a motor vehicle or vessel or while detained

- (2) This subsection applies if:
- (a) one of the following applies:
 - (i) a person is killed or seriously injured as a result of an incident involving a motor vehicle or vessel;
 - (ii) an incident occurs in which a person is killed or seriously injured while the person is held in custody in relation to an arrest under the *Customs Act 1901*, the *Migration Act 1958* or the *Maritime Powers Act 2013* or otherwise detained under any of those Acts;
 - (iii) an incident occurs in which a person is killed or seriously injured while the person is an unauthorised maritime arrival and is being taken to a regional processing country under section 198AD of the *Migration Act 1958*; and
 - (b) the worker is directly involved in the incident in the course of performing his or her duties as an Immigration and Border Protection worker.

Person killed or seriously injured by a firearm discharging or physical force

- (3) This subsection applies if:
- (a) all of the following apply:

- (i) the worker is an officer authorised to carry arms within the meaning of section 189A of the *Customs Act 1901*;
 - (ii) an incident occurs in which a person is killed or seriously injured as a result of the discharge of a firearm by the worker;
 - (iii) the incident occurs in the course of the worker performing his or her duties as an Immigration and Border Protection worker; or
- (b) both of the following apply:
- (i) an incident occurs in which a person is killed or seriously injured as a result of the application of physical force by the worker;
 - (ii) the incident occurs in the course of the worker performing his or her duties as an Immigration and Border Protection worker.

Direction to be given as soon as practicable after the incident

- (4) A direction under subsection (1) must be given as soon as practicable after the incident concerned and may be given whether or not the worker is still performing his or her duties as an Immigration and Border Protection worker.

Provision of blood or body sample while in hospital

- (5) If:
- (a) an Immigration and Border Protection worker is involved in an incident referred to in subsection (2) or (3); and
 - (b) the worker attends or is admitted to a hospital for examination or treatment because of the incident;
- an authorised person may give the worker a written direction requiring the worker to do either or both of the following:
- (c) provide a sample of his or her blood for the purpose of an alcohol blood test;
 - (d) provide a body sample of a kind specified in the direction for a prohibited drug test.

Section 37

Compliance with direction

- (6) An Immigration and Border Protection worker must comply with a direction given to him or her under this section.

Note 1: See subsection 13(4) and sections 15, 28 and 29 of the *Public Service Act 1999* for the consequences of an APS employee in the Department not complying with subsection (6) of this section.

Note 2: See section 57 of this Act for the termination of a person's engagement as a consultant or contractor, or for the arranging of a person to cease to perform services for the Department, if the person does not comply with subsection (6) of this section.

37 Performing duties on board a vessel

If:

- (a) an Immigration and Border Protection worker is on board a vessel throughout a period (the *onboard period*); and
- (b) the vessel is under the command of an officer of Customs (within the meaning of the *Customs Act 1901*); and
- (c) at any time during the onboard period, the worker performs duties as an Immigration and Border Protection worker;

the worker is taken, for the purposes of this Part, to be in the course of performing his or her duties as an Immigration and Border Protection worker throughout the onboard period.

38 Conduct of tests and provision of samples to be in accordance with the rules

Conduct of tests

- (1) An alcohol screening test, alcohol breath test, alcohol blood test or prohibited drug test under section 34, 35 or 36 is to be conducted in accordance with the rules.

Provision of samples

- (2) A sample of blood for the purpose of an alcohol blood test under section 35 or 36, or a body sample for the purpose of a prohibited

drug test under that section, is to be provided in accordance with the rules.

39 Rules for purposes of this Part

For the purposes of sections 34, 35 and 36, the rules may make provision for and in relation to the following:

- (a) the authorisation of persons:
 - (i) to conduct alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests for the purpose of those sections; and
 - (ii) to operate equipment for that purpose;
- (b) the provision of samples of blood for the purpose of alcohol blood tests under those sections;
- (c) the provision of body samples for the purpose of prohibited drug tests under those sections;
- (d) the conduct of alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests under those sections;
- (e) the devices used in conducting alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests under those sections, including the calibration, inspection and testing of those devices;
- (f) in the case of alcohol blood tests and prohibited drug tests—the accreditation of persons to conduct analyses in connection with such tests;
- (g) the procedure for the handling, analysis, storage and destruction of:
 - (i) samples of blood taken in connection with alcohol blood tests under those sections; or
 - (ii) body samples taken in connection with prohibited drug tests under those sections;
- (h) the giving of the test results in certificates or other documents and the evidentiary effect of such certificates or other documents;
- (i) the confidentiality and disclosure of the test results;

Section 40

- (j) the keeping and destruction of records in relation to alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests under those sections.

40 Admissibility of test results etc. in legal proceedings

The following:

- (a) a certificate or other document recording the results of a test conducted under section 34, 35 or 36 in relation to an Immigration and Border Protection worker;
- (b) any other information, answer to a question or document relevant to conducting such a test;

are not admissible in evidence against the worker in any proceedings other than the following:

- (c) proceedings in relation to a decision of the Secretary to terminate the employment or engagement of the worker;
- (d) proceedings under the *Safety, Rehabilitation and Compensation Act 1988*;
- (e) proceedings in tort against the Commonwealth that are instituted by the worker.

Part 6—Secrecy and disclosure provisions

41 Simplified outline of this Part

- An entrusted person must not make a record of or disclose Immigration and Border Protection information unless the making of the record or disclosure is authorised by a provision of this Part, is in the course of the person’s employment or service as an entrusted person or is required or authorised by law or by an order or direction of a court or tribunal.

42 Secrecy

- (1) A person commits an offence if:
- (a) the person is, or has been, an entrusted person; and
 - (b) the person makes a record of, or discloses, information; and
 - (c) the information is Immigration and Border Protection information.

Penalty: Imprisonment for 2 years.

- (1A) If the information is Immigration and Border Protection information because of the operation of subsection 4(5) or (6), the fault element of recklessness for paragraph (1)(c) of this section is taken to be satisfied if the person is reckless as to whether or not whichever of the following applies:
- (a) the information has a security classification;
 - (b) the information originated with, or was received from, an intelligence agency;
 - (c) the information was provided to the Commonwealth pursuant to a statutory obligation or otherwise by compulsion of law.

Note: Recklessness is the fault element for paragraph (1)(c)—see section 5.6 of the *Criminal Code*.

Section 43

Exception

- (2) Subsection (1) does not apply if:
- (a) the making of the record or disclosure is authorised by section 43, 44, 45, 47, 48 or 49; or
 - (b) the making of the record or disclosure is in the course of the person's employment or service as an entrusted person; or
 - (c) the making of the record or disclosure is required or authorised by or under a law of the Commonwealth, a State or a Territory; or
 - (d) the making of the record or disclosure is required by an order or direction of a court or tribunal.

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

Geographical jurisdiction

- (3) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1).

43 Records or disclosure for the purposes of this Act or the *Law Enforcement Integrity Commissioner Act 2006*

An entrusted person may make a record of, or disclose, Immigration and Border Protection information if:

- (a) the making of the record, or disclosure, is for the purposes of this Act or a legislative instrument under this Act; or
- (b) the making of the record, or disclosure, is for the purposes of the *Law Enforcement Integrity Commissioner Act 2006* or regulations under that Act.

44 Disclosure to certain bodies and persons

Immigration and Border Protection information that is not personal information

- (1) An entrusted person authorised under subsection (3) may disclose Immigration and Border Protection information that does not contain personal information, to a body or person mentioned in subsection (4) if:
- (a) the Secretary is satisfied that the information will enable or assist that body or person to perform or exercise any of the functions, duties or powers of that body or person; and
 - (b) if, under subsection (6), that body or person is required to comply with a condition before the disclosure of the information—that body or person has complied with that condition.

Immigration and Border Protection information that is personal information

- (2) An entrusted person authorised under subsection (3) may disclose Immigration and Border Protection information that contains personal information, to a body or person mentioned in subsection (4) for a purpose mentioned in section 46 if:
- (a) the Secretary is satisfied that the information will enable or assist that body or person to perform or exercise any of the functions, duties or powers of that body or person; and
 - (b) the Secretary is satisfied that the disclosure of the information to that body or person is necessary for the purpose mentioned in section 46; and
 - (c) if, under subsection (6), that body or person is required to comply with a condition before the disclosure of the information—that body or person has complied with that condition; and
 - (d) in relation to a class of protected information—that body or person is prescribed in the rules and that class of information is prescribed in the rules as a class of information that may be disclosed to that body or person.

Section 44

Authorisation

- (3) The Secretary may, by writing, authorise an entrusted person for the purposes of subsections (1) and (2).

Bodies and persons

- (4) For the purposes of subsections (1) and (2), the bodies and persons are the following:
- (a) a Department, agency or authority of the Commonwealth, a State or a Territory;
 - (b) the Australian Federal Police;
 - (c) a police force or police service of a State or Territory;
 - (d) a coroner;
 - (e) any other person who holds an office or appointment under a law of the Commonwealth, a State or a Territory;
 - (f) any other body or person prescribed by the rules for the purposes of this paragraph.
- (5) Paragraph (4)(f) does not apply in relation to a foreign country, an agency or authority of a foreign country or a public international organisation.

Conditions

- (6) The Secretary may, by writing, impose conditions to be complied with by a body or person:
- (a) before Immigration and Border Protection information is disclosed to that body or person under subsection (1) or (2);
or
 - (b) in relation to Immigration and Border Protection information disclosed to that body or person under subsection (1) or (2).

Instruments are not legislative instruments

- (7) An instrument under subsection (3) or (6) is not a legislative instrument.

45 Disclosure in accordance with agreements

Immigration and Border Protection information that is not personal information

- (1) An entrusted person authorised under subsection (3) may disclose Immigration and Border Protection information that does not contain personal information, to a foreign country, an agency or authority of a foreign country or a public international organisation if:
- (a) the Secretary is satisfied that the information will be used in accordance with an agreement to which subsection (4) applies; and
 - (b) that foreign country, agency, authority or organisation has undertaken not to use or further disclose the information except in accordance with the agreement or otherwise as required or authorised by law.

Immigration and Border Protection information that is personal information

- (2) An entrusted person authorised under subsection (3) may disclose Immigration and Border Protection information that contains personal information, to a foreign country, an agency or authority of a foreign country or a public international organisation for a purpose mentioned in section 46 if:
- (a) the Secretary is satisfied that the information will be used in accordance with an agreement to which subsection (4) applies; and
 - (b) the Secretary is satisfied that the disclosure of that information to that foreign country, agency, authority or organisation is necessary for the purpose mentioned in section 46; and
 - (c) that foreign country, agency, authority or organisation has undertaken not to use or further disclose the information except in accordance with the agreement or otherwise as required or authorised by law; and

Section 46

- (d) in relation to a class of protected information—that foreign country, agency, authority or organisation is prescribed in the rules and that class of information is prescribed in the rules as a class of information that may be disclosed to that foreign country, agency, authority or organisation.

Authorisation

- (3) The Secretary may, by writing, authorise an entrusted person for the purposes of subsections (1) and (2).

Agreements

- (4) This subsection applies to an agreement that is in force between:
 - (a) the Commonwealth or an agency or authority of the Commonwealth; and
 - (b) one or more of the following:
 - (i) a foreign country;
 - (ii) an agency or authority of a foreign country;
 - (iii) a public international organisation.

Conditions

- (5) The Secretary may, by writing, impose conditions to be complied with by a foreign country, an agency or authority of a foreign country or a public international organisation in relation to Immigration and Border Protection information disclosed to it under subsection (1) or (2).

Instruments are not legislative instruments

- (6) An instrument under subsection (3) or (5) is not a legislative instrument.

46 Permitted purposes

For the purposes of sections 44 and 45, the purposes are the following:

-
- (a) the administration or enforcement of a law of the Commonwealth, a State, a Territory or a foreign country that relates to:
 - (i) criminal law; or
 - (ii) a law imposing a pecuniary penalty or providing for the forfeiture of property;
 - (b) in relation to a law referred to in paragraph (a), the prevention of crime, or the detection or analysis of criminal conduct, in respect of that law;
 - (c) assisting a coronial inquiry, coronial investigation or coronial inquest under a law of the Commonwealth, a State or a Territory;
 - (d) a purpose relating to the protection of public health, or the prevention or elimination of risks to the life or safety of an individual or a group of individuals;
 - (e) the collection and verification of statistics for the purposes of the *Census and Statistics Act 1905* or the performance of the functions of the Australian Bureau of Statistics as set out in section 6 of the *Australian Bureau of Statistics Act 1975*;
 - (f) the protection of the public revenue of the Commonwealth, a State, a Territory or a foreign country;
 - (g) a purpose relating to matters covered by the *Customs Act 1901*, the *Migration Act 1958*, the *Maritime Powers Act 2013*, the *Australian Citizenship Act 2007*, the *Immigration (Guardianship of Children) Act 1946*, the *Education Services for Overseas Students Act 2000* or the *Biosecurity Act 2015*;
 - (h) any of the following:
 - (i) assisting in establishing the identity of a particular person;
 - (ii) establishing whether or not a particular person is or was an Australian citizen at a particular time or in a particular period;
 - (iii) establishing whether or not a particular person is or was the holder of a particular kind or class of visa under the *Migration Act 1958* at a particular time or in a particular period;

Section 47

- (i) a purpose relating to immigration, quarantine or border control between Australia and a foreign country;
- (j) the provision of services to persons who are not Australian citizens;
- (k) a purpose relating to the performance of functions under section 17 of the *Australian Security Intelligence Organisation Act 1979*;
- (l) a purpose relating to the performance of functions under section 6 of the *Intelligence Services Act 2001*;
- (m) the administration of the National Anti-Doping Scheme (within the meaning of the *Australian Sports Anti-Doping Authority Act 2006*);
- (n) the administration or enforcement of laws with respect to commerce:
 - (i) between a State and another State; or
 - (ii) between a State and a Territory; or
 - (iii) between a Territory and another Territory; or
 - (iv) between Australia and another country; or
 - (v) within a State or Territory;
- (o) a purpose prescribed by the rules.

47 Disclosure with consent

An entrusted person may disclose Immigration and Border Protection information that relates to the affairs of a person or body if:

- (a) the person or body has consented to the disclosure; and
- (b) the disclosure is in accordance with that consent.

48 Disclosure to reduce threat to life or health

An entrusted person may disclose Immigration and Border Protection information if:

- (a) the entrusted person reasonably believes that the disclosure is necessary to prevent or lessen a serious threat to the life or health of an individual; and

- (b) the disclosure is for the purposes of preventing or lessening that threat.

49 Disclosure of publicly available information

An entrusted person may disclose Immigration and Border Protection information if it has already been lawfully made available to the public.

50 Exceptions operate independently

Sections 43, 44, 45, 47, 48 and 49 do not limit each other.

50A Information must be certified as appropriately classified before proceedings can be initiated

If, an offence against section 42 relates to information that has a security classification, proceedings for the offence must not be initiated unless the Secretary has certified that it is appropriate that the information had a security classification at the time of the conduct that is alleged to constitute the offence.

51 Interaction with Privacy Act

For the purposes of the *Privacy Act 1988*:

- (a) the making of a record, in accordance with section 43, of Immigration and Border Protection information, to the extent that the Immigration and Border Protection information contains personal information, is taken to be a use that is authorised by this Act; and
- (b) the disclosure, in accordance with section 43, 44, 45, 47, 48 or 49, of Immigration and Border Protection information, to the extent that the Immigration and Border Protection information contains personal information, is taken to be a disclosure that is authorised by this Act.

Part 7—Other matters

52 Simplified outline of this Part

- The Secretary and the Comptroller-General of Customs can delegate their functions or powers under a law of the Commonwealth.
- The Secretary may give directions to Immigration and Border Protection workers to do with the administration and control of the Department or the performance of functions or exercise of powers by such workers under a law of the Commonwealth.
- The Secretary or the Australian Border Force Commissioner may terminate the engagement of a person as a consultant or contractor if the person fails to comply with a direction under this Act.
- The Minister may make rules for the purposes of this Act.

53 Delegation by Secretary

- (1) The Secretary may, by writing, delegate any of his or her functions or powers under a law of the Commonwealth to:
 - (a) the Australian Border Force Commissioner; or
 - (b) an Immigration and Border Protection worker.
- (2) However, subsection (1) does not apply in relation to:
 - (a) section 30 (resignation in anticipation of termination of employment); or
 - (b) section 32 (termination of employment for serious misconduct); or
 - (c) the *Migration Act 1958* or an instrument under that Act.

Note: Section 496 of the *Migration Act 1958* deals with delegation by the Secretary of his or her powers under that Act.

Directions to delegates

- (3) An Immigration and Border Protection worker must, in performing functions or exercising powers under a delegation under subsection (1), comply with any written directions of the Secretary.

Subdelegation by Australian Border Force Commissioner

- (4) If the Australian Border Force Commissioner is delegated functions or powers under subsection (1), the Commissioner may, by writing, delegate any of those functions or powers to the following:
- (a) a person who is covered by paragraph (a) of the definition of ***Immigration and Border Protection worker*** in subsection 4(1) and who is in the Australian Border Force;
 - (b) a person who is covered by paragraph (b), (c), (d), (e) or (f) of that definition and whose services are made available to, or who is performing services for, the Australian Border Force.
- (5) An Immigration and Border Protection worker must, in performing functions or exercising powers under a delegation under subsection (4), comply with any written directions of the Australian Border Force Commissioner.
- (6) The Australian Border Force Commissioner must not give directions under subsection (5) in relation to particular functions or powers that are inconsistent with any directions given under subsection (3) in relation to those functions or powers.
- (7) A function that is performed or a power that is exercised by an Immigration and Border Protection worker under a delegation under subsection (4) is taken, for the purposes of the law referred to in subsection (1), to have been performed or exercised by the Secretary.

Section 54

54 Delegation by Comptroller-General of Customs

- (1) The Comptroller-General of Customs may, by writing, delegate any of his or her functions or powers under a law of the Commonwealth (other than section 179 of the *Customs Act 1901*) to:
- (a) the Secretary; or
 - (b) an Immigration and Border Protection worker.

Directions to delegates

- (2) An Immigration and Border Protection worker must, in performing functions or exercising powers under a delegation under subsection (1), comply with any written directions of the Comptroller-General of Customs.

Subdelegation by Secretary

- (3) If the Secretary is delegated functions or powers under subsection (1), the Secretary may, by writing, delegate any of those functions or powers to an Immigration and Border Protection worker.
- (4) An Immigration and Border Protection worker must, in performing functions or exercising powers under a delegation under subsection (3), comply with any written directions of the Secretary.
- (5) The Secretary must not give directions under subsection (4) in relation to particular functions or powers that are inconsistent with any directions given under subsection (2) in relation to those functions or powers.
- (6) A function that is performed or a power that is exercised by an Immigration and Border Protection worker under a delegation under subsection (3) is taken, for the purposes of the law referred to in subsection (1), to have been performed or exercised by the Comptroller-General of Customs.

55 Directions by Secretary—administration and control of the Department

- (1) The Secretary may, by writing, give directions to Immigration and Border Protection workers in connection with the administration and control of the Department.

Essential qualifications

- (2) Without limiting subsection (1), directions under that subsection may relate to the essential qualifications for Immigration and Border Protection workers for performing their duties.

Note 1: See section 23 of the *Public Service Act 1999* for the reduction in the classification of an APS employee in the Department if the employee lacks, or has lost, an essential qualification for performing his or her duties.

Note 2: See section 29 of the *Public Service Act 1999* for the termination of the employment of an APS employee in the Department if the employee lacks, or has lost, an essential qualification for performing his or her duties.

- (3) Without limiting subsection (2), essential qualifications may have one or more of the following components:
- (a) physical or psychological health or fitness;
 - (b) professional or technical qualifications;
 - (c) learning and development requirements;
 - (d) security clearances.

Organisational suitability assessments

- (4) Without limiting subsection (1), directions under that subsection may relate to organisational suitability assessments.

Reporting of serious misconduct or criminal activity

- (5) Without limiting subsection (1), directions under that subsection may relate to the reporting by Immigration and Border Protection workers of the following:
- (a) serious misconduct by such a worker;

Section 55

(b) criminal activity involving such a worker; where the serious misconduct or criminal activity affects, or is likely to affect, the operations, responsibilities or reputation of the Department.

Relationship with directions under section 26

- (6) A direction under this section prevails over a direction under section 26 to the extent of any inconsistency.

Compliance with directions

- (7) An Immigration and Border Protection worker must comply with a direction under this section.

Note 1: See subsection 13(4) and sections 15, 28 and 29 of the *Public Service Act 1999* for the consequences of an APS employee in the Department not complying with subsection (7) of this section.

Note 2: See section 57 of this Act for the termination of a person's engagement as a consultant or contractor, or for the arranging of a person to cease to perform services for the Department, if the person does not comply with subsection (7) of this section.

Directions are not legislative instruments

- (8) A direction under this section is not a legislative instrument.

No limit on other powers to give directions

- (9) This section does not limit any other power of the Secretary to give directions to any person.

Self-incrimination

- (10) If an Immigration and Border Protection worker is required by a direction of the kind mentioned in subsection (5) to give information, answer a question or produce a document, the worker is not excused from:
- (a) giving the information; or
 - (b) answering the question; or

(c) producing the document;
on the ground that the information, the answer to the question or the production of the document might tend to incriminate the worker or expose the worker to a penalty.

- (11) However:
- (a) the information given, the answer given or the document produced; or
 - (b) giving the information, answering the question or producing the document;
- is not admissible in evidence against the worker in any proceedings.
- (12) Subsection (11) has effect subject to section 40.

56 Directions by Secretary—performance of functions or exercise of powers under laws of the Commonwealth

- (1) The Secretary may, by writing, give directions to Immigration and Border Protection workers in relation to the performance of functions, or the exercise of powers, by those workers under a law of the Commonwealth.
- (2) However, subsection (1) does not apply in relation to the *Migration Act 1958*.

Note: Section 499 of the *Migration Act 1958* allows the Minister to give directions to a person or body about the performance of functions or the exercise of powers under that Act.

Relationship with directions under section 27

- (3) A direction under this section prevails over a direction under section 27 to the extent of any inconsistency.

Compliance with directions

- (4) An Immigration and Border Protection worker must comply with a direction under this section.

Section 57

Note 1: See subsection 13(4) and sections 15, 28 and 29 of the *Public Service Act 1999* for the consequences of an APS employee in the Department not complying with subsection (4) of this section.

Note 2: See section 57 of this Act for the termination of a person's engagement as a consultant or contractor, or for the arranging of a person to cease to perform services for the Department, if the person does not comply with subsection (4) of this section.

Directions are not legislative instruments

- (5) A direction under this section is not a legislative instrument.

No limit on other powers to give directions

- (6) This section does not limit any other power of the Secretary to give directions to any person.

57 Termination of engagement of consultant or contractor

- (1) If:

- (a) a person is covered by paragraph (e) of the definition of ***Immigration and Border Protection worker*** in subsection 4(1); and
- (b) the person fails to comply with a direction under section 26, 27, 35, 36, 55 or 56 or subsection (2) of this section or with a requirement under subsection 34(1);

the Secretary or the Australian Border Force Commissioner may terminate the person's engagement as a consultant or contractor.

- (2) If:

- (a) a person (the ***affected person***) is covered by paragraph (f) of the definition of ***Immigration and Border Protection worker*** in subsection 4(1); and
- (b) in connection with that person, paragraph (e) of that definition covers a person (the ***consultant/contractor***); and
- (c) the affected person fails to comply with a direction under section 26, 27, 35, 36, 55 or 56 or with a requirement under subsection 34(1);

Section 57A

the Secretary or the Australian Border Force Commissioner may, by writing, direct the consultant/contractor to arrange for the affected person to cease to perform services for the Department.

- (3) Subsection (1) does not limit the circumstances in which a person's engagement as a consultant or contractor may be terminated.

57A Act not to apply so as to exceed Commonwealth power

- (1) If a provision of this Act, or of an instrument made under this Act:
- (a) would, apart from this section, have an application (an *invalid application*) in relation to:
 - (i) one or more particular persons, things, matters, places, circumstances or cases; or
 - (ii) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases; because of which the provision exceeds the Commonwealth's legislative power; but
 - (b) also has at least one application (a *valid application*) in relation to:
 - (i) one or more particular persons, things, matters, places, circumstances or cases; or
 - (ii) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases; that, if it were the provision's only application, would be within the Commonwealth's legislative power;
- it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.
- (2) This section applies to a provision of this Act, or of an instrument made under this Act, whether the provision is enacted or made before, on or after the commencement of this section.

58 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:

Section 58

- (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) amend this Act.

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

Endnotes

Endnote 1—About the endnotes

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.

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

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Border Force Act 2015	40, 2015	20 May 2015	1 July 2015 (s 2)	
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 8 (item 1): 16 June 2016 (s 2(1) item 3) Sch 9: 1 July 2015 (s 2(1) item 7)	Sch 9
as amended by				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Customs Amendment (Australian Trusted Trader Programme) Act 2015	73, 2015	25 June 2015	Sch 1 (item 6): 1 July 2015 (s 2(1) item 3)	—
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (items 1–25): 1 July 2015 (s 2(1) item 2) Sch 1 (items 27–31): 31 Oct 2017 (s 2(1) item 3)	Sch 1 (items 24, 25)

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 4	am No 115, 2017
Part 6	
s 41	am No 115, 2017
s 42	am No 115, 2017
s 43	am No 115, 2017
s 44	am No 115, 2017 (Sch 1 items 27, 28)
s 45	am No 115, 2017 (Sch 1 items 29, 30)
s 46	am No 41, 2015; No 115, 2017
s 47	am No 115, 2017
s 48	am No 115, 2017
s 49	am No 115, 2017
s 50A	ad No 115, 2017
s 51	am No 115, 2017
Part 7	
s 54	am No 73, 2015
s 57A	ad No 115, 2017
