

The Chair
Senate Legal and Constitutional Committee

RE: Inquiry into the AusCheck Amendment Bill 2009

Civil Liberties Australia thanks the Committee for inviting submissions. We believe that the proposed legislation contains a number of issues of concern.

This Bill creates a very broad power. The use of the AusCheck legislative framework beyond Aviation and Maritime Security Identity Cards (already in existence) is not explicitly stated anywhere. This legislative instrument creates a framework whereby the government can in the future extend AusCheck to domains for 'national security' purposes.

The essential problem is that at the time this Bill is being debated, no-one knows what AusCheck will be expanded to cover. This raises the concern that expanding the AusCheck scheme to as yet unnamed domains, for broad 'national security' purposes through regulation, especially where it is incidental to executive powers of the Commonwealth, creating a very broad power. In this aspect, the Bill is not significantly dissimilar to the Bill considered by the Committee in 2007. CLA questions what *exactly* will AusCheck be used for in the future?

The use of s.8 (v) matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth is very broad and it is arguable that this provision captures matters that need not be of national security. Furthermore, the Bill requires supporting legislation, or regulations to expand the use of AusCheck.

However, were the government to utilise the regulation route, the parliament would not be given the opportunity to debate the expanded scope for AusCheck. The opportunity to debate the privacy implications of subsequent regulations would not arise. CLA recommends that for each regulatory scheme that proposes to utilise AusCheck to make background checks, a Privacy Impact Assessment should be conducted, published and be open for public debate. The Committee may consider that any regulatory provisions should be brought back before the Committee before becoming effective.

It is also of concern that the threshold for when a national security background check is appropriate and when it is not has not been established. Finally, in considering the offences under the proposed regulations, the inclusion of sedition is not advisable until reform to this law has been finalised.

Compliance depends on the public trusting that the information they provide will not be used by other agencies. In regards to the “identification verification information” provisions whereby biometric data may be collected, the Bill, Explanatory Memorandum and the AG’s Second Reading speech indicate that this data is utilised for validating the identity of persons who have similar names and birthdates, and shall not be used for verification purposes. CLA believes that the collection of biometric data should not be routine, rather only collected where necessary to identify an individual.

As such, CLA recommends that AusCheck should not hold biometric data, but rather be the conduit for transporting that data. Secondly, identification verification information must only be authorised where the collection is directly necessary (rather than directly related) for the purpose of identity verification. Public acceptance of AusCheck would be enhanced where collection of such critically private information is minimised. Compliance with the scheme will be enhanced where those submitting to biometric collection do so only where necessary.

CLA believes that the integrity of AusCheck would be enhanced by accountability mechanisms, especially where biometric data is collected and stored. CLA endorses the Australian Privacy Commissioner’s guidelines on voluntary notification of serious data security breaches.

In aggregate, CLA is concerned that AusCheck may in the future be used in situations not debated by parliament. The collection and storage of biometric information is also of concern.

We thank the committee for inviting submissions and are willing to further discuss any issues in the future.

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