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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Australian Border Force Bill 2015**

**No.     , 2015**

*(Immigration and Border Protection)*

**A Bill for an Act relating to the Australian Border Force, the Australian Border Force Commissioner and persons performing work for the Department, and for related purposes**



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1 **A Bill for an Act relating to the Australian Border**  
2 **Force, the Australian Border Force Commissioner**  
3 **and persons performing work for the Department,**  
4 **and for related purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**  
7

8 **1 Short title**

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

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1     **2 Commencement**

2                     This Act commences on 1 July 2015.

3     **3 Simplified outline of this Act**

- 4                     • There is an Australian Border Force within the Department.
- 5                     • There is to be an Australian Border Force Commissioner of  
6                     the Australian Border Force, who is to have the control of the  
7                     operations of the Australian Border Force.
- 8                     • The Australian Border Force Commissioner and APS  
9                     employees in the Australian Border Force are able to exercise  
10                    powers under the *Customs Act 1901*, the *Migration Act 1958*,  
11                    the *Maritime Powers Act 2013* and other Commonwealth  
12                    laws.
- 13                    • The Australian Border Force Commissioner may give  
14                    directions to Immigration and Border Protection workers to do  
15                    with the administration and control of the operations of the  
16                    Australian Border Force or the performance of functions or  
17                    exercise of powers by such workers under a law of the  
18                    Commonwealth.
- 19                    • There are resignation and termination provisions that apply to  
20                    all APS employees in the Department in circumstances  
21                    involving serious misconduct.
- 22                    • All Immigration and Border Protection workers may be  
23                    required to undergo an alcohol screening test, an alcohol  
24                    breath test, an alcohol blood test or a prohibited drug test.
- 25                    • There are secrecy and disclosure provisions covering  
26                    information obtained by the Secretary, the Australian Border  
27                    Force Commissioner and Immigration and Border Protection  
28                    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*.

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- 1                    ***engages in corrupt conduct***: an Immigration and Border Protection  
2 worker ***engages in corrupt conduct*** if the worker, while an  
3 Immigration and Border Protection worker, engages in:
- 4                    (a) conduct that:
- 5                                (i) involves; or  
6                                (ii) is engaged in for the purpose (or for purposes including  
7    the purpose) of;  
8                    the worker abusing his or her position as an Immigration and  
9                    Border Protection worker; or
- 10                   (b) conduct that:
- 11                                (i) perverts; or  
12                                (ii) is engaged in for the purpose (or for purposes including  
13    the purpose) of perverting;  
14                    the course of justice; or
- 15                   (c) conduct that, having regard to the duties and powers of the  
16                   worker as an Immigration and Border Protection worker:
- 17                                (i) involves; or  
18                                (ii) is engaged in for the purpose (or for purposes including  
19    the purpose) of;  
20                    corruption of any other kind.
- 21                   ***entrusted person*** means:
- 22                                (a) the Secretary; or  
23                                (b) the Australian Border Force Commissioner (including in his  
24    or her capacity as the Comptroller-General of Customs); or  
25                                (c) an Immigration and Border Protection worker.
- 26                   ***Immigration and Border Protection worker*** means:
- 27                                (a) an APS employee in the Department; or  
28                                (b) a person covered by paragraph (d), (e) or (f) of the definition  
29    of ***officer of Customs*** in subsection 4(1) of the *Customs Act*  
30    1901; or  
31                                (c) a person covered by paragraph (f) or (g) of the definition of  
32    ***officer*** in subsection 5(1) of the *Migration Act 1958*; or  
33                                (d) a person who is:
- 34    (i) an employee of an Agency (within the meaning of the  
35    *Public Service Act 1999*); or
-

- 1 (ii) an officer or employee of a State or Territory; or  
2 (iii) an officer or employee of an agency or authority of the  
3 Commonwealth, a State or a Territory; or  
4 (iv) an officer or employee of the government of a foreign  
5 country, an officer or employee of an agency or  
6 authority of a foreign country or an officer or employee  
7 of a public international organisation;  
8 and whose services are made available to the Department; or  
9 (e) a person who is:  
10 (i) engaged as a consultant or contractor to perform  
11 services for the Department; and  
12 (ii) specified in a determination under subsection 5(1); or  
13 (f) a person who is:  
14 (i) engaged or employed by a person to whom  
15 paragraph (e) or this paragraph applies; and  
16 (ii) performing services for the Department in connection  
17 with that engagement or employment; and  
18 (iii) specified in a determination under subsection 5(2).

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

21 ***personal information*** has the same meaning as in the *Privacy Act*  
22 *1988*.

23 ***prohibited drug*** means:

- 24 (a) a narcotic substance (within the meaning of the *Customs Act*  
25 *1901*); or  
26 (b) any drug prescribed in an instrument under subsection (3).

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

29 ***protected information*** means information that was obtained by a  
30 person in the person's capacity as an entrusted person.

31 Note: See also subsection (4).

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

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1 **rules** means the rules made under section 58.

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

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

5 (a) corrupt conduct engaged in, a serious abuse of power, or a  
6 serious dereliction of duty, by the worker; or

7 (b) any other seriously reprehensible act or behaviour by the  
8 worker, whether or not acting, or purporting to act, in the  
9 course of his or her duties as an Immigration and Border  
10 Protection worker.

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

13 *Authorised person instrument*

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

18 *Prohibited drug instrument*

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

22 *Protected information*

23 (4) Without limiting the definition of **protected information** in  
24 subsection (1), information obtained by an entrusted person in the  
25 course of performing duties, or in performing functions or  
26 exercising powers, under a law of the Commonwealth:

27 (a) as an officer of Customs, or an authorised officer, within the  
28 meaning of the *Customs Act 1901*; or

29 (b) as an officer, or an authorised officer, within the meaning of  
30 the *Migration Act 1958*; or

31 (c) as a maritime officer within the meaning of the *Maritime*  
32 *Powers Act 2013*; or

- 1 (d) as a delegate of someone else; or  
2 (e) in any other capacity;  
3 is taken to be information obtained by the person in the person's  
4 capacity as an entrusted person.

## 5 **5 Consultants and contractors etc.**

### 6 *Consultants and contractors*

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

### 11 *Other persons*

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

### 16 *Determinations are not legislative instruments*

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

## 18 **6 Act binds the Crown**

19 This Act binds the Crown in each of its capacities.

## 20 **7 Extraterritorial application**

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

1 **Part 2—Australian Border Force Commissioner**

2 **Division 1—Simplified outline of this Part**

3 **8 Simplified outline of this Part**

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- 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.

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

3 **9 Establishment**

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

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

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

11 **10 Powers of Australian Border Force Commissioner**

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

1 **Division 3—Appointment of the Australian Border Force**  
2 **Commissioner**

3 **11 Appointment**

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

8 *Comptroller-General of Customs*

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

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

14 **12 Term of appointment**

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

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

20 **13 Oath or affirmation by Australian Border Force Commissioner**

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



1                    *Compliance*

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

5                    **14 Acting Australian Border Force Commissioner**

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

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

18                    *Comptroller-General of Customs*

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

22                    **15 Application of finance law**

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

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

3 **16 Remuneration and allowances**

- 4 (1) The Australian Border Force Commissioner is to be paid the  
5 remuneration that is determined by the Remuneration Tribunal. If  
6 no determination of that remuneration by the Tribunal is in  
7 operation, he or she is to be paid the remuneration that is  
8 prescribed by the rules.
- 9 (2) The Australian Border Force Commissioner is to be paid the  
10 allowances that are prescribed by the rules.
- 11 (3) This section has effect subject to the *Remuneration Tribunal Act*  
12 *1973*.

13 **17 Leave of absence**

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

21 **18 Outside work**

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

25 **19 Disclosure of interests**

- 26 (1) The Australian Border Force Commissioner must give written  
27 notice to the Minister of any direct or indirect pecuniary interest  
28 that the Commissioner has or acquires and that conflicts or could

1 conflict with the proper performance of the Commissioner's  
2 functions.

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

## 6 **20 Resignation of appointment**

7 (1) The Australian Border Force Commissioner may resign his or her  
8 appointment by giving the Governor-General a written resignation.

9 (2) The resignation takes effect on the day it is received by the  
10 Governor-General or, if a later day is specified in the resignation,  
11 on that later day.

## 12 **21 Suspension or termination of appointment**

13 (1) The Governor-General may suspend or terminate the appointment  
14 of the Australian Border Force Commissioner:

- 15 (a) for misbehaviour; or  
16 (b) if the Commissioner is unable to perform the duties of his or  
17 her office because of physical or mental incapacity.

18 (2) The Governor-General may suspend or terminate the appointment  
19 of the Australian Border Force Commissioner if:

- 20 (a) the Commissioner:  
21 (i) becomes bankrupt; or  
22 (ii) takes steps to take the benefit of any law for the relief of  
23 bankrupt or insolvent debtors; or  
24 (iii) compounds with one or more of his or her creditors; or  
25 (iv) makes an assignment of his or her remuneration for the  
26 benefit of one or more of his or her creditors; or  
27 (b) the Commissioner is absent, except on leave of absence, for  
28 14 consecutive days or for 28 days in any 12 months; or  
29 (c) the Commissioner engages in conduct that is inconsistent  
30 with an oath or affirmation he or she made and subscribed  
31 under section 13; or

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- 1 (d) the Commissioner engages, except with the Minister's  
2 approval, in paid work outside the duties of his or her office  
3 (see section 18); or  
4 (e) the Commissioner fails, without reasonable excuse, to  
5 comply with:  
6 (i) section 19; or  
7 (ii) section 29 of the *Public Governance, Performance and*  
8 *Accountability Act 2013* (which deals with the duty to  
9 disclose interests) or rules made under that Act for the  
10 purposes of that section; or  
11 (f) the Commissioner fails, without reasonable excuse, to  
12 comply with a direction under section 23.
- 13 (3) The suspension of the appointment of the Australian Border Force  
14 Commissioner under this section does not affect any entitlement of  
15 the Commissioner to be paid remuneration, and allowances, in  
16 accordance with this Act.

17 *Statement in Parliament*

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

23 **22 Other terms and conditions**

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

1 **Division 5—Ministerial directions**

2 **23 Minister may give directions to Australian Border Force**  
3 **Commissioner**

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

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

3           **24 Oaths or affirmations by Immigration and Border Protection**  
4                           **workers**

5                   (1) The Australian Border Force Commissioner may request the  
6                       following persons to make and subscribe an oath or affirmation in  
7                       accordance with the form prescribed by the rules for the purposes  
8                       of this subsection:

9                       (a) a person who is covered by paragraph (a) of the definition of  
10                        ***Immigration and Border Protection worker*** in  
11                        subsection 4(1) and who is in the Australian Border Force;

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

15                   (2) A person must make and subscribe the oath or affirmation before  
16                       the Australian Border Force Commissioner or a person authorised  
17                       by the Commissioner.

18                        *Compliance*

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

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

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

1 **Division 7—Delegation and directions**

2 **25 Delegation**

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

19 *Directions to delegates*

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

24 *Subdelegation by Secretary*

- 25 (4) If the Secretary is delegated functions or powers under  
26 subsection (1), the Secretary may, by writing, delegate any of those  
27 functions or powers to any Immigration and Border Protection  
28 worker.
- 29 (5) An Immigration and Border Protection worker must, in performing  
30 functions or exercising powers under a delegation under  
31 subsection (4), comply with any written directions of the Secretary.

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

10 **26 Directions—administration and control of the operations of the**  
11 **Australian Border Force**

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

23 *Essential qualifications*

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

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

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



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

6 *Reporting of serious misconduct or criminal activity*

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

15 *Compliance with directions*

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

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

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

25 *Directions are not legislative instruments*

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

27 *No limit on other powers to give directions*

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

Section 27

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*Self-incrimination*

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

20 **27 Directions—performance of functions or exercise of powers**  
21 **under laws of the Commonwealth**

- 22 (1) The Australian Border Force Commissioner may, by writing, give  
23 directions to the following persons in relation to the performance  
24 of functions, or the exercise of powers, by those persons under a  
25 law of the Commonwealth:  
26 (a) a person who is covered by paragraph (a) of the definition of  
27 ***Immigration and Border Protection worker*** in  
28 subsection 4(1) and who is in the Australian Border Force;  
29 (b) a person who is covered by paragraph (b), (c), (d), (e) or (f)  
30 of that definition and whose services are made available to,  
31 or who is performing services for, the Australian Border  
32 Force.

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

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

6 *Compliance with directions*

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

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

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

16 *Directions are not legislative instruments*

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

18 *No limit on other powers to give directions*

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

1 **Part 3—Resignation from the Department**  
2

3 **28 Simplified outline of this Part**

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

11 **29 Resignation—general**

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

24 **30 Resignation in anticipation of termination of employment**

- 25 (1) This section applies if:  
26 (a) an APS employee in the Department gives the Secretary  
27 written notice of the employee's resignation under  
28 paragraph 29(1)(a); and

- 
- 1 (b) either:
- 2 (i) the Secretary or the Australian Border Force
- 3 Commissioner reasonably believes that the employee
- 4 has engaged in serious misconduct and the Secretary is
- 5 considering terminating the employee's employment; or
- 6 (ii) the employee is being investigated for serious
- 7 misconduct and the Secretary is not in a position to
- 8 decide whether to terminate the employee's
- 9 employment because the findings of the investigation
- 10 are not yet known.
- 11 (2) The Secretary or the Australian Border Force Commissioner may,
- 12 by written notice given to the APS employee, substitute a day, no
- 13 later than 90 days after the day specified in the employee's notice
- 14 of resignation, as the day on which the employee's resignation is to
- 15 take effect.
- 16 (3) Subsection (2) has effect subject to subsection (7).
- 17 *Multiple notices*
- 18 (4) The Secretary or the Australian Border Force Commissioner may
- 19 give more than one notice under subsection (2) to the APS
- 20 employee in relation to the notice of resignation.
- 21 *Timing of first notice*
- 22 (5) To be effective, the first notice given under subsection (2) in
- 23 relation to the notice of resignation must be given to the APS
- 24 employee before the day specified in the notice of resignation.
- 25 *Employee's resignation takes effect or employee's employment*
- 26 *terminated*
- 27 (6) The Secretary must, on or before the day substituted in the most
- 28 recent notice given under subsection (2) in relation to the notice of
- 29 resignation:
- 30 (a) notify the APS employee that the employee's resignation
- 31 takes effect; or
- 32 (b) terminate the APS employee's employment.
-

## **Part 3** Resignation from the Department

### **Section 30**

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

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

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## 1 **Part 4—Termination of employment in the** 2 **Department for serious misconduct** 3

### 4 **31 Simplified outline of this Part**

- |    |   |
|----|---|
| 5  | • If the Secretary terminates the employment of an APS                |
| 6  | employee in the Department and the Secretary or the                   |
| 7  | Australian Border Force Commissioner reasonably believes              |
| 8  | that the employee's conduct or behaviour amounts to serious           |
| 9  | misconduct, the Secretary or the Commissioner may make a              |
| 10 | declaration to that effect.   |
| 11 | • The effect of the declaration is that provisions of the <i>Fair</i> |
| 12 | <i>Work Act 2009</i> dealing with unfair dismissal, and notice of     |
| 13 | termination or payment in lieu, will not apply to the APS             |
| 14 | employee.   |

### 15 **32 Termination of employment for serious misconduct**

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

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

Section 32

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

4 *Timing of declaration*

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

8 *Copy of declaration to be given to APS employee*

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

13 *Effect of declaration on Fair Work Act*

- 14 (5) If the Secretary or the Australian Border Force Commissioner  
15 makes the declaration for the APS employee, the *Fair Work Act*  
16 *2009* (other than Part 3-1 and Division 9 of Part 3-3 of that Act)  
17 does not apply in relation to:

- 18 (a) the termination of the APS employee's employment; or  
19 (b) the making of the declaration.

20 Note 1: This means, for example, that the provisions of the *Fair Work Act*  
21 *2009* dealing with unfair dismissal, and notice of termination or  
22 payment in lieu, do not apply in relation to the APS employee.

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

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

28 *Report to Minister*

- 29 (7) The Secretary or the Australian Border Force Commissioner must  
30 give the Minister a written report containing the following, as soon  
31 as practicable after making the declaration:



- 1 (a) the grounds for the Secretary's or Commissioner's belief  
2 referred to in subsection (1) in relation to the APS employee;  
3 (b) the nature and findings of any investigation of, or inquiry  
4 into, the APS employee's conduct or behaviour;  
5 (c) details of any other matter the Secretary or Commissioner  
6 considers relevant.

7 *Declaration not a legislative instrument*

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

1 **Part 5—Alcohol and drug tests**  
2

3 **33 Simplified outline of this Part**

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

7 **34 Alcohol screening test—suspicion that Immigration and Border**  
8 **Protection worker under the influence of alcohol**

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

15 *Compliance with requirement*

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

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

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

25 *Return to duties*

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

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*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

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1 **36 Alcohol screening, breath or blood test or prohibited drug test—**  
2 **certain incidents**

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

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

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

29 *Person killed or seriously injured by a firearm discharging or*  
30 *physical force*

- 31 (3) This subsection applies if:  
32 (a) all of the following apply:  
33 (i) the worker is an officer authorised to carry arms within  
34 the meaning of section 189A of the *Customs Act 1901*;
-

- 1 (ii) an incident occurs in which a person is killed or  
2 seriously injured as a result of the discharge of a firearm  
3 by the worker;
- 4 (iii) the incident occurs in the course of the worker  
5 performing his or her duties as an Immigration and  
6 Border Protection worker; or
- 7 (b) both of the following apply:
- 8 (i) an incident occurs in which a person is killed or  
9 seriously injured as a result of the application of  
10 physical force by the worker;
- 11 (ii) the incident occurs in the course of the worker  
12 performing his or her duties as an Immigration and  
13 Border Protection worker.

14 *Direction to be given as soon as practicable after the incident*

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

19 *Provision of blood or body sample while in hospital*

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

31 *Compliance with direction*

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

Section 37

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

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

8 **37 Performing duties on board a vessel**

9 If:

10 (a) an Immigration and Border Protection worker is on board a  
11 vessel throughout a period (the *onboard period*); and

12 (b) the vessel is under the command of an officer of Customs  
13 (within the meaning of the *Customs Act 1901*); and

14 (c) at any time during the onboard period, the worker performs  
15 duties as an Immigration and Border Protection worker;

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

19 **38 Conduct of tests and provision of samples to be in accordance**  
20 **with the rules**

21 *Conduct of tests*

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

25 *Provision of samples*

26 (2) A sample of blood for the purpose of an alcohol blood test under  
27 section 35 or 36, or a body sample for the purpose of a prohibited  
28 drug test under that section, is to be provided in accordance with  
29 the rules.

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**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;
- (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.

Section 40

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1 **40 Admissibility of test results etc. in legal proceedings**

2 The following:

3 (a) a certificate or other document recording the results of a test  
4 conducted under section 34, 35 or 36 in relation to an  
5 Immigration and Border Protection worker;

6 (b) any other information, answer to a question or document  
7 relevant to conducting such a test;

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

10 (c) proceedings in relation to a decision of the Secretary to  
11 terminate the employment or engagement of the worker;

12 (d) proceedings under the *Safety, Rehabilitation and*  
13 *Compensation Act 1988*;

14 (e) proceedings in tort against the Commonwealth that are  
15 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 protected 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 protected information.

Penalty: Imprisonment for 2 years.

*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*).

Section 43

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*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, protected 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**

*Protected information that is not personal information*

- (1) An entrusted person authorised under subsection (3) may disclose protected information, or a class of protected 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.

*Protected information that is personal information*

- (2) An entrusted person authorised under subsection (3) may disclose protected information, or a class of protected information, that contains personal information, to a body or person mentioned in subsection (4) for a purpose mentioned in section 46 if:

- 1 (a) the Secretary is satisfied that the information will enable or  
 2 assist that body or person to perform or exercise any of the  
 3 functions, duties or powers of that body or person; and  
 4 (b) the Secretary is satisfied that the disclosure of the  
 5 information to that body or person is necessary for the  
 6 purpose mentioned in section 46; and  
 7 (c) if, under subsection (6), that body or person is required to  
 8 comply with a condition before the disclosure of the  
 9 information—that body or person has complied with that  
 10 condition; and  
 11 (d) in relation to a class of protected information—that body or  
 12 person is prescribed in the rules and that class of information  
 13 is prescribed in the rules as a class of information that may be  
 14 disclosed to that body or person.

15 *Authorisation*

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

18 *Bodies and persons*

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

Section 45

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1

*Conditions*

2

(6) The Secretary may, by writing, impose conditions to be complied with by a body or person:

3

4

(a) before protected information is disclosed to that body or person under subsection (1) or (2); or

5

6

(b) in relation to protected information disclosed to that body or person under subsection (1) or (2).

7

8

*Instruments are not legislative instruments*

9

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

10

11

**45 Disclosure in accordance with agreements**

12

*Protected information that is not personal information*

13

(1) An entrusted person authorised under subsection (3) may disclose protected information, or a class of protected 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:

14

15

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18

(a) the Secretary is satisfied that the information will be used in accordance with an agreement to which subsection (4) applies; and

19

20

21

(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.

22

23

24

25

*Protected information that is personal information*

26

(2) An entrusted person authorised under subsection (3) may disclose protected information, or a class of protected 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:

27

28

29

30

- 1 (a) the Secretary is satisfied that the information will be used in  
 2 accordance with an agreement to which subsection (4)  
 3 applies; and  
 4 (b) the Secretary is satisfied that the disclosure of that  
 5 information to that foreign country, agency, authority or  
 6 organisation is necessary for the purpose mentioned in  
 7 section 46; and  
 8 (c) that foreign country, agency, authority or organisation has  
 9 undertaken not to use or further disclose the information  
 10 except in accordance with the agreement or otherwise as  
 11 required or authorised by law; and  
 12 (d) in relation to a class of protected information—that foreign  
 13 country, agency, authority or organisation is prescribed in the  
 14 rules and that class of information is prescribed in the rules as  
 15 a class of information that may be disclosed to that foreign  
 16 country, agency, authority or organisation.

17 *Authorisation*

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

20 *Agreements*

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

28 *Conditions*

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

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1 *Instruments are not legislative instruments*

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

4 **46 Permitted purposes**

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

- 7 (a) the administration or enforcement of a law of the  
8 Commonwealth, a State, a Territory or a foreign country that  
9 relates to:  
10 (i) criminal law; or  
11 (ii) a law imposing a pecuniary penalty or providing for the  
12 forfeiture of property;
- 13 (b) in relation to a law referred to in paragraph (a), the  
14 prevention of crime, or the detection or analysis of criminal  
15 conduct, in respect of that law;
- 16 (c) assisting a coronial inquiry, coronial investigation or coronial  
17 inquest under a law of the Commonwealth, a State or a  
18 Territory;
- 19 (d) a purpose relating to the protection of public health, or the  
20 prevention or elimination of risks to the life or safety of an  
21 individual or a group of individuals;
- 22 (e) the collection and verification of statistics for the purposes of  
23 the *Census and Statistics Act 1905* or the performance of the  
24 functions of the Australian Bureau of Statistics as set out in  
25 section 6 of the *Australian Bureau of Statistics Act 1975*;
- 26 (f) the protection of the public revenue of the Commonwealth, a  
27 State, a Territory or a foreign country;
- 28 (g) a purpose relating to matters covered by the *Customs Act*  
29 *1901*, the *Migration Act 1958*, the *Maritime Powers Act*  
30 *2013*, the *Australian Citizenship Act 2007*, the *Immigration*  
31 *(Guardianship of Children) Act 1946* or the *Education*  
32 *Services for Overseas Students Act 2000*;
- 33 (h) any of the following:  
34 (i) assisting in establishing the identity of a particular  
35 person;

- 1 (ii) establishing whether or not a particular person is or was  
 2 an Australian citizen at a particular time or in a  
 3 particular period;
- 4 (iii) establishing whether or not a particular person is or was  
 5 the holder of a particular kind or class of visa under the  
 6 *Migration Act 1958* at a particular time or in a particular  
 7 period;
- 8 (i) a purpose relating to immigration, quarantine or border  
 9 control between Australia and a foreign country;
- 10 (j) the provision of services to persons who are not Australian  
 11 citizens;
- 12 (k) a purpose relating to the performance of functions under  
 13 section 17 of the *Australian Security Intelligence*  
 14 *Organisation Act 1979*;
- 15 (l) a purpose relating to the performance of functions under  
 16 section 6 of the *Intelligence Services Act 2001*;
- 17 (m) the administration of the National Anti-Doping Scheme  
 18 (within the meaning of the *Australian Sports Anti-Doping*  
 19 *Authority Act 2006*);
- 20 (n) the administration or enforcement of laws with respect to  
 21 commerce:
- 22 (i) between a State and another State; or  
 23 (ii) between a State and a Territory; or  
 24 (iii) between a Territory and another Territory; or  
 25 (iv) between Australia and another country; or  
 26 (v) within a State or Territory;
- 27 (o) a purpose prescribed by the rules.

28 **47 Disclosure with consent**

29 An entrusted person may disclose protected information that relates  
 30 to the affairs of a person or body if:

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

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1       **48 Disclosure to reduce threat to life or health**

2                     An entrusted person may disclose protected information if:

- 3                     (a) the entrusted person reasonably believes that the disclosure is  
4                         necessary to prevent or lessen a serious threat to the life or  
5                         health of an individual; and  
6                     (b) the disclosure is for the purposes of preventing or lessening  
7                         that threat.

8       **49 Disclosure of publicly available information**

9                     An entrusted person may disclose protected information if it has  
10                     already been lawfully made available to the public.

11       **50 Exceptions operate independently**

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

13       **51 Interaction with Privacy Act**

14                     For the purposes of the *Privacy Act 1988*:

- 15                     (a) the making of a record, in accordance with section 43, of  
16                         protected information, to the extent that the protected  
17                         information contains personal information, is taken to be a  
18                         use that is authorised by this Act; and  
19                     (b) the disclosure, in accordance with section 43, 44, 45, 47, 48  
20                         or 49, of protected information, to the extent that the  
21                         protected information contains personal information, is taken  
22                         to be a disclosure that is authorised by this Act.



1 **Part 7—Other matters**  
2

3 **52 Simplified outline of this Part**

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

16 **53 Delegation by Secretary**

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

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

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1                                    *Directions to delegates*

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

5                                    *Subdelegation by Australian Border Force Commissioner*

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

30                                    **54 Delegation by Comptroller-General of Customs**

- 31                                    (1) The Comptroller-General of Customs may, by writing, delegate  
32                                    any of his or her functions or powers under a law of the  
33                                    Commonwealth to:

- 1 (a) the Secretary; or  
2 (b) an Immigration and Border Protection worker.

3 *Directions to delegates*

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

8 *Subdelegation by Secretary*

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

25 **55 Directions by Secretary—administration and control of the**  
26 **Department**

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

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*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;
  - (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.

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1                                    *Relationship with directions under section 26*

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

4                                    *Compliance with directions*

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

7                    Note 1:    See subsection 13(4) and sections 15, 28 and 29 of the *Public Service*  
8                    *Act 1999* for the consequences of an APS employee in the Department  
9                    not complying with subsection (7) of this section.10                  Note 2:    See section 57 of this Act for the termination of a person's  
11                  engagement as a consultant or contractor, or for the arranging of a  
12                  person to cease to perform services for the Department, if the person  
13                  does not comply with subsection (7) of this section.14                                    *Directions are not legislative instruments*

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

16                                    *No limit on other powers to give directions*

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

19                                    *Self-incrimination*

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

- 24                                    (a) giving the information; or
- 
- 25                                    (b) answering the question; or
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- 26                                    (c) producing the document;

27                                    on the ground that the information, the answer to the question or  
28                                    the production of the document might tend to incriminate the  
29                                    worker or expose the worker to a penalty.

- 30                  (11) However:

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- 1 (a) the information given, the answer given or the document  
2 produced; or  
3 (b) giving the information, answering the question or producing  
4 the document;  
5 is not admissible in evidence against the worker in any  
6 proceedings.

7 (12) Subsection (11) has effect subject to section 40.

8 **56 Directions by Secretary—performance of functions or exercise of**  
9 **powers under laws of the Commonwealth**

10 (1) The Secretary may, by writing, give directions to Immigration and  
11 Border Protection workers in relation to the performance of  
12 functions, or the exercise of powers, by those workers under a law  
13 of the Commonwealth.

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

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

19 *Relationship with directions under section 27*

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

22 *Compliance with directions*

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

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

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

1                    *Directions are not legislative instruments*

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

3                    *No limit on other powers to give directions*

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

6                    **57 Termination of engagement of consultant or contractor**

- 7                    (1) If:

8                    (a) a person is covered by paragraph (e) of the definition of  
9                    ***Immigration and Border Protection worker*** in  
10                    subsection 4(1); and

11                    (b) the person fails to comply with a direction under section 26,  
12                    27, 35, 36, 55 or 56 or subsection (2) of this section or with a  
13                    requirement under subsection 34(1);

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

- 16                    (2) If:

17                    (a) a person (the ***affected person***) is covered by paragraph (f) of  
18                    the definition of ***Immigration and Border Protection worker***  
19                    in subsection 4(1); and

20                    (b) in connection with that person, paragraph (e) of that  
21                    definition covers a person (the ***consultant/contractor***); and

22                    (c) the affected person fails to comply with a direction under  
23                    section 26, 27, 35, 36, 55 or 56 or with a requirement under  
24                    subsection 34(1);

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

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

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1 **58 Rules**

- 2 (1) The Minister may, by legislative instrument, make rules  
3 prescribing matters:  
4 (a) required or permitted by this Act to be prescribed by the  
5 rules; or  
6 (b) necessary or convenient to be prescribed for carrying out or  
7 giving effect to this Act.
- 8 (2) To avoid doubt, the rules may not do the following:  
9 (a) create an offence or civil penalty;  
10 (b) provide powers of:  
11 (i) arrest or detention; or  
12 (ii) entry, search or seizure;  
13 (c) impose a tax;  
14 (d) set an amount to be appropriated from the Consolidated  
15 Revenue Fund under an appropriation in this Act;  
16 (e) amend this Act.