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THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIA CARD BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Health)



## EXPLANATORY MEMORANDUM

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#### GENERAL OUTLINE

The purpose of the Bill is to create a national system of identification to facilitate the administration and operation of Commonwealth laws relating to taxation, social security, medical and hospital benefits and immigration.

The Bill provides for the operation of the national system of identification by the establishment of the Australia Card Register and the issue of an Australia Card. The Health Insurance Commission will be the administering authority (the Authority) for the Australia Card program.

There is no requirement in the Bill for a person to carry a Card at all times but there are provisions which require a person to produce a Card on particular occasions.

Part II of the Bill deals with the process of issuing Australia Cards - the eligibility of persons to apply on behalf of others (prescribed representatives), notification of decisions about issue of a Card to an applicant, the form of the Card, the period of effectiveness for a Card, cancellation and renewal.

Part III provides for the Authority to establish and maintain the Australia Card Register which will contain the information relating to a person detailed in the Schedule to the Bill. This information may be amended by the Authority on its own initiative or on request from the person who is the subject of the information.

Part IV of the Bill describes the circumstances in which a Card is to be produced - in general these are specific financial transactions, employment purposes, and for the payment of Commonwealth benefits, allowances or pensions. There are penalties attaching to certain provisions in this Part.

Part V of the Bill provides for access to information on the Register (a) by a person who is the subject of the information and (b) by officials of certain Government agencies, including the Authority, for specific purposes.

The Authority is authorised in Part VI of the Bill to establish a National Births, Deaths and Marriages Register (BDM) by the Commonwealth entering agreements with the States, the Northern Territory and Norfolk Island. Those agreements are to provide the Authority with access to the existing Registers of the States so that it can check the validity of the information on the Australia Card Register, and in exchange for this access the Authority is to provide an automated Register for use by the States. Access to the BDM Register will also be provided to 3 Commonwealth agencies for specific purposes.

The Data Protection Agency is established in Part VII of the Bill, so also is the Data Protection Advisory Committee. The Agency is given review powers over decisions of the Authority and investigative powers into complaints about the Authority and certain other bodies.

Offences, other than those which relate specifically to uses of the Card and Register are enumerated in Part VIII of the Bill.

Miscellaneous provisions are in Part IX.

#### Statement of Financial Impact

The cost of the Australia Card program in 1986-87 was curtailed at \$1.7 million as a direct result of the failure of the Senate to pass this legislation last year. The full benefits of the program are not likely to be available until 1993-94 but in that year the savings on expenditure and gains to revenue are estimated to be \$877 million.

Over a ten year period from 1987-88 the benefits of the Australia Card program continue to be estimated at \$5,453 million compared with costs for the same period of \$759 million. These estimates were calculated in 1986 in preparation for first lodgement of the Australia Card Bill 1986.

There will be additional costs to the private sector from the introduction of the Australia Card particularly in relation to compliance with the taxation uses of the Card.

## PART I - PRELIMINARY

Clause 1 - Short title

Formal.

Clause 2 - Commencement

This clause provides that Part 1 is to come into operation on the day on which the Act receives the Royal Assent. The remaining sections are to come into operation on a day or days fixed by Proclamation.

Clause 3 - Objects

This clause sets out the objects of the Bill which include to facilitate administration and execution of Commonwealth laws, in particular, those relating to -

- (i) taxation;
- (ii) invalid and old-age pensions;
- (iii) social security and hospital and medical benefits;  
and
- (iv) immigration

This list reflects particular legislative heads of power provided in section 51 of the Constitution in placita 51 (ii), (xxiii) and (xxiiiA).

The second object of the Bill is to prevent the obtaining of benefits under laws referred to in paragraphs (ii) and (iii) above by persons not entitled to such benefits or the obtaining of such benefits at rates exceeding those at which particular persons are entitled to receive benefits.

Clause 4 - Interpretation

Sub-clause (1) of this clause defines the meaning of words and expressions used in the Bill. The more significant of these are

- 'Card-subject' and 'prescribed representative': the Bill recognises that there will be a number of circumstances in which a person in respect of whom a Card is issued ('the Card-subject') has his or her property or affairs managed by another person. This can occur, for example, where the proposed Card-subject is a minor, where the Card-subject is overseas and has given a power of attorney to another person or where the Card-subject is mentally or physically incapable of managing his or her own affairs. The person managing the proposed Card-subject's affairs can apply for a Card to be issued in respect of that person and will then become the Card-subject's 'prescribed representative' and the prescribed representative is entitled by clause 9 of the Bill to possession of the Card-subject's Card and use of the Card on behalf of the Card-subject.

- 'minor' is defined as a person who has not attained the age of 18 years. Clause 11 of the Bill sets out the circumstances in which an application can be made for an Australia Card by a minor. Clause 4 also defines 'eligible applicant'. Eligible applicants are persons, such as parents and guardians, who can apply to be issued with a Card on behalf of a minor where the minor is not able or does not wish to apply in his or her own right.
- 'photograph' is defined to include certain computerised images.
- 'recognised name': the Bill provides that the name of the Card-subject is to be shown on that person's Australia Card. However it is not uncommon for a person to be known by a name other than the name given to that person at birth. For example, a person may commonly use an abbreviated version of the original surname. The Bill permits a person to opt to have this commonly-used name ('recognised name') entered on that person's Australia Card. The person's name at birth (and any legal changes since then) would not appear on the Card but would be included with the recognised name in the Australia Card Register.

A recognised name is the name a person chooses to use for the purposes of the Australia Card system ie the name the person uses in the circumstances in which an Australia Card is required to be produced. Clause 17 makes provision for issue of 2 Cards where a person would use two names in these circumstances.

'signature' is defined to include certain computerised images.

'taxation law' is defined by reference to an Act of which the Commissioner of Taxation has the general administration (other than an Act prescribed in the definition of 'taxation law' in paragraph 2(b) of the Taxation Administration Act) or regulations under an Act referred to in this definition.

Sub-clause 4(2) deems a child for this Act to be a child of a man who is not the biological father of the child but who was married to a woman at the time when a medical procedure (artificial insemination or implementation of an embryo in the body of a woman (sub-clause 4(5))) was carried out on that woman, if the procedure was carried out with the man's consent or under an Act or law of a State or Territory.

Sub-clause 4(3) provides that sub-clause 4(2) applies to a purported marriage that is void as if the purported marriage were a marriage, unless at the time of the medical procedure referred to in sub-clause 4(2) neither party believed on reasonable grounds that the purported marriage was valid.

Sub-clause 4(4) deems a woman who is at a particular time a de facto spouse of a man to be married at that time to that man for the purposes of sub-clause 4(2).

Sub-clause 4(6) where a person states in an application for a Card made under sub-clause 11(5) or sub-clause 27(1) that the person is a parent of the minor the Authority is to assume that the person is the minor's parent unless it has reasonable grounds to believe otherwise.

Sub-clause 4(9) provides that a Card is taken to be issued to the person applying for the Card when it is given by the Authority into the custody of the person or sent from the custody of the Authority for delivery by certified mail to that person.

Sub-clause 4(10) provides that where an applicant under the Bill cannot provide particular information required for an approved form, but submits a notice in writing stating the reasons for not providing the information and giving other information which may be considered by the person receiving it as an adequate substitute, the application shall not be taken not to be in accordance with that form merely because of a failure to provide the first mentioned information.

#### Clause 5 - Act to bind Crown

This clause provides that the Bill binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and Norfolk Island but the Crown is not liable to be prosecuted for an offence.

#### Clause 6 - Administering Authority

The effect of this clause is to make the Health Insurance Commission the administering authority for the purposes of the Bill and to confer on the Commission functions required by the Bill to be performed by the Authority.

#### Clause 7 - Extension of Act to External Territories

This clause extends the Bill to every external Territory.

### PART II - AUSTRALIA CARD

#### Division 1 - Preliminary

#### Clause 8 - No obligation to carry Card

Sub-clause (1) of this clause provides that nothing in the Bill requires a person to carry his or her Australia Card at all times. Sub-clause (2) provides that nothing in the Bill requires a person to carry a Card at any time other than for a requirement in the Bill that the Card be produced, delivered or surrendered.

Sub-clause (3) makes clear that a person is entitled to use his or her Card voluntarily as a means of identification. Where a Card is issued to a person other than the Card-subject (ie to the prescribed representative), then, by virtue of sub-clause (4) the prescribed representative may use the Card as a means of identification of the Card-subject. Attention is also drawn to clause 167 which makes it an offence for a person to require

production of an Australia Card unless such production is authorised by the Australia Card Bill.

#### Clause 9 - Prescribed representatives

In this Bill prescribed representatives can act on behalf of persons who for some reason are unwilling or unable to manage their own affairs. Persons become prescribed representatives by applying on behalf of a minor (sub-clause 11(5)), where a person voluntarily wishes someone to act on their behalf or is in a group prescribed in regulations (sub-clause 11(6)) or where the person is guardian or trustee of someone mentally or physically incapable (sub-clause 11(7)).

Sub-clause (1) defines documents relevant to a person's application and issue of an Australia Card.

Sub-clauses (2) and (3) provide that a prescribed representative is entitled to have possession of a Card and related documents of the other person. Where there are two prescribed representatives as may occur with minors, both are jointly entitled to such possession.

Sub-clause (4) enables the prescribed representative to act on behalf of the Card-subject in all matters to do with the Australia Card.

However sub-clause (5) clarifies that a person who has a prescribed representative acting on his or her behalf can at any time apply to have a Card issued directly to that person. This is of particular relevance to minors who may wish to exercise their right to apply for a Card.

Sub-clause (6) is a procedural provision ensuring that all references to the Card-subject in the Bill are treated as references to the prescribed representative. An exception is in relation to offences where a person may not be liable for an offence committed by the prescribed representative.

A person ceases to be a prescribed representative in the circumstances set out in sub-clause (7) of this clause. These are:

- a) where the person notifies the Authority that he or she has withdrawn from being a prescribed representative;
- b) where an Australia Card is issued to the Card-subject in his or her own right or to another person (ie a new Card is issued to a new prescribed representative). However, a prescribed representative of a minor may not cease to be a prescribed representative in relation to that minor merely because the minor acquired an additional prescribed representative which could be done by action taken under clause 27;
- c) where the Card-subject is a minor and the prescribed representative ceases to be a person who would be eligible to apply for a Card in respect of that minor. A person can cease to be so eligible to apply under sub-clause 11(5) in a number of instances. For



example, for a person who is not a parent or guardian, the minor may no longer be living with and being cared for by that person, or the minor may reach an age where he or she applies for and is issued a Card in his or her own right;

- d) where the Card-subject is a minor, has two prescribed representatives and a court orders that one of these representatives is entitled to sole possession of the minor's Australia Card, then the other prescribed representative will cease to be a prescribed representative.

Where a person ceases to be a prescribed representative then, unless a new Australia Card has already been issued, the existing Card will still have endorsed on it the name and Australia Card number of the former prescribed representative. When this occurs the Authority can either cancel the Card (under clause 19) and issue a new Card with the correct information on it, or an application can be made under clause 26 to have the name of the former prescribed representative removed from the Australia Card Register and a new Card issued.

Sub-clauses (8) and (9) of this clause require a person who ceases to be a prescribed representative to deliver the Card and associated documentation to the Authority or another prescribed representative.

Sub-clause (10) makes clear that being a prescribed representative under the Bill does not confer any extra rights or powers or impose extra duties or obligations on a person except those conferred or imposed by the Bill.

## Division 2 - Issue of Australia Card

### Clause 10 - Eligibility for Card

This clause provides that the persons eligible for issue or renewal of a Card are Australian citizens, holders of entry permits under the Migration Act (whether those permits are for permanent or temporary entry) persons to whom sub-section 8(1) of the Migration Act applies, [sub-section 8(1) of the Migration Act describes those persons who are exempt from the requirements under that Act to obtain entry permits and Norfolk Island residents and entry permit holders within the meaning of the Immigration Act of Norfolk Island.

### Clause 11 - Application for Card

Clause 11 sets out how an application for a Card is to be made and lists the circumstances in which a minor can apply for a Card in his or her own right and in which a person can apply for the issue of a Card in respect of another person.

Sub-clause (1) of this clause provides that an application for the issue of a Card should be in writing in accordance with a form approved by the Authority. The application must be delivered to the Authority or a person approved by the Authority by notice published in the Gazette. The purpose of

such an approval is to enable the Authority to authorise persons to receive applications, for example, in more remote areas of Australia or overseas, where an office of the Authority is not situated or is not conveniently situated. The person so approved will also be regarded as the issuing agency for the purposes of clause 12 of the Bill.

Sub-clause (2) limits the information that can be requested in an application to that information that can be entered in the Register which is described in Schedule 1 of the Bill and information that is directly relevant to such information.

Sub-clause (3) makes clear that any person may at any time apply for a Card in his or her own right, even if a Card in respect of that person has already been issued to another person (ie to a prescribed representative of the person). This is subject to the exception that minors cannot apply for a Card in their own right unless they meet the requirements of sub-clause (4).

Sub-clause (4) provides for the circumstances in which a minor can apply for his or her own Australia Card and sub-clause (5) provides for the circumstances in which another person can apply for a Card in respect of a minor. Where a person applies for and is issued a Card in respect of a minor, that person will be the minor's prescribed representative. Unlike any other category, a minor can have two prescribed representatives, for example, both parents. The effect of sub-clauses (4) and (5) is that an application for an Australia Card in respect of a minor may be made -

(a) where the minor is below 16 years of age

- singly by

- i) a parent,
- ii) a guardian, or
- iii) a person who ordinarily lives with and cares for the minor, or

- jointly by any two of the persons listed above.

(b) where the minor is between 16 years and 18 years of age the minor can apply for his or her own Australia Card. If the minor does not apply for an Australia Card an application can be made by any one or any two of the persons who could apply for a Card in respect of the minor if the minor were below 16 years of age. As mentioned above, sub-clause (3) makes clear that the minor can apply for his or her own Card even though a Card in respect of that minor has already been issued to a prescribed representative. In such a case if the Card is issued to the minor that prescribed representative would cease to be a prescribed representative (by operation of sub-clause 9(7)) and the Card issued to the prescribed representative would be cancelled (under clause 19).

c) if the minor can satisfy the Authority that he or she is living independently of any person, or would be entitled to a pension, benefit or allowance payable under the Social Security Act, the application may be made by the minor.

A situation where a minor is living with and being cared for by a person who is not a parent or guardian of the minor may arise, for example, where the minor is living with foster parents or relatives such as grandparents or is a ward of the state living in an orphanage or children's home.

The effect of sub-clause (6) is, when read in conjunction with sub-clause (3), to enable a person to either apply for a Card in his or her own right or for another person to apply on the first-mentioned person's behalf if the other person holds a power of attorney given by the first-mentioned person, because both the person and the other person agree voluntarily (for example, when an aged parent prefers that one of his or her children handle the parent's affairs) or because the regulations permit such an application to be made.

The purpose for including such a regulation-making power is to enable flexibility so that other situations which may arise in the future can be covered. The effect of sub-clause (3) is that even if a person falls within a class of persons declared by such regulations this will not stop the person from making an application for a Card in his or her own right.

Sub-clause (7) permits applications to be made by persons who are a trustee or guardian of the Card-subject in cases where the physical or mental incapacity of the Card-subject requires this.

Clause 12 - Provision of photograph and specimen signature and attendance for interview

Clause 12 requires the provision of a photograph and specimen signature in two instances : where a person makes an application for a Card on his or her own behalf (an 'independent application') and where a person who is a prescribed representative makes an application on behalf of another person (a 'representative application'). The definition of 'representative application' has the effect of excluding from the requirements of clause 12 applications by persons on behalf of minors. This means that where an application is made on behalf of a minor (under sub-clause 11(5)) a photograph and specimen signature do not have to be provided. In all other cases, unless the exceptions in sub-clauses (4), (8) or (15) apply, a photograph and a specimen of the usual signature of the proposed Card-subject is required (sub-clauses (2) and (3)).

Sub-clause (4) provides an exception to the requirement to provide a photograph of the Card-subject where the Authority is satisfied that the making of a photograph would cause an unreasonable amount of distress to the person or to a member of the person's family. There are a number of means by which the Authority could be so satisfied, for example, by a doctor's certificate. The reason for including a reference to a member of the person's family is to cover instances where the person is incapable of forming his or her own view on the question of distress because, for example, that person is senile or unconscious.

Sub-clause (5) provides that where an application is delivered to an issuing agency, the applicant may request the agency not to require a photograph of the Card-subject or to dispense with the requirement on the ground that compliance would cause unreasonable distress to the Card-subject or a member of the Card-subject's family. Sub-clause (6) requires the issuing agency to notify the applicant under sub-clause (5) in writing if it decides that the ground for the request was not established.

Sub-clause (7) provides for the Authority to require a photograph of a Card-subject for incorporation in a new Card where the Card-subject has been previously exempted from providing a photograph on the grounds referred to in sub-clause 12(4) but whose affliction, exempting the Card-subject from providing a photograph, is temporary.

Sub-clause (8) provides an exception to the requirement to provide a specimen of a signature of the Card-subject where the Authority is satisfied that to require the provision of such a specimen of a Card-subject suffering from a disability or illness, would make the requirement unreasonable.

Sub-clause (9) provides that where an application is delivered to an issuing agency the applicant may request the agency not to require a specimen signature of the Card-subject or to dispense with the requirement on the ground that it would be unreasonable in view of the disability or illness from which the Card-subject is suffering. Sub-clause (10) requires the issuing agency to notify the applicant under sub-clause (9) if it decides that the ground for the request was not established.

Sub-clause (11) provides for the Authority to require a specimen signature of a Card-subject for incorporation in a new Card where the Card-subject was previously exempted from providing a signature on the grounds referred to in sub-clause 12(8) but whose disability or illness, which exempted the Card-subject from providing a signature, is temporary.

The person applying for the Card is also required by sub-clause (12) to comply with a request by the issuing agency (which is defined in sub-clause(1) to include the Authority or a person approved by the Authority for the purposes of sub-paragraph 11(1)(b)(ii)) for an interview by the agency or a staff member of the agency. Such an interview could either be at an office of the Authority or, where there are particular difficulties, an official of the Authority would visit the applicant.

The effect of sub-clause (13) is that where a representative application is made, the issuing agency can decide whether it wishes to interview the person who is the proposed Card-subject as well as, or instead of, the applicant. If an interview with the proposed Card-subject is required then the issuing agency is to notify the applicant of this proposal and if the applicant does not consent or the proposed Card-subject does not comply with the request for interview, sub-clause (14) provides that the requirements of clause 12 are not met.

Sub-clause (15) is a safety-net provision to enable the Minister to declare certain classes of persons as exempt from

the requirements of clause 12 should cases arise where such exemption is necessary or desirable.

Sub-clause (16) makes clear that failure to comply with a requirement of clause 12 where a person is not excused by reason of the operation of an exemption in sub-clause (4), (8) or (15) means the Authority may reject the application.

#### Clause 13 - Requirement of further information or documents

This provision enables the Authority, where necessary, to request an applicant to provide documents or other evidence to verify a statement made in an application for a Card. In practice, the Authority will first seek to verify information given in the application and at interview by reference to data it can access from other Commonwealth organisations (clause 14) or from the National Register of Births, Deaths and Marriages (Part VI). This will reduce considerably the likelihood of the applicant having to produce documents.

Sub-clause (1) enables the Authority to serve notice on an applicant to produce further information or documents which may be reasonably required to verify the identity of the person or to enable the Authority to decide whether the person is eligible for a Card or to verify a statement made in the person's application.

Sub-clause (2) requires the Authority to include in the notice a statement of the applicant's appeal rights if not satisfied with the notice - these are a written objection to the Authority seeking reconsideration of the notice, and if dissatisfied with the Authority's reconsideration a review of that decision by the Agency.

Sub-clause (3) details the form for an objection to a notice which may be made at any time before the end of the period specified in the notice.

Sub-clause (4) requires the Authority after receiving an objection to reconsider the notice and decide either to cancel it, to cancel it and provide a new notice to the applicant, to vary the notice or to confirm the notice, and to inform the applicant of its decision.

Sub-clause (5) requires the Authority after reconsidering a notice to include in its notification to an applicant of a decision to provide, a new notice, vary a notice or confirm a notice, both the reasons for the decision and a statement of the applicant's right to have the Authority's decision reviewed by the Agency.

#### Clause 14 - Authority may obtain information from other Departments, &c.

This clause enables the Authority to obtain information from a number of specified Commonwealth agencies for the purposes of identifying persons for the purpose of the Australia Card program.

Sub-clause (1) limits the purposes for which the information can be sought to identify persons to be invited to apply for the issue of Cards, inviting persons to apply for the issue of a Card, verifying statements made in applications for the issue of Cards, or deciding whether to issue Cards to persons or for any other purpose related to the Authority's functions under the Bill.

Sub-clause (2) identifies the Commonwealth agencies involved and the scope of the information to be provided.

Sub-clause (3) enables the Minister to define in a written direction the extent of the information to be provided under this clause.

Sub-clause (4) enables the Australian Electoral Commission to arrange with the Authority for the provision of electoral information.

It should be noted that under paragraphs 88(1)(c) and (d) the Data Protection Agency can investigate whether the Authority has exceeded its entitlement under this clause.

#### Clause 15 - Issue of Card

This clause outlines the circumstances in which a Card shall be issued. Where the Authority is satisfied that an application has been made in accordance with the Bill, that the person is eligible for a Card, that the identity of the person is the true identity and that the person has complied with any clause 13 notice for further documents or information, it will issue a Card to the person. Otherwise the Authority will decide not to issue a Card to the person (sub-clause (1)).

Sub-clause (2) prevents the issue of a Card to a person other than the proposed Card-subject unless and until any application by the Card-subject on his or her own behalf has been refused by the Authority. The effect of this provision is to enhance the interests of the Card-subject in the situation where there are competing applications.

Sub-clause (3) prevents the Authority from issuing a Card to a person applying to be a prescribed representative unless it first gives notice to any other person who has also applied to be a prescribed representative for the same Card-subject. The provision also requires that the Authority provide that other person with an opportunity to give reasons to the Authority for not issuing a Card to the other person in respect of the Card-subject, and is satisfied that in all the circumstances it should issue a Card to the first-mentioned applicant. The effect of this sub-clause is to ensure that when there are two separate applications on behalf of one person, the unsuccessful applicant is given the opportunity to put a case in support of the application. It is particularly aimed at resolving difficulties in respect of Cards for minors where there is a family break-down.

Sub-clause (4) is identical in effect to sub-clause (3) except that it applies in circumstances where a Card has already been issued to a prescribed representative.

Sub-clause (5) requires the Authority not to issue a Card to a person who has not provided a photograph nor a specimen signature. A Card without both a photograph and a signature on it is open to fraudulent use and to protect a person from being exposed to such a risk, this provision requires a prescribed representative to act on the person's behalf.

Sub-clause (6) provides that where a court order entitles a person to sole possession of a current Card issued in respect of a minor the Authority shall not issue a Card in respect of the minor to another person.

Sub-Clause (7) provides that where a court order awards custody or guardianship of a minor to a person, the Authority shall not issue a Card in respect of the minor to another person unless that other person is by virtue of the same order or a later order awarded custody or guardianship of the minor and the first-mentioned person has agreed to the issue of the Card to the other person.

Sub-clause (8) requires the Authority not to issue a Card in respect of a Card-subject to another person unless that other person is a holder of a Card in his or her own right.

#### Clause 16 - Notice of decision in relation to issue of Card

This clause provides in sub-clause (1) that where the Authority decides not to issue a Card the Authority is required to give the applicant notice in writing of the decision, and in certain circumstances a statement of reasons for the decision. Sub-clause (2) defines those circumstances to be firstly, an application by a Card-subject for the issue of a Card which has already been issued to a prescribed representative. This provision would apply, for example, were a minor under the age of 16 to apply for a Card and the Authority considered the minor was not living independently.

The other circumstances where a statement of reasons is supplied automatically is where a person applies on behalf of another person and a Card is issued to another prescribed representative. This covers the situation addressed in sub-clause 15(3) and is the consequence of an unsuccessful application even after the consultation process before the issue of the Card.

It should be noted that under clause 114 all persons who are refused a Card can apply for a statement of the reasons for a decision.

Sub-clause (3) operates where a person is a prescribed representative and a Card is issued to someone else, either the Card-subject or another prescribed representative, and the Authority is required to notify them. For example were a minor over 16 to apply for a Card, upon issue the parents would be notified.

Sub-clause (4) enables a person who has applied for a Card and has not received one within 28 days to utilise the appeal processes of Part VII.

Clause 17 - Form of Card

Sub-clause (1) of this clause provides that the Minister may determine the form, material and dimensions of an Australia Card and shall publish that information in the Gazette. The Minister may also determine different forms of cards for visitors (sub-clause(2)).

Sub-clauses (3) - (6) describe exhaustively the information which can be included on a Card. The following information will appear on Australia Cards:

Adult's Card

name  
number  
signature  
photograph  
expiry date

Cards for children under 16 living independently and children 16-18 who apply for their own Card.

name  
number  
signature  
date of birth  
photograph  
expiry date

Child's Card issued to a prescribed representative

name  
number  
date of birth  
sex  
name and number of prescribed representative(s)  
expiry date

Card for visiting adult

name  
number  
signature  
photograph  
eligibility for Medicare benefits  
and/or eligibility to work, if applicable  
expiry date

Card for visiting child

name  
number  
date of birth  
sex  
name and number of responsible adult  
eligibility for Medicare benefits  
and/or eligibility to work, if applicable  
expiry date

Sub-clause (7) provides that certain specified information to be included on the Card may be incorporated by electronic means. Sub-clause (8) provides that a determination by the Minister under sub-clauses (1) or (2) cannot override the limitations imposed by sub-clause (7). Sub-clause (9) provides



that a person's given names may be endorsed on the person's Card in abbreviated form if they cannot be endorsed in full on the Card. Sub-clause (10) extends the meaning of 'Australia' in this section to include the external Territories.

### Division 3 - Duration of Card

#### Clause 18 - Period for which Card effective

This clause sets out the periods during which an Australia Card will be effective.

Sub-clause (1) of this clause provides for the period of effectiveness of Cards, in respect of Cards other than visitors' Cards

- . where the Card is issued during the period of 5 years after commencement of this clause, it is effective for a period of between 3 and 7 years (as the Authority fixes) from the date of commencement of the Card. (This provision enables the Authority to avoid having to renew all the Cards issued around the commencement date at the same time).
- . where the Card is issued some time after the period of 5 years after commencement of the clause, it is effective for a period of between 5-6 years (as the Authority fixes) from the date of commencement of the Card.

Sub-clause (1) is expressed as being subject to other provisions of the Division, so that, for example, the period of effectiveness of a Card is subject to action taken under clause 19 to cancel the Card.

Where a Card has been issued to a person in respect of a minor, sub-clause (2) provides that the Card will cease to be effective if

- the prescribed representative's own Card ceases to be effective;
- the minor attains the age of 18 years; or
- a Card is issued to the minor on his or her own application.

Where a Card is issued to a visitor, the Card is effective for a period of no longer duration than the temporary entry permit (sub-clause (3)). The Authority can extend this period (sub-clause (4)) if the temporary entry permit is extended.

Sub-clause (5) requires that the period of duration (including an extension of that period) of a Card issued to a visitor cannot be inconsistent with any limitation of time imposed by law on the continued presence of the person in Australia.

Sub-clause (6) provides that once a Card is issued, any other Card previously issued in respect of a Card-subject ceases to be effective. This ensures that with one exception a person can only have one Card at a time. The exception is where the Authority accepts that a person operates legitimately under two

names and in those circumstances a second Card with the other name, the same number and photograph can be issued. This exception is provided to enable for example, a married woman to use the card under her given name and her married name.

Under sub-clause (7), where a person applies for a Card in a name that is not the name on an existing Card issued in respect of that person and the Authority is not satisfied that the Card-subject uses two names, the Authority is required to notify the person that the existing Card has ceased to be effective.

Sub-clause (8) defines a 'prescribed person', as an Australian citizen or a permanent resident or a resident of Norfolk Island or a person holding a general entry permit for Norfolk Island.

#### Clause 19 - Cancellation of Card

This clause describes the circumstances in which a Card is cancelled. Sub-clause (1) requires the Authority to cancel a Card in the following circumstances:

- . the Card has been issued in a mistaken identity;
- . the Card-subject is not eligible for issue of a Card or becomes ineligible (for example by becoming a citizen of another country);
- . the person refuses to hand in a Card issued under clause 12;
- . amendment of the Register under clause 28 renders the Card invalid; or
- . the Card has been surrendered under clause 21.

Sub-clause (2) requires the Authority to notify the person of a cancellation and sub-clause (3) enables a Card to be replaced where it has been issued with a mistaken identity.

Cancellation of a Card is subject to the appeal rights in Part VII.

#### Clause 20 - Replacement of Lost Card, &c.

Sub-clause (1) enables a Card-subject to apply for the issue of a Card to replace a Card that has been either;

- (a) lost, stolen or destroyed; or
- (b) defaced so as to render the writing, printing or images on the Card illegible or unrecognisable.

The exclusion of Cards that would expire within 12 months from this provision avoids the Authority having to replace a Card which is just about to be renewed and then issue another Card soon after. In this situation the renewal provisions will apply.

Sub-clause (2) provides that regulations made under sub-clause (1) may require an application to be verified by a statutory

declaration. In sub-clause (3) the Authority is required to cancel the current Card and issue a new Card provided the Authority is satisfied the claim is true and where appropriate, the defaced Card has been surrendered. Sub-clause (4) provides that the Card issued under this clause will be effective for the remainder of the period for which the replaced Card would have been effective.

#### Clause 21 - Surrender of expired or cancelled Card

This provision describes the circumstances in which a Card is to be surrendered.

Sub-clause (1) enables the Authority to ask for a Card that has expired under clause 18 or has been cancelled under Clause 19.

Sub-clause (2) enables certain officials to require the surrender of a Card from a prohibited non-citizen under the Migration Act or from a person subject to a deportation order under that Act.

Sub-clause (3) is a similar provision to sub-clause (2) relating to Norfolk Island immigration laws.

Sub-clause (4) enables a person about to leave Australia and whose Card has ceased to be effective, has been cancelled, or will cease to be effective, to surrender the Card to one of a number of persons performing duty at a port or airport from which the person is leaving Australia (which is defined to include the external Territories under sub-clause (5)). It is an offence to refuse to comply with a requirement under this clause (sub-clause (6)).

#### Clause 22 - Renewal of Card

Sub-clause (1) of this clause provides that a person may apply for renewal of a Card 3 months before the Card will cease to be effective. Where a Card is lost, stolen, destroyed or defaced, the person to whom the Card was issued may also apply for renewal of the Card if it was due to cease to be effective within the next 12 months. If the remainder of the period of effectiveness of such a Card is greater than 12 months a person is only entitled (under clause 20) to apply for a replacement Card for the remainder of the period for which the Card to be replaced would have been effective.

An application for renewal of a Card must be in writing in accordance with a form approved by the Authority (sub-clause (2)) but otherwise the requirements imposed by clauses 11, 12, and 13 on applications, provision of photograph and signature (and exemptions to these requirements) and requirements to provide further information, apply to an application for a renewal as if it were the original application for a Card (sub-clause (3)).

Sub-clause (4) provides that a Card shall be renewed, upon application, where the person to whom the Card relates is eligible for renewal of the Card and either the information in the Register is still accurate or the applicant has provided the necessary information to correct the information in the Register. Sub-clause (5) treats the renewed Card, for the

purposes of the Bill, as if it were the original Card issued. Renewal is effected by issuing a new Card (sub-clause (6)) provided the Card to be renewed is delivered to the Authority or the Authority is satisfied it has been lost, stolen or destroyed (sub-clause (6)). Sub-clause (7) applies the provisions of clause 16 (notice of decision not to issue a Card, deemed refusal to issue a Card etc) and clause 18 (period of effectiveness of the Card) in relation to clause 22.

### PART III - AUSTRALIA CARD REGISTER

#### Clause 23 - Australia Card Register

This clause establishes an Australia Card Register to be kept by the Authority. The Australia Card Register is referred to throughout the Bill as 'the Register'.

#### Clause 24 - Manner of keeping Register

This clause provides that the Register may be kept by electronic means but apart from this, the Authority shall comply with any directions the Data Protection Agency gives in relation to the form or manner in which the Register is kept.

Attention is also drawn to clause 150 by virtue of which any failure by the Authority to comply with a direction given by the Agency is a matter which the Agency is to report to the Minister.

Sub-clause (3) of this clause requires the Authority to observe any procedures reasonably necessary to prevent unauthorised access to, or disclosure of, information on the Register and, under sub-clause (4), to comply with any guidelines issued by the Data Protection Agency given in relation to such procedures (sub-paragraph 88(1)(h)(i)).

#### Clause 25 - Entry of information in Register

Sub-clause (1) of this clause requires the Authority to enter in the Register the information specified in Schedule I for each Card-subject and for each prescribed representative of a Card-subject.

Sub-clause (2) enables the Authority to enter other specified information in the Register where this is reasonably necessary for the efficient performance by the Authority of its functions and duties under the Bill.

Sub-clause (3) requires the Authority to 'log' all access obtained to information in the Register relating to a person and record details of such access as part of the information in the Register.

Sub-clause (4) enables the Authority after consulting with the President and the Director-General of Australian Archives to destroy a record of particulars of access to information in the Register which has been entered in the Register under sub-clause (3) and has been in the Register continuously for at least 2 years. Sub-clause (5) prohibits the Authority from

entering information in relation to a person other than under sub-clauses (1), (2) or (3) thus precluding any material being entered into the Register other than the personal details described in Schedule I, the program management information under sub-clause (2) and the logging details. All that information is able to be accessed by the Card-subject under clause 56.

Sub-clause (6) extends the provisions of the Act which apply to the Register, apart from the clauses concerning amendments of the Register and exclusion of the operation of the Freedom of Information Act and the Archives Act, to all applications, requests and documents lodged with the Authority under the Bill. This extends to applications, requests and documents the protection given to access to the Register.

#### Clause 26 - Amendment of Register on application

This clause provides a person with the right to request that information about that person on the Register be altered. Sub-clauses (2) and (3) enable a Card-subject (or a person applying for a Card) to request that information in the register relating to Card-subject or to a prescribed representative of the Card-subject be amended on the ground that the information is incorrect, incomplete or misleading. The person is to specify in the application what part of the information he or she believes is incomplete, incorrect or misleading and specify what amendment is being requested (sub-clause (4)). The Authority can request further information to be provided (sub-clause (5)).

Sub-clause (6) requires the Authority to decide whether the applicant's claim is valid and, if so, alter the Register within 21 days of the application.

Within 28 days of the application, the Authority is required by sub-clause (7) to either provide a transcript of the amended information upon request, or if no amendment has been made, a notice of the decision.

Should the Authority decide to make an amendment different to the one requested by the applicant, the Authority is to give the applicant the opportunity to object to the proposed amendment (sub-clause (8)).

If after 28 days, the Authority has not amended the Register as requested, the applicant can exercise appeal rights under Part VII of the Bill (sub-clause (9)).

#### Clause 27 - Application to become a prescribed representative of a minor Card-subject

This provision covers the situation where a minor has a Card issued to a single prescribed representative and a second person being a parent, adoptive parent, guardian or someone who has responsibility for care of the minor wishes to be the second prescribed representative, against the wishes of the existing prescribed representative. It also covers the situation of minors who for some reason, for example death of parents, lose their prescribed representatives.

Sub-clause (2) precludes a request being granted if a court has determined the issue of custody to the disadvantage of the requestor or the requestor does not have a Card in his or her own right. Also the request cannot be granted if there are already two prescribed representatives on behalf of the minor. (Sub-clause (3)).

The Authority may at its discretion, under sub-clause (4), grant or refuse a request to make the requestor the second prescribed representative. (It should be noted that if the request is refused the person may make an application under clause 11 to be the sole prescribed representative on behalf of the minor and the Authority will be required to determine the matter in line with the processes of clause 15.)

Sub-clause (5) requires the Authority to appoint the requestor as prescribed representative should there be no other person as prescribed representative.

The Authority under sub-clause (6) is to notify the requestor of its decision within 14 days of its decision to grant or refuse the application, and if it grants the application the Authority is to enter information in the Register about the requestor as a prescribed representative for the Card-subject (sub-clause (7)).

#### Clause 28 - Amendment of Register by Authority

Sub-clause (1) of this clause provides that the Authority may amend information in the Register in relation to a person, without any application being made by the person, where there are reasonable grounds for believing that the information is incomplete, incorrect or misleading and it is desirable to amend it. Sub-clause (2) enables the Authority to require by notice in writing a person to whom a Card has been issued to give to the Authority such information or documents as are specified in the notice and are reasonably required by the Authority to assist it in determining whether information in the Register relating to that person is correct.

Sub-clause (3) provides that a notice given to a person under sub-clause (2) shall inform the person that if the person is dissatisfied with the notice, appeal rights are available against the notice by lodging a written objection to the notice seeking reconsideration by the Authority, and if necessary a review by the Agency of the Authority's decision. Sub-clause (4) enables the person after receiving a notice to lodge a written objection within the period specified in the notice for providing information or documents to the Authority. The objection may be against the length of the period or the information or documents specified in the notice and grounds for the objection must be provided. Sub-clause (5) requires the Authority to reconsider the notice if a person lodges a written objection and decide to cancel the notice, to cancel the notice and issue a new notice, or to vary or confirm the notice, and notify the person of its decision. Sub-clause (6) requires the Authority to give reasons for its decision and a statement of the person's right of review to the Agency against the decision if it decides to cancel the notice and issue a new notice or vary or confirm the notice.

Where the Authority amends information in the Register, it is required by sub-clause (7) to give any person who would be entitled to request amendment of the information notice of the intention to amend and a copy of the information as proposed to be amended. The right to object to the proposed amendment is provided for by clause 31.

Sub-clause (8) provides that where a notice of objection is being considered by the Authority under clause 31 or where the Data Protection Agency is considering, under clause 116, the Authority's decision to make an amendment the Authority is not to proceed with the amendment. However the Authority can enter in the Register an indication that the information is under review. Such an indication would serve as a warning to users of the Register that the particular information may be subject to change.

Clause 29 - Notification to Authority of changes  
to certain information

This clause facilitates the maintenance of the Register in an up-to-date form by allowing those organisations with access to the Register to advise the Authority of instances where information on the Register may be incorrect. This will occur for example where the Department of Social Security note the Register entry for a person has a different residential address than the one appearing on the application for a benefit. In these circumstances, this provision would enable the Authority to be advised of the potential error so action under clause 28 could occur.

Sub-clause (1) provides that a Secretary of a Department (other than the chief executive officer of the Authority) entitled to access to the Register may, on request from the Authority, enter into an arrangement with the Authority under which the Secretary would inform the Authority of changes to relevant information held by the Department.

Sub-clause (2) defines relevant information as information which relates to a person in respect of whom a Card has been issued and is information of a kind referred to in Schedule 1.

Sub-clause (3) requires a Secretary of a Department who is party to an arrangement, to comply with the arrangement while it is in force and sub-clause (4) provides that an arrangement will cease to be in effect if the Secretary of the Department ceases to be entitled to have access to the Register or the Authority cancels the arrangement.

Clause 30 - Replacement of Card where Register amended

Sub-clause (1) of this clause provides that, where the Authority has amended information in the Register and the information is endorsed or recorded on the person's Australia Card, the Authority may cancel the Card and issue a new Card. However, if the amendment was made within 12 months before the day on which the Card would cease to be effective the person to whom the Card was issued shall be deemed to have applied for the renewal of a Card.

Sub-clause (2) provides that the Bill applies to a new Card issued under sub-clause (1) as if it were a Card issued under clause 15. A Card shall not be issued under sub-clause (1) unless the Card to be cancelled is delivered to the Authority or the Authority is satisfied the Card has been lost, stolen or destroyed (sub-clause (3)). Under sub-clause (4) the Authority is to notify a person if, after amending the Register, it decides as it may under sub-clause (1) not to cancel a Card and issue a new Card to that person - this could occur if the amendment to the information endorsed on the Card is not significant. Sub-clause (5) provides that the new Card is to be effective for the remainder of the period that the cancelled Card would have been effective if it had not been cancelled.

Clause 31 - Objection to amendment of Register by Authority

Sub-clause (1) of this clause provides that, where the Authority, in accordance with clause 28, serves notice of intention to amend information in the Register in relation to a person, the person may object, in writing to the Authority to that decision. Sub-clause (2) sets out the information to be included in the objection.

Where an objection is made, the Authority is required, by sub-clause (3), to review the amendment and make a fresh decision. However if the original decision for amendment was made by a delegate of the Authority, that delegate shall not carry out the review (sub-clause (5)). If the original decision was made by the chief executive officer as delegate of the Authority, an application for review by the Authority cannot, by virtue of sub-clause (6), be made. This means that the person objecting has the option to proceed directly to the Data Protection Agency for review of the Authority's decision that the Register should be amended.

Where, after a review, the Authority makes a decision under sub-clause (3) in relation to information in the Register, notice in writing of the decision and the reasons for the decision is to be given to the person to whom the entry in the Register relates (sub-clause (7)). By virtue of clause 116 that person may apply to the Data Protection Agency for review of any decision under clause 31 and sub-clause 28(8) applies to prevent the proposed amendment being made in the Register while the Data Protection Agency is reviewing the Authority's decision or, if no review is sought, until after the expiration of the period within which an application for review can be made.

If an amendment is proposed and the person to whom the entry relates fails to lodge an objection or, after internal review, does not seek review by the Agency, the amendment will proceed. There is nothing to stop that person applying under clause 26 to have the amendment 'revised' at a later stage if he or she so wishes.



## PART IV - PRODUCTION OF AUSTRALIA CARD

## Division 1 - Preliminary

Clause 32 - Interpretation

Sub-clause (1) of this clause defines a number of words and expressions for the purposes of Part IV of the Bill which is the Part which outlines the circumstances in which an Australia Card is required to be produced.

Sub-clause (2) explains that a reference in Part IV to a person recording a matter refers to a person recording that matter in the person's records, in a prescribed manner. Sub-clause (3) provides that a reference in Part IV to giving notice to the Commissioner of Taxation refers to giving notice in such manner and form as the Commissioner approves. The Crown is exempted by sub-clause (4) from the prohibitions applying under the provisions of Part IV to acts done unless a Card is produced.

Sub-clause (5) provides that a contravention of this Part does not affect the validity or enforceability of an agreement, the validity of any act or thing, nor entitle a person to recover a payment.

Sub-clause (6) provides that where a provision under Part IV prohibits a person from doing an act or thing to another person unless that person requires a current Card of the other person, and the first-mentioned person makes such a requirement, the other person is not entitled to have that act or thing done without the requirement being complied with, but if the act or thing is done without compliance with the requirement, nothing in this sub-clause affects the validity of the act or thing, nor entitles a person to recover a payment.

Clause 33 - Eligible representatives of Bodies

Sub-clause (1) defines the persons who may be eligible representatives for the purposes of Part IV for bodies corporate and unincorporated associations.

Sub-clause (2) deems the current Card of a body to refer to the current Card of the eligible representative of the body, and a notice in writing which sets out the body's name and tax file number or reason for not having a tax file number which is signed by the eligible representative.

Sub-clauses (3) and (4) similarly deem the recording or giving notice of a body's Australia Card number to refer to the recording or giving notice of the Australia Card number of the person who is the body's eligible representative, the body's name and tax file number or reason for not having a tax file number.

Sub-clauses (5)-(9) describe the requirements for a body to notify an authority of changes to their eligible representatives. Where a person ceases to be an eligible representative of a body it must within 14 days notify the necessary authorities and require a person who is still an

eligible representative of the body to produce that person's current Card to the authority (sub-clause (6)). Under sub-clause (8) when the person who is the body's new representative produces to the authority that person's current Card the authority is to substitute the new representative's Australia Card number for the number of the former eligible representative.

#### Clause 34 - Trustees

Sub-clause (1) provides that where a provision in Part IV prohibits a person from doing an act or thing unless that person requires the production of a current Card of another person, and if the act or thing were done, the other person would be acting in the capacity of trustee (other than a bare trustee) of a trust estate, the other person shall - if such a requirement is made - give to the first-mentioned person a notice in writing signed by the other person which states the following:

- . in connection with the doing of the act or thing the other person is acting in the capacity of trustee of that trust estate;
- . if there is a tax file number for the person as trustee, or with other persons as co-trustees, of the trust estate - provides the number;
- . if there is no tax file number - the person should explain why.

Sub-clause (2) provides that if a person receives from another person a notice of the kind referred to in sub-clause (1) relating to the other person, the first-mentioned person is required to record the matters set out in the notice when recording the other person's Australia Card number. A pecuniary penalty is provided for non-compliance with this clause.

#### Clause 35 - Production of current Card

This clause provides that a reference in this Part to the production of a current Card as at a particular time means either the production by a person of a current Card of that person at a particular time or the production by a prescribed representative of a current Card both of a Card-subject and of the prescribed representative.

#### Clause 36 - Certificates of identity

The purpose of this clause is to provide an alternative to the requirements of Part IV for the production of a person's Australia Card, where it is not reasonably practicable for the person or that person's prescribed representative to attend for the purpose of producing that person's Australia Card. By virtue of sub-clause (2) a person can, therefore, meet a requirement to produce his or her Australia Card by having delivered to the person requiring the production of the Card a certificate signed by a prescribed person (as defined in

sub-clause (1)). That certificate will specify the Australia Card number of the Card-subject (and, the Australia Card number of the Card-subject's prescribed representative, if any) and the Australia Card number of the prescribed person and will include the information specified in sub-clause (2).

A prescribed person, means a person who is an Australian citizen and is included in one of the classes of persons prescribed for this clause. The intention is that the list of prescribed persons will be similar to the categories of persons who may provide certificates of identity for passport applicants.

Sub-clause (3) makes it an offence for a prescribed person to sign a certificate unless he or she has sighted the current Australia Card of the relevant Card-subject and prescribed representative, if any.

Sub-clause (4) provides that, if the regulations prescribe a form for the certificate, then all certificates must be in that form.

#### Clause 37 - Recently - arrived visitors to Australia

This clause allows visitors to Australia to provide a passport as an alternative form of identification to an Australia Card - passport is defined in clause (4) of the Bill to mean official travel document for a person without a passport.

Sub-clause (2) substitutes the visitors' name, usual residential address, residential address in Australia, and particulars of the passport as details to be recorded in circumstances where an Australia Card number would be needed. Sub-clause (3) defines a 'visitor' as a person in Australia who is neither an Australian citizen nor a permanent resident and who has been in Australia for a total of less than 6 weeks during the immediately preceding 12 months.

#### Clause 38 - Non-residents

Sub-clause (1) requires a non-resident to provide a notice in writing in substitution for an Australia Card, in circumstances where Australian residents would have to produce a current Card, which sets out the name and address of the non-resident, the fact that the person is a non-resident and includes his or her signature to the document. Sub-clause (2) requires the recording of these details in substitution for an Australia Card number in circumstances where an Australia Card number would be recorded. Under sub-clause (3) where a person furnishes to another person a notice of the kind referred to in sub-clause (1) that other person is entitled to assume that the person is a non-resident, unless and until the other person has reasonable grounds to believe that the first-mentioned person is not a non-resident. The term 'non-resident' is defined in sub-clause (4) to mean a natural person not present in Australia who is neither an Australian citizen nor a permanent resident.

Sub-clause (5) prohibits a person from furnishing a notice to another person which purports to be a notice under sub-clause (1) and includes a false or misleading statement.

Clause 39 - Application of Part in relation to  
certain external Territories

This clause enables regulations to be made to provide for the 'modification' of this Part in its application to Norfolk Island or Cocos (Keeling) Islands; 'modification' includes addition or omission of a provision or the substitution of one provision for another.

Division 2 - When Card to be produced

Clause 40 - Deposits and accounts  
with financial institutions

This provision requires production of a Card for opening or continuing accounts with banks, building societies, credit unions or similar organisations.

Sub-clause (1) provides for penalties for a financial institution which permits a person to engage in a range of specified financial transactions where they occur on or after the first relevant day (a day to be prescribed but not earlier than 1 March 1989) - without the financial institution requiring the person to produce a current Card. When the person complies with the requirement there is a penalty if the institution fails to record the person's Australia Card number for the transaction.

Sub-clause (2) also provides penalties for a financial institution which permits or gives effect to any of the transactions referred to in sub-clause (1) on or after the second relevant day (a day to be prescribed but a day to be later than 30 June 1990) in respect of moneys deposited or accounts opened before the first relevant day, - without requiring the person to produce a current Card, or when the person complies with the requirement the financial institution fails to record the person's Australia Card number for the money or the account.

The combined effect of these two sub-clauses is to allow a period in which existing arrangements need to be verified by production of a Card. It should be noted that production of a Card is not necessary for each individual transaction and need only occur once, for example upon opening a new bank account or verifying an existing one.

Sub-clause (3) provides penalties for a financial institution which pays or credits interest to a person - for money deposited or an account opened on or after the first relevant day, or on or after the second relevant day for moneys deposited or an account opened before the first relevant day, and when required by a taxation law to provide information to the Commissioner of Taxation, fails to notify the Commissioner of the person's Australia Card number; if another person was the legal owner of the deposit or the account when interest was

paid or credited and the institution recorded the Australia Card number of that person, the institution is to notify the Commissioner of that person's number.

Under sub-clause (4) a penalty is provided where a person before the second relevant day, who owns a deposit of money or maintains an account with a financial institution where the money was deposited or the account opened before the first relevant day, produces to the institution the current Card of the person in respect of that money or account, and the institution fails to record the person's Australia Card number.

Sub-clause (5) provides a penalty for financial institutions which fail after a specified time to provide information to the Commissioner of Taxation about unverified accounts. The sub-clause requires the financial institution no later than 2 months after the second relevant day to notify the Commissioner of Taxation of particulars of each deposit of money made or account opened before the first relevant day with the institution, for which as at a day specified in the notice the institution has not recorded the person's Australia Card number for the purposes of sub-clauses (2) or (4).

Sub-clause (6) distinguishes between 'depositing money' and 'including a deposit in an account' with a financial institution for the purposes of this clause.

#### Clause 41 - Investments

Sub-clause (1) defines prescribed borrower for this clause. The provision affects all persons and entities deriving interest from money invested with government or non-government bodies, companies or solicitor's trust funds.

The effect of sub-clause (2) is that a penalty is provided for a prescribed borrower who, either on or after the first relevant day or on or after the second relevant day in respect of transactions before the first relevant day, borrows money from a person and fails to require production of a current Card from the person, or when the requirement is complied with on a single occasion, the borrower fails to record the person's Australia Card number.

Sub-clause (3) provides for a penalty where a prescribed borrower, either on or after the first relevant day or on or after the second relevant day in respect of transactions before the first relevant day, pays or credits interest to a person in respect of money lent by the person, has to provide the information required by a taxation law to the Commissioner of Taxation, and fails to notify the Commissioner also of the person's Australia Card number. If another person was the legal owner of debt owed by the borrower when interest was paid or credited and the borrower recorded the other person's Australia Card number, the borrower is also to notify the Commissioner of the other person's Australia Card number.

Sub-clause (4) exempts from borrowings by a financial institution for the purposes of this clause moneys deposited with, or deposits of money in an account maintained with a financial institution by a person.

Sub-clause (5) provides that except as provided in sub-clause (4) nothing in clause 40 limits the generality of this clause.

Sub-clause (6) explains that for the purposes of sub-clauses (7) or (8) a legal practitioner accepts money for an eligible purpose only if the practitioner accepts the money for investment by the practitioner on behalf of the person or is lent under an agreement arranged by or on behalf of the practitioner.

Sub-clause (7) provides a penalty for a legal practitioner who (1) on or after the first relevant day, accepts money from a person for an eligible purpose and (2) - on or after the first relevant day or on or after the second relevant day in respect of moneys accepted for an eligible purpose before the first relevant day, repays money received by the legal practitioner which represents income arising from the investment or loan by the legal practitioner, and fails to require production of the person's current Card, or when the requirement is complied with on a single occasion the legal practitioner fails to record the person's Australia Card number for the money accepted for an eligible purpose.

Under sub-clause (8) where a legal practitioner pays or credits to a person money received by the practitioner representing income arising from the investment or loan of money accepted on or after the first relevant day, or on or after the second relevant day for an investment or loan accepted before the first relevant day, - and the legal practitioner is required under a taxation law to provide information to the Commissioner of Taxation, a penalty is provided if the practitioner fails to notify the Commissioner of the person's Australia Card number. If another person was the legal owner of the investment or loan when the practitioner paid or credited that money and the practitioner recorded the other person's Australia Card number, the legal practitioner is also to notify the Commissioner of the other person's Australia Card number.

#### Clause 42 - Income from certain trusts

In sub-clause(1) "eligible trust" is defined for this clause as an arrangement included in classes of arrangements declared by regulations to be cash management trusts, property trusts or unit trusts, and "unit" includes an interest of any kind.

Sub-clause (2) provides for a penalty for a manager of an eligible trust who, on or after the first relevant day, issues to a person a unit in an eligible trust or purchases from a person, or pay to a person income relating to, a unit in an eligible trust, or on or after the second relevant day in respect of a unit issued before the first relevant day, purchases from a person, or pays to a person income relating to a unit in the eligible trust, and fails to require production of the current Card from the person, or when the requirement is complied with on a single occasion, the manager fails to record the person's Australia Card number in respect of that unit.

In sub-clause(3) where a manager of an eligible trust pays or credits to a person income from a unit in an eligible trust,

either where the unit was issued on or after the first relevant day or on or after the second relevant day for a unit issued before the first relevant day, and because of paying or crediting the income - the manager is required under a taxation law to provide information to the Commissioner of Taxation, a penalty is provided if a manager fails to notify the Commissioner of the person's Australia Card number. If another person was the holder of the unit when the manager paid or credited the income and the manager recorded the other person's Australia Card in respect of that unit, the manager shall inform the Commissioner of the Australia Card number of the other person.

#### Clause 43 - Primary production income and rental income

Sub-clause(1) defines 'marketing authority' and 'produce agent' and 'real estate agent', for this clause.

Sub-clauses (2) and (3) provide for penalties for a marketing authority or produce agent which, on or after the first relevant day, make a payment to a person from the sale of primary produce and fail to require, the production of a current Card of the person, or when the requirement is complied with on a single occasion the marketing authority or produce agent fails to record the Australia Card number of the person. Where the marketing authority or produce agent makes such payments on or after the first relevant day and is required under a taxation law to provide information to the Commissioner of Taxation, a penalty is also provided if it fails to notify the Commissioner of the person's Australia Card number.

In sub-clauses (4) and (5) similar requirements and penalties regarding the production of a current Card, the recording of Australia Card number and the reporting of the number to the Commissioner of Taxation where a taxation law requires the provision of other information to the Commissioner, are imposed on real estate agents in respect of rent paid to persons in connection with the letting of premises.

Sub-clause (6) provides that sub-clause (2) or (4) does not prohibit a payment from being made if a taxation law imposes a withholding tax by reference to the making of a payment or requires a person making the payment to deduct an amount from the payment and deal with it in a manner prescribed by taxation law.

#### Clause 44 - Foreign remittances

Sub-clause (1) provides for a penalty for financial institutions which remit funds overseas for a person, on or after the first relevant day, unless the remittance is permitted by sub-clause (2) or (3).

Sub-clause (2) requires a financial institution to remit funds overseas for a person only if it requires the current Card of the person to be produced, the requirement is complied with on a single occasion, and the financial institution records the Australia Card number of the person for a remittance.

In sub-clause (3) a financial institution may effect a remittance of funds overseas for a person if the funds are withdrawn from an account opened with the institution, a current Card of the person has been produced in accordance with a requirement of clause 40, and the financial institution has recorded the person's Australia Card number in respect of that account.

Sub-clause(4) provides that where a financial institution is required under a taxation law to provide information to the Commissioner of Taxation in respect of a person's overseas remittances of funds, the institution shall also notify the Commissioner of the person's Australia Card number.

Sub-clause(5) extends the meaning of the term 'effecting a remittance of funds overseas for a person, to providing a bank draft or similar instrument to the person where it could be expected that the bank draft or other instrument will be sent overseas for a person. Penalties are provided if the institution fails to require production of the Card or when the requirement is complied with if it fails to record the Australia Card number, or if the institution fails to notify the Commissioner of the Australia Card number when it is providing information pursuant to sub-clause (4).

#### Clause 45 - Land transactions

Sub-clause (1) defines Registrar of Land Titles for the purposes of this clause.

Sub-clause(2) requires a person on or after the first relevant day not to become party to a transaction whereby a transfer of land is effected, unless that person has completed a declaration which is in the prescribed form, includes the person's name and Australia Card number and such other matters relating to the transaction as are prescribed and the declaration is delivered to the Registrar of Land Titles in the appropriate State or Territory. A penalty is provided for failure to make the declaration including the Australia Card number.

Sub-clause (3) provides that where a Registrar of Land Titles is required under a taxation law to provide information to the Commissioner of Taxation about a transaction referred to in sub-clause (2), or a transfer or proposed transfer of an interest in land in the appropriate State or Territory, and a declaration has been delivered to the Registrar under sub-clause (2), the Registrar is required to notify the Commissioner of the Australia Card number of the person who completed the declaration.

#### Clause 46 - Safety deposit box services and similar services

Sub-clauses(1) and (2) require a financial institution, on or after the first relevant day, not to make available to a person a safety deposit box or similar service nor to allow a person access to such facilities unless the institution requires in respect of each service the production of the current Card of the person, the requirement is complied with and the institution records for that service or occasion of access the



person's Australia Card number. In sub-clause(3) the financial institution is required to record a person's Australia Card number where the person produces a current Card, in respect of the making available of a safety deposit box service or similar service to that person before the first relevant day. A penalty is provided for failure to record the number.

Sub-clause(4) requires financial institutions to provide information to the Commissioner of Taxation no later than 2 months after the first relevant day of safety deposit box services and similar services, made available and still available to a person immediately before the first relevant day, where as at a date specified in the notice to the Commissioner the Australia Card number of the person had not been verified. A penalty is provided for failure to give the required notice to the Commissioner.

#### Clause 47 - Shares in public companies

Sub-clause(1) defines a 'dealer' and a 'public company' for the purposes of this clause. Sub-clause(2) requires a dealer not to effect a purchase of shares on behalf of a person, on or after the first relevant day, unless the dealer requires the production of the person's current Card, the requirement is complied with on a single occasion and the dealer records the person's Australia Card number.

After the transfer of ownership of shares, sub-clause (3) requires a person, on or after the first relevant day, not to submit the instrument of transfer to a public company for registration unless the transferee's Australia Card number is recorded on the instrument. A penalty is provided for failure to fulfil this obligation.

Sub-clause(4) prohibits a public company from registering the share transfer unless the company requires production of the current Card of the transferee, the requirement is complied with and the company records the transferee's Australia Card number on the instrument. Under sub-clause (5) where an instrument of transfer of shares in a public company has been submitted to the company for registration, on or after the first relevant day, and on or after that day a dividend is paid for those shares to the transferee, and by reason of paying the dividend the company is required under a taxation law to provide information to the Commissioner of Taxation, the company shall give the Commissioner of Taxation notice, when providing the information, of the Australia Card number of the transferee. A penalty is provided for failure to give notice to the Commissioner of the transferee's Australia Card number.

#### Clause 48 - Dealings in futures contracts

Sub-clause(1) defines 'broker' and 'futures contract'.

Sub-clause(2) provides for a penalty for a broker, who on or after the first relevant day, deals in a futures contract on behalf of a person and fails to require production of the person's current Card, or when the requirement is complied with, fails to record the person's Australia Card number.

Sub-clause (3) provides that where a broker is required under a taxation law to provide information to the Commissioner of Taxation about a futures contract in which a broker has dealt in on behalf of a person the broker shall also give to the Commissioner notice of the person's Australia Card number. A penalty is provided for a broker who fails to notify the Commissioner of the names and the Australia Card numbers of his or her clients.

#### Clause 49 - Employment

Sub-clause(1) provides that, on or after the first relevant day, where a person becomes an employee of an employer, the employer shall require production of the current Card of the first-mentioned person and - if the requirement is complied with, shall record the Australia Card number of the first-mentioned person.

Sub-clause (2) imposes the same requirements on an employer concerning production of a current Card and recording of an Australia Card number, for an employee to be paid salary or wages in connection with the employee's employment by the employer. Sub-clause (3) refers to an employer who issues a document being a group certificate, a tax stamps sheet or a statement of earnings to an employee, or who receives from an employee a tax declaration. The employer, having been required to record the Australia Card number of the employee under sub-clause (1) or (2), is also required to record that person's Australia Card number on the document or declaration. A penalty is provided for failure to comply with sub-clause (3).

Sub-clause (4) gives the same meaning in this clause to an expression used in this clause and in Part VI of the Income Tax Assessment Act, as is given in that Part (e.g. group certificate or tax stamps sheet).

#### Clause 50 - Prescribed payments system

Sub-clause (1) requires a person who is an eligible paying authority, in relation to a prescribed payment that the person is liable to make to a payee, shall not make the payment unless the person requires or has required at a previous time, production of the current Card of the payee and the requirement is, on a single occasion, complied with by the payee.

Sub-clause (2) requires that when a current Card is produced pursuant to sub-clause (1) the person shall record the payee's Australia Card number; and the person is to record the number in the part of a deduction form, relating to the payment, applicable to the eligible paying authority (sub-clause (3)).

Sub-clause (4) provides that where sub-section 221 YHR(3) of the Income Tax Assessment Act requires a person to forward a reporting exemption declaration to the Commissioner of Taxation received by the person from another person, and the first-mentioned person has recorded the other person's Australia Card number, the first-mentioned person is to record the number on the declaration before forwarding it.

Sub-clause (5) deems a payee not to have properly furnished a deduction form to a person who is an eligible paying authority

in relation to a payment made by the person to the payee, for the purposes of determining the amount the person is to deduct from the payment where the person has required the production of a current Card of the payee and the requirement has not been complied with.

Sub-clause (6) attributes the same meaning to an expression used in this clause and in Division A of Part VI of the Income Tax Assessment Act as is given to the expression in that Part (e.g. deduction form), and sub-clause (7) gives effect to sections 221YHA and 221YHZ of the Income Tax Assessment Act for the purposes of this clause as if the clause were a provision of Division 3A of Part VI of that Act.

#### Clause 51 - Production to the Commissioner of Taxation

Sub-clause (1) enables the Commissioner of Taxation, by notice in writing for a purpose related to the performance of a function or exercise of a power under a taxation law, to require the production of a current Card of a person and sub-clause (2) provides for a penalty if a person refuses or fails, without a reasonable excuse, to comply with such a requirement.

It is intended that offences against clauses 40-44 and 46-51 should be offences of strict liability to ensure compliance and to facilitate achieving the objects of the Bill.

#### Clause 52: Claims for Medicare benefits

This provision will require a person claiming payment of Medicare benefits to produce the Australia Card in the same way as a Medicare Card is currently required. The Australia Card will replace the Medicare Card.

Sub-clause (1) defines Act in this clause to mean the Health Insurance Act.

Sub-clauses (2) and (3) describe the circumstances in which a Card or an Australia Card number is required for the payment of Medicare benefits:

- . for cash payments - the Australia Card of the person claiming the benefit is produced and if that person is claiming on behalf of the patient, the Australia Card number of the patient;
- . for cheque payments - the Australia Card number of the claimant; and
- . for 'bulk-billing' - the practitioner submits the Australia Card number of the patient or if unable to do so, the Commission can identify an entry in the Register for that patient.

Sub-clause (4) enables a person providing a medical service to require production of a Card of a patient and record the number. This enables for example a doctor to submit a claim for bulk billing with the Australia Card number of the patient.

Sub-clauses (5) - (8) are transitional provisions dealing with claims for benefits before the first relevant day during the period when Australia Cards are being issued, and the provisions will cease to have effect after the first relevant day. The effect of these provisions is to enable the phasing in of Australia Cards to replace existing Medicare Cards. Each sub-clause reflects the requirements of one (or part of one) of the earlier sub-clauses in this clause: sub-clause (5) corresponds with sub-clause (2), sub-clause (6) with paragraph (3)(a), sub-clause (7) with paragraphs (3)(b) and (3)(c), and sub-clause (8) with sub-clause (4).

Sub-clauses (5) - (7) require that, in respect of services rendered before the first relevant day, where a claimant has a current Card, the claimant or the person acting on behalf of the claimant meet the same obligations as are imposed by sub-clauses (2) and (3). Sub-clause (8) requires a person, or an employee of that person, to whom a benefit is to be assigned by a patient, who has a current Card for a service rendered to the patient, before the first relevant day, to meet the same obligations as are imposed by sub-clause (4).

Sub-clause (9) provides that sub-clauses (2), (3), (5), (6) and (7) do not apply for benefits payable under the Act to minors living in a relevant institution, and sub-clauses (4) and (8) do not apply in respect of assignment of such benefits. Sub-clause (10) defines a relevant institution as an establishment for the institutional care of minors prescribed for the purposes of this sub-clause.

#### Clause 53: Hospital patients

Sub-clause (1) enables a recognised hospital to require the production of a current Card of a person admitted as an in-patient, and requires the hospital to notify the Health Insurance Commission of the person's Australia Card number (sub-clause (2)). 'In-patient' and 'recognised hospital' have the same meanings as in the Health Insurance Act (sub-clause (3)).

#### Clause 54: Social security benefits

Sub-clause (1) contains definitions for the purposes of this clause, including 'eligible person' which is defined as a person who is eligible for the issue or renewal of a Card and 'pensioner' which is defined as an eligible person who is receiving a pension.

Sub-clause (2) requires that an eligible person shall not, on or after the first relevant day, be entitled to receive a pension, unless the Secretary requires in respect of the person the current Card of the person to be produced and the requirement is complied with or the Secretary identifies an entry in the Register in respect of that person.

Sub-clause (3) covers the situation where a person who cannot produce a Card is otherwise entitled to receive a benefit and would suffer hardship unless the benefit is paid. Sub-clauses (4) and (5) require the Secretary to waive the requirement to produce the Card and pay the benefit. The benefit will

continue to be paid if an application for a Card has been made and the Secretary shall specify how long the benefits are to be paid. The period in the authorisation will be commensurate with the degree of hardship which a person would otherwise experience.

Sub-clause (6) enables the payment of an instalment of a pension under an authorisation pursuant to sub-clause (4) or (5), notwithstanding the effect of sub-clause (2).

Sub-clause (7) prohibits an eligible person from receiving a pension on or after the second relevant day, where the person was entitled to receive a pension from before the first relevant day until the second relevant day, unless a current Card is produced to the Secretary or the Secretary identifies an entry in the Register relating to that person. Sub-clause (8) provides that where a person, on or after the first relevant day, who immediately before the first relevant day was not an eligible person, is entitled to a pension and becomes an eligible person, that person is not entitled to receive a pension on or after the twenty-eighth day after the person becomes an eligible person or the second relevant day which ever is the later, unless the person has produced a current Card for that person to the Secretary or the Secretary identifies an entry in the Register relating to that person.

An effect of sub-clauses (7) and (8) for beneficiaries of Australian pensions who are resident overseas, is that a person entitled to receive a pension who is permanently resident overseas and who has never been an eligible person is exempted from complying with the provisions. Persons entitled to receive pensions who are resident overseas but were resident in Australia on or after the first relevant day will have to comply with the provisions of this clause.

The effect of sub-clauses (9) and (10) is that persons who are entitled to a special benefits pension under Part VII of the Social Security Act have an extended period before the requirement to produce a Card comes into effect.

Sub-clause (11) enables the Secretary to refuse to deal with an inquiry or request, on or after the first relevant day, by a person claiming to be a pensioner or to be acting on behalf of a pensioner unless the pensioner's current Card is produced to the Secretary.

Sub-clause (12) provides for the Secretary to delegate to an officer all or any of the Secretary's powers except the power of delegation, and sub-clause (13) explains that a delegation under this clause does not prevent the exercise of a power by the Secretary.

## PART V - ACCESS TO INFORMATION

## Division 1 - Preliminary

Clause 55 - Operation of Freedom of Information Act 1982  
and Archives Act 1983

The effect of sub-clauses (1) and (2) is to maintain the operation of the Freedom of Information Act 1982 in respect of all documents except

- the Australia Card Register;
- the National Births, Deaths and Marriages Register; and
- documents of the Agency or Authority containing information obtained under an arrangement made under clause 73 between the Commonwealth and the States, the Northern Territory or Norfolk Island.

Although the Freedom of Information Act does not apply to the Australia Card Register, Part V of the Australia Card Bill does provide for similar rights of access for Card-subjects to information on the Register concerning those Card-subjects.

The Freedom of Information Act is also not to apply to the Births, Deaths and Marriages Register. This Register is to contain information provided by the States, the Northern Territory, the Australian Capital Territory and Norfolk Island. Access to births, deaths and marriages information in those jurisdictions will continue to be regulated by those jurisdictions.

The effect of sub-clauses (3) and (4) is to maintain the operation of the Archives Act 1983 in respect of all documents except

- the Australia Card Register
- the National Births, Deaths and Marriages Register
- documents of the Agency or Authority containing information obtained under an arrangement made under clause 73 between the Commonwealth and the States, the Northern Territory or Norfolk Island.

## Division 2 - Access by Card-subjects, &amp;c

Clause 56 - Access to Register

Sub-clause (1) of this clause provides that a Card-subject or a person who has made an application under clause 11 (this includes persons who are applying for the issue of a Card to them as prescribed representatives of Card-subjects) can request access to information in the Register concerning themselves.

Sub-clause (2) provides that where a person, or 2 persons jointly have made an application for the issue of a Card in respect of a person, the applicant or applicants may request access to information in the Register in relation to that person.

Sub-clause (3) requires the Authority within 21 days of a request for access to provide the applicant with a transcript of the information or the capacity to read the information. The particular information to which access is provided is information that is in the Register in relation to the person seeking access being information

- of a kind specified in Schedule 1 which has been entered on the Register in accordance with sub-clause 25(1)
- of a kind specified in sub-clause 25(2) - program management information etc - entered on the Register in accordance with that sub-clause
- of the kind specified in sub-clause 25(3) being records of certain access gained to the person's entry in the Register.

Sub-clause (4) limits the information to be given out under the clause by providing, in effect, that the residential and postal address of a minor is not to be provided unless those addresses are the same as the addresses of the person seeking that information. The purpose of the exclusion is to guard against the possibility that the Authority might provide to a parent who is no longer living with a child the address of the child and thus the address of the parent with whom the child is living. This is not a purpose for which the Register has been established and is a matter appropriate for handling within the family concerned or in a court.

#### Clause 57 - Access to information recorded on Card

This clause provides a right of access by a Card-subject to information which is recorded on the Card-subject's Card in such a form as not to be legible. The information which may be recorded in such a form is information of a kind referred to in sub-clause 17(7). The Authority may provide access by furnishing a transcript of the information or providing the applicant with a capacity to read the information.

#### Clause 58 - Fee payable in respect of certain requests

The effect of this clause is that once one request has been made under clause 56, for access to information in the Register in relation to that person, the Authority is not obliged to comply with a further request under the same clause made within the succeeding 12 months unless

- a) since the Authority complied with the first request, the applicant has been given notice of a change in the information to which the request relates; or
- b) the applicant pays the prescribed fee.

After a request under clause 57 for access to information recorded on a Card has been made, the Authority is not obliged to comply with a further request made within 12 months from when a previous request was made, unless the applicant pays the prescribed fee.

### Division 3 - Access by officials

#### Clause 59 - Nature and method of access

This clause is an interpretative provision. Sub-clause (1) of this clause explains that where a provision of Division 3 refers to access to the Register this does not necessarily mean access to all the material in the Register but means access to so much of the information in the Register as is reasonably necessary, having regard to the purpose for which access is given.

Sub-clause (2) provides that access to the Register can be given either by providing the person with a transcript of information or by providing equipment to enable the person to read the information on the Register. Thus the sub-clause would enable indirect access (where the Authority itself extracts the relevant information from the Register and hands the information on) or direct access (for example, where the person is provided with on-line computer access to the Register, subject to the restriction in sub-clause (1)).

#### Clause 60 - Taxation matters

This clause entitles the Commissioner of Taxation to have access to the Register for purposes related to the performance by the Commissioner of a function under a taxation law.

#### Clause 61 - Social security matters

This clause entitles the Secretary of the Department responsible for matters arising under the Social Security Act to have access to the Register for purposes related to the performance of a function under that Act.

#### Clause 62 - Health insurance matters

This clause entitles the General Manager of the Health Insurance Commission to have access to the Register for purposes related to the performance by the Commission of a function under the Health Insurance Act or Health Insurance Commission Act (except for Part IIA of that Act which refers to Medibank Private functions).

#### Clause 63 - Administration of Australia Card identification system

This clause entitles the chief executive officer of the Authority to have access to the Register for the purpose of performing the functions of the Authority under this Bill.



Clause 64 - Agency purposes

This clause entitles the President to have access to the Register for the purpose of the performance by the Agency of its functions under this Bill.

Clause 65 - Authorisation of other persons  
to have access to Register

Clauses 65 and 66 establish strict controls over officials who have access to the Register. Each position where access is allowed must be declared by the Secretary and approved by the Agency. Clause 66 requires the Secretary to keep the Authority informed of the identity of each person occupying an approved position so that security procedures can be implemented.

Sub-clauses (1) and (2) provide that a Secretary of a Department who is entitled under the earlier provisions of Part V to have access to the Register may, by instrument in writing, declare offices or positions to be relevant offices for the purpose of authorising other persons to have access to the Register (sub-clause 66(1)).

Sub-clauses (3), (4) and (5) establish a process whereby a Secretary of a Department (other than the chief executive officer of the Authority) who makes an instrument under sub-clause (2) gives a copy of the instrument to the Authority with a statement of the extent to which a person occupying a position specified in the instrument is to have access to the Register; the Authority gives a copy of the instrument and the statement to the Agency together with the Authority's recommendation on whether the Agency should approve, reject or partly approve the instrument and if the Authority recommends a rejection or partial approval it is required first to consult with the Secretary or a representative of the Secretary who made the instrument. Sub-clause (6) requires the chief executive officer of the Authority who makes an instrument under sub-clause (2) to give a copy of the instrument to the Agency and a statement of the extent to which a person occupying a position specified in the instrument is to have access to the Register.

Sub-clause (7) requires the Agency after receiving a copy of an instrument and accompanying statement to decide within 14 days whether to approve, reject or partly approve the instrument, and to give written notice of its decision to the relevant Secretary of the Department and the chief executive officer of the Authority. Sub-clause (8) provides that the Agency in performing its functions under sub-clause (7) is to ensure that the number of persons entitled to have access to the Register is no greater than is reasonably necessary for carrying out the functions for which a Secretary is entitled to have access to the Register.

Sub-clause (9) deems a Secretary to have revoked or varied the instrument under sub-clause (1) when there is a decision of the Agency under sub-clause (7) to reject or partly approve an instrument. Sub-clause (10) enables a Secretary, by instrument in writing, to revoke or to vary an instrument made by the Secretary under sub-clause (2), and a Secretary is

required to give a copy of any instrument of revocation or variation to the Agency (sub-clause (11)).

Clause 66 - Access to Register by authorised persons

Sub-clause (1) defines a 'relevant office' for a Department as an office or position in relation to which there is in force an instrument made by a Secretary under sub-clause 65(2) and approved by the Agency under sub-clause 65(7).

Sub-clause (2) provides that each Secretary who is entitled to have access to the Register is to prepare a record for each relevant office in that Department of the name of the person occupying the office. Under sub-clause (3) a Secretary other than the chief executive officer of the Authority is to give a copy of the record to the Authority and inform the Authority of any variations to the record. Sub-clause (4) provides that a person occupying a position, specified in an instrument approved by the Agency, and whose name remains on the record provided by the Secretary to the Authority, is entitled to have access to the Register for the same purposes as those for which the Secretary is entitled to have access.

DIVISION 4 - Miscellaneous

Clause 67 - Notification to certain persons  
of changes to Register

Sub-clause (1) enables the Authority, when requested by a Secretary of a Department entitled to have access to the Register, to enter into an arrangement under which the Authority is to inform the Secretary of additions or changes to information in the Register for a person or a class of persons, where such information is relevant to a purpose for which the Secretary is entitled to access the Register. Sub-clause (2) requires the Authority to comply with such an arrangement while it is in effect. Sub-clause (3) enables the chief executive officer of the Authority to make a separate record of additions or changes to information in the Register concerning a person or a class of persons where the information is relevant to a purpose for which the chief executive officer is entitled to have access to the Register.

Clause 68 - Disposal of records on change  
of administrative arrangements

Sub-clause (1) defines 'relevant records' for this clause. Sub-clause (2) provides that where the Secretary of a Department being responsible for a particular matter is authorised to have access to the Register and the Department ceases to have responsibility for that matter, the Secretary is to arrange for all relevant records held in the Department relating to that matter to be delivered to the Secretary of the Department which has become responsible for the matter or in any other case to the Agency. Sub-clause (3) entitles the Agency to possession of all relevant records held by a Department which is abolished, immediately prior to the Department's abolition. Sub-clause (4) enables the President, after consulting with the Director-General of Australian Archives, who is in possession of records delivered under sub-section (2) or (3), to cause the records to be delivered

to the responsible Department, or if no Department is responsible for the matter - to have the records destroyed where the records contain only information obtained from the Register, or in any other case to have the records amended by deletion of information from the Register and delivered into appropriate custody.

## PART VI - NATIONAL BIRTHS, DEATHS AND MARRIAGES REGISTER

### Clause 69 - Objects of this Part

This clause provides that the objects of Part VI are the establishment of a National Births, Deaths and Marriages Register:

- to facilitate the administration and execution of the other provisions of the Act, thereby promoting the objects in Clause 3,
- to provide for a continually updated census of the population of Australia and the external Territories,
- to facilitate the administration and execution of the other laws of the Commonwealth relating to census and statistics, and Commonwealth laws relating to marriage, divorce, parental rights and custody and guardianship of unions, and immigration and emigration,
- to enable the Commonwealth to co-ordinate and assist the establishment and maintenance of a uniformly administered national system of relevant registration laws (as defined in clause 70).

### Clause 70 - Interpretation

This clause includes definitions of 'appropriate officer', 'arrangement', 'change of name', 'jurisdiction', 'relevant registration law' and 'relevant Territory' for this Part.

### Clause 71 - Establishment and keeping of BDM Register

Sub-clauses (1) and (2) provide that for the purposes of this Bill there is to be a Register known as the National Births, Deaths and Marriages Register (BDM Register) which is to be kept by the Authority.

Sub-clause (3) enables the keeping of the BDM Register by electronic means. Sub-clause (4) provides that the BDM Register may consist of 2 or more registers each of which contains as much of the information to be entered in the BDM Register as the Authority determines. Sub-clause (5) requires the Authority to observe such procedures as are reasonably necessary to prevent unauthorised access to, or disclosure of information from the Register, and sub-clause (6) provides that the Authority is to comply with guidelines issued by the Agency for this latter purpose.

### Clause 72 - Delegation by Authority of certain functions

Sub-clause (1) enables the Minister to make an arrangement

with an appropriate officer of a jurisdiction for a delegation to a person nominated by that officer of the functions and powers of the Authority, for the keeping of the part of the BDM Register relating to that jurisdiction. Sub-clause (2) deems the Authority to have delegated the functions and powers to which the arrangement relates where there is such an arrangement in force under sub-clause (1).

Sub-clause (3) provides that the Minister may direct the Authority to delegate functions or powers of the Authority for the keeping of the part of the BDM Register relating to a Territory other than the Northern Territory or Norfolk Island, and under sub-clause (4) the Authority must comply with any direction under sub-clause (3).

Sub-clause (5) requires the Authority to vary or revoke a delegation where there has been a delegation of functions and powers under a direction, and the direction is varied or revoked.

Sub-clause (6) prohibits the Authority from performing a function or exercising a power to the extent that a delegation is in force for that function or power; and sub-clause (7) gives the same force and effect to an act or thing done in the performance of a function or exercise of a power where the function or power has been delegated, as if the function or power had not been delegated and the act or thing had been done by the Authority.

#### Clause 73 - Access to State and Territory registers

Sub-clause (1) enables the Minister to make an arrangement with an appropriate officer of a jurisdiction for access by the Authority to a register kept under a relevant registration law of that jurisdiction. Sub-clause (2) provides that an arrangement under sub-section (1) shall only provide for access by the Authority to a register kept under a relevant registration law of a jurisdiction for the purpose of compiling and maintaining the BDM Register, and for that purpose sub-clause (3) entitles the Authority to have access to a register kept under a relevant registration law of a relevant Territory.

Sub-clause (4) enables the Minister to give a direction in writing concerning access by the Authority to a register under sub-clause (3) and the Authority is required to obey any such direction.

#### Clause 74 - Entry of information in BDM Register

This clause requires the Authority to enter in the BDM Register particulars of information relating to a birth, death, marriage, adoption, legitimation, acknowledgement of paternity or change of name in Australia or an external Territory, after receiving such information under a clause 73 arrangement or otherwise.

#### Clause 75 - Nature and method of access to BDM Register

Sub-clause (1) interprets 'access to the BDM Register' as access to as much of the information contained in the BDM

Register as is reasonably necessary, bearing in mind the purpose for which access is given. Sub-clause (2) provides that access to the BDM Register may be given to a person by furnishing the person with a document containing information, or providing the person with access to equipment which will allow the person to read information in the BDM Register.

#### Clause 76 - Australia Card matters, &c

The clause entitles the chief executive officer of the Authority to have access to the BDM Register to assist (a) in the identification of persons who are the subject of applications for the issue of Cards, (b) to verify statements made in applications for the issue of Cards, (c) to assist in the verification of the identity of persons who are the subject of Cards which have been issued and persons to whom Cards have been issued, and (d) to perform the Authority's functions under this Part.

#### Clause 77 - Delegates of the Authority

Sub-clause (1) entitles a person, to whom functions or powers have been delegated under clause 72, to have access to the part of the BDM Register in relation to which the person is performing those functions or exercising those powers, and to authorise persons in writing to have access as mentioned in this clause.

Sub-clause (2) entitles a person authorised under sub-clause (1) to have access in accordance with the authorisation.

#### Clause 78 - Passport matters

This clause entitles the Secretary of the Department responsible for matters arising under the Passports Act to have access to the BDM Register to obtain assistance in identifying persons in relation to whom Australian passport applications have been made or Australian passports issued, or to facilitate the recall of Australian passports issued to persons who have since died.

#### Clause 79 - Statistical matters

This clause entitles the Australian Statistician for the purposes of statistical coding and aggregation to have access to the BDM Register to extract data and to insert in the BDM Register statistical codes relating to codes of classification including causes of death, in connection with the performance of the functions of the Australian Bureau of Statistics under the Australian Bureau of Statistics Act.

#### Clause 80 - Epidemiological studies

Sub-clause (1) entitles the Secretary of the Department responsible for matters arising under the National Health Act to have access to the BDM Register to obtain information necessary for the conduct of an epidemiological study approved by the Director of the body known as the Australian Institute of Health. Sub-clause (2) enables the Secretary of the Department referred to in this clause, or a person authorised by the Secretary, to have access to the BDM Register to

communicate to a person involved in an approved epidemiological study information obtained from the BDM Register for the conduct of the study.

Clause 81 - Authorisation of other persons to  
have access to BDM Register

This provision creates the same strict controls for access to the BDM Register as are applied to the Australia Card Register.

Sub-clause (1) defines a 'Secretary' for this clause as a Secretary of a Department entitled under a preceding provision of this Division to have access to the BDM Register. Sub-clause (2) enables a Secretary to declare, by instrument in writing, offices or positions to be relevant offices for the purpose of authorising other persons to have access to the BDM Register (see sub-clause 82(1)).

Sub-clauses (3)(4) and (5) establish a process whereby a Secretary of a Department (other than the chief executive officer of the Authority) who makes an instrument under sub-clause (2) gives a copy of the instrument to the Authority with a statement of the extent to which a person occupying a position specified in the instrument is to have access to the BDM Register; the Authority gives a copy of the instrument and the statement to the Agency together with the Authority's recommendation on whether the Agency should approve, reject or partly approve the instrument and if the Authority recommends a rejection or partial approval it is required first to consult with the Secretary or a representative of the Secretary who made the instrument. Sub-clause (6) requires the chief executive officer of the Authority who makes an instrument under sub-clause (2) to give a copy of the instrument to the Agency and a statement of the extent to which a person occupying a position specified in the instrument is to have access to the BDM Register.

Sub-clause (7) requires the Agency after receiving a copy of an instrument and accompanying statement to decide within 14 days whether to approve, reject or partly approve the instrument, and to give written notice of its decision to the relevant Secretary of the Department and the chief executive officer of the Authority. Sub-clause (8) provides that the Agency in performing its functions under sub-clause (7) is to ensure that the number of persons entitled to have access to the BDM Register is no greater than is reasonably necessary for carrying out the functions for which a Secretary is entitled to have access to the BDM Register.

Sub-clause (9) deems a Secretary to have revoked or varied the instrument under sub-clause (10) when there is a decision of the Agency under sub-clause (7) to reject or partly approve an instrument. Sub-clause (10) enables a Secretary, by instrument in writing, to revoke or to vary an instrument made by the Secretary under sub-clause (2), and sub-clause (11) requires a Secretary to give a copy of any instrument of revocation or variation to the Agency.

Clause 82 - Access to BDM Register by  
authorised persons

Sub-clause (1) defines a 'relevant office' for a Department as an office or position in relation to which there is in force an instrument made by a Secretary under sub-clause 81(2) and approved by the Agency under sub-clause 81(7).

Sub-clause (2) provides that each Secretary entitled to have access to the BDM Register is to prepare a record for each relevant office in the Department of the name of the person occupying that office. Under sub-clause (3) a Secretary other than the chief executive officer of the Authority is to give a copy of the record to the Authority informing the Authority of any variations to the record. Sub-clause (4) provides that a person occupying an office specified in an instrument approved by the Agency, and whose name remains on the record provided by the Secretary to the Authority, is entitled to have access to the BDM Register for the same purposes as those for which the Secretary is entitled to have access.

Clause 83 - State and Territory officials

Sub-clause (1) enables a Minister to make an arrangement with an appropriate officer of a jurisdiction for access, by persons authorised by a person nominated by that appropriate officer, to that part of the BDM Register relating to that jurisdiction for the purposes of the administration of the laws of that jurisdiction.

Sub-clause (2) enables the Minister responsible for the administration of a Territory (other than the Northern Territory or Norfolk Island) to authorise persons to have access to that part of the BDM Register relevant to the Territory, for the administration of the laws of that or another Territory.

Sub-clause (3) confers a power on the Minister responsible for the administration of a relevant Territory to make an arrangement with an appropriate officer of another jurisdiction providing for access by

- (a) persons authorised by the Minister to the part of the BDM relating to that jurisdiction, for the purposes of the administration of the laws of the relevant Territory, or
- (b) persons authorised by a person nominated by that appropriate officer to the part of the BDM Register relating to that relevant Territory for the purposes of administration of that jurisdiction.

Sub-clause (4) enables a person authorised under an arrangement under sub-clauses (1) or (3) to have access to the BDM Register as entitled under the arrangement. Sub-clause (5) entitles a person authorised under sub-clause (2) to have access in accordance with the authorisation.

Clause 84 - Provisions relating to arrangements  
under this Part

Sub-clause (1) provides that an arrangement made under this Part by a Minister with an appropriate officer of a jurisdiction may contain such incidental or supplementary provisions as that Minister and the appropriate officer think necessary. Sub-clause (2) enables a Minister to arrange with an appropriate officer of a jurisdiction for the variation or revocation of an arrangement, made under this Part by a Minister and an appropriate officer of a jurisdiction. Sub-clause (3) requires that an arrangement under this Part and any variation or revocation of the arrangement, is to be in writing and a copy of each instrument by which the arrangement is made, varied or revoked is to be published in the Gazette.

PART VII - DATA PROTECTION AGENCY  
AND THE DATA PROTECTION ADVISORY COMMITTEE

Clause 85 - Interpretation

This clause defines the meaning of words and expressions used in this part of the Bill. 'Eligible body' is defined to mean any body or person (other than the Authority, the Auditor-General or certain authorised officers performing duties under the Audit Act) which has, or who has, access to the Register or is entitled to ask for the production of an Australia Card. It therefore includes employers, banks and other financial institutions. An 'office-holder' is defined to include members of the Agency as well as Associate Commissioners so that when an Associate Commissioner is conducting an inquiry on behalf of the Agency he or she can exercise all the powers of the Agency.

Division 2 - Establishment and functions of Agency

Clause 86 - Interpretation

For the Division of this Part establishing the Agency a 'member' is defined to mean a member of the Agency, including the President. This definition simplifies those provisions in this Division relating to appointment, conditions and powers of the individual members of the Agency.

Clause 87 - Establishment

This clause establishes the Data Protection Agency.

Clause 88 - Functions

The functions of the Data Protection Agency are to:

- review decisions made by the Authority. The Agency will have the authority to overturn such decisions where necessary. (paragraph 88(1)(a));



investigate complaints that the Authority has infringed a person's privacy and to direct the Authority where necessary to resolve such issues (paragraph 88(1)(b));

investigate complaints that the Authority may have exceeded its powers to obtain information from other Commonwealth bodies under clause 14 (paragraph 88(1)(c)) and to direct the Authority to destroy or amend records containing information so obtained;

examine the Authority's records to ensure it has not exceeded its powers under clause 14 and to give any directions necessary to require compliance (paragraph 88(1)(d));

investigate any action or practice of bodies having access to the Register or which are able to require production of the Card, where the action or practice may involve a breach of the Bill. The Agency can attempt to conciliate any complaints about such actions, or if it is unable to settle the matter or considers it inappropriate to settle it, it may report the matter to the Minister (paragraph 88(1)(e));

supervise the way in which the Authority maintains the Australia Card Register and the Register of Births Deaths and Marriages (BDM) established under Part VI (paragraph 88(1)(f));

issue guidelines to prevent unauthorised disclosure of material on, or derived from the Australia Card Register and the BDM Register (paragraph 88(1)(g));

issue guidelines to ensure the confidentiality, accuracy and completeness of material on the Register and BDM Register (paragraphs 88(1)(h)(j) and (k));

evaluate compliance guidelines in relation to the guidelines in (j) and (k) above (paragraph 88(1)(m) and (n));

issue guidelines on the manner in which the Authority undertakes reviews of its decisions requested under clause 115 (paragraph 88(1)(p));

issue directions to the Authority on the handling of data obtained from other bodies (paragraph 88(1)(q));

approve which Commonwealth officers are to have access to the Register (paragraph 88(1)(r));

publish details of databases containing personal information held by Commonwealth bodies (paragraph 88(1)(s));

monitor the need for databases held by Commonwealth authorities containing information derived from the Register or BDM Register and where necessary give directions on their form (paragraph 88(1)(t));

- . recommend to the Minister any action that the Commonwealth needs to take to ensure the Australia Card program does not contravene the Information Privacy Principles (paragraph 88(1)(u));
- . research developments in computer technology that may have an impact on privacy (paragraph 88(1)(w));
- . undertake educational programs to provide the protection of individual privacy (paragraph 88(1)(y));
- . provide advice to the Minister when requested (paragraph 88(1)(z));
- . perform any function required by other legislation; this includes powers and functions under the Privacy Bill (paragraph 88(1)(za));
- . consult under other bodies where appropriate (paragraph 88(1)(zb)).

Sub-clause 88(2) prohibits the Agency from publishing details under paragraph 88 (1)(s) of databases excluded from the coverage of the Privacy Bill or that part of the Freedom of Information Act 1982 dealing with notification of documents held by a Commonwealth agency.

#### Clause 89 - Powers

This clause provides the Agency with the authority to perform the functions as described in clause 88.

#### Clause 90 - Agency to have regard to certain matters

In making its decisions, handling complaints, issuing guidelines and performing its other functions, the Agency is required under this clause to balance the need to ensure proper protection from interferences of privacy against the requirements of Government to achieve its objectives in an efficient manner.

#### Clause 91 - Membership

Sub-clause (1) provides that the Agency will consist of three members - a President and two Commissioners. Except if the President is a Judge, the members of the Agency will be appointed full-time (sub-clause (3)) by the Governor-General (sub-clause (2)). Sub-clause (4) allows appointments for periods not exceeding 5 years and enables a member to be reappointed. Sub-clauses (5) and (6) prohibit the appointment of a person who is over the age of 65 years or who would turn 65 before the expiry of the period of appointment.

Sub-clause (7) allows an exception to the above provisions in that a Judge may be appointed or have an appointment continue to the age of 70 years. Sub-clause (8) provides that terms and conditions of appointment (other than remuneration and allowances covered under clause 87) are to be determined by the Governor-General, except in the case of a Judge.

Sub-clause (9) enables the Agency to perform all its powers and functions even where there is a vacancy.

#### Clause 92 - Associate Commissioners

The Governor-General can appoint persons to be Associate Commissioners either full-time or part-time (sub-clause (2)). Appointments cannot exceed 5 years and persons may be reappointed (sub-clause (3)). Sub-clause (4) enables the Governor-General to determine the terms and conditions of employment other than remuneration set by the Remuneration Tribunal and allowances as prescribed in regulations.

#### Clause 93 - Appointment of Judge as office-holder not to affect tenure, &c.

A Judge appointed as office-holder of the Agency would not lose any of his or her entitlements as a Judge. Sub-clause (2) defines 'judicial office'.

#### Clause 94 - Arrangement concerning holder of State or Northern Territory office

This clause allows the Commonwealth to arrange with a State or Northern Territory Government for the appointment of a Judge or an official as an office-holder under the Bill. Sub-clause (2) enables the Commonwealth to reimburse the State or Territory for the costs.

#### Clause 95 - Remuneration and allowances

Sub-clause (1) provides that members of the Agency and Associate Commissioners will have their remuneration determined by the Remuneration Tribunal, except if the President is a Judge, in which case he or she may continue to receive salary under some other authority (sub-clause (4)). Where the Tribunal has not made a determination, a regulation shall be made covering the remuneration of the members and Associate Commissioners.

Sub-clause (2) gives authority for the making of a regulation prescribing allowances (other than remuneration in the form of salary) that a member or an Associate Commissioner shall be paid.

Sub-clause (4) provides that judges who continue receiving their salaries and allowances as judges are not to be paid remuneration under the Bill.

#### Clause 96 - Leave of absence

Approval for a member or an Associate Commissioner to be absent from duty can be granted in the following ways:

- . for the President - by the Minister: or
- . for a Commissioner or an Associate Commissioner - by the President.

Clause 97 - Resignation

The President, Commissioner or Associate Commissioner may resign by writing to the Governor-General.

Clause 98 - Termination of appointment

This clause sets down the circumstances in which the Governor-General may terminate the appointment of the President of the Agency, a Commissioner or an Associate Commissioner. These circumstances are:

- . misbehaviour or physical and mental incapacity,
- . bankruptcy,
- . contravening the disclosure of interest requirements without reasonable excuse, or
- . for a full-time appointee, engaging in outside employment without consent.

The clause also provides that an appointment can be terminated if the office-holder is absent from duty, or in the case of an Associate Commissioner where that person misses three consecutive meetings, without leave being granted. Sub-clause (4) enables the Governor-General to retire an office-holder covered by the Superannuation Act on the grounds of incapacity if the person consents.

Clause 99 - Disclosure of interests

Where it comes to the attention of a member of the Agency that a matter under consideration by the Agency involves a conflict with a direct or indirect pecuniary interest of that member, this clause requires the member to disclose that interest.

Sub-clause (2) requires that the disclosure be noted in the minutes and the member is not to participate in the deliberation or decision on that matter unless the Agency or Minister determines otherwise, and where the Agency makes such a determination sub-clause (3) precludes the interested member from participating in that determination. In the conduct of a review of a decision a member or Associate Commissioner is required to disclose to the parties to the review any conflict of interest and shall not participate in the review unless the parties agree (sub clause (4)).

Clause 100 - Divisions

The Data Protection Agency will consist of a number of Divisions. One will be known as Research and Community Education (sub-clause (2)) and this clause gives the president authority to create other Divisions. The other Divisions will be created primarily to handle reviews and complaints and may consist of one or more members of the Agency or Associate Commissioners.

Sub-clause (3) enables the President to declare one of the members of the Divisions as President.

Sub-clause (4) allows the President to alter or revoke a direction to establish a Division and sub-clause (5) enables a Division that has had its membership changed to take over a matter considered by the previous Division.

Sub-clause (6) deems each Division to be the Agency for the purposes for which it is established and each Division may exercise the powers and perform the functions of the Agency even though other Divisions have been established (sub-clauses (7) and (8)).

#### Clause 101 - Meetings

This clause requires the Agency to hold meetings to perform its functions, other than review functions. The conduct of reviews is covered in Division 2 of Part VII.

Sub-clause (2) enables the President of the Agency to call a meeting of the Agency at any time. The President of the Agency is to be present at all meetings and a quorum of the President and one Commissioner is necessary. Except for decisions to issue guidelines, which need to be unanimous, decisions of the Agency are to be determined by a majority of votes. The President has a deliberative vote and if there is a tied vote, the President has a casting vote (sub-clause (3)). Sub-clause (4) covers the situation where the President is absent through action under the conflict of interest provisions.

Sub-clauses (5) and (6) allows the Agency to conduct any or all meetings by telephone, closed-circuit television or other communications measures.

#### Clause 102 - Acting appointments

This clause is similar to provisions in many Acts establishing statutory authorities and allows standing acting arrangements to be approved by the Minister. These arrangements permit the filling of the position of President, Commissioner or Associate Commissioner should any of those offices fall vacant or if the office-holder is absent from duty or overseas. The arrangement is to specify the person who is to temporarily fill the position and comes into effect upon the office-holder being absent or in such other circumstances as may be specified in the instrument of appointment. Such arrangements avoid short-term appointments being made by the Governor-General. An acting appointment under this clause cannot continue for more than 12 months after a vacancy in the office occurs. The Minister has power to determine any terms and conditions of active appointment, and can revoke the appointment at any time.

Sub-clause (10) provides that any action or decision of a person whose appointment is defective or irregular as described under that sub-clause will not affect the validity of that action or decision.

Division 3 - Establishment and functions of  
Advisory Committee

Clause 103 - Interpretation

This clause defines the terms used in this Division.

Clause 104 - Establishment and membership

This clause establishes the Data Protection Advisory Committee which consists of a Convenor who is the Commissioner in charge of the Research and Community Education Division of the Agency (sub-clause (5)) and between 6 and 12 members. Sub-clauses (3) and (4) require that members be appointed by the Governor-General as part-time office-holders and that the period of appointment be no longer than 5 years, although members are eligible for reappointment.

Sub-clause (6) places a limitation on the appointment of persons to ensure that Commonwealth employees are never in the majority on the Committee. Sub-clause (7) specifies that the membership include persons:

- . with 5 or more years of experience at a high level in industry, commerce, industrial relations, public administration or government service;
- . with extensive experience in electronic data-processing;
- . representing general community interests including social welfare community interests;
- . with 5 or more years of experience in employee organisations, industrial relations and industrial democracy; and
- . selected from a list of persons recommended by organisations formed to promote civil liberties (sub-clause (8)).

Sub-clauses (9) and (10) preclude persons over the age of 65 years from being members of the Advisory Committee. Terms and conditions of appointment of a member may be determined by the Governor-General under sub-clause (11). Sub-clause (12) enables the Committee to operate with vacant positions with the limitation that the memberships cannot fall below 7 for longer than 6 months.

Clause 105 - Functions

The Advisory Committee's functions are to advise the Agency on the following matters:

- . supervision of the Authority in its keeping of the Australia Card Register and the BDM Register;
- . issue of guidelines by the Agency
- . evaluation of compliance with the Agency's guidelines;

- . publication of Commonwealth databases by the Agency;
- . monitoring the need for and accuracy of Commonwealth databases;
- . compliance with the Information Privacy Principles in relation to the Australia Card program;
- . research and monitor development in data processing and computer technology;
- . educational programs for the surveillance of monitoring the protection of individual privacy; and
- . other matters relevant to functions conferred on the Agency by any Act, Regulation or Ordinance.

The Advisory Committee can recommend to the Agency that particular material be included in guidelines and under the direction of the President can undertake community education and consultation programs in relation to the protection of individual privacy.

#### Clause 106 - Acting Convenor

This clause provides that a person acting in the position of a Commissioner who also holds office as Convenor, may be deemed to act as the Convenor while he or she is acting as that Commissioner.

#### Clause 107 - Leave of absence

This clause empowers the President to grant to the Convenor leave of absence and the Convenor can similarly grant leave of absence to members of the Committee.

#### Clause 108 - Removal and resignation of members

The Governor-General can terminate the appointment of a member of the Advisory Committee in the following circumstances:

- . misbehaviour;
- . physical or mental incapacity;
- . bankruptcy;
- . failure to disclose a conflict of interest under clause 109, or
- . being absent from 3 consecutive meetings of the Advisory Committee without approved leave.

Sub-clause (3) enables a member to resign from office.

#### Clause 109 - Disclosure of interests of members

A member is to disclose a direct or indirect pecuniary interest in any issue under consideration by the Committee which may bring the member into conflict with his or her

proper functions in respect of that matter. Disclosures of interest are required to be recorded in the minutes of the meeting (sub-clause (2)).

#### Clause 110 - Meetings of Advisory Committee

This clause covers the meetings of the Advisory Committee which are convened and presided over by the Convenor. Sub-clause (4) enables a member to elect a member to preside at a meeting in the absence of the Convenor. Sub-clause (5) sets the quorum at five members, requires that questions be decided on a majority of votes and provides that the presiding member has a deliberative as well as a casting vote. Sub-clause (6) requires the Committee to keep a record of its proceedings.

#### Clause 111 - Remuneration and allowances

This clause covers the payment of remuneration and allowances, which are to be set by the Remuneration Tribunal or by regulations in the absence of any determinations by that Tribunal.

### Division 4 - Review by Agency of certain decisions

#### Clause 112 - Interpretation

This clause defines words and expressions used in this Division. Sub-clause (2) clarifies that a failure to notify a person of their rights does not make a decision invalid.

#### Clause 113 - Notification of rights of persons affected by certain decisions

This clause sets down the obligations of the Authority to inform persons of their review rights under this Act.

#### Clause 114 - Statements of reasons for certain decisions

This clause enables a person to request a statement of reasons for a decision within 28 days of being notified of that decision. Sub-clause (2) requires the Authority to provide the statement of reasons within 28 days of receiving the person's application.

#### Clause 115 - Reconsideration by Authority of eligible decisions

Sub-clause (1) provides that, where staff of the Authority are aware of any person who wishes to apply for a review of a decision under this clause but requires assistance in doing so, they must take reasonable steps to provide that assistance.

Sub-clause (2) provides that within 12 months of being notified of a decision a person may apply in writing for an internal review of a decision of the Authority. Some of the decisions of the Authority must be referred to the Authority before they go to the Agency for final review. Those decisions are:

- refusal to give a dispensation from a requirement to submit to a photograph or provide a specimen signature (sub-clauses 12(6) and (10));



- . requiring a person to submit themselves to a photograph or provide a signature where a temporary affliction previously precluded compliance (sub-clauses 12(7) and (11);
- . cancelling of a Card (clause 19);
- . refusal to review a Card (sub-clause 22(4));
- . refusal to amend the Register (sub-clause 26(5));
- . refusal to accede to a request to be a prescribed representative for a minor sub-clause 27(1));
- . refusal to replace a Card after the Register is amended (clause 30); and
- . any other decision made by the Authority, except those which must go directly to the Agency for decision under clause 116 and decisions where the person already has had a right to object.

With a number of other decisions, the applicant has the discretion to either apply for an internal review or go directly to the Agency. These decisions are where the outcome may have an immediate impact on the well-being of the person and a quick decision is required. These decisions are

- . refusal to issue a Card (clause 15);
- . issue of a Card to a person where there has previously been another prescribed representative (sub-clause 16(3)); and
- . refusal to replace a lost, stolen or destroyed Card (clause 20).

Sub-clauses (3) and (4) require the Authority to reconsider the decision and make a fresh decision. Where the original decision-maker is a delegate of the Authority, that decision-maker is precluded from conducting the review.

Sub-clause (5) requires the Authority to notify the persons of the result of the review and advise the applicant that if he or she is dissatisfied with the fresh decision, the applicant may ask the Agency to review the Authority's decision. Should the Authority fail to notify the applicant of a decision upon internal review within 21 days of the application, the person may go straight to the Agency for a review of the original decision.

#### Clause 116 - Application for review by Agency

This clause enables a person to apply to the Agency for a review of certain decisions. The decisions which a person seeking review must refer to the Agency are:

- . those decisions already internally reviewed by the Authority and with which the person remains dissatisfied;

- . a decision made by the chief executive officer of the Authority rather than one of the staff;
- . a decision to confirm or vary a notice to provide evidence in support of an application for a Card (clause 13); and
- . decisions to issue a notice to a person seeking further information verifying information in the Register or to amend the Register after the person has been given an opportunity to object (clauses 28 and 31).

Besides these decisions a person may refer to the Agency those decisions described in relation to clause 115 which may have an immediate impact on the person.

Sub-clause (2) requires office-holders of or staff assisting the Agency, where they become aware that assistance is needed, to take reasonable steps to provide assistance to persons wishing to apply for a review of a decision under this clause but who need help to do so.

Sub-clauses (2) and (3) requires that an application to the Agency be written in a form determined by the Agency.

Applications to the Agency need to be made within 28 days of the person being notified of the decision and the Agency has the discretion to extend that period upon request. (sub-clauses (4) and (5)).

#### Clause 117 - Procedure of Agency

This clause sets down the procedures the Agency is to follow in conducting an inquiry into a decision - in respect of which an application for review was made under clause 116.

Sub-clause (2) provides that the procedure to be followed by the Agency may be determined by the Agency within its discretion, inquiries are to be as expeditious and informal as possible and the Agency is not bound by the rules of evidence that apply in a Court but can obtain information in a manner the Agency considers appropriate. Inquiries into decisions are to be conducted by the Agency in private. The Agency may dismiss an application that is considered to be frivolous, vexatious or trivial and may inquire into a matter without any of the parties or their representatives being present.

Sub-clause (5) requires the Agency to afford applicants reasonable opportunity to put their points of view when conducting an inquiry. This includes permitting the applicant to present a case at a hearing or provide documentation and make submissions in relation to those documents in support of the applicant's case. Sub-clause (6) allows an applicant to be represented by some other person, (including a legal representative) and allows the Authority to be represented by a member of the Authority's staff.

Clause 118 - Parties entitled to  
appear before Agency

This clause covers the parties entitled to appear before the Agency in an inquiry. Those parties are the applicant, the Authority and a person whom the Agency determines under sub-clause (3) is affected by the decision. There is no review of a decision by the Agency that a person's interests are, or are not, affected by a particular decision.

Clause 119 - Preliminary conferences

To assist in the quick resolution of cases, this clause allows the Agency to hold a conference prior to a formal hearing. Sub-clause (1) empowers the office-holder presiding over an inquiry to direct the parties to attend a conference.

Sub-clause (2) gives the Agency power to make a decision on the basis of an agreement reached between the parties at a preliminary conference.

Sub-clause (3) prohibits the Agency from taking evidence at a preliminary conference on an issue that is to be determined at the inquiry, unless the parties otherwise agree.

Sub-clause (4) precludes an office-holder, who presides over a preliminary conference from participating in an inquiry on the matter if a party objects.

Clause 120 - Lodging of material documents with Agency

This is a technical provision setting down the requirements of the Agency for the submission of documents relating to an inquiry.

Clause 121 - Power to obtain information and documents

This clause empowers the Agency, for the purposes of conducting an inquiry, to require persons who may be able to give relevant information to produce information or documents. Sub-clause (1) enables the Agency to give a notice in writing to the person from whom the information or documents are required, specifying the relevant information or documents to be provided and the period within which the person must comply. Sub-clause (2) empowers the Agency to take possession of the documents, copy them, take extracts from them and to allow them to be inspected by persons entitled to do so.

Sub-clause (3) enables the Agency to require a person to attend and answer questions relevant to an inquiry where the Agency has reason to believe that the person can provide information.

Clause 122 - Powers of Agency to take evidence, &c.,  
in conducting an inquiry.

This clause sets down the powers of the Agency, relating to the taking of evidence. Sub-clause (1) empowers the Agency to take evidence on oath or affirmation, proceed in the absence of parties and to adjourn proceedings. Sub-clause (2) empowers the Agency to issue a summons. Sub-clauses (3) and (4) empower

the office-holder presiding at an inquiry to require a person to take an oath or affirmation that the information provided is true and to administer the oath or affirmation.

Sub-clause (5) enables a person summoned to appear to be represented by a lawyer.

Sub-clauses (6) and (7) are technical provisions relating to persons taking evidence on behalf of the Agency.

#### Clause 123 - Office-holder presiding

This clause clarifies who shall preside over an inquiry with 2 or more office-holders.

#### Clause 124 - Decision on review

This provision describes the scope of the Agency's powers to make decisions on review. Sub-clause (1) clarifies that the Agency can:

- . affirm a decision of the Authority; or
- . set aside a decision of the Authority, or
- . set aside a decision and make a fresh decision.

Upon making a decision, sub-clause (2) requires the Agency to notify the applicant and the Authority of that decision and provide reasons for it.

Sub-clause (3) clarifies that a decision of the Agency shall be taken as a decision of the Authority except for review purposes.

#### Clause 125 - Publication of decisions

This clause enables the President to publish decisions made by the Agency upon review, and the reasons for those decisions, providing that the published details will not enable the identification of the individual to whom the decision relates.

#### Clause 126 - Decision on questions

This provision clarifies that where an inquiry is conducted, decisions shall be made on the majority but where opinion is equally divided, the opinion of the presiding office-holder shall prevail.

#### Clause 127 - Operation and implementation of decision subject to review

This clause clarifies the status of decisions made by the Authority and subject to review. Sub-clause (1) confirms that a decision of the Authority remains valid until such time as it may be set aside by virtue of the operation of clause 124. An exception to this rule is covered in sub-clause (2) which enables the Agency, upon request, to stay the effect of a decision by the Authority. This provision would enable a person notified of a decision, for example, to cancel a Card, to quickly ensure the decision is not implemented until an

inquiry is held. Sub-clause (3) enables an order staying a decision to be revoked or varied. Sub-clause (4) sets down requirements for the Agency to consult with interested parties, unless as provided in sub-clause (5) the urgency of the case makes such consultation impracticable.

Sub-clause (6) provides that orders staying decisions are subject to any conditions contained in the order, and continue to operate until the end of the period specified in the order or until the decision of the Agency upon review comes into effect.

Clause 128 - Return of documents, &c., at completion of inquiry

After an inquiry has been completed, or after the deadline for initiating a review of a decision of the Agency has expired, this clause enables the Agency to return the documents furnished to it in connection with the inquiry or returned from the Federal Court.

Clause 129 - Appeals to Federal Court from decisions of the Agency

This provision enables a person affected by a decision of the Agency upon review to appeal to the Federal Court on a question of law. The Federal Court is only able to review a decision of an Agency on the grounds that the Agency made an error in law in its consideration of the matter and is not able to reconsider the matter on its merits. Sub-clause (2) enables a person who has been refused a review of a decision by the Agency to appeal to the Federal Court regarding the refusal. Sub-clause (3) sets down the time limit and manner in which an application to the Federal Court can be made. Sub-clauses (4) and (5) require the Federal Court to hear and determine an appeal, and make orders affirming, or setting aside the decision of the Agency or referring the matter to the Agency for reconsideration.

Clause 130 - Operation of decision subject to appeal

This clause clarifies the status of decisions made by the Agency subject to appeal by the Federal Court.

Sub-clause (1) confirms that a decision of the Agency remains valid until such time as it may be set aside. An exception to this rule is covered in sub-clause (2) which enables the Court to stay the effect of a decision, or part of a decision, by the Agency or a decision to which the Agency's review related. Sub-clause (3) enables a staying order to be revoked or varied and sub-clause (4) provides that these orders are to be subject to any conditions contained in the order and will continue to operate until the expiration of the period specified in the order or a decision of the Court is given upon the appeal.

Clause 131 - Reference of question of law to Federal Court

This clause enables the Agency, with the concurrence of the presiding member at the inquiry or, where only one member presided, with the concurrence of the President, to refer a

question of law arising in the course of an inquiry to the Federal Court. Sub-clause (2) precludes the Agency from making any decision on the matter pending receipt of the advice or making any decision inconsistent with the advice.

Clause 132 - Sending of documents to,  
and disclosure of documents by, Federal Court

This is a procedural provision requiring the Agency to submit documents relevant to an appeal to the Court and for the Court to return them on completion of the case. Sub-clause (2) enables the Court to inspect documents subject to a certificate issued under sub-clause 160 (1) but requires the Court not to disclose that information to any other person. Sub-clause (3) empowers the Court to disclose to parties to an appeal documents covered by a certificate issued under sub-clause 160 (1) which relate to criminal investigations.

Clause 133 - Protection of office-holders, &c.

This clause clarifies that a person representing a party in proceedings and a witness in an inquiry have the same protection or liabilities as if the proceeding were in the High Court, while an office-holder conducting a review has the same protection and immunity as a High Court judge.

Clause 134 - Confidential information  
not to be disclosed

This clause prohibits an office-holder or a staff member of the Agency from disclosing any document or information relating to an inquiry of the Agency to any other court, tribunal, authority or other person with power to require the production of documents or the answering of questions.

Clause 135 - Legal assistance.

Sub-clause (1) enables a person to apply to the Attorney-General for legal assistance in relation to an inquiry by the Agency. Sub-clause (2) empowers the Attorney-General to grant legal or financial assistance, subject to any conditions, to an applicant on the grounds of hardship.

Division 5 - Investigation by Agency of complaints

Clause 136 - Certain matters deemed to be the subject  
of complaints

This clause enables the Agency to investigate matters and exercise its powers under this Division upon complaints by individuals and in some other circumstances. Sub-clause (1) provides that the Agency shall perform its complaint handling function:

- . where an individual submits a complaint under clause 137 about some action of the Authority;
- . where an individual complains about some action taken in relation to this Bill by a Commonwealth body with access to the Register or by any organisation or

person empowered to require production of an Australia Card;

where requested by the Minister; and

where the Agency itself considers it desirable

Sub-clause (2) enables an investigation initiated by the Minister or the Agency to be handled as if it were a complaint by an individual. This allows all the powers of the Agency to be used in these particular circumstances.

#### Clause 137 - Complaints about the Authority

This clause requires the Agency to investigate a complaint that the Authority has unduly infringed the privacy of the complainant, provided that the complaint is not a matter which the person could have reviewed under Division 4 of this Part. The Agency is required to decide whether to issue directions to the Authority about the exercise of its power. Sub-clause (2) requires the Agency to investigate a complaint that the Authority has exceeded its authority under clause 14 in seeking to obtain documents from other Commonwealth bodies. The Agency may also give directions to the Authority for it to destroy or amend its records which include information obtained beyond power.

#### Clause 138 - Complaints about eligible bodies

This clause requires the Agency to investigate complaints that:

- . a Department;
- . the Health Insurance Commission (other than in its capacity as the Authority); or
- . any other organisation or person entitled to have access to the Register or entitled to ask for production of an Australia Card (other than the Authority or a member of its staff or the Auditor-General or certain persons carrying out duties under the Audit Act 1901) has contravened guidelines issued by the Agency referred to in paragraphs 88(1) (e), (m) or (n) of the Bill.

The Agency is required to endeavour to effect a settlement of the matter by conciliation where appropriate.

#### Clause 139 - Discretion not to investigate certain complaints

Sub-clause (1) sets out those cases in which the Agency may decide not to investigate, or decide to discontinue an investigation of a complaint,

- (a) if the complainant was aware of the action complained of more than 12 months before he complained and the Agency is satisfied that the complainant will not suffer undue hardship if the complaint is not investigated;

- (b) if the complaint is frivolous or vexatious or is not made in good faith, or if the complainant does not have a sufficient interest in the matter to justify his making the complaint, and there are no special reasons justifying an investigation. Thus, even though the Agency may consider that the person making a complaint does not have a sufficient interest in the matter, it may nevertheless consider that special reasons justify his undertaking an investigation;
- (c) if in all the circumstances the Agency considers that investigation or further investigation of the complaint is unnecessary.

It will be seen that the Agency does not have a general discretion to refuse to investigate a complaint. It is entitled to refuse to investigate only where the matter is stale, or there is no real substance to the complaint, or an investigation is unnecessary, for example where the matter has been put right by the Department, authority or eligible body concerned.

Sub-clause (2) enables the Agency to refuse to investigate a complaint if the person has already made the same complaint to the Authority or the body to which the complaint refers, unless the complainant has informed the Agency that no redress has been granted or the redress given is not adequate. Where, upon the Agency being so informed, the Agency considers no redress has been granted by the Authority or the eligible body or the redress granted is inadequate, sub-clause (3) requires the Agency to investigate the complaint.

Sub-clauses (4) and (5) give effect to the principle that the Agency does not investigate complaints where the complainant is entitled to other means of redress, unless there are special reasons for doing so, or where it would be unreasonable, perhaps because of the cost involved, to expect the complainant to exercise that other right of redress. Sub-clauses (4) and (5) also preclude the Agency from investigating a matter where the complainant either has exercised or has available a right of appeal to a court or to a tribunal established by an enactment for review of his case. In those cases the Agency must consider whether in relation to the first alternative, there are special reasons why it should investigate the matter or, in relation to the second alternative, whether it is unreasonable to expect the complainant to exercise that right of appeal, as, for example, where it would cost too much in relation to the value of the matter in dispute.

Where a complaint is made about a matter that is open to review under some administrative procedure rather than by a statutory body, sub-clause (6) allows the Agency to decline to investigate if it considers that it is reasonable to seek review by that means.

Sub-clause (7) deals with the case where the complaint to the Agency is not made by the person with the grievance but by someone on that person's behalf. In such cases, the provisions of this clause apply to the complainant's representative. The Bill recognises that there may be many, for example migrants or



elderly people, who would have difficulty in making complaints themselves or who would be reluctant to do so.

#### Clause 140 - Reference of matters to other authorities

This is a procedural provision which enables the Agency to transfer complaints to the Human Rights and Equal Opportunity Commission, the Merit Protection and Review Agency and the Commonwealth Ombudsman where those complaints would be more conveniently and effectively dealt with by those bodies.

#### Clause 141 - Effect of investigations by Auditor-General

This clause provides that where an office-holder becomes aware that the Agency is performing functions or exercising powers in relation to a matter which is the subject of an investigation by the Auditor-General, then the Agency, shall unless the President and the Auditor-General both agree otherwise, cease to perform functions or exercise its powers in relation to that matter until the completion of the Auditor-General's investigation.

#### Clause 142 - Manner of making complaints

Complaints to the Agency may be made orally or in writing. Oral complaints may be required by the Agency to be reduced to writing.

Sub-clause (2) empowers the Agency to decline to investigate a complaint until a complainant satisfies a request of the Agency to put the request in writing.

Sub-clause (3) places an obligation upon the Agency and its staff to provide assistance to a person unable to reduce a complaint to writing, or to formulate the complaint as requested.

#### Clause 143 - Preliminary inquiries

Sub-clause (1) empowers the Agency to make preliminary inquiries of the Authority or an eligible body to determine whether it has power to investigate the complaint or whether it should proceed with the investigation. Sub-clause (2) enables the Agency to arrange for contact officers in the Authority or an eligible body for the purposes of conducting preliminary inquiries.

#### Clause 144 - Conduct of investigations

This clause deals with the manner in which the Agency will be required to conduct investigations on receipt of a complaint concerning the action of the Authority or an eligible body. The essence of the procedure is that it be flexible and informal, that proper notice be given to the Authority or eligible body to be investigated, and that the Authority or eligible body put their cases to the Agency.

Sub-clause (1) provides that before commencing an investigation, the Agency is to inform the Authority or the eligible body of the investigation.

Sub-clause (2) enables the Agency to make arrangements for the manner in which, and the timing of notifications that, complaints or classes of complaints are to be investigated.

Sub-clauses (3) and (4) require that investigations are to be conducted in private, and, subject to the other provisions of the Bill, in such a manner as the Agency thinks fit according to the particular circumstances of the case. The Agency may obtain such information and make such enquiries as it thinks fit. The Agency will ordinarily proceed by informal and personal inquiry into a complaint, and by discussions or correspondence with departments or other sources as necessary.

Sub-clauses (5) and (6) provide that in keeping with the flexible character of the Agency's operations, it is not bound to conduct a hearing - sub-clause (5). Where the Agency proposes to be critical in a report of some person (whether an official or the complainant or any other person), or of a Department, the Authority or an eligible body, the report shall not be made unless, before the completion of the investigation, the Agency gives the Authority or eligible body concerned an opportunity to put its case.

Sub-clauses (7) and (8) enables an authorised representative to represent the Authority or an eligible body before the Agency if either does not appear in person or, in the case of persons other than the Authority or an eligible body, another person may put its case to the Agency.

Sub-clause (9) requires that where the Agency requires a person to appear before it or it uses its powers to obtain information or documents, any complaint must be reduced to writing and, where appropriate, the responsible Minister informed. Sub-clause (10) enables the Agency to discuss an investigation with a Minister concerned with the matter.

Sub-clause (11) requires that if the Agency considers that its investigation would reveal some misconduct or breach of duty, the Agency may bring the matter to the notice of an appropriate Minister or an appropriate officer in the Authority or eligible body.

#### Clause 145 - Power to obtain information and documents

This clause empowers the Agency, for the purposes of its enquiries, to require persons who may be able to give relevant information to answer questions and produce documents.

Sub-clause (1) empowers the Agency to give a notice in writing to the person from whom information is required, specifying the relevant information or documents required to be provided or produced and the period within which the person must comply.

Sub-clause (2) enables the Agency to take possession of copies or take extracts from and retain as long as is necessary documents produced. The Agency must permit persons entitled to inspect documents access to those documents.

Sub-clause (3) empowers the Agency to require a person whom it considers could provide information relevant to the investigation to attend and answer questions.

Sub-clause (4) provides that a Commonwealth official is not excused from providing any information requested by the Agency where the Attorney-General or the Director of Public Prosecutions has given an undertaking to the official that the information provided will not be used in evidence against the official and that undertaking states the grounds why the provision of the information is in the public interest.

Sub-clause (5) provides that a Commonwealth official is not required to provide information under sub-clause (4) if the provision of the information would tend to incriminate the official in relation to an offence that is currently being investigated.

Sub-clause (6) provides that a person is not to be liable to a penalty under the provisions of any other legislation for giving information or documents to the Agency in a case where the person is required to do so under this Bill.

#### Clause 146 - Power to examine witnesses

Where, under clause 145, the Agency requires a person to attend in order to provide information or answer questions relevant to its inquiries, the Agency may administer an oath or affirmation to that person. The Agency may then examine the person on oath or affirmation.

#### Clause 147 - Directions to persons to attend compulsory conference

This clause empowers the Agency to direct persons to attend a compulsory conference in order to attempt a settlement of a complaint. Sub-clause (1) empowers the Authority to direct all parties to attend a conference.

Sub-clause (2) makes it an offence to fail to attend a conference without reasonable excuse. A person directed to attend a conference is entitled to be reimbursed under sub-clause (3) and the Agency may require the person directed to attend a conference to produce specified documents (sub-clause 4).

#### Clause 148 - Conduct of compulsory conference

This is a procedural provision covering the way in which the Agency conducts a compulsory conference. Sub-clause (2) provides that a conference is to be held in private and the Agency can determine the manner in which the conference can be held. Sub-clauses (3) and (4) describe arrangements for representation of parties.

#### Clause 149 - Complainant and certain other persons to be informed of various matters

This is another procedural provision requiring the Agency to notify a complainant where the complaint is not to be investigated (sub-clause (1)).

Sub-clause (2) enables arrangements with the Authority to be made for the notification of complaints. Sub-clauses (3) and

(4) require the Agency to notify the body it has investigated of particulars of its investigation, and any comments or suggestions arising out of the investigation.

Clause 150 - Directions to Authority  
following investigation

This clause reflects the greater control the Agency has over the Authority than over other Commonwealth bodies and organisations and persons outside the Commonwealth with authority to require production of the Card. Whereas under clause 151 the Agency is able to report on the result of an investigation into these other bodies, the Agency can under sub-clause (1) direct the Authority to alter its procedures as a result of a complaint and sub-clause (3) requires the Authority to comply with the complaint. Sub-clause (4) requires the Agency to report to the Minister concerning a refusal or failure of the Authority to comply with a direction of the Agency. Sub-clause (2) empowers the Agency, after consulting with the Director-General of the Australian Archives, to direct the Authority to amend or destroy records if it has gone beyond its authority in collecting information from other Commonwealth bodies under clause 14.

Clause 151 - Reports to be prepared where  
no settlement of complaint about eligible body

This clause empowers the Agency to report on the results of investigations into organisations and persons other than the Authority. Sub-clause (1) provides that where an investigation has not led to a settlement of a complaint, the Agency shall report to the person laying the complaint, the organisation investigated and where appropriate a Minister. If after 60 days the Agency is of the view the practice investigated has not ceased, the Agency shall report to the Minister on the lack of satisfactory action (sub-clause 2).

Clause 152 - Certain reports to be tabled in the  
Parliament

This clause requires the Minister receiving a report under sub-clauses 150 (4) or 151 (2) to table it in Parliament.

Division 6 - Miscellaneous

Clause 153 - Agency not to be sued

This provision protects the Agency and its staff from legal proceedings arising from an action done under this Bill and performed in good faith.

Clause 154 - Offences

This clause makes it an offence to refuse to comply with a direction of the Agency to attend a hearing, take an oath or affirmation or provide information. Sub-clause (3) makes it an offence to obstruct the Agency or provide false information.

Clause 155 - Protection from civil actions

This provision precludes a person being sued for lodging a complaint with the Agency or providing information.

Clause 156 - Powers of Agency in relation to certain eligible bodies

Sub-clause (1) enables the Agency to require a body or person entitled to have a Card produced or to record the number of a Card, to provide information, specified in a notice, required by the Agency in performing its functions under the Bill. Sub-clause (2) gives the Agency a similar power in relation to a body or person which has access to the Register where information is required by the Agency for the performance of its functions under paragraphs 88(1)(j) or (m). Sub-clause (3) provides for a penalty for a body or person who does not comply with the notice by obtaining the information specified in the notice.

Clause 157 - Power to enter premises

Sub-clause (1) provides that subject to sub-clause (3) a person authorised by the Agency may enter premises of the Authority or eligible body and inspect documents for the purpose of the performance of the Agency's functions under the Bill, other than documents included in a certificate of the Attorney-General under clause 160. Sub-clause (2) requires the occupier of the premises entered by an authorised person to provide that person with reasonable assistance to facilitate the exercise of the person's powers. Sub-clause (3) prohibits an authorised person from entering premises not occupied by the Commonwealth or by a Commonwealth authority unless the occupier consents or the person is authorised to enter the premises by a warrant issued under sub-clause (4) by a Magistrate or a Justice of the Peace. Sub-clause (5) provides that the warrant shall specify the hours during which entry may be made and shall set a date after which the warrant will cease to have effect. Sub-clause (6) states that nothing in sub-clause (1) restricts the operation of any other provision in Part VII.

Clause 158 - Restrictions on Agency obtaining personal information

Sub-clause (1) requires that information concerning a person who makes an application under clause 116 or a complaint under clause 137 or 138 shall not be provided in a way which reveals the person's identity unless the person consents. Sub-clause (2) restricts the Agency in obtaining access to a document containing information concerning a person which reveals that person's identity, unless the person has consented to production of the document, or the document is a copy of another document and the information which would have disclosed the person's identity has been deleted.

Sub-clause (3) requires a person not to provide prescribed information - concerning a complaint - which relates to a person other than a complainant; and sub-clause (4) also prohibits a person from providing prescribed information to the Agency - concerning a complaint - which relates both to the

complainant and another person unless the information can be disclosed without revealing the other person's identity.

Sub-clause (5) requires a person not to provide a prescribed document - concerning a complaint - which contains information relating to a person other than the complainant, unless the document is a copy of another prescribed document and has had that information deleted from it; and sub-clause (6) also prohibits a person from providing a prescribed document - concerning a complaint - which relates both to the complainant and another person, unless the document is a copy of another prescribed document and has had deleted from it information which reveals the identity of the other person.

Sub-clause (7) provides that this clause has effect notwithstanding any other provision of this Part. Sub-clause (8) explains that a reference in this clause to furnishing information or producing a document in connection with an application or a complaint means providing the information or document to the Agency in connection with the performance of its functions or exercise of its powers in relation to that application or complaint. Sub-clause (9) defines a number of terms used in this clause, including 'document', 'prescribed document', 'prescribed information' and 'relevant law'.

#### Clause 159 - Publication of guidelines

This clause requires the Agency to publish in the Gazette guidelines issued under Part VII, and the guidelines are to come into effect on the date of publication in the Gazette or on such later day as is specified in the guidelines.

#### Clause 160 - Certain documents and information not required to be disclosed

Certain information or documents may be withheld from the Agency on a certificate by the Attorney-General that disclosure to the Agency would be against the public interest. Sub-clause (1) specifies the documents that may be so withheld relate to:

- . defence, security, international relations:
- . communications between Commonwealth and State Ministers;
- . Cabinet or Executive Council deliberations; or
- . criminal investigation and confidential sources of information, or documents the disclosure of which could endanger the life or physical safety of a person.

Sub-clause (2) enables the Attorney-General to certify that the giving of information to the Agency about the existence of documents relating to security, defence, international relations or the National Crime Authority would be prejudicial to the public interest.

Clause 161 - Staff

This clause provides that the staff of the Agency shall be appointed under the Public Service Act 1922 and that the President of the Agency shall have the powers of a Secretary of a Department.

Clause 162 - Annual Report

This clause requires the Agency to produce an annual report of (a) the operations and effectiveness of the Agency, (b) the activities of the Advisory Committee, and (c) the administration of the Australia Card identification system. Sub-clause (2) outlines the procedure for laying the report before the Houses of Parliament.

Sub-clauses (3) and (4) contain details of material that shall be included in the Agency's report.

## PART VIII - OFFENCES

Clause 163 - Card not to be defaced or altered

This clause provides for penalties for a person who intentionally defaces or alters an Australia Card.

Clause 164 - False Cards

This clause provides for a penalty for a person possessing or being in control of a Card not issued under the Act. Such an offence includes persons who possess or control a document purporting to be an Australia Card or one that so closely resembles an Australia Card that it could be mistaken for an Australia Card.

Clause 165 - Dishonest use or improper possession  
of Card

Sub-clause (1) provides for a penalty for a person, with intent to deceive, producing a Card issued to another person to an officer of the Commonwealth or a Commonwealth authority.

Sub-clause (2) provides for a penalty for a person possessing a Card issued to another person, or knowingly being in possession of a Card which has been altered.

Clause 166 - False Statements

Sub-clause (1) provides for a penalty for a person making a false or misleading statement about the person's identity in connection with an application for the issue or renewal of a Card. Sub-clause (2) provides for penalties for a person knowingly making a false or misleading statement, for the purpose of obtaining or renewing a Card, in an application or to a member of the staff of the Authority.

Clause 167 - Unauthorised requirement that  
Card be produced

Sub-clause (1) of this clause provides for a penalty for a person not authorised by this Bill who requires another person to produce a Card.

Sub-clause (2) defines specific circumstances where a person is prohibited from requiring another person to produce a Card.

Sub-clause (3) explains that a person making a statement to another person which could reasonably be understood to mean that the other person is required to produce a Card, is to be taken as a person requiring the other person to produce a Card.

Clause 168 - Unauthorised access to Register  
or BDM Register

This clause provides for penalties for a person who obtains access to the Register or the BDM Register who is not so permitted by the Bill.

Clause 169 - Secrecy

Sub-clause (1) applies this clause to a person who is or has been a member, or a member of the staff of the Authority or the Agency.

Sub-clause (2) provides for a penalty for a person who having obtained any information in the course of performing duties under the Bill, divulges or communicates the information to any person or makes a record of any of the information, except for the purposes of the Bill, for the performance of functions or exercise of powers of the Authority or the Agency, or in connection with the performance of duties under the Bill. This sub-clause is subject to that part of sub-clause (4) which allows the communication or recording of information where it is necessary to do so for performance of functions under this Bill, and other than in connection with the performance by the Agency of its community education function under paragraph 88(i)(y).

Sub-clause (3) excludes from sub-clause (2) information lawfully published or lawfully available to the public.

Sub-clause (4) specifies that a person shall not be required to divulge or communicate any matter or thing to a court or produce a document in a court that has come to the notice of the person in the performance of duties under the Bill, except where it is necessary to do so for the purpose of carrying into effect the provisions of the Bill. Sub-clause (5) defines 'court' and 'produce' for the purposes of sub-clause (4).

Clause 170 - Use of information acquired under this Bill

Sub-clause (1) provides for penalties for a person who under Part IV of the Bill is entitled to require a person to produce a Card, and communicates any of the information on the Card to any other person, unless the first-mentioned person is required or permitted to do so by the Bill.



Sub-clause (2) provides for penalties for a person who under Part V of the Bill is entitled to access the Register, and communicates to any other person information obtained from the Register, unless that person is required or permitted to do so by the Bill, or unless the other person is performing duties for the same purpose as the person who is entitled to have access to the Register in the first instance.

Sub-clause (3) provides for penalties for a person who under Part VI, or an arrangement under that Part, is entitled to access the BDM Register, and communicates to any other person information obtained from the BDM Register.

Sub-clause (4) also provides for penalties for a person who is entitled to require production of a Card under Part IV and records or maintains a record of any information endorsed on or incorporated in the Card, other than is specified as being required or permitted by the Bill or is reasonably necessary to comply with an obligation imposed by the Bill.

Sub-clauses (5) and (6) provide for penalties for a person who is entitled to access the Register under Part V and records information contained in the Register or identifies a person to whom the information relates by reference to the Australia Card number, unless that person is required or permitted to do so by the Bill or it is reasonably necessary for the performance of functions for the purpose for which the information was obtained from the Register.

Sub-clause (7) provides for penalties for a person who is entitled under Part VI to access the BDM Register and records information contained in the BDM Register, unless that person is required or permitted to do so by the Bill or it is reasonably necessary for the performance of functions for the purpose for which the information was obtained from the BDM Register.

Sub-clause (8) provides that a person referred to in this clause shall not be required to produce, divulge or communicate a record of information obtained from the Register or the BDM register to a court, unless it is necessary to do so for the purpose of carrying into effect the provisions of the Bill. Sub-clauses (2), (3), (5) and (6) are all subject to this clause.

Sub-clause (9) defines for the purposes of sub-clause (8) "court" and "produce".

Sub-clause (10) provides for penalties where a Card-subject produces a Card to a person not entitled under Part IV of the Bill to require a Card to be produced and that person retains the Card, records information from the Card or communicates information from the Card.

#### Clause 171 - Penalties for corporations

This clause provides that where a corporation is convicted of an offence against this Bill the penalty which may be imposed is a fine of up to 5 times the maximum amount which could otherwise be imposed as a pecuniary penalty for that offence.

Clause 172 - Prosecution of offences

Sub-clause (1) provides that subject to sub-clause (2) an offence against a number of provisions in the Bill is an indictable offence. These are offences under sub-clause 36(3), clauses 38, 40 to 44, 46 to 51, clauses 163 and 164, sub-clause 165(2) and clauses 166, 167, 169, sub-clause 169(2), sub-clauses 170(1), (2) and (10) and sub-clause 173(2).

Sub-clause (2) enables a court of summary jurisdiction to hear and determine proceedings in respect of the indictable offences listed in sub-clause (1) if the court is satisfied that it is proper to do so and the parties to the proceedings consent.

Sub-clause (3) provides a maximum penalty for an offence referred to in sub-clause (1) of which a person is convicted by a court of summary jurisdiction under sub-clause (2).

Sub-clause (4) provides that an offence against the Act not referred to in sub-clause (1) is a summary offence.

## PART IX - MISCELLANEOUS

Clause 173 - Retention of information acquired under this Bill

Sub-clause (1) of this clause provides for a person, entitled to require a person to produce a Card under Part IV or entitled to access the Register under Part V, to make and retain a record of information in the Card or incorporated in the part of the Register to which the person is entitled to have access for as long as is reasonably necessary. This sub-clause is subject to sub-clause (2) which provides for a penalty for a person entitled to make and retain a record of information under sub-clause (1) who does not destroy that record of information when it is no longer reasonably necessary to retain it.

Clause 174 - Release of information to police, &c.

Sub-clause (1) permits the communication by the Authority, the Agency, or the Secretary responsible for matters arising under a relevant Act, of information reasonably required for the investigation or prosecution of an offence under this Bill, under a relevant Act, or under a taxation law to the Australian Federal Police or the Director of Public Prosecutions. Relevant Act is defined in sub-clause (2) to mean the Social Security Act, the Migration Act or the Health Insurance Act.

Clause 175 - Publication of statistics

This clause permits the publication of statistics by the Authority, the Agency or the Australian Statistician provided they are not published in a manner which is likely to enable an individual to be identified.

Clause 176 - Provision of statistical information to  
Australian Statistician

Sub-clause (1) permits the Authority to extract statistical information from the Register concerning population sizes and movements for the Australian Statistician, subject to sub-clause (2) which requires the Authority not to provide information to the Australian Statistician in a manner which is likely to enable an individual to be identified.

Clause 177 - Operation of certain laws not affected

Sub-clause (1) provides that nothing in the Bill shall affect the operation of a 'relevant law' which is defined in sub-clause (3) to mean the Migration Act, the Australian Citizenship Act or the Immigration Act of Norfolk Island. Sub-clause (2) provides that the issue of a Card to a person does not affect the status of the person, nor powers conferred on, nor liabilities or obligations imposed on the person by a relevant law.

Clause 178 - Giving of notices

Sub-clause (1) of this clause provides for a document to be given to the Authority by way of a postal service, provided that the postage is pre-paid and the document is addressed to the Authority at a prescribed address in the State or Territory in which the person giving the document is resident.

Sub-clause (2) provides for a document to be given to a person approved to receive applications for Cards (under sub-paragraph 11(1)(ii)), by way of a postal service, provided that the postage is pre-paid and the document is addressed to the person at the address published by notice in the Gazette.

Sub-clause (3) provides for the Authority to give a document to a person by way of a postal service provided that the postage is pre-paid and the document is addressed to the person at that person's address for the receipt of notices.

Sub-clause (4) specifies that where a Card has not yet been issued pursuant to an application made by a person or 2 persons jointly, notices shall be sent to the address specified on the application for the purpose of receiving notices.

Sub-clause (5) provides that the regulations may make provision for the address for receiving notices in relation to the address of the Card-subject or a prescribed representative of a Card-subject.

Sub-clause (6) specifies that this clause has effect for the purposes of this Act but does not prejudice any other method of giving a document to a person.

Clause 179 - Authority to be notified of loss, theft or  
destruction of Card

This clause provides for a penalty for a person issued with a Card who does not notify the Authority within 21 days of becoming aware of the loss, theft or destruction of the Card.

Clause 180 - Reports to Department administering  
Migration Act

Sub-clause (1) provides for the Secretary of the Department responsible for matters arising under the Migration Act 1958 to give a statement to the Authority, specifying the names of persons reasonably suspected of being prohibited non-citizens within the meaning of that Act. On receipt of such a statement, the Authority is required to provide a report to the Secretary which is to include the person's last known residential address and any other information in the Register which the Authority considers reasonably necessary to enable the identity of the person to be verified.

Sub-clause (2) provides for a Secretary, referred to in sub-clause (1), to incorporate the information contained in the reports, in such records and make such use of the information as the Secretary directs in writing. This provision is subject to the guidelines issued by the Agency under paragraph 88(1)(j).

Clause 181 - Protection of the "Australia Card"  
name and symbol

Sub-clause (1) provides that a person is committing an offence where the person uses the expression 'Australia Card' or a prescribed symbol in connection with a business, trade, profession or occupation, or sells goods to which that expression or symbol has been applied, or promotes the supply of goods or services which use the expression or symbol, or imports into Australia for sale or use by any business, trade, profession or occupation any article to which the expression or symbol has been applied outside Australia.

Sub-clause (2) provides that an association (whether a body corporate or other form of association) commits an offence when it uses the expression "Australia Card" or a prescribed symbol in connection with any activity of the association implying that the association is connected with the Commonwealth, the Authority or the Agency, or uses the expression or symbol as the name or emblem of the association, or as the name or emblem of a newspaper or magazine owned by the association.

Sub-clause (3) provides for penalties for offences against this clause, and sub-clause (4) enables a person to be convicted of a further offence against this clause at any time after an earlier conviction.

Sub-clause (5) widens the definition of references used in this clause in relation to expressions of 'Australia Card' and official and prescribed symbols of 'Australia Card' and any expressions directly or indirectly related to such matters.

Sub-clause (6) specifies that proceedings in relation to this clause shall not be instituted without the written consent of the Attorney-General.

Sub-clause (7) protects the rights conferred by law on a person in respect of a registered trade mark under the Trade Marks Act 1955, or a registered design under the Designs Act 1906 which was registered before the date of commencement of

this clause. This sub-clause is subject to sub-clause (9) which concerns actions or proceedings against the Commonwealth or the Authority.

Sub-clause (8) protects the rights conferred by law relating to the use of a symbol on or after the commencement of this clause provided that the person used the symbol in good faith, in a manner referred to in sub-clauses (1) and (2), within a prescribed period before the commencement of the clause or where immediately before that date, the person would have been entitled to prevent another person from passing off, by using that or a similar symbol, goods or services as if they were the goods or services of the first-mentioned person. This sub-clause is also subject to sub-clause (9).

Sub-clause (9) specifies that no action or proceeding, civil or criminal, lies against the Commonwealth or the Authority for or in relation to the use of the expression "Australia Card" by the Commonwealth or the Authority or official "Australia Card" symbol.

Sub-clause (10) provides that where sub-clause (9) extends to the acquisition of property from any person, the Commonwealth is liable to pay compensation as agreed between the parties and in default of an agreement being reached, compensation is to be paid as determined by the Federal Court, which is given jurisdiction for this purpose in sub-clause (11).

#### Clause 182 - Property in Australia Card

This clause provides that property in a Card remains in the Commonwealth.

#### Clause 183 - Modification of Register to protect safety, &c., of persons

Sub-clause (1) provides the chief executive officer of the Authority with a discretion which may be exercised to preserve the safety or well-being of a person or to protect the person from prejudicial actions. If the chief executive officer considers that certain information relating to the person -

(a) entered in the Register should be modified or omitted, or

(b) proposed to be entered in the Register should not be so entered or entered only in a modified form,

the chief executive officer is required to modify or omit information if para (a) applies, or not include information or enter information only in a modified form if para (b) applies, and to inform the person of the action taken (sub-clause (2)).

Sub-clause (3) enables a person to request the chief executive officer of the Authority to exercise his or her powers under this clause in relation to information relevant

to that person, or to a Card-subject where the requesting person is the prescribed representative, or to a person in respect of whom another person has applied for the issue of a Card.

Sub-clause (4) requires the chief executive officer after deciding not to exercise his or her powers under sub-clause (2), to notify the person who made the request of the decision. This decision is only subject to review by the Agency.

Clause 184 - Authority to record refusals of access to Register

This clause requires the Authority - after access to information on the Register is refused - to record particulars of the refusal, and to provide the Agency with a copy of the record.

Clause 185 - Authority to record access and refusals of access to BDM Register

Sub-clause (1) requires the Authority to maintain records of particulars of each occasion on which access to information in the BDM Register was obtained or refused.

Sub-clause (2) requires the Authority to provide a copy of such a record, where it is requested, to the Agency, the Minister or a person authorised by the Minister.

Sub-clauses (3) and (4) provide that the Authority shall provide a copy of such a record, where it is requested, to a Minister of a State or Territory or a person authorised by such a Minister, or to the Administrator of Norfolk Island or a person authorised by the Administrator.

Clause 186 - Delegation

Sub-clause (1) enables the chief executive officer of the Authority or the President of the Agency to delegate, by instrument in writing, to a person all their respective powers under the Act except for this power of delegation, and in the case of the chief executive officer, also his or her powers under clause 183.

Sub-clause (2) deems a delegated power when exercised by the delegate to be exercised by the chief executive officer of the Authority or the President. Sub-clause (3) provides that a delegation under this clause does not prevent the chief executive officer of the Authority or the President from exercising a power.

Clause 187 - Saving of rights of Auditor General and Director-General of Archives

Sub-clause (1) provides that nothing in the Act limits a right of the Auditor-General or the Director-General of the Australian Archives to have access to information or a document for the performance of a function of the Auditor-General or the Director-General of Archives.

A right of the Auditor-General referred to in sub-clause (1) also includes a reference to a right of an authorised officer or authorised person within the meaning of sections 14B and 48E, respectively, of the Audit Act, to have access to information or a document (sub-clause (2)). A document is defined in sub-clause (3) to include both a document to which sub-clause 25(6) applies, as well as a document which contains information derived from the Register.

#### Clause 188 - Conduct engaged in on behalf of body corporate

Sub-clause (1) deems conduct to be engaged in by a body corporate when it is conduct engaged in on behalf of a body corporate, that is by a director, employee or agent of the body corporate acting within the scope of their actual or apparent authority, or by any other person at the direction of or with the consent or agreement of a director, employee or agent of the body corporate acting within the scope of their actual or apparent authority.

Sub-clause (2) provides that where it is necessary to establish the state of mind of a body corporate - in proceedings for an offence against this Act - it is sufficient to show that a director, employee or agent of the body had that state of mind when acting within the scope of their actual or apparent authority. Sub-clause (3) explains the reference to a person's state of mind in sub-clause (2).

#### Clause 189 - Regulations

This clause enables the Governor-General to prescribe regulations for the purposes of this legislation.

#### Schedule 1

This schedule lists information to be entered in the Register under sub-clause 25(1) in respect of (1) a Card-subject, (2) a Card-subject who is an Australian citizen, (3) a Card-subject who is a permanent resident, (4) a Card-subject who is a person visiting Australia, or (5) a prescribed representative.

