



Migration Legislation Amendment (Information and Other Measures) Act 2007

No. 63, 2007

**An Act to amend the law relating to migration,
fisheries and the environment, and for related
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 63, 2007

**An Act to amend the law relating to migration,
fisheries and the environment, and for related
purposes**

[Assented to 15 April 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Legislation Amendment
(Information and Other Measures) Act 2007*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	15 April 2007
2. Schedule 1, Part 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 May 2007 (<i>see</i> F2007L01135)
3. Schedule 1, Part 2, Division 1	At the same time as the provision(s) covered by table item 2. However, Division 1 of Part 2 of Schedule 1 to this Act does not commence at all if Schedule 1 to the <i>Australian Citizenship (Transitional and Consequential) Act 2007</i> commences at or before that time.	1 May 2007
4. Schedule 1, items 66 and 67	Immediately before the commencement of Schedules 1 and 3 to the <i>Australian Citizenship (Transitional and Consequential) Act 2007</i> . However, items 66 and 67 of Schedule 1 to this Act do not commence at all if Schedules 1 and 3 to the <i>Australian Citizenship (Transitional and Consequential) Act 2007</i> commence at or before the time that the provision(s) covered by table item 2 commence.	1 July 2007

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
5. Schedule 1, item 68	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of Schedule 1 to the <i>Australian Citizenship (Transitional and Consequential) Act 2007</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2007 (paragraph (b) applies)
6. Schedule 1, item 69	At the same time as the provision(s) covered by table item 2. However, item 69 of Schedule 1 to this Act does not commence at all if Schedule 1 to the <i>Australian Citizenship (Transitional and Consequential) Act 2007</i> does not commence at or before that time.	Does not commence
7. Schedule 1, item 70	Immediately after the commencement of Schedule 1 to the <i>Australian Citizenship (Transitional and Consequential) Act 2007</i> . However, item 70 of Schedule 1 to this Act does not commence at all if Schedule 1 to the <i>Australian Citizenship (Transitional and Consequential) Act 2007</i> commences at or before the time the provision(s) covered by table item 2 commence.	1 July 2007
8. Schedule 1, items 71 and 72	At the same time as the provision(s) covered by table item 2.	1 May 2007
9. Schedule 2	At the same time as the provision(s) covered by table item 2.	1 May 2007
10. Schedule 3	The day on which this Act receives the Royal Assent.	15 April 2007
Note:	This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.	

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- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Personal identifiers

Part 1—Main amendments

Environment Protection and Biodiversity Conservation Act 1999

1 Paragraphs 26(3)(a) and (b) of Schedule 1

Omit “non-citizen”, substitute “person”.

2 Clause 49 of Schedule 1 (definition of *disclose*)

Repeal the definition, substitute:

disclose, in relation to identifying information that is a personal identifier provided under clause 28, includes provide unauthorised access to the personal identifier.

Note: Clause 52 deals with authorised access to identifying information.

3 Clause 49 of Schedule 1 (definition of *identifying information*)

Repeal the definition, substitute:

identifying information means the following:

- (a) any personal identifier provided under clause 28;
- (b) any meaningful identifier derived from any such personal identifier;
- (c) any record of a result of analysing any such personal identifier or any meaningful identifier derived from any such personal identifier;
- (d) any other information, derived from any such personal identifier, from any meaningful identifier derived from any such personal identifier or from any record of a kind referred to in paragraph (c), that could be used to discover a particular person’s identity or to get information about a particular person.

4 After subclause 51(1) of Schedule 1

Insert:

Schedule 1 Personal identifiers

Part 1 Main amendments

(1A) This clause does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

5 Paragraph 52(2)(g) of Schedule 1

Repeal the paragraph, substitute:

(g) the purposes of this Act;

6 After subclause 53(1) of Schedule 1

Insert:

(1A) This clause does not apply if the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

7 Subparagraph 53(2)(a)(i) of Schedule 1

Omit “non-citizen”, substitute “person”.

8 Subparagraph 53(2)(a)(ii) of Schedule 1

Omit “non-citizens”, substitute “persons”.

9 Paragraph 53(2)(d) of Schedule 1

Omit “non-citizen”, substitute “person”.

10 After paragraph 53(2)(d) of Schedule 1

Insert:

(da) is to an agency of the Commonwealth or of a State or Territory in order to verify that a person is an Australian citizen or holds a visa of a particular class; or

11 After paragraph 53(2)(e) of Schedule 1

Insert:

(ea) is reasonably necessary for the enforcement of the criminal law of the Commonwealth or of a State or Territory; or

(eb) is required by or under a law of the Commonwealth or of a State or Territory; or

12 Paragraph 53(2)(f) of Schedule 1

Omit “non-citizen”, substitute “person”.

13 Paragraph 53(2)(g) of Schedule 1

Repeal the paragraph, substitute:

(g) is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to action taken by the Department; or

14 After paragraph 53(2)(h) of Schedule 1

Insert:

(ha) is a disclosure of an audio or a video recording for the purposes of:

- (i) this Act or the regulations; and
- (ii) transcribing or translating the recording, or conducting language analysis or accent analysis of the recording; or

15 Paragraph 53(2)(i) of Schedule 1

Omit “non-citizen”, substitute “person”.

Fisheries Management Act 1991

16 Paragraphs 26(3)(a) and (b) of Schedule 1A

Omit “non-citizen”, substitute “person”.

17 Clause 49 of Schedule 1A (definition of *disclose*)

Repeal the definition, substitute:

disclose, in relation to identifying information that is a personal identifier provided under clause 28, includes provide unauthorised access to the personal identifier.

Note: Clause 52 deals with authorised access to identifying information.

18 Clause 49 of Schedule 1A (definition of *identifying information*)

Repeal the definition, substitute:

identifying information means the following:

- (a) any personal identifier provided under clause 28;
- (b) any meaningful identifier derived from any such personal identifier;
- (c) any record of a result of analysing any such personal identifier or any meaningful identifier derived from any such personal identifier;
- (d) any other information, derived from any such personal identifier, from any meaningful identifier derived from any such personal identifier or from any record of a kind referred to in paragraph (c), that could be used to discover a particular person's identity or to get information about a particular person.

19 After subclause 51(1) of Schedule 1A

Insert:

- (1A) This clause does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

20 Paragraph 52(2)(g) of Schedule 1A

Repeal the paragraph, substitute:

- (g) the purposes of this Act;

21 After subclause 53(1) of Schedule 1A

Insert:

- (1A) This clause does not apply if the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

22 Subparagraph 53(2)(a)(i) of Schedule 1A

Omit "non-citizen", substitute "person".

23 Subparagraph 53(2)(a)(ii) of Schedule 1A

Omit “non-citizens”, substitute “persons”.

24 Paragraph 53(2)(d) of Schedule 1A

Omit “non-citizen”, substitute “person”.

25 After paragraph 53(2)(d) of Schedule 1A

Insert:

- (da) is to an agency of the Commonwealth or of a State or Territory in order to verify that a person is an Australian citizen or holds a visa of a particular class; or

26 After paragraph 53(2)(e) of Schedule 1A

Insert:

- (ea) is reasonably necessary for the enforcement of the criminal law of the Commonwealth or of a State or Territory; or
- (eb) is required by or under a law of the Commonwealth or of a State or Territory; or

27 Paragraph 53(2)(f) of Schedule 1A

Omit “non-citizen”, substitute “person”.

28 Paragraph 53(2)(g) of Schedule 1A

Repeal the paragraph, substitute:

- (g) is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to action taken by the Department; or

29 After paragraph 53(2)(h) of Schedule 1A

Insert:

- (ha) is a disclosure of an audio or a video recording for the purposes of:
 - (i) this Act or the regulations; and
 - (ii) transcribing or translating the recording, or conducting language analysis or accent analysis of the recording; or

30 Paragraph 53(2)(i) of Schedule 1A

Omit “non-citizen”, substitute “person”.

Migration Act 1958

31 Paragraphs 5A(3)(a) and (b)

Omit “non-citizen”, substitute “person”.

32 Section 5B

Omit “non-citizen”, substitute “person”.

33 Section 336A (definition of *disclose*)

Repeal the definition, substitute:

disclose, in relation to identifying information that is a personal identifier provided under section 40, 46, 166, 170, 175, 188, 192 or 261AA, includes provide unauthorised access to the personal identifier.

Note: Section 336D deals with authorised access to identifying information.

34 Section 336A (definition of *identifying information*)

Repeal the definition, substitute:

identifying information means the following:

- (a) any personal identifier provided under section 40, 46, 166, 170, 175, 188, 192 or 261AA;
- (b) any meaningful identifier derived from any such personal identifier;
- (c) any record of a result of analysing any such personal identifier or any meaningful identifier derived from any such personal identifier;
- (d) any other information, derived from any such personal identifier, from any meaningful identifier derived from any such personal identifier or from any record of a kind referred to in paragraph (c), that could be used to discover a particular person’s identity or to get information about a particular person.

35 After subsection 336C(1)

Insert:

- (1A) This section does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious

and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

36 After subsection 336E(1)

Insert:

(1A) This section does not apply if the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

37 Subparagraph 336E(2)(a)(i)

Omit “non-citizen”, substitute “person”.

38 Subparagraph 336E(2)(a)(ii)

Omit “non-citizens”, substitute “persons”.

39 Paragraph 336E(2)(d)

Omit “non-citizen”, substitute “person”.

40 After paragraph 336E(2)(d)

Insert:

(da) is to an agency of the Commonwealth or of a State or Territory in order to verify that a person is an Australian citizen or holds a visa of a particular class; or

41 After paragraph 336E(2)(e)

Insert:

(ea) is reasonably necessary for the enforcement of the criminal law of the Commonwealth or of a State or Territory; or
(eb) is required by or under a law of the Commonwealth or of a State or Territory; or

42 Paragraph 336E(2)(f)

Omit “non-citizen”, substitute “person”.

43 Paragraph 336E(2)(g)

Repeal the paragraph, substitute:

- (g) is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to action taken by the Department; or
- (ga) is for the purpose of facilitating or expediting the exercise of powers, or performance of functions, of the Migration Agents Registration Authority; or

44 Paragraph 336E(2)(i)

Omit “non-citizen”, substitute “person”.

Torres Strait Fisheries Act 1984

45 Paragraphs 26(3)(a) and (b) of Schedule 2

Omit “non-citizen”, substitute “person”.

46 Clause 49 of Schedule 2 (definition of *disclose*)

Repeal the definition, substitute:

disclose, in relation to identifying information that is a personal identifier provided under clause 28, includes provide unauthorised access to the personal identifier.

Note: Clause 52 deals with authorised access to identifying information.

47 Clause 49 of Schedule 2 (definition of *identifying information*)

Repeal the definition, substitute:

identifying information means the following:

- (a) any personal identifier provided under clause 28;
- (b) any meaningful identifier derived from any such personal identifier;
- (c) any record of a result of analysing any such personal identifier or any meaningful identifier derived from any such personal identifier;
- (d) any other information, derived from any such personal identifier, from any meaningful identifier derived from any such personal identifier or from any record of a kind referred

to in paragraph (c), that could be used to discover a particular person's identity or to get information about a particular person.

48 After subclause 51(1) of Schedule 2

Insert:

(1A) This clause does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

49 Paragraph 52(2)(g) of Schedule 2

Repeal the paragraph, substitute:

(g) the purposes of this Act;

50 After subclause 53(1) of Schedule 2

Insert:

(1A) This clause does not apply if the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

51 Subparagraph 53(2)(a)(i) of Schedule 2

Omit "non-citizen", substitute "person".

52 Subparagraph 53(2)(a)(ii) of Schedule 2

Omit "non-citizens", substitute "persons".

53 Paragraph 53(2)(d) of Schedule 2

Omit "non-citizen", substitute "person".

54 After paragraph 53(2)(d) of Schedule 2

Insert:

- (da) is to an agency of the Commonwealth or of a State or Territory in order to verify that a person is an Australian citizen or holds a visa of a particular class; or

55 After paragraph 53(2)(e) of Schedule 2

Insert:

- (ea) is reasonably necessary for the enforcement of the criminal law of the Commonwealth or of a State or Territory; or
- (eb) is required by or under a law of the Commonwealth or of a State or Territory; or

56 Paragraph 53(2)(f) of Schedule 2

Omit “non-citizen”, substitute “person”.

57 Paragraph 53(2)(g) of Schedule 2

Repeal the paragraph, substitute:

- (g) is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to action taken by the Department; or

58 After paragraph 53(2)(h) of Schedule 2

Insert:

- (ha) is a disclosure of an audio or a video recording for the purposes of:
 - (i) this Act or the regulations; and
 - (ii) transcribing or translating the recording, or conducting language analysis or accent analysis of the recording; or

59 Paragraph 53(2)(i) of Schedule 2

Omit “non-citizen”, substitute “person”.

60 Transitional—Authorisations

- (1) This item applies to an authorisation that:
 - (a) is in force under any of the following provisions immediately before this item commences:
 - (i) clause 52 of Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*;

- (ii) clause 52 of Schedule 1A to the *Fisheries Management Act 1991*;
 - (iii) clause 52 of Schedule 2 to the *Torres Strait Fisheries Act 1984*; and
- (b) specifies that access to identifying information is authorised for the purpose of making decisions under that Act.
- (2) The authorisation has effect on and after that commencement as if it were an authorisation in force under that clause that specified that access to identifying information is authorised for the purposes of that Act.

61 Application

The amendments made by items 1 to 59 of this Schedule apply to access to, or disclosure of, identifying information that occurs after those items commence.

Part 2—Amendments contingent on the Australian Citizenship (Transitionals and Consequentials) Act 2007

Division 1—Amendments that commence if the Australian Citizenship (Transitionals and Consequentials) Act 2007 has not yet commenced

Migration Act 1958

62 Paragraph 336D(2)(g)

Repeal the paragraph, substitute:

- (g) the purposes of this Act or the regulations or of the *Australian Citizenship Act 1948* or the regulations made under that Act;

Note: This item does not commence at all if Schedule 1 to the *Australian Citizenship (Transitionals and Consequentials) Act 2007* commences before Part 1 of this Schedule commences.

63 After paragraph 336E(2)(h)

Insert:

- (ha) is a disclosure of an audio or a video recording for the purposes of:
 - (i) this Act or the regulations or the *Australian Citizenship Act 1948* or the regulations made under that Act; and
 - (ii) transcribing or translating the recording, or conducting language analysis or accent analysis of the recording; or

Note: This item does not commence at all if Schedule 1 to the *Australian Citizenship (Transitionals and Consequentials) Act 2007* commences before Part 1 of this Schedule commences.

64 Transitional—Authorisations

- (1) This item applies to an authorisation that:
 - (a) is in force under section 336D of the *Migration Act 1958* immediately before this item commences; and
-

- (b) specifies that access to identifying information is authorised for the purpose of making decisions under:
- (i) the *Migration Act 1958* or the regulations made under that Act; or
 - (ii) the *Australian Citizenship Act 1948* or the regulations made under that Act.

- (2) The authorisation has effect on and after that commencement as if it were an authorisation in force under that section that specified that access to identifying information is authorised for the purposes of that Act or the regulations made under that Act.

Note: This item does not commence at all if Schedule 1 to the *Australian Citizenship (Transitionals and Consequential) Act 2007* commences before Part 1 of this Schedule commences.

65 Application

The amendments made by items 62 and 63 of this Schedule apply to access to, or disclosure of, identifying information that occurs after those items commence.

Note: This item does not commence at all if Schedule 1 to the *Australian Citizenship (Transitionals and Consequential) Act 2007* commences before Part 1 of this Schedule commences.

Division 2—Other amendments contingent on the Australian Citizenship (Transitionals and Consequential) Act 2007

Australian Citizenship (Transitionals and Consequential) Act 2007

66 Item 39 of Schedule 1

Repeal the item.

Note: This item does not commence at all if Schedules 1 and 3 to the *Australian Citizenship (Transitionals and Consequential) Act 2007* commence before Part 1 of this Schedule commences.

67 Item 22 of Schedule 3

Repeal the item.

Note: This item does not commence at all if Schedules 1 and 3 to the *Australian Citizenship (Transitionals and Consequential) Act 2007* commence before Part 1 of this Schedule commences.

Migration Act 1958

68 Paragraph 336D(2)(g)

Repeal the paragraph, substitute:

- (g) the purposes of this Act or the regulations or of the *Australian Citizenship Act 2007* or the regulations made under that Act;

69 After paragraph 336E(2)(h)

Insert:

- (ha) is a disclosure of an audio or a video recording for the purposes of:
 - (i) this Act or the regulations or the *Australian Citizenship Act 2007* or the regulations made under that Act; and
 - (ii) transcribing or translating the recording, or conducting language analysis or accent analysis of the recording; or

Note: This item does not commence at all if Schedule 1 to the *Australian Citizenship (Transitionals and Consequentials) Act 2007* does not commence before Part 1 of this Schedule commences.

70 Subparagraph 336E(2)(ha)(i)

Repeal the subparagraph, substitute:

- (i) this Act or the regulations or the *Australian Citizenship Act 2007* or the regulations made under that Act; and

Note: This item does not commence at all if Schedule 1 to the *Australian Citizenship (Transitionals and Consequentials) Act 2007* commences before Part 1 of this Schedule commences.

71 Transitional—Authorisations

- (1) This item applies to an authorisation that:
 - (a) is in force under section 336D of the *Migration Act 1958* immediately before this item commences; and
 - (b) specifies that access to identifying information is authorised for the purpose of making decisions under:
 - (i) the *Migration Act 1958* or the regulations made under that Act; or
 - (ii) the *Australian Citizenship Act 1948* or the regulations made under that Act; or

(iii) the *Australian Citizenship Act 2007* or the regulations made under that Act.

- (2) The authorisation has effect on and after that commencement as if it were an authorisation in force under that section that specified that access to identifying information is authorised for the purposes of that Act or the regulations made under that Act.

72 Application

The amendment made by item 68, 69 or 70 of this Schedule applies to access to, or disclosure of, identifying information that occurs after that item commences.

Schedule 2—Authorisations relating to movement records

Migration Act 1958

1 After paragraph 488(2)(a)

Insert:

- (aa) authorise an officer, for the purpose of making a movement record available to, and for the use of:
 - (i) the person to whom the record relates; or
 - (ii) the duly appointed agent of that person; to perform one or more of those actions; or

2 Application provision

The amendment of the *Migration Act 1958* made by this Schedule applies in relation to any request made to the Department for access to a movement record:

- (a) by the person to whom the record relates; or
 - (b) by the duly appointed agent of that person;
- on or after the commencement of this Schedule.

Schedule 3—Other amendments

Migration Act 1958

1 Subsection 5(1) (paragraph (a) of the definition of *fisheries detention offence*)

Omit “100A, 101, 101A,”, substitute “100A, 100B, 101, 101A, 101AA,”.

2 Subsection 5(1) (paragraph (b) of the definition of *fisheries detention offence*)

Omit “45, 48, 49 or 51”, substitute “45, 46A, 46B, 46C, 46D, 48, 49, 49A, 51 or 51A”.

*[Minister’s second reading speech made in—
House of Representatives on 1 March 2007
Senate on 28 March 2007]*

(15/07)
