

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT
INQUIRY INTO AUSCHECK BILL 2006

Senator Ludwig placed the following questions on notice at the hearing on 1 March 2007:

Consultation

1. What **consultation** has been undertaken in relation to the Bill?

The answer to the honourable senator's question is as follows:

AusCheck has engaged in an extensive consultation process with the aviation and maritime industry commencing in September 2006. That consultation has included discussion of proposed new business process requirements, and the development of a sophisticated IT system. The system will support the background checking process, assist industry in application management and system maintenance and the commencement of cost recovery.

AusCheck participates in all meetings of the Aviation Security Advisory Forum, the Maritime Security Advisory Forum, the Maritime Security Identification Card Working Group and the Regional Aviation Advisory Committee. AusCheck has also conducted an ongoing program of visits to all major industry issuing bodies who will be clients of AusCheck, distributed several newsletters and has a Quickplace providing secure access for our industry clients to technical information about the AusCheck IT system. This consultation is ongoing.

The consultation conducted thus far has informed the development of AusCheck systems and processes and, consequently, the legislative framework to support the processes set out in the AusCheck Bill.

2. Will the Federal Government **consult with industry** prior to, and during, the drafting of the regulations?

The answer to the honourable senator's question is as follows:

Yes

Breadth of provisions

3. How does the Department respond to the suggestion that the Bill include a **definition of 'background check'** that more precisely defines the *types* of information that may be gathered and assessed under the AusCheck scheme (to provide clearer scope of the operation of the scheme and to provide an additional safeguard against the possible misuse of information obtained pursuant to the scheme)?

The answer to the honourable senator's question is as follows:

Government directed that AusCheck be established as a centralised background checking service confined in the first instance to conducting background checks for Aviation and Maritime Security Identification Card schemes (ASICs and MSICs) but that in the longer term, could be used for other background checking purposes in which the Australian Government is involved and to rationalise some of the background checking functions currently within the Australian Government.

Given the need for flexibility, it would be difficult to define more precisely the types of information that may be gathered and assessed as part of a background check under the AusCheck Scheme. Clauses 5(a) to (c) describe the matters that are required for the purposes of the ASIC and MSIC background checking process. However, the content of a background check will differ according to the purpose for which it is conducted. For example, even the content of the ASIC and MSIC background checks differs. Clause 5 is intended to be a menu of possible elements of a background check which AusCheck is authorised to be involved in.

It is not possible to more precisely define these types of information without sacrificing AusCheck's flexibility and its ability to become involved in other areas where the Australian Government is involved in background checking.

4. The Australian Privacy Foundation (*Submission 5*, p. 2) notes that **spent convictions schemes** do not appear to have been taken into account in the Bill. If not, why not?

The answer to the honourable senator's question is as follows:

The Bill does not contain reference to the spent convictions scheme as provision for spent convictions is already contained in Commonwealth, state and territory legislation. Any policy requirement that deviates from the spent convictions provisions of the Commonwealth states or territories will need to be set out in legislation and passed by the portfolio with policy responsibility.

The Commonwealth *Crimes Act 1914* section 85ZM(2) defines a 'spent conviction'. Under the spent conviction scheme, a person need not disclose convictions that are spent when applying for a background check. States and territories also have legislation or established practice that prohibits disclosure of spent convictions as separately defined by the states and territories. In accordance with these provisions, the *Aviation Transport Security Regulations 2005*, regulation 6.01(a) defines a conviction as not including spent convictions for the purposes of an ASIC. A similar provision is contained within regulation 6.07B of the *Maritime Transport and Offshore Facilities Security Regulations 2003* in relation to an MSIC. Both the ASIC and MSIC regulations also permit certain criminal convictions to be exempt from the spent convictions scheme. These exemptions are set out in the *Aviation Transport Security Regulations 2005*, regulation 6.01 note 4, the *Maritime Transport and Offshore Facilities Security Regulations 2003* regulation 6.07B note 4, and Schedule 4 of the *Crimes Regulations 1990*.

5. What is the justification for the broad drafting in clauses 5(d) and 8(1)(c) of the Bill which allow for **future expansion of the AusCheck scheme by regulation**?

The answer to the honourable senator's question is as follows:

Government directed that AusCheck be established as a centralised background checking service confined in the first instance to conducting background checks for ASICs and MSICs but that in the longer term, could be used for other background checking purposes in which the Australian Government is involved and to rationalise some of the background checking functions currently within the Australian Government. The AusCheck Bill reflects this direction.

6. What is the **justification for clause 10** of the Bill? Why is it necessary? What kinds of matters is it designed to deal with?

The answer to the honourable senator's question is as follows:

As stated in relation to question 5, the AusCheck Bill reflects Government's direction that AusCheck be established as a centralised background checking service confined in the first instance to conducting background checks for ASICs and MSICs, but that in the longer term, could be used for other background checking purposes in which the Australian Government is involved and to rationalise some of the background checking functions currently within the Australian Government.

The Australian Government is currently involved in background checking in a wide range of areas including persons working in aged care facilities, vetting of Government employees for Australian Government security clearances, persons working with ammonium nitrate as well as the usual employment checks for Commonwealth public servants. There has as yet been no detailed consideration of what, if any, role AusCheck could play in these areas of background checking.

Not all of the background checking in which the Australian Government is involved is established under Commonwealth legislation. For example, the background checking conducted for the purposes of security clearances is conducted under the executive power of the Commonwealth and schemes in relation to ammonium nitrate are established under state and territory legislation. The structure of AusCheck makes it appropriate that any involvement in other background checking schemes is established by regulation. As a result, clause 10 of the Bill provides that AusCheck may establish a statutory scheme for background checking for the purposes of its involvement in such a scheme.

7. How does the Department respond to criticism that **future expansion of the AusCheck scheme to other background checks by regulation will not allow proper scrutiny and monitoring by Parliament**?

The answer to the honourable senator's question is as follows:

Background checking schemes in which the Commonwealth is involved are frequently established by regulation or other legislative instrument rather than primary legislation. For example, the ASIC and MSIC background checking schemes are established by regulations under the *Aviation Transport Security Act 2004* and the *Maritime Transport and Offshore Facilities Security Act 2003* with the content of that check and the obligation to apply for a background check being contained in

regulations. Against the background of legislation already in place to support the ASIC and MSIC background checking schemes, there is broad scope for Government to put in place legislation to support any similar initiative.

The aged care background checking scheme is established by the making of principles under the *Aged Care Act 1997*. The AusCheck Bill is consistent with these precedents.

The AusCheck Bill will in fact increase the transparency and the opportunity for scrutiny of Australian Government involvement in background checking as all AusCheck involvement in background checking will be traceable to regulations under the AusCheck Act, rather than in a range of regulations, statutory instruments and other non-legislative sources.

Regulations are subject to Parliamentary scrutiny being disallowable instruments laid before the Senate and scrutinised by the Senate Standing Committee on Regulations and Ordinances.

8. The Law Council of Australia (*Submission 6*, p. 6) argues that the scope of the Bill could be narrowed by amending the Bill to **confine AusCheck to conducting and coordinating background checking for the purposes of other Commonwealth Acts which directly authorise the screening of persons for a specified reason**. What is the Department's response to this?

The answer to the honourable senator's question is as follows:

Background checking schemes in which the Commonwealth is involved are frequently established by regulation, legislative instrument or non-legislative power rather than primary legislation. An amendment to confine AusCheck to conducting and coordinating background checks for the purposes of other Commonwealth Acts which directly authorise the screening of persons for a specified reason, would prevent AusCheck from becoming involved in a number of areas in which the Australian Government is involved in background checking.

9. The Australian Privacy Foundation (*Submission 5*, p. 3) argues that 'it is completely unacceptable for the AusCheck database to be available as a general intelligence resource for an unspecified range of agencies for...undefined purposes'. In particular, it points to the **undefined terms 'criminal intelligence' and 'security intelligence' in clause 14** and the use of AusCheck information for these broad purposes. The Law Council (*Submission 6*, p. 11) also expresses concern about the potential provision of information to a wide range of both national and international agencies under clause 14.
 - On what basis can such broad use of AusCheck information be justified?
 - Why are the terms 'criminal intelligence' and 'security intelligence' not defined in the Bill?

The answer to the honourable senator's question is as follows:

The AusCheck database can only be used for limited purposes. For this reason, a limited number of government agencies may receive information from the database for security and criminal intelligence purposes. The uses to which personal information from the database may be put are clearly set out in the AusCheck Bill subclause 14(2).

It should be noted that Australia's law enforcement and national security agencies are already empowered to acquire information under their own legislation. These organisations could more quickly acquire up-to-date personal information about specific individuals by accessing their own databases and databases specifically constructed for law enforcement purposes.

Except where permitted under existing legislation, all information supplied from the AusCheck database will be by request and information will only be supplied for an authorised purpose.

The terms 'criminal intelligence' and 'security intelligence' used in the AusCheck Bill will take their ordinary and natural meaning. There are many instances where the terms 'criminal intelligence' and 'security intelligence' are used but not defined in Australian legislation. Examples include:

Australian Crime Commission Act 2002 s7A,

Australian Passports Act 2005 s50,

Foreign Passports (Law Enforcement and Security) Act 2005 s23,

Migration Act 1958, s503B

Firearms Act (NT) s40A

Firearms Act (Tas) s29

Police Service Administration Act 1990 (Qld) Information Schedule

Sex Industry Offences Act 2005 (Tas) s17

Where such terms are defined in Australian legislation, the definitions are broad and add little to the ordinary and natural meaning. This is illustrated in Schedule 2 of the *Weapons Act 1990 (Qld)* where criminal intelligence is defined as follows:

“criminal intelligence, in relation to a person, means any information about the person's connection with or involvement in criminal activity.”

10. In its submission, CrimTrac (*Submission 3*, p. 6) notes that any **expansion of the AusCheck scheme could result in duplication of services** that CrimTrac already provides through its National Criminal History Record Check (NCHRC) process. What is the Department's response to CrimTrac's concern that this might add unnecessary **'additional layers of administration'**?

The answer to the honourable senator's question is as follows:

AusCheck centralises coordination of the various elements of background checking that are obtained from its background checking partners, including CrimTrac. AusCheck does not duplicate CrimTrac services that are available broadly to the Australian community and utilised for a range of different purposes. AusCheck merely provides a way to quickly and directly access the National Criminal History Database for the purposes of background checking schemes in which AusCheck is involved.

11. In its submission, CrimTrac (*Submission 3*, p. 7) notes that **the areas of aged care and children** (referred to by the Attorney-General in the Second Reading debate as sectors where the AusCheck scheme might be applied in the future) **do not have specific heads of power under the Constitution** (the purposes listed under clause 8(2) relate to activities for which there is a head of power in the Constitution).
 - On what basis could the expansion of the AusCheck scheme to these areas (and any others not covered by a constitutional head of power) be justified?

The answer to the honourable senator's question is as follows:

There has as yet been no detailed consideration of how AusCheck could become involved in other areas of background checking in which the Australian Government is involved. This is in accordance with the direction from Government that AusCheck be confined in the first instance to conducting background checks for ASICs and MSICs.

It is anticipated that Government will consider other background checking in which AusCheck may be involved at some point after 1 July 2007 when the ASIC and MSIC schemes are fully established.

12. The EM states that it is expected that future background checking schemes would be constructed under relevant Acts. With respect to the **right of appeal for decisions regarding any future schemes**, would the Department consider inserting a general provision in the Bill which specifically provides for appeal to the AAT?

The answer to the honourable senator's question is as follows:

Clause 18 of the Bill provides that the regulations may provide for the review of decisions under the regulations. This mechanism is used as the review requirements that are appropriate for each background checking arrangement will differ according to the particular circumstances of the arrangement. For example, both the *Aviation Transport Security Regulations 2005* and the *Maritime Transport and Offshore Facilities Security Regulations 2003* already provide a range of review rights, including review by the Administrative Appeals Tribunal. Any additional review rights provided under the AusCheck regulations will be specifically tailored to complement the existing review rights in the *Aviation Transport Security Regulations 2005* and the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

Where AusCheck provides any new background checking services, it is intended that review rights will be similarly tailored to complement the arrangements in the particular scheme that requires the background check. In this context, the Department does not consider that a general provision providing a right of review to the Administrative Appeals Tribunal would be sufficiently flexible to allow review rights to be tailored so that they are consistent with and appropriate for each scheme.

13. The Law Council of Australia (*Submission 6*, p. 11) notes that, while the Bill creates an offence for AusCheck staff who disclose information for an unlawful purpose, **once information is lawfully disclosed to another agency, the Bill does not impose any limitations on how that agency may use or disclose the information.** Why is this not the case?

The answer to the honourable senator's question is as follows:

The Bill provides for personal information from the AusCheck database to be disclosed for a very narrow band of non-background checking purposes described in clause 14(2)(b)(ii) and (iii). In effect, the purposes would restrict external access to the database to law enforcement and national security agencies. Agencies of this kind either have their own legislative sanctions for inappropriate conduct and the misuse of information or have strict internal guidelines for the secure use and disclosure of information.

The extension of the offence provisions governing the use and disclosure of information by AusCheck staff for background checking purposes would be inappropriate given the requirements of law enforcement and national security agencies. Such an extension would imply that AusCheck could determine the appropriate use of this information in law enforcement and national security contexts. As guidelines and legislative restriction that govern the use of information in these contexts are already in place, it is more appropriate to restrict the offence provisions in the AusCheck Bill to the purpose of background checking and to the persons immediately connected with this purpose.

Privacy issues

14. The Association of Australian Ports & Marine Authorities (*Submission 2*, p. 2) has raised some **privacy concerns** in relation to clause 14 of the Bill (which, amongst other things, allows AusCheck scheme personal information about an individual to be used or disclosed for the purposes of collection, correlation, analysis or dissemination of criminal intelligence or security intelligence).
 - Would the Department consider specifying in clause 14 the organisations to which information may be disclosed?

The answer to the honourable senator's question is as follows:

The organisations eligible to receive information for the purposes of collection, correlation, analysis or dissemination of criminal intelligence or security intelligence are law enforcement organisations and national security organisations. These organisations are a relatively small and easily identifiable group of organisations.

However, individually listing every law enforcement and national security organisation in Australia in the text of the Bill would cause difficulties whenever a new organisation is created or an existing organisation changes its name and administrative structure. With each occasion of this type, the AusCheck Act would need to be amended to provide for the newly created organisation.

Difficulties of this kind have been encountered as the result of the creation of AusCheck. For example, regulation 2.26(2)(b) of the *Aviation Transport Security Regulations 2005* sets out a list of organisations that an ASIC applicant must consent to sharing their personal information. This regulation was written before the creation of AusCheck and must now be amended to provide for AusCheck to receive this information.

15. The Association of Australian Ports & Marine Authorities (*Submission 2*, p. pp 2-3) also notes some concerns about the consultation process in relation to the **Privacy Impact Assessment** commissioned by AusCheck.
- Was the consultant briefed by the Department about the AusCheck legislation and its history?
 - Has the Privacy Impact Assessment been completed?
 - If so, can it be provided to the committee?
 - Will the Privacy Impact Assessment be released prior to consideration of the Bill by the Senate? If not, why not?

The answer to the honourable senator's question is as follows:

The consultant undertaking the Privacy Impact Assessment was briefed by the Department in relation to the AusCheck legislation and its history. This was included in written background briefing material provided to the consultant in December 2006 and in oral briefings provided in early February 2007.

The Privacy Impact Assessment has not yet been completed and hence cannot be provided to the committee.

It is expected that the Privacy Impact Assessment will be completed during the first half of 2007. This may or may not be before the Bill is considered by the Senate.

16. The Victorian Council for Civil Liberties (*Submission 7*, p. 2) argues that the Bill should provide for the **deletion of data from the AusCheck database after a fixed period** (for example, five years after the making of a background check all data collected for that check should be deleted). What is the Department's response to this?

The answer to the honourable senator's question is as follows:

The information on the AusCheck database will be kept and disposed of in accordance with the Department's Records Disposal Authority. The Authority has been approved by the National Archives of Australia.

The Authority is an integral part of the recordkeeping program of the agency, taking into consideration the requirements for creation, capture, maintenance and disposal of the agency's records. These requirements are based on business needs, broader organisational accountability and community expectations. The Authority takes into consideration the interests of all stakeholders, including the agency and its administrative requirements in discharging its functional responsibilities, and the criteria for RNA (Retain as National Archives) record classes, as described in the National Archives' publication, *Why Records are Kept, Directions in Appraisal*. This provides an open and accountable framework for managing recordkeeping obligations and the Department sees no need to depart from this usual arrangement.

Once AusCheck is operational, the Department will undertake an assessment of its business process, areas of risk and the records required to be created and kept by AusCheck to determine the retention requirements for all AusCheck's records.

17. The Victorian Council for Civil Liberties (*Submission 7*, p. 2) and the Law Council of Australia (*Submission 6*, p. 11) argue that the Bill should allow a person the subject of a background check to have **access to data** collected for that check, to have the ability to **challenge its accuracy**, and to apply for **deletion of data on the grounds that it is inaccurate**.

- What is the Department's response to this?
- Will persons the subject of background checks be able to access their own information through **Freedom of Information** requests?

The answer to the honourable senator's question is as follows:

The majority of information about persons the subject of background checks is submitted by the individuals themselves, either directly or through their Issuing Bodies. AusCheck also receives information from external sources; the Australian Federal Police (AFP), Australian Security Intelligence Organisation (ASIO) and Department of Immigration and Citizenship (DIAC).

The AFP The AFP provides criminal history information. In the vast majority of cases, the information will reveal that the person does not have an adverse criminal history. AusCheck anticipates that individuals with positive outcomes would not have a motivation to challenge this finding or a desire to access the information on which the finding was based. Nonetheless if the information is requested it will be supplied to the individual.

In those cases where an adverse finding appears likely, the individual will be accorded appropriate opportunity to respond to AusCheck, consistent with the requirements of natural justice. After taking into account any response from the individual, AusCheck will proceed to make a finding.

ASIO All non-adverse findings from ASIO are passed to AusCheck and then directly to the Issuing Body. AusCheck does not receive and cannot supply the information on which non-adverse ASIO findings are arrived at. The process for dealing with adverse findings is governed by section 38 of the *Australian Security Intelligence Organisation Act 1979*. Unless exceptional circumstances exist, the person is notified of the finding within 14 days and receives a copy of the assessment. The person is also informed of the process by which the accuracy of an ASIO security assessment may be challenged.

DIAC DIAC checks are conducted when individuals indicate that they are not Australian or New Zealand citizens. The final form of the DIAC advice supplied to AusCheck has not yet been determined. However, it is likely that AusCheck will receive a simple notification that the person either has or has not the necessary legal non citizen/work rights status required for an ASIC/MSIC. If individuals wish to challenge this assessment or to access the information on which it was based, they will be directed to the appropriate contact person within DIAC.

Persons the subject of background checks will be able to access their own information in accordance with the *Freedom of Information Act 1982*.

18. The Australian Privacy Foundation (*Submission 5*, p. 3) argues that the Bill should **specify retention periods or at least specify criteria for disposal of personal information** in the AusCheck database. Is it the government's intention that personal information be retained indefinitely?

The answer to the honourable senator's question is as follows:

Refer to answer to question 16.

19. The Australian Rail, Tram and Bus Industry Union (*Submission 10*, pp 6-7) expresses concern that the Bill allows the **performance of background checks by contractors** which 'increases the risk of a breakdown in the security arrangements and, inadvertently or otherwise, the leak of private information into the public domain'.
 - What is the Department's response to this?

The answer to the honourable senator's question is as follows:

It is not unusual for a Commonwealth agency to engage contractors and consultants from time to time. The definition of *AusCheck staff member* does not 'allow' this arrangement as such, but merely ensures that where such persons are engaged, they will be bound by the same confidentiality requirements as Australian Public Service employees. In particular, the definition ensures that such contractors and consultants will be covered by the offence provisions in clause 15 of the Bill. This clause provides that it is an offence to disclose information relating to the AusCheck scheme without proper authority.

Cost recovery

20. Can the Department provide the committee with any details of feedback or comments received from industry stakeholders in relation to the **AusCheck draft Cost Recovery Impact Statement** (released for comment in January 2007)?

The answer to the honourable senator's question is as follows:

AusCheck has been involved in an extensive consultation process following the release of its Draft Cost Recovery Impact Statement in January 2007. That process is due to conclude on 31 March

2007 when comments made will be considered in the process of finalising the Cost Recovery Impact Statement.

AusCheck has conducted forums for industry clients in Melbourne, Brisbane, Perth and Sydney together with individual visits to all major industry clients. A large range of oral and written comments have been provided and further submissions are expected before the conclusion of the consultation process. When the consultation is concluded, the comments will be compiled and responded to either individually or via a series of Frequently Asked Questions and Answers on the AusCheck website. This material can be made available to the Committee when the consultation period is concluded.

21. What is the Department's response to arguments that **cost recovery from industry is not appropriate** in relation to AusCheck background checks (nor in relation to anti-terrorism security measures generally)? (See, for example, Regional Aviation Association of Australia, *Submission 1*, p. 2; Shipping Australia Limited, *Submission 11*, p. 2)

The answer to the honourable senator's question is as follows:

The Committee Secretariat has asked the Department of Transport and Regional Services (DOTARS) to provide a response to this question.

22. Melbourne Airport (*Submission 4*, p. 2) argues that, if full Commonwealth funding is not available to cover fee increases for background checks under the AusCheck scheme, a **price freeze for five years on ASIC check prices** would be in the best interests of the industry. What is the Department's response to this?

The answer to the honourable senator's question is as follows:

Under the guidelines issued by Department of Finance and Administration (DOFA) that govern cost recovery, the price charged for services must recover the cost of provision of those services. AusCheck's costs are largely fixed, being primarily staff and information technology costs. As a result, unit price is heavily dependent on demand for services and will remain sensitive to changes in demand.

AusCheck is providing a new service that has not previously been provided and as a result, there is no established pattern of demand. The price provided for 2007/2008 was calculated on the basis of projected demand figures provided by industry.

In the absence of an established pattern of demand it is not possible to provide a price freeze for five years as to do so would involve under or over recovery of the cost of providing services that is inconsistent with the requirements of the DOFA guidelines.

23. How will the Federal Government ensure that the **cost of the AusCheck scheme will not be borne ultimately by employees?**

The answer to the honourable senator's question is as follows:

AusCheck provides background checking services to issuing bodies which are generally participants in the aviation and maritime industries such as airlines, airports, ports and stevedores. AusCheck will require issuing bodies to pay a price that has been calculated to cover the cost of providing these services. AusCheck plays no role in relation to how issuing bodies recover the costs of the background checking application process.

General issues

24. In the Second Reading debate, the Attorney-General stated that the Federal Government is working with industry to implement **best practice measures to manage lost, stolen or expired ASIC cards**. Can you provide the committee with details of what these measures will entail?

The answer to the honourable senator's question is as follows:

The Committee Secretariat has asked the Department of Transport and Regional Services (DOTARS) to provide a response to this question.

25. What measures are being undertaken/considered by the Federal Government to provide **more stringent testing for obtaining and continuing to hold ASICs** given the 'many vulnerabilities' identified in the current system by the Wheeler Report (see pp 44-47)?

The answer to the honourable senator's question is as follows:

The Committee Secretariat has asked DOTARS to provide a response to this question.

26. The Law Council of Australia argues (*Submission 6*, p. 8) that the Bill **does not establish minimum standards with respect to transparency, natural justice, appeal processes or periodic reporting**. What is the Department's response to this?

The answer to the honourable senator's question is as follows:

The Department does not consider that it is necessary to establish these matters by reference to explicit standards in the Bill. All legislation goes through a rigorous scrutiny process within government to ensure that it appropriately conforms with relevant administrative law and criminal law principles, including ensuring that there are appropriate appeals and that natural justice is afforded. In addition, the *Legislative Instruments Act 2003* has specifically prescribed measures to achieve high drafting standards for legislative instruments, as well as requiring rule-makers to consult before making legislative instruments that are likely to have a direct, or substantial indirect, effect on business. The *Legislative Instruments Act 2003* also provides for the Parliamentary scrutiny of legislative instruments. These requirements are ones which apply to all legislative instruments and to repeat them in every piece of legislation is unnecessary and would unduly complicate the statute book. Similarly, all areas of the Department are subject to annual reporting requirements and public accountability processes such as Senate Estimates hearings.

27. The Australian Rail, Tram and Bus Industry Union (*Submission 10*, p. 7) notes that **the role of AusCheck 'remains somewhat confused'**, referring to a recent seminar conducted by AusCheck where participants were told that AusCheck would make the final determination on eligibility for MSICs. This appears to differ from previous advice indicating that AusCheck would make a recommendation to the issuing body which would then make the final determination.

- Can you explain the precise role of AusCheck?
- Will AusCheck make the final determination on eligibility?
- Please explain how coordination of background checks will take place in practice?
- How will AusCheck communicate with all relevant agencies and issuing bodies?
- Have/will all relevant agencies (eg CrimTrac, ASIO, DIAC) be consulted/briefed on AusCheck's role?
- Have these agencies raised any concerns about implementation of the AusCheck scheme? If so, what are these concerns and how are they being addressed?

The answer to the honourable senator's question is as follows:

Can you explain the precise role of AusCheck?

AusCheck will coordinate the background checks required under the *Aviation Transport Security Regulations 2005* and the *Maritime Transport and Offshore Facilities Security Regulations 2003*. Applicants for ASICs and MSICs apply to an ASIC or MSIC Issuing Body. The *Aviation Transport Security Regulations 2005* and the *Maritime Transport and Offshore Facilities Security Regulations 2003* provide Issuing Bodies with the discretionary power to determine whether an applicant for an ASIC or MSIC can be issued with a security card. This discretion does not extend to ASIC or MSIC applicants who have been found to have an adverse criminal history or adverse security assessment. Issuing Bodies are not to issue ASICs or MSICs to persons with adverse criminal history or adverse security assessments. The criteria and assessment for adverse security findings are arrived at independently by ASIO. The criteria for adverse criminal history findings are set out in the *Aviation Transport Security Regulations 2005* and the *Maritime Transport and Offshore Facilities Security Regulations 2003* but the assessments are made by AusCheck.

Issuing Bodies apply to AusCheck for background checks to be conducted on applicants for ASICs and MSICs. AusCheck uses the information submitted by Issuing Bodies to forward requests for security assessments to ASIO, criminal history information to CrimTrac, and, if required, legal non-citizen/work rights information to DIAC. CrimTrac supplies individuals' criminal history information to the AFP who applies the Commonwealth spent convictions legislation. The AFP then forwards a criminal history certificate to AusCheck.

AusCheck compares the information on individual criminal history certificates to the disqualifying criteria set by the *Aviation Transport Security Regulations 2005* and the *Maritime Transport and Offshore Facilities Security Regulations 2003* to determine whether individuals have an adverse or non-adverse criminal history. AusCheck then informs the Issuing Body whether the individual has an adverse or non-adverse security assessment, an adverse or non-adverse criminal history, and, if required, the results of the DIAC check. The Issuing Body then, in accordance with the requirements in the *Aviation Transport Security Regulations 2005* or the *Maritime Transport and Offshore Facilities Security Regulations 2003*, determines if an individual should be issued with an ASIC or MSIC.

Will AusCheck make the final determination on eligibility?

No, the final determination on eligibility is made by the issuing body. However, AusCheck determines whether a person has an adverse criminal history based on information received from the AFP and in accordance with disqualifying criteria set in the *Aviation Transport Security Regulations 2005* and the *Maritime Transport and Offshore Facilities Security Regulations 2003*, which provide that an issuing body must not issue an ASIC or MSIC to a person with an adverse criminal history.

Please explain how coordination of background checks will take place in practice?

As described above. A computer system is being designed to automate as far as possible the process of comparing the results of the background checks with the statutory criteria set out in the *Aviation Transport Security Regulations 2005* and the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

How will AusCheck communicate with all relevant agencies and issuing bodies?

AusCheck will be introducing a new purpose built IT communication package called 'Customers in Context' prior to its launch on 1 July. Customers in Context acts as a database for storing all client contact details. The new software operates within the Electronic Document Management System environment and will record all interaction between AusCheck and stakeholders. In addition to logging and storing all electronic and paper based communiqués, the system enables notes to be made and stored on phone calls - either made or received - and subsequent follow-up actions to be logged.

It is planned for agencies and issuing bodies to be divided into subgroups using applications contained in the new software, so that outward communication from AusCheck will only occur when the information is relevant to the stakeholder. All industry specific information will be targeted within Customers in Context, so that only the correct subgroups are contacted.

AusCheck will continue posting Frequently Asked Questions (FAQs) on its website and regularly distributing newsletters.

Have/will all relevant agencies (eg CrimTrac, ASIO, DIAC) be consulted/briefed on AusCheck's role?

Two groups have been created to facilitate regular consultation with AusCheck's stakeholder agencies. The Consultative Committee is a high level group that meets approximately every three months to consider AusCheck's progress and to resolve any difficulties encountered through lower

level discussions. The Business Process Working Group meets every four to six weeks to allow the stakeholder agencies to be informed of new developments and to raise any issues of concern or mutual interest.

These formal groups are complemented by numerous bilateral meetings between AusCheck and its stakeholder agencies in which specific issues are discussed. These meetings cover issues such as IT interfacing, legislation development, legal questions, policy boundaries and various other matters relevant to the development of a new central background checking agency.

Have these agencies raised any concerns about implementation of the AusCheck scheme? If so, what are these concerns and how are they being addressed?

At the recent AusCheck Draft CRIS forums, opportunity was given for agencies and Issuing Bodies to comment and/or question AusCheck representatives on any concerns they had regarding AusCheck operations. Most questions raised were answered at the meetings by AusCheck representatives, however all comments and questions made were documented. A ten page document of questions and comments has been compiled from these meetings and is currently being used to prepare a new list of FAQs that will be published on the AusCheck website. All issuing bodies will be notified via email when this list is posted.

Several more complex questions raised at the forums were taken on-notice. These are being responded to individually.

AusCheck will continue to document and address all concerns raised.

28. Will AusCheck implement measures to overcome the potential for **'forum shopping' between jurisdictions**? (ie persons going to other jurisdictions after receiving an adverse background check in a particular jurisdiction)

The answer to the honourable senator's question is as follows:

Since the ACIC and MSIC schemes are established under Commonwealth legislation, there is no scope for forum shopping between jurisdictions. However, anecdotal evidence suggests that there may be some shopping between issuing bodies. One of the advantages of a centralised background checking agency implementing a background checking scheme supported by Commonwealth legislation is that it avoids the potential for 'forum shopping'. Regardless of which issuing body an ASIC or MSIC background check is generated from, the disqualifying criteria and process of evaluation is identical. As a result all like applications will be treated in the same way and there will be no advantage in forum shopping.

Recommendations of Joint Committee of Public Accounts and Audit

29. The Joint Committee of Public Accounts and Audit in its *Report 409, Developments in Aviation Security since the Committee's June 2004 'Report 400: Review of Aviation Security in Australia'* (tabled in December 2006), recommended that, as well as being responsible for background checks for

applicants of ASICs and MSICs, **AusCheck should also be responsible for the issue of these cards** (Recommendation 4).

- What is the Federal Government's response to this recommendation?

The answer to the honourable senator's question is as follows:

The Committee Secretariat has asked DOTARS to provide a response to this question.

30. The Joint Committee of Public Accounts and Audit's report recommended that, in determining whether to issue an applicant with an ASIC, **AusCheck should take into account the specific level of risk that exists at the airport for which the application has been made** (Recommendation 5).

- What is the Federal Government's response to this recommendation?

The answer to the honourable senator's question is as follows:

The Committee Secretariat has asked DOTARS to provide a response to this question.

31. The Joint Committee of Public Accounts and Audit's report recommended that **AusCheck should establish detailed and formal mechanisms for monitoring the return of ASICs** on the expiry or termination of a cardholder's work in aviation-related industries and provide an annual report to the Parliament on the number of non-returned identity cards (Recommendation 6).

- What is the Federal Government's response to this recommendation?

The answer to the honourable senator's question is as follows:

The Committee Secretariat has asked DOTARS to provide a response to this question.

32. The Joint Committee of Public Accounts and Audit's report recommended that **AusCheck should be required to monitor and report annually to the Attorney-General** on the adequacy of ASIO, the AFP and DIMA (now DIAC) in completing background checks for ASIC applications (Recommendation 7).

- What is the Federal Government's response to this recommendation?

The answer to the honourable senator's question is as follows:

DOTARS is currently preparing the Government Response to this report.

As a division of the Attorney-General's Department, AusCheck is required to publish information on its performance in the Attorney-General's Department Annual Report and the Portfolio Budget Statements. This information is intended to include application numbers and processing times as well as any significant issues that have arisen in the delivery of background checking services.



Australian Government
Attorney-General's Department

AusCheck

AusCheck
Cost Recovery Impact Statement
(CRIS)

April 2007



Revision History

Revision No.	Author	Date	Comments
0.1	Craig Jordan	13/11/2006	Initial draft for review by Finance.
0.2	Craig Jordan	21/11/2006	Update following review from Finance.
0.3	Craig Jordan	08/01/2007	Update following review from Finance.
0.4	Craig Jordan	11/01/2007	Update following review from GM FSG

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Overview

BACKGROUND - AUSCHECK

In December, 2005 the Australian government agreed to the establishment of a centralised government background checking coordination agency to commence operations from 1 July 2007. The organisation has been established as a separate division within the Attorney-General's Department and will be responsible for the coordination and assessment of background checks on persons requiring access to security zones in the aviation and maritime industries. An additional function of the organisation would be maintaining a comprehensive database of all Aviation Security Identification Card (ASIC) applicants and Maritime Security Identification Card (MSIC) cardholders.

Once fully operational AusCheck will:

- assess the criminal and security background of applicants for ASICs and MSICs;
- provide a recommendation to the relevant issuing body on an applicant's eligibility;
- maintain an accurate, up-to-date database of all ASIC and MSIC applicants and cardholders; and
- operate on a cost-recovery basis once the organisation is fully established.

An MSIC is required if a person needs to work unescorted or unmonitored in a maritime security zone. The MSIC scheme covers waterfront workers, seafarers on Australian regulated ships, customs brokers and shipping agents, contractors, service providers and maintenance workers, truck drivers, train operators and anyone who works onboard an offshore oil or gas facility.

An ASIC is required if a person needs to work in an airside area or a landside security zone—collectively the 'secure area'—at a security controlled airport that has regular public transport services.

The ASIC or MSIC indicates that the holder has been background-checked and that the check revealed that they are of suitable character to be in a secure area. The identity of the person seeking the card is verified, then a background check is conducted including: a criminal history check by CrimTrac, a security assessment by the Australian Security Intelligence Organisation (ASIO) and where required, an Authority to Work in Australia check by the Department of Immigration and Multicultural Affairs (DIMA).

The ASIC is valid for two years, while the MSIC is valid for five years. Upon expiry of the card—and assuming there is still a valid reason to access security designated area(s)—a full background check is again conducted of the person's proof of identity, criminal convictions, and, if necessary, authority to work in Australia. The security assessment by ASIO remains 'active' after the person obtains their initial ASIC or MSIC.



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STAKEHOLDERS

An application for an ASIC or MSIC must be processed through an 'issuing body' before being lodged with AusCheck.

ASIC and MSIC issuing bodies are authorised by the Australian Government to take applications and issue ASICs and MSICs. Issuing bodies are responsible for providing information on how to obtain and use an ASIC and MSIC, confirming an applicant's identity and producing the ASIC or MSIC. A full list of issuing bodies is available through <www.dotars.gov.au>.

The relationship that exists between AusCheck and the issuing body is a fee for service relationship which concerns the background check only. That is, AusCheck will coordinate a background check of an applicant upon receipt of an application from an issuing body. Once the background check is completed, AusCheck will provide a recommendation to the relevant issuing body on the applicant's eligibility to be issued with an ASIC or MSIC.

Australian Government Cost Recovery Policy and Guidelines

In December 2002 the Australian Government adopted a formal cost recovery policy to improve the consistency, transparency and accountability of Commonwealth cost recovery arrangements and promote the efficient allocation of resources.

These guidelines apply to all *Financial Management and Accountability Act 1997* (FMA Act) agencies and those *Commonwealth Authorities and Companies Act 1997* (CAC Act) bodies—collectively referred to as 'agencies' for the purposes of these guidelines—that have been notified of the cost recovery policy under sections 28 or 43 of the CAC Act.

While all cost recovery arrangements must comply with the cost recovery policy and these guidelines, only significant arrangements need to document compliance with the policy through a Cost Recovery Impact Statement (CRIS).

What is a significant cost recovery arrangement?

To determine whether a cost recovery arrangement is considered 'significant', both the revenue generated and the impact of cost recovery on stakeholders needs to be taken into account.

A significant cost recovery arrangement is one where:

- an agency's total cost recovery receipts equal \$5 million or more per annum—in this



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case every cost recovery arrangement within the agency is considered, in the first instance, to be significant, regardless of individual activity totals; or

- an agency's cost recovery receipts are below \$5 million per annum, but stakeholders are likely to be materially affected by the cost recovery initiative; or
- Ministers determine the cost recovery arrangement to be significant on a case-by-case basis.

A CRIS should be prepared for all significant cost recovery arrangements.

The cost recovery guidelines must be applied to review cost recovery activities,

- under an agreed schedule of reviews announced by the Australian Government; or
- whenever there is a change to the cost recovery arrangements; or
- where new cost recovery arrangements are to be introduced.

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WHAT IS COST RECOVERY?

Cost recovery is the recovery of some or all of the costs of a particular activity. Australian Government cost recovery charges fall into two broad categories:

- Fees for goods and services; and
- Cost recovery taxes (primarily levies, but also excises and customs duties).

Cost recovery is different to general taxation. Some levies or taxes are used to raise cost recovery revenues. The direct link or 'earmarking' between the revenue and the funding of a specific activity distinguishes such cost recovery taxes from general taxation.

General taxation, on the other hand, is a compulsory extraction of money by a public authority for public purposes, enforceable by law, and which is not a payment for services rendered.

WHY HAVE COST RECOVERY?

Used appropriately, cost recovery can provide an important means of improving the efficiency with which Australian Government products and services are produced and consumed.

Charges for goods and services can give an important message to users or their customers about the cost of resources involved. It may also improve equity by ensuring that those who use Australian Government products and services, or who create the need for regulation, bear the costs.

PRINCIPLES UNDERPINNING COST RECOVERY ARRANGEMENTS

Regulatory and non-regulatory agencies undertake a range of activities. Cost recovery may not be appropriate for some of these activities. For example, cost recovery may not be warranted where:

- it is not cost effective; or
- it would be inconsistent with government policy objectives; or
- it would unduly stifle competition and industry innovation (for example through 'free rider' effects).

The guidelines require the following regulatory activities to be assessed for cost recovery:



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- registration and approvals;
- issuing exclusive rights, licences and privileges;
- monitoring ongoing compliance with regulations; and
- investigation and enforcement.

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The Australian Cost Recovery Guidelines require that cost recovery arrangements be assessed against cost recovery principles contained in the Guidelines. These principles can be broadly grouped into:

- economic efficiency;
- design principles;
- operational principles;
- efficiency principles; and
- overarching principles.

ECONOMIC EFFICIENCY

The general principles relating to economic efficiency support cost recovery as an important means of improving economic efficiency, by:

- sending an important pricing messages to users or customers about the costs of resources involved;
- reducing the call on general taxation revenue and avoiding the high efficiency losses from higher taxation revenue;
- improving horizontal equity by ensuring that consumers or beneficiaries of products pay for the costs; and
- improving agency performance through transparency of costs and increased cost consciousness in both the agency and users.

DESIGN PRINCIPLES

Design principles require that cost recovery arrangements:

- do not cross-subsidise across user groups;
- be subject to the same public administration principles that apply to all government activities; and
- incorporate an appropriate level of industry consultation to help drive agency efficiency.



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OPERATIONAL PRINCIPLES

Operational principles require that:

- all cost recovery arrangements should have clear legal authority;
- cost recovery charges should be linked as closely as possible to the actual costs of activities or products;
- costs recovered should relate to specific activities, not the agency that provides them;
- targets should not be set for the level of costs recovered;
- over-recovery is inappropriate;
- outputs or activities that have 'public good' characteristics may be taxpayer funded;
- costs recovered may exclude activities undertaken for government where they are not integral or directly related to the provision of regulatory activities; and
- partial cost recovery is generally not appropriate.

EFFICIENCY PRINCIPLES

A key principle is that cost recovery should be based on 'the efficient costs' of the activity and should avoid:

- regulatory creep, where additional regulation is imposed without adequate scrutiny;
- gold plating, where unnecessarily high standards or facilities are adopted or there is simply over-regulation; and
- cost padding, where costs are artificially inflated in the knowledge that all costs can be recovered.



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Application of principles underpinning AusCheck cost recovery arrangements

The Attorney-General's Department is classified as an "Agency" under the *Financial Management and Accountability Act 1997* (FMA Act). The proposed cost recovery arrangements for AusCheck, are also considered to be a significant arrangement as the total cost recovery receipts is expected to exceed \$5 million dollars.

The Cost Recovery Guidelines distinguish between regulatory activities according to their stage in the regulatory process. They separate 'pre-market' and 'post-market' regulation. Pre-market regulatory activities involve registration and approvals or issuing exclusive rights and privileges before a product or service can be offered for sale. Post-market activities involve monitoring compliance with regulations, investigations and enforcement.

REGISTRATION AND APPROVAL ACTIVITIES

The regulatory activities for aviation and maritime security that are administered by the Attorney-General's department through AusCheck involve the following registration and approval activities:

- receiving and registering applications for ASICs and MSICs electronically from issuing bodies. ASIC and MSIC applications will automatically include the consent for a criminal records check and security assessment;
- requests for criminal records checks and security assessments will be electronically submitted to the relevant agency, namely CrimTrac, AFP, ASIO and DIMA;
- the results of criminal records checks and security assessments will be electronically transmitted to AusCheck's systems; and
- AusCheck will assess the results of the criminal record checks and security assessments and advise the issuing body that no reason exists to withhold an ASIC or MSIC on the basis of those checks or alternatively advise the issuing body that the applicant does not satisfy the statutory requirements of the issue of an ASIC or MSIC.



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The Cost Recovery Guidelines recommend that an assessment of activities be made against a set of questions that will assist in determining whether cost recovery would be appropriate.

Principle	Discussion
<p>Would cost recovery unduly stifle competition and industry innovation (for example, through 'free rider' effects)?</p>	<p>The proposed cost recovery arrangements relate to access to security zones and will not impact on innovation. The fees for processing ASICs and MSICs are applicable to all persons requiring access to security zones and are set at a single rate regardless of location or the nature of the underlying activity requiring a security card.</p> <p>The calculation of the fee ensures issuing bodies are treated equitably and does not confer competitive advantage on one issuing body over another. That is, by imposing the charge on industry for the ASICs and MSICs, this should not stifle competition in the industry's delivery of its end product.</p> <p>The cost recovery arrangements, therefore, will not impact on industry competition.</p>
<p>Would cost recovery be inconsistent with government policy objectives?</p>	<p>Cost recovery arrangements for ASICs and MSICs are Government policy and are not inconsistent with other policies.</p>
<p>Is cost recovery cost-effective and cost-efficient?</p>	<p>The design of the cost recovery process, IT system and associated financial processes enables AusCheck to accurately link the costs of its activities to the services provided to issuing bodies.</p> <p>The billing system, which will interact with the operational system, will enable AusCheck to directly identify and bill the relevant issuing body, or collect upfront payments via credit card.</p>



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ECONOMIC EFFICIENCY

Principle	Discussion
Sending important pricing messages to users or customers about the costs of resources involved	The imposition of a fee will send an important pricing signal to applicants and employers, ensuring that only persons genuinely requiring a security card will apply for one. This will discourage frivolous or vexatious demand without a genuine need.
Reducing the call on general taxation revenue and avoiding the high efficiency losses from higher taxation revenue	Expenses incurred by AusCheck will be recovered through an appropriate targeted usage charge. As such, all costs of providing the service will be fully recovered and thus there will be no need for budget funding.
Improving horizontal equity by ensuring that consumers or beneficiaries of products pay for the costs	The proposed cost recovery arrangements improve horizontal equity by ensuring the beneficiaries (issuing bodies) of AusCheck's activities pay for the costs of those activities.
Improving agency performance through transparency of costs and increased cost consciousness in both the agency and users	As part of its consultation process, industry will be given access to the detailed costings that support the end product price for an ASIC and MSIC. It is proposed that prices will be reviewed in 12 months, once reliable demand data has been captured. After the initial 12-month review, bi-annual reviews of the fees will be undertaken in consultation with industry.



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DESIGN PRINCIPLES

Principle	Discussion
Do not cross-subsidise across user groups	Separate fees have been calculated for ASICs and MSICs which have different expiry periods. In all other respects, fees are consistent across all types of activities in security zones. The fee for an ASIC or MSIC does not vary according to location, as the cost to produce an ASIC or MSIC is exactly the same regardless of location.
Be subject to the same public administration principles that apply to all government activities	AusCheck comprises a division with the Attorney-General's Department and is subject to the same public administration principles as the remainder of the department.
Involve a degree of industry consultation to help drive agency efficiency	As part of its consultation process, AusCheck will publish its CRIS on its website. In addition, a number of forums will be held in Brisbane, Sydney, Canberra, Melbourne, Adelaide and Perth which industry will be encouraged to attend and provide relevant feedback on the proposed CRIS and associated costings. It is proposed that prices will be reviewed in 12 months, once reliable demand data has been captured. After the initial 12-month review, bi-annual reviews of the fees will be undertaken in consultation with industry.



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OPERATIONAL PRINCIPLES

Principle	Discussion
All cost recovery arrangements should have clear legal authority.	The authority to recover the costs of the regulatory activity is contained in the proposed AusCheck Act and Regulations. The fees will be set by a Legislative Instrument.
Cost recovery charges should be linked as closely as possible to the actual costs of activities or products.	Cost recovery charges are directly linked to the actual costs of undertaking the regulatory activities. Refer to section 5.1 for detailed costs.
Costs recovered should relate to specific activities, not the agency that provides them.	Proposed charges have been calculated with reference to the actual activities that need to be performed to process applications.
Over-recovery is inappropriate.	Prices have been set to recover estimated costs.
Costs recovered may exclude activities undertaken for government where they are not integral or directly related to the provision of regulatory activities.	AusCheck's activities will include policy development and services to government. Specific activities include: <ul style="list-style-type: none">• policy development relating to the expansion of background checks to other industries. The proposed charges do not include the costs for the above activity or any services to government that are not integral or directly related to the regulatory activity.
Partial cost recovery is generally not appropriate.	AusCheck costs of conducting the checks will be fully cost recovered.



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Design and implementation

Charges can be collected in a variety of ways and based on different measures of costs. Agencies should choose the appropriate approach for a particular product/service by:

- linking the charge or charges as closely as possible to the activity or product to be cost recovered;
- designing a system that is cost effective to calculate, collect and enforce;
- designing a system where the compliance costs of paying the charges are not excessive;
- ensuring all aspects of the charging mechanism are consistent with the policy objectives of the agency; and
- designing a charging mechanism that is not inconsistent with other Australian Government policies.

BASIS FOR CHARGING

For the activities undertaken by AusCheck, cost recovery based on a fixed fee is the recommended basis for charging issuing bodies. The main benefit of this is that there is a direct link between the costs of the service provided to the level of the charge.

This approach will encourage transparency and efficiency in the delivery of AusCheck service.

WHAT ARE THE LEGAL REQUIREMENTS FOR THE IMPOSITION OF CHARGES?

The proposed AusCheck Act will provide for regulations that give AusCheck authority to charge a fee per application received from an issuing body. The details of charges will be set out in regulations which will also allow AusCheck to fully cost recover the costs of its regulatory activities in relation to applications received. The regulations will describe how costs are to be recovered and will authorise the Minister (the Attorney-General) to approve variations to the level of the fees. The instrument prescribing fee changes will be a legislative instrument, subject to disallowance.

AusCheck is not affected by any provisions within the various annexes of the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO), conventions to which the Australian Government is a signatory.



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Costs to be included in charges

AusCheck will initially have four products for which it will cost recover. These products are background checks for:

- ASIC - new application;
- ASIC - renewal application;
- MSIC - new application; and
- MSIC - renewal application.

ASICs will have a maximum validity period of two years and MSICs will have a maximum validity period of five years. If an applicant holds both an ASIC and MSIC, the maximum validity period for the MSIC is two years, and the applicant will only need to undergo a background check once.

The costs associated with the processing of background checks for ASICs and MSICs will consist of:

- direct costs—costs that can be directly attributed to the above products;
- indirect costs—costs that are not directly attributable to the above products. These costs refer to the ‘overhead’ costs discussed later;
- capital costs—comprise depreciation, which reflects the portions of assets consumed each period in the production of background checks for ASICs and MSICs;
- fixed costs—which are costs that do not vary with the production of background checks for ASICs and MSICs;
- variable costs—which are costs that vary with the production of background checks for ASICs and MSICs; and
- common (joint) costs - which are costs that remain unchanged as the production of background checks for ASICs and MSICs is varied. These costs are incurred if any one of the background checks for ASICs or MSICs is provided.

The proposed charges do not include the costs for any activity or service to government that are not integral or directly related to the regulatory activity.

The table below is based on feedback provided by issuing bodies as a result of a formal request to provide data. This demand level underpins the AusCheck operating costs presented in Para 5.1.



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<u>Demand</u>						
ASIC - new applications		27,000	28,000	30,000	30,000	28,000
ASIC - renewals		63,000	66,000	75,000	79,000	71,000
MSIC - new applications		12,000	11,000	12,000	12,000	11,000
MSIC - renewals		160	190	760	8,000	81,000
Total		102,160	105,190	117,760	129,000	191,000

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AUSCHECK COSTS

The table below shows the estimated costs that AusCheck will incur on an annual basis for the next five years, assuming the demand levels discussed earlier.

<u>AusCheck Operating expenses - (Scenario A)</u>					
	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
<u>Checking partner costs by</u>					
ASIO cost	\$390,000	\$405,600	\$454,272	\$472,443	\$456,245
CrimTrac cost	\$2,104,496	\$2,253,591	\$2,623,806	\$2,989,214	\$4,602,925
Total checking partner costs	\$2,494,496	\$2,659,191	\$3,078,078	\$3,461,656	\$5,059,170
<u>AusCheck labour costs</u>					
Divisional management & support	\$1,131,644	\$1,176,910	\$1,178,721	\$1,180,604	\$1,182,562
Processing function	\$1,327,122	\$1,347,309	\$1,648,414	\$1,822,295	\$2,775,890
AusCheck labour costs	\$2,458,767	\$2,524,219	\$2,827,135	\$3,002,899	\$3,958,452
<u>IT costs</u>					
Maintenance & license	\$610,925	\$634,500	\$659,018	\$684,517	\$711,035
Depreciation	\$1,101,913	\$1,161,913	\$1,171,913	\$1,181,913	\$1,191,913
IT costs	\$1,712,838	\$1,796,413	\$1,830,931	\$1,866,430	\$1,902,948
General expenses	\$272,032	\$273,948	\$290,600	\$302,058	\$352,123
Total AusCheck costs	\$6,938,133	\$7,253,771	\$8,026,744	\$8,633,043	\$11,272,694
AGD overhead	\$1,011,056	\$1,043,618	\$1,077,425	\$1,112,524	\$1,148,965
TOTAL COSTS - ALL	\$7,949,189	\$8,297,389	\$9,104,169	\$9,745,567	\$12,421,659



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CHECKING PARTNER COSTS

Checking partner cost inputs will include:

Commonwealth Agency	Price
CrimTrac	\$20.60 per check (new and renewal applications)
Australian Security Intelligence Organisation (ASIO)	\$10.00 per new application check
Attorney-General's Department—Document Verification System	No charge for 2007–08. To be reviewed in 2007–08 for inclusion from 2008–09.
Department of Immigration and Multicultural Affairs (DIMA)	No charge for 2007–08. To be reviewed in 2007–08 for possible inclusion from 2008–09.
Australian Federal Police (AFP)	No charge to AusCheck for 2007–08. AFP recover their costs from CrimTrac and these are included in the CrimTrac charges. To be reviewed in 2007–08 for possible inclusion from 2008–09.

The cost for CrimTrac recovers all costs associated with providing this service, including labour, fixed asset depreciation, overhead and other operating expenses, as well as AFP costs.

The cost for ASIO recovers all costs for dedicated labour, specific ASIO software licence fees and appropriate variable expenses.

AUSCHECK LABOUR COSTS

AusCheck labour costs are based on the current Attorney-General's Department Certified Agreement, plus appropriate allowances for on-costs.

Approximately 23 full-time-equivalent staff (FTEs) will be cost recovered as part of the total AusCheck operation. This includes 14 FTEs for processing and related



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support functions, with salary levels ranging from SES Band 1 to APS3, and nine FTEs covering functions such as costings, communications and industry liaison, strategic advice and general management.

Within the 14 FTEs, AusCheck plans to employ a number of contract/casual staff, which will assist the organisation in aligning staff availability with demand.

Labour costs have been allocated to the four products, based on total estimated annual actual hours worked for each product.

IT COSTS

IT costs include costs associated with license fees, maintenance, and depreciation. Depreciation covers the specific AusCheck IT application, associated In-Confidence secure gateway, phone systems and online billing system. Assets are depreciated on a straight line basis over the life of the asset (five years) and leasehold items are amortised over the life of the lease.

An assessment was also made of capital costs to ensure that the capital assets deployed in the various activities were reasonable for the level of service that they provided.

IT costs have been allocated to the four products based on the expected volume of each product.

GENERAL EXPENSES

General expenses include items such as travel, forums, office expenses and legal fees.

General expenses have been allocated to the four products based on the expected volume of each product.

ATTORNEY-GENERAL'S DEPARTMENT COSTS

The costing process included consideration of direct, indirect (overhead) and capital costs.



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Costs in relation to the Attorney-General's Department corporate areas, such as the Information and Knowledge Services Group (IKS), Corporate Services Group (CSG) and Financial Services Group (FSG) were based on budgeted 2006–07 costs.

Interviews were conducted with a range of senior managers of corporate areas to validate the information gathered and determine whether there were any significant variations between the historical cost information and the efficient cost of a service. No significant variations were noted.

Reference was made to the Department's actual 2005–06 costs to ensure that costs were consistent.

Only those overheads that were closely linked to a particular activity were allocated to that activity.

Overheads that were not attributable to a particular activity but integral to the provision of AusCheck services were allocated using an appropriate driver.

Specific functions within the various corporate areas were excluded from the cost allocation model. These included:

- public education and publishing services sections of the Public Affairs Branch; and
- Freedom of Information and Ministerial and Parliamentary Services sections of the Corporate Services Group.

These functions were deemed not to directly relate to regulation activity of background checking.

Departmental overhead costs have been allocated to the four products based on the volume of each product.

INFORMATION AND KNOWLEDGE SERVICES GROUP

The Information and Knowledge Services Group (IKS) assists its internal clients to use technology to enhance their productivity, manage information and communicate with others. It does this by providing appropriate, secure, reliable and cost-effective technological solutions to business problems.



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IKS facilitates the development of corporate behaviours that support the creation, exchange and utilisation of information and knowledge considered of value to the Department. It manages applications development and maintenance, local area networks and servers, telephony, office machines (such as photocopiers and faxes), data communications, IT security, client services (including a Help Desk), strategic planning and business continuity for the IT environment.

A reasonable proportion of IKS costs have been allocated to AusCheck, based on the number of personal computers (laptops and desktops) the AusCheck division has.

FINANCIAL SERVICES GROUP

The Financial Services Group (FSG) is responsible for the strategic and operational aspects of financial planning, management, record-keeping and reporting to enhance the consistency, accuracy and reliability of financial information across the Department.

Specific outputs include:

- unqualified audited financial statements and estimates provided to the Department of Finance and Administration within required timeframes;
- implementation and monitoring of an appropriate financial management framework to minimise the risk of errors and fraud.

The AusCheck budget is expected to contribute approximately 0.8% of the overall departmental and administered funds for the Attorney-General's Department.

An overhead amount has been passed-on to AusCheck for the Budgets and Financial Reporting, Financial Framework and Project Management Office sections of FSG, based on a percentage of budgets. The expected costs for operating these branches is approximately \$3,300,000. Therefore AusCheck would be allocated \$26,000.

Costs associated with the raising of purchase orders, payment of invoices and collection of monies will be allocated to AusCheck on a cost per transaction basis.



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CORPORATE SERVICES GROUP

The Corporate Services Group (CSG) provides advice and services to the portfolio Ministers and Departmental Executive and Groups. It has a number of sections which include:

Human Resources

The Human Resources Section provides expert and strategic advice in developing the Department's human resource management policies and practices, including salary administration and recruitment. Overhead charges are allocated to AusCheck on a cost per head basis.

Ministerial and Parliamentary Services

The Ministerial and Parliamentary Services Section provides parliamentary, Cabinet, legislative, Executive Council and ministerial liaison and support for the portfolio.

No overhead costs are allocated to AusCheck for these services, as they are deemed to not be integral or directly related to the provision of regulatory activity.

Corporate Governance and Coordination

The Corporate Governance and Coordination Section provides all corporate governance functions in the Department, including risk management, fraud control and business continuity arrangements. It is responsible for departmental travel matters, including general policy issues, making international flight and accommodation bookings and administrative arrangements, including the issue of official passports and visas.

The area also undertakes all general cross-departmental and cross-portfolio coordination projects, and preparation of the departmental Annual Report. Overhead charges are allocated to AusCheck on a cost per full-time equivalent (FTE).



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Freedom of Information

The Freedom of Information Section is responsible for the processing of all Freedom of Information (FOI) requests within the Department. This includes the decisions on which documents should be released and which should be withheld.

No overhead costs are allocated to AusCheck for these services, as they are deemed to not be integral or directly related to the provision of regulatory activity.

Property and Support Services

The Property and Support Services Section provides and maintains a wide range of operational and administrative services for the Department, including reception services in Robert Garran Offices, mail delivery and collection, building maintenance and access, environmental services, supply and issue of general stationery items, photocopying and associated services. It is also responsible for construction of the Department's new building, and provides expert advice and project manages the building work. Overhead charges are allocated to AusCheck on a cost per full-time equivalent (FTE).

AusCheck will be relocating to a new building in mid-2007, where it is estimated it will occupy approximately 824 square metres. Costs incurred include lease costs, outgoings and depreciation for the new building fit-out. Overhead charges are allocated to AusCheck on a cost per square-metre-occupied basis.

EXECUTIVE MANAGEMENT

Cost associated with executive management include the Secretary of the Attorney-General's Department and the Deputy Secretary for the National Security and Criminal Justice Group, of which AusCheck is a part. Overhead charges are allocated to AusCheck on a cost per full-time equivalent (FTE)

OUTLINE OF CHARGING STRUCTURE

As AusCheck is a new operating division, it is difficult to determine with certainty the accuracy of demand levels and associated cost estimates.



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As a result of this, AusCheck proposes to review its fees late in the 2007–08 financial year to ensure that it is not over- nor under-recovering.

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UNIT PRICES - ALTERNATIVE SCENARIOS

A number of alternative calculations were undertaken in order to gain a better understanding of how unit prices may vary using different expected demand levels. The table below depicts the various prices for new and renewal ASIC and MSIC applications.

Scenario A demand levels are based on feedback provided by issuing bodies following a formal request to issuing bodies to provide data. This scenario is considered the baseline scenario.

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<u>Summary of scenarios</u>					
Scenario A = unit prices based on anticipated demand levels as estimated by issuing bodies					
Scenario B = scenario A, 25% increase in demand					
Scenario C = scenario A, 15% increase in demand					
Scenario D = scenario A, 10% increase in demand					
Scenario E = scenario A, 10% decrease in demand					
Scenario F = scenario A, 15% decrease in demand					
Scenario G = scenario A, 25% decrease in demand					
<u>Scenario A unit costs</u>	2007/08	2008/09	2009/10	2010/11	2011/12
ASIC - new applications	\$84	\$85	\$84	\$83	\$73
ASIC - renewal applications	\$74	\$75	\$73	\$72	\$61
MSIC - new applications	\$90	\$91	\$90	\$88	\$77
MSIC - renewal applications	\$80	\$81	\$79	\$77	\$65
<u>Scenario B unit costs</u>	2007/08	2008/09	2009/10	2010/11	2011/12
ASIC - new applications	\$75	\$77	\$76	\$75	\$68
ASIC - renewal applications	\$65	\$66	\$65	\$64	\$56
MSIC - new applications	\$80	\$82	\$81	\$80	\$71
MSIC - renewal applications	\$70	\$72	\$71	\$69	\$60
<u>Scenario C unit costs</u>	2007/08	2008/09	2009/10	2010/11	2011/12
ASIC - new applications	\$78	\$80	\$79	\$78	\$69
ASIC - renewal applications	\$68	\$69	\$68	\$67	\$58
MSIC - new applications	\$83	\$85	\$84	\$83	\$73
MSIC - renewal applications	\$74	\$75	\$73	\$72	\$62
<u>Scenario D unit costs</u>	2007/08	2008/09	2009/10	2010/11	2011/12
ASIC - new applications	\$80	\$81	\$80	\$79	\$70
ASIC - renewal applications	\$70	\$71	\$70	\$68	\$59
MSIC - new applications	\$85	\$87	\$86	\$85	\$74
MSIC - renewal applications	\$75	\$77	\$75	\$74	\$63



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<u>Summary of scenarios</u>					
Scenario A = unit prices based on anticipated demand levels as estimated by issuing bodies					
Scenario B = scenario A, 25% increase in demand					
Scenario C = scenario A, 15% increase in demand					
Scenario D = scenario A, 10% increase in demand					
Scenario E = scenario A, 10% decrease in demand					
Scenario F = scenario A, 15% decrease in demand					
Scenario G = scenario A, 25% decrease in demand					
<u>Scenario E unit costs</u>	2007/08	2008/09	2009/10	2010/11	2011/12
ASIC - new applications	\$88	\$75	\$88	\$87	\$75
ASIC - renewal applications	\$79	\$80	\$78	\$76	\$64
MSIC - new applications	\$95	\$97	\$95	\$93	\$80
MSIC - renewal applications	\$85	\$86	\$84	\$82	\$69
<u>Scenario F unit costs</u>	2007/08	2008/09	2009/10	2010/11	2011/12
ASIC - new applications	\$91	\$93	\$91	\$89	\$77
ASIC - renewal applications	\$81	\$82	\$80	\$78	\$65
MSIC - new applications	\$98	\$100	\$98	\$95	\$82
MSIC - renewal applications	\$88	\$90	\$87	\$84	\$70
<u>Scenario G unit costs</u>	2007/08	2008/09	2009/10	2010/11	2011/12
ASIC - new applications	\$98	\$99	\$97	\$95	\$81
ASIC - renewal applications	\$88	\$89	\$87	\$84	\$69
MSIC - new applications	\$105	\$107	\$105	\$102	\$86
MSIC - renewal applications	\$95	\$97	\$94	\$91	\$75

RECOMMENDED PRICE FOR 2007–08

The recommended price for the next five years is

<u>Scenario A unit costs</u>	2007/08	2008/09	2009/10	2010/11	2011/12
ASIC - new applications	\$84	\$85	\$84	\$83	\$73
ASIC - renewal applications	\$74	\$75	\$73	\$72	\$61
MSIC - new applications	\$90	\$91	\$90	\$88	\$77
MSIC - renewal applications	\$80	\$81	\$79	\$77	\$65

The above prices are GST exclusive.



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Ongoing monitoring

MONITORING MECHANISMS

It is proposed that AusCheck will monitor cost recovery arrangements on a regular basis, by comparing costs incurred (and the subsequent fees charged) with the estimated costs to be incurred.

As required, AusCheck will publish required information in the Attorney-General's Department Annual Report and Portfolio Budget Statements.

CONSULTATION WITH STAKEHOLDERS

The consultation process will begin on 26 January 2007 with the release of the draft CRIS on the Attorney-General's web site.

A period of two months will be allowed for industry to provide comments on the CRIS and to ask any questions of AusCheck or obtain additional information. Those comments will be taken into account in finalising the cost of AusCheck services.

During February 2007, AusCheck will be undertaking a series of industry discussion forums on the CRIS and related costings. The proposed dates are:

- Canberra – 7 February 2007
- Melbourne – 8 February 2007
- Sydney – 12 & 13 February 2007
- Brisbane – 14 February 2007
- Townsville – 15 February 2007
- Perth – 20, 21 & 22 February 2007
- Adelaide – 23 February 2007



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Certification

This Cost Recovery Impact Statement was certified by the Secretary of the Attorney-General's Department on April 2007.

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