

2019-2020

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Migration and Citizenship Legislation
Amendment (Strengthening Information
Provisions) Bill 2020**

No. , 2020

(Home Affairs)

**A Bill for an Act to amend and insert provisions
dealing with protected information in the law
relating to migration and Australian citizenship,
and for related purposes**

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1 **A Bill for an Act to amend and insert provisions**
2 **dealing with protected information in the law**
3 **relating to migration and Australian citizenship,**
4 **and for related purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act is the *Migration and Citizenship Legislation Amendment*
8 *(Strengthening Information Provisions) Act 2020*.

9 **2 Commencement**

10 (1) Each provision of this Act specified in column 1 of the table
11 commences, or is taken to have commenced, in accordance with

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column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Parts 1 and 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1, Part 3	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) the commencement of the <i>Federal Circuit and Family Court of Australia Act 2020</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

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1 (2) Any information in column 3 of the table is not part of this Act.
2 Information may be inserted in this column, or information in it
3 may be edited, in any published version of this Act.

4 **3 Schedules**

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

1 **Schedule 1—Strengthening information**
2 **provisions for character and conduct**

3 **Part 1—Main amendments**

4 *Australian Citizenship Act 2007*

5 **1 Section 3**

6 Insert:

7 *authorised Commonwealth officer* means a Commonwealth
8 officer whose duties consist of, or include, the performance of
9 functions, or the exercise of powers, under or for the purposes of
10 this Act or the *Migration Act 1958*.

11 *Commonwealth officer* (except in subsection 51A(2)) has the
12 meaning given by section 121.1 of the *Criminal Code*.

13 Note: A Minister is not a Commonwealth officer.

14 *gazetted agency* has the meaning given by subsection 503A(9) of
15 the *Migration Act 1958*.

16 **2 Paragraph 43(2)(f)**

17 Omit “a proceeding”, substitute “proceedings”.

18 **3 After section 52**

19 Insert:

20 **52A Protecting information supplied by law enforcement or**
21 **intelligence agencies etc.**

22 (1) This section applies in relation to information that:

23 (a) is communicated to an authorised Commonwealth officer by
24 a gazetted agency on condition that it be treated as
25 confidential information; and

26 (b) is relevant to the exercise of a power under or in relation to:

27 (i) subsection 17(1A), (3), (4) or (4A) (Minister’s refusals
28 of citizenship by descent); or

- 1 (ii) subsection 19D(2), (4), (5) or (6) (Minister's refusals of
2 citizenship—adoption); or
3 (iii) subsection 24(1A), (3), (4), (4A) or (6) (Minister's
4 refusals of citizenship by conferral); or
5 (iv) subsection 25(1) in relation to a cancellation referred to
6 in subparagraph 25(2)(b)(iii) (person not of good
7 character); or
8 (v) subsection 26(3) (delayed making of pledge); or
9 (vi) subsection 30(1A), (3), (4) or (5) (Minister's refusals of
10 resumption of citizenship); or
11 (vii) section 34 (revocation of citizenship because of offences
12 or fraud); or
13 (viii) section 36B (citizenship cessation for certain conduct);
14 or
15 (ix) section 36D (citizenship cessation for certain
16 convictions).

17 Note: *Authorised Commonwealth officer* and *gazetted agency* are defined
18 by section 3.

19 *Confidential gazetted agency information not generally to be*
20 *disclosed to other persons*

- 21 (2) An officer to whom information is communicated as referred to in
22 paragraph (1)(a) or any officer to whom information is disclosed
23 under this subsection must not (subject to subsections 52B(1) and
24 52C(1)) disclose the information to another person, except if:
25 (a) both of the following apply:
26 (i) the person is the Minister or an authorised
27 Commonwealth officer;
28 (ii) the information is disclosed for the purposes of the
29 exercise of a power referred to in paragraph (1)(b); or
30 (b) both of the following apply:
31 (i) the person is the Minister or an authorised
32 Commonwealth officer;
33 (ii) the information is disclosed for the purposes of the
34 exercise of a power referred to in paragraph 503A(1)(b)
35 of the *Migration Act 1958*.

36 Note 1: The Minister may allow the disclosure of the information under
37 section 52B. The High Court, the Federal Court of Australia or the

Schedule 1 Strengthening information provisions for character and conduct
Part 1 Main amendments

1 Federal Circuit Court may order the production or giving of the
2 information under section 52C.

3 Note 2: An authorised Commonwealth officer who contravenes this subsection
4 may commit an offence under subsection (6).

5 *Confidential gazetted agency information not to be produced to*
6 *court or parliament etc.*

- 7 (3) An officer to whom information is communicated as referred to in
8 paragraph (1)(a), or the Minister or an authorised Commonwealth
9 officer to whom information is disclosed under subsection (2),
10 must not (subject to subsections 52B(1) and 52C(1)) be required to:
11 (a) produce the information to a court, a tribunal, a parliament or
12 parliamentary committee or any other body or person; or
13 (b) give the information in evidence before a court, a tribunal, a
14 parliament or parliamentary committee or any other body or
15 person.

16 *Evidential rules*

17 (4) The hearsay rule does not apply to evidence that is given for the
18 purpose of establishing that information is covered by
19 subsection (1).

20 (5) A certificate, signed by an authorised Commonwealth officer, that
21 states that information was communicated to that officer by a
22 gazetted agency (without disclosing the name of the agency) is
23 prima facie evidence of the matters stated in the certificate.

24 *Offence*

- 25 (6) A person commits an offence if:
26 (a) the person is an authorised Commonwealth officer; and
27 (b) information is communicated to the officer as referred to in
28 paragraph (1)(a) or is disclosed to the officer under
29 subsection (2); and
30 (c) the officer discloses the information to another person; and
31 (d) the disclosure of the information is not in accordance with:
32 (i) subsection (2); or
33 (ii) a declaration made under subsection 52B(1); or
34 (iii) an order made under subsection 52C(1).
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1 Penalty: Imprisonment for 2 years.

2 *Relationship between this section and other laws*

- 3 (7) This section has effect despite anything in:
4 (a) any other provision of this Act or the regulations; or
5 (b) any other law of the Commonwealth; or
6 (c) any law (whether written or unwritten) of a State or a
7 Territory;
8 whether the provision or law commences before or after this
9 section.

10 Note: This section (as affected by section 52D) is specified in Schedule 3 to
11 the *Freedom of Information Act 1982* with the effect that documents
12 containing information protected from disclosure by this section are
13 exempt documents under that Act.

- 14 (8) To avoid doubt, if information is disclosed in accordance with
15 subsection (2), the disclosure is taken, for the purposes of the
16 Australian Privacy Principles, to be authorised by this Act.

17 **52B Minister may allow disclosure of information supplied by law**
18 **enforcement or intelligence agencies**

- 19 (1) The Minister may, by writing, declare that specified information
20 covered by subsection 52A(1) may be disclosed, in specified
21 circumstances, to:
22 (a) a specified Minister; or
23 (b) a specified Commonwealth officer, subject to any specified
24 conditions (including in relation to further disclosure of the
25 information); or
26 (c) a specified court; or
27 (d) a specified tribunal.

28 However, before making the declaration, the Minister must consult
29 the gazetted agency from which the information originated.

30 Note 1: In addition, the High Court, the Federal Court of Australia or the
31 Federal Circuit Court may order specified information covered by
32 subsection 52A(1) to be produced or given under section 52C.

33 Note 2: *Commonwealth officer* is defined by section 3.

1 (e) the officer's conduct or omission contravenes the condition
2 or conditions.

3 Penalty: Imprisonment for 2 years.

4 *Provisions relating to declarations under subsection (1)*

5 (8) The Minister does not have a duty to consider whether to exercise
6 the Minister's power under subsection (1).

7 (9) The rules of natural justice do not apply to the consideration or
8 exercise of the power under subsection (1).

9 (10) A declaration under subsection (1) is not a legislative instrument.

10 (11) To avoid doubt, if information is disclosed in accordance with a
11 declaration under subsection (1), the disclosure is taken, for the
12 purposes of the Australian Privacy Principles, to be authorised by
13 this Act.

14 **52C Courts may order disclosure of information supplied by law**
15 **enforcement agencies or intelligence agencies**

- 16 (1) Despite subsections 52A(3) and 52B(4), the High Court, the
17 Federal Court of Australia or the Federal Circuit Court may order
18 the Minister to cause specified information to be produced to, or
19 given in evidence before, the Court if:
- 20 (a) the Court is satisfied that the information is covered by
21 subsection 52A(1) (information supplied by law enforcement
22 agencies or intelligence agencies etc.); and
 - 23 (b) the production or giving of the information is for the
24 purposes of proceedings (the *substantive proceedings*)
25 relating to the exercise of a power under a provision referred
26 to in paragraph 52A(1)(b).

27 *Making submissions relating to use of information*

- 28 (2) If information is produced to, or given in evidence before, the
29 Court in accordance with an order under subsection (1), any party
30 to the substantive proceedings may, subject to subsection (3) and
31 the control of the Court:

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- 1 (a) make submissions concerning the use that the Court should
2 make of the information for the purpose of the substantive
3 proceedings, including any weight to be given to that
4 information; and
5 (b) make submissions, and if appropriate tender evidence,
6 concerning the impact that disclosing the information may
7 have on the public interest.
- 8 (3) A party to the substantive proceedings may make submissions and
9 tender evidence under subsection (2) only if:
10 (a) the party is aware of the content of the information; and
11 (b) the content of the information was not acquired unlawfully or
12 in circumstances that would found an action for breach of
13 confidence (whether or not the party was the person who
14 acquired the content unlawfully or in those circumstances).

15 *Court orders to prevent disclosure of information*

- 16 (4) For the purposes of hearing submissions under subsection (2), the
17 Court must order that:
18 (a) any person who the Court is satisfied, under subsection (3),
19 may not make submissions or tender evidence be excluded
20 from the hearing, including:
21 (i) the applicant in relation to the substantive proceedings;
22 or
23 (ii) any other party to the substantive proceedings; or
24 (iii) the legal representative of a person mentioned in
25 subparagraph (i) or (ii); and
26 (b) no report of the part of the proceedings that relates to the
27 information is to be published; and
28 (c) no person, without the consent of the Court, has access to a
29 file or a record of the Court that contains the information.

30 *Prohibition on disclosing information that has a real risk of*
31 *damaging the public interest*

- 32 (5) After considering the information and any submissions made under
33 subsection (2), the Court must determine whether disclosing the
34 information would create a real risk of damage to the public

1 interest, having regard to any of the following matters that it
2 considers relevant (and only those matters):

- 3 (a) the fact that the information was communicated, or originally
4 communicated, to an authorised Commonwealth officer by a
5 gazetted agency on condition that it be treated as confidential
6 information;
- 7 (b) the risk that the disclosure of information may discourage
8 gazetted agencies and informants from giving information in
9 the future;
- 10 (c) Australia's relations with other countries;
- 11 (d) the need to avoid disruption to national and international
12 efforts relating to law enforcement, criminal intelligence,
13 criminal investigation and security intelligence;
- 14 (e) in a case where the information was derived from an
15 informant—the protection and safety of informants and of
16 persons associated with informants;
- 17 (f) the protection of the technologies and methods used (whether
18 in or out of Australia) to collect, analyse, secure or otherwise
19 deal with, criminal intelligence or security intelligence;
- 20 (g) Australia's national security;
- 21 (h) such other matters (if any) as are specified in the regulations.
- 22 (6) If the Court determines under subsection (5) that disclosing the
23 information would create a real risk of damage to the public
24 interest, the Court must not disclose the information to any person,
25 including:
- 26 (a) the applicant in relation to the substantive proceedings; and
27 (b) any other party to the substantive proceedings; and
28 (c) the legal representative of a person mentioned in
29 paragraph (a) or (b); and
30 (d) any person who seeks access to a file or record of the Court
31 that contains the information.

32 *Conduct of proceedings*

- 33 (7) The Court may give such weight in the substantive proceedings to
34 the information as the Court considers appropriate in the
35 circumstances, taking into account any submissions made to the
36 Court under subsection (2).

1 **52D Details of gazetted agency to be treated as confidential**
2 **information**

3 Sections 52A to 52C apply to information relating to a gazetted
4 agency in the same way as those sections apply to information that
5 is communicated by the gazetted agency.

6 Note: For example, the agency's name would be information relating to the
7 agency and so would be able to be disclosed only in accordance with
8 those sections.

9 **4 Application and transitional provisions**

10 The amendments of the *Australian Citizenship Act 2007* made by this
11 Part apply after the commencement of this Part in relation to any
12 information covered by subsection 52A(1) of that Act (as inserted by
13 this Part), whether the information is communicated or originated, and
14 any proceedings of a court, tribunal, parliament, parliamentary
15 committee, body or other person are commenced, before or after that
16 commencement.

17 ***Migration Act 1958***

18 **5 Subsection 5(1)**

19 Insert:

20 ***Australian law enforcement or intelligence body*** has the meaning
21 given by subsection 503A(9).

22 ***authorised Commonwealth officer*** has the meaning given by
23 subsection 503A(9).

24 ***Commonwealth officer*** (except in subsection 488AA(2)) has the
25 same meaning as in section 121.1 of the *Criminal Code*.

26 Note: A Minister is not a Commonwealth officer.

27 ***foreign law enforcement body*** has the meaning given by
28 subsection 503A(9).

29 ***gazetted agency*** has the meaning given by subsection 503A(9).

1 **6 Subsection 5(1) (after paragraph (a) of the definition of**
2 **non-disclosable information)**

3 Insert:

4 (aa) in relation to which both of the following apply:

5 (i) the information or matter was disclosed by a gazetted
6 agency and the information or matter is relevant to the
7 exercise of a power under, or in relation to, section 501,
8 501A, 501B, 501BA, 501C or 501CA;

9 (ii) the further disclosure of the information or matter
10 would, in the Minister's opinion (after consulting the
11 gazetted agency), be contrary to the national interest; or

12 **7 Paragraph 474(7)(a)**

13 Omit "503A(3)", substitute "503B(1)".

14 **8 Paragraph 500(6F)(c)**

15 After "the Minister must", insert "(subject to section 503A)".

16 **9 Sections 503A to 503D**

17 Repeal the sections, substitute:

18 **503A Protecting information supplied by law enforcement or**
19 **intelligence agencies etc.**

20 (1) This section applies in relation to information that:

21 (a) is communicated to an authorised Commonwealth officer by
22 a gazetted agency on condition that it be treated as
23 confidential information; and

24 (b) is relevant to the exercise of a power under or in relation to
25 section 501, 501A, 501B, 501BA, 501C or 501CA.

26 Note: *Authorised Commonwealth officer* and *gazetted agency* are defined
27 by subsection (9).

28 *Confidential gazetted agency information not generally to be*
29 *disclosed to other persons*

30 (2) An officer to whom information is communicated as referred to in
31 paragraph (1)(a) or any officer to whom information is disclosed

1 under this subsection must not (subject to subsections 503B(1) and
2 503C(1)) disclose the information to another person, except if:

- 3 (a) both of the following apply:
4 (i) the person is the Minister or an authorised
5 Commonwealth officer;
6 (ii) the information is disclosed for the purposes of the
7 exercise of a power referred to in paragraph (1)(b); or
8 (b) both of the following apply:
9 (i) the person is the Minister or an authorised
10 Commonwealth officer;
11 (ii) the information is disclosed for the purposes of the
12 exercise of a power referred to in paragraph 52A(1)(b)
13 of the *Australian Citizenship Act 2007*.

14 Note 1: The Minister may allow the disclosure of the information under
15 section 503B. The High Court, the Federal Court or the Federal
16 Circuit Court may order the production or giving of the information
17 under section 503C.

18 Note 2: An authorised Commonwealth officer who contravenes this subsection
19 may commit an offence under subsection (6).

20 *Confidential gazetted agency information not to be produced to*
21 *court or parliament etc.*

- 22 (3) An officer to whom information is communicated as referred to in
23 paragraph (1)(a), or the Minister or an authorised Commonwealth
24 officer to whom information is disclosed under subsection (2),
25 must not (subject to subsections 503B(1) and 503C(1)) be required
26 to:
27 (a) produce the information to a court, a tribunal, a parliament or
28 parliamentary committee or any other body or person; or
29 (b) give the information in evidence before a court, a tribunal, a
30 parliament or parliamentary committee or any other body or
31 person.

32 *Evidential rules*

- 33 (4) The hearsay rule does not apply to evidence that is given for the
34 purpose of establishing that information is covered by
35 subsection (1).

- 1 (5) A certificate, signed by an authorised Commonwealth officer, that
2 states that information was communicated to that officer by a
3 gazetted agency (without disclosing the name of the agency) is
4 prima facie evidence of the matters stated in the certificate.

5 *Offence*

- 6 (6) A person commits an offence if:
7 (a) the person is an authorised Commonwealth officer; and
8 (b) information is communicated to the officer as referred to in
9 paragraph (1)(a) or is disclosed to the officer under
10 subsection (2); and
11 (c) the officer discloses the information to another person; and
12 (d) the disclosure of the information is not in accordance with:
13 (i) subsection (2); or
14 (ii) a declaration made under subsection 503B(1); or
15 (iii) an order made under subsection 503C(1).

16 Penalty: Imprisonment for 2 years.

17 *Relationship between this section and other laws*

- 18 (7) This section has effect despite anything in:
19 (a) any other provision of this Act or the regulations; or
20 (b) any other law of the Commonwealth; or
21 (c) any law (whether written or unwritten) of a State or a
22 Territory;
23 whether the provision or law commences before or after this
24 section.

25 Note: This section (as affected by section 503D) is specified in Schedule 3
26 to the *Freedom of Information Act 1982* with the effect that documents
27 containing information protected from disclosure by this section are
28 exempt documents under that Act.

- 29 (8) To avoid doubt, if information is disclosed in accordance with
30 subsection (2), the disclosure is taken, for the purposes of the
31 Australian Privacy Principles, to be authorised by this Act.

32 *Definitions*

- 33 (9) In this Act:
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1 Note 1: In addition, the High Court, the Federal Court or the Federal Circuit
2 Court may order specified information covered by subsection 503A(1)
3 to be produced or given under section 503C.

4 Note 2: *Commonwealth officer* is defined by section 5.

5 *Obligations on Commonwealth officers and tribunal members to*
6 *whom information is disclosed*

7 (2) A Commonwealth officer to whom information is disclosed in
8 accordance with a declaration under subsection (1) must comply
9 with any conditions that are specified in the declaration.

10 Note: A Commonwealth officer who contravenes a condition may commit
11 an offence under subsection (7).

12 (3) A member of a tribunal to whom information is disclosed in
13 accordance with a declaration under subsection (1) must not
14 disclose the information to any person (other than the Minister, or a
15 Commonwealth officer to whom the information has been
16 disclosed in accordance with a declaration under subsection (1)).

17 (4) A Minister, a Commonwealth officer, or a member of a tribunal, to
18 whom information is disclosed in accordance with a declaration
19 under subsection (1) must not be required to produce the
20 information to, or give the information in evidence before, any
21 court (subject to subsection 503C(1)).

22 (5) A Minister, a Commonwealth officer, or a member of a tribunal, to
23 whom information is disclosed in accordance with a declaration
24 under subsection (1) must not voluntarily produce the information
25 to, or voluntarily give the information in evidence before, any court
26 unless so producing or giving the information is permitted by the
27 declaration.

28 (6) Information produced or given voluntarily to a court in accordance
29 with subsection (5) is taken, for the purposes of this Act, to have
30 been produced to the court as a result of an order made under
31 subsection 503C(1).

32 *Offence*

33 (7) A person commits an offence if:
34 (a) the person is a Commonwealth officer; and

- 1 (b) information is disclosed to the officer in accordance with a
2 declaration under subsection (1); and
3 (c) the declaration specifies one or more conditions; and
4 (d) the officer engages in conduct, or omits to engage in conduct;
5 and
6 (e) the officer's conduct or omission contravenes the condition
7 or conditions.

8 Penalty: Imprisonment for 2 years.

9 *Provisions relating to declarations under subsection (1)*

- 10 (8) The Minister does not have a duty to consider whether to exercise
11 the Minister's power under subsection (1).
12 (9) The rules of natural justice do not apply to the consideration or
13 exercise of the power under subsection (1).
14 (10) A declaration under subsection (1) is not a legislative instrument.
15 (11) To avoid doubt, if information is disclosed in accordance with a
16 declaration under subsection (1), the disclosure is taken, for the
17 purposes of the Australian Privacy Principles, to be authorised by
18 this Act.

19 **503C Courts may order disclosure of information supplied by law**
20 **enforcement agencies or intelligence agencies**

- 21 (1) Despite subsections 503A(3) and 503B(4), the High Court, the
22 Federal Court or the Federal Circuit Court may order the Minister
23 to cause specified information to be produced to, or given in
24 evidence before, the Court if:
25 (a) the Court is satisfied that the information is covered by
26 subsection 503A(1) (information supplied by law
27 enforcement agencies or intelligence agencies etc.); and
28 (b) the production or giving of the information is for the
29 purposes of proceedings (the *substantive proceedings*)
30 relating to the exercise of a power under a provision referred
31 to in paragraph 503A(1)(b).

1 *Making submissions relating to use of information*

- 2 (2) If information is produced to, or given in evidence before, the
3 Court in accordance with an order under subsection (1), any party
4 to the substantive proceedings may, subject to subsection (3) and
5 the control of the Court:
- 6 (a) make submissions concerning the use that the Court should
7 make of the information for the purpose of the substantive
8 proceedings, including any weight to be given to that
9 information; and
- 10 (b) make submissions, and if appropriate tender evidence,
11 concerning the impact that disclosing the information may
12 have on the public interest.
- 13 (3) A party to the substantive proceedings may make submissions and
14 tender evidence under subsection (2) only if:
- 15 (a) the party is aware of the content of the information; and
16 (b) the content of the information was not acquired unlawfully or
17 in circumstances that would found an action for breach of
18 confidence (whether or not the party was the person who
19 acquired the content unlawfully or in those circumstances).

20 *Court orders to prevent disclosure of information*

- 21 (4) For the purposes of hearing submissions under subsection (2), the
22 Court must order that:
- 23 (a) any person who the Court is satisfied, under subsection (3),
24 may not make submissions or tender evidence be excluded
25 from the hearing, including:
- 26 (i) the applicant in relation to the substantive proceedings;
27 or
28 (ii) any other party to the substantive proceedings; or
29 (iii) the legal representative of a person mentioned in
30 subparagraph (i) or (ii); and
- 31 (b) no report of the part of the proceedings that relates to the
32 information is to be published; and
- 33 (c) no person, without the consent of the Court, has access to a
34 file or a record of the Court that contains the information.

- 1 *Prohibition on disclosing information that has a real risk of*
2 *damaging the public interest*
- 3 (5) After considering the information and any submissions made under
4 subsection (2), the Court must determine whether disclosing the
5 information would create a real risk of damage to the public
6 interest, having regard to any of the following matters that it
7 considers relevant (and only those matters):
- 8 (a) the fact that the information was communicated, or originally
9 communicated, to an authorised Commonwealth officer by a
10 gazetted agency on condition that it be treated as confidential
11 information;
- 12 (b) the risk that the disclosure of information may discourage
13 gazetted agencies and informants from giving information in
14 the future;
- 15 (c) Australia’s relations with other countries;
- 16 (d) the need to avoid disruption to national and international
17 efforts relating to law enforcement, criminal intelligence,
18 criminal investigation and security intelligence;
- 19 (e) in a case where the information was derived from an
20 informant—the protection and safety of informants and of
21 persons associated with informants;
- 22 (f) the protection of the technologies and methods used (whether
23 in or out of Australia) to collect, analyse, secure or otherwise
24 deal with, criminal intelligence or security intelligence;
- 25 (g) Australia’s national security;
- 26 (h) such other matters (if any) as are specified in the regulations.
- 27 (6) If the Court determines under subsection (5) that disclosing the
28 information would create a real risk of damage to the public
29 interest, the Court must not disclose the information to any person,
30 including:
- 31 (a) the applicant in relation to the substantive proceedings; and
32 (b) any other party to the substantive proceedings; and
33 (c) the legal representative of a person mentioned in
34 paragraph (a) or (b); and
35 (d) any person who seeks access to a file or record of the Court
36 that contains the information.

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Conduct of proceedings

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- (7) The Court may give such weight in the substantive proceedings to the information as the Court considers appropriate in the circumstances, taking into account any submissions made to the Court under subsection (2).

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503D Details of gazetted agency to be treated as confidential information

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Sections 503A to 503C apply to information relating to a gazetted agency in the same way as those sections apply to information that is communicated by the gazetted agency.

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Note: For example, the agency's name would be information relating to the agency and so would be able to be disclosed only in accordance with those sections.

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10 Subparagraph 503E(1)(c)(iii)

15

Omit "or (2)".

16

11 Application and transitional provisions

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Application provisions

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- (1) The amendments of the definition of *non-disclosable information* in section 5 of the *Migration Act 1958* made by this Part apply in relation to particulars, reasons or documents given after the commencement of this item.

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- (2) Subsection 503A(6) of the *Migration Act 1958* (as inserted by this Part) applies in relation to any contravention by a person that occurs after the commencement of this Part (including in relation to information divulged or communicated to the person before that commencement).

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- (3) Subsection 503B(7) of the *Migration Act 1958* (as inserted by this Part) applies in relation to any contravention by a person that occurs after the commencement of this Part (including in relation to a declaration made before that commencement that is taken under subitem (6) to have been made under subsection 503B(1) of that Act).

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- (4) The other amendments of the *Migration Act 1958* made by this Part apply after the commencement of this Part in relation to any

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Schedule 1 Strengthening information provisions for character and conduct
Part 1 Main amendments

1 information covered by subsection 503A(1) of that Act (as inserted by
2 this Part), whether the information is communicated or originated, and
3 any proceedings of a court, tribunal, parliament, parliamentary
4 committee, body or other person are commenced, before or after that
5 commencement.

6 *Transitional provisions*

- 7 (5) Information divulged or communicated in accordance with
8 paragraph 503A(1)(a) or (b) of the *Migration Act 1958* before the
9 commencement of this Part is taken for the purposes of that Act, after
10 that commencement, to be information disclosed in accordance with
11 subsection 503A(1) or under subsection 503A(2) of that Act (as the case
12 requires and as inserted by this Part).
- 13 (6) A declaration under subsection 503A(3) of the *Migration Act 1958* that
14 is in force under that subsection immediately before the commencement
15 of this Part is taken for the purposes of that Act, after that
16 commencement, to be in force under subsection 503B(1) of that Act (as
17 inserted by this Part).
- 18 (7) The repeal of subsection 503A(9) of the *Migration Act 1958* by this Part
19 does not affect the continuity of any notice published in the *Gazette* for
20 the purposes of paragraph (a) or (b) of the definition of ***gazetted agency***
21 that is in force under that subsection immediately before the
22 commencement of this Part.

1 **Part 2—Consequential amendments**

2 ***Freedom of Information Act 1982***

3 **12 Paragraph 38(3)(b)**

4 Repeal the paragraph, substitute:

5 (b) disclosure of the document, or information contained in the
6 document, is prohibited under:

7 (i) section 503A of the *Migration Act 1958* as affected by
8 section 503D of that Act; or

9 (ii) section 52A of the *Australian Citizenship Act 2007* as
10 affected by section 52D of that Act.

11 **13 Schedule 3**

12 After:

Aged Care Quality and Safety Commission Act 2018, subsection 60(1)
and section 62

13 insert:

Australian Citizenship Act 2007, section 52A as affected by section 52D
of that Act

14 ***Inspector of Transport Security Act 2006***

15 **14 Section 90**

16 Repeal the section, substitute:

17 **90 Operation of certain provisions of the *Migration Act 1958* and the**
18 ***Australian Citizenship Act 2007* not affected**

19 Nothing in this Act affects the operation of:

20 (a) section 503A, 503B or 503C of the *Migration Act 1958*; or

21 (b) section 52A, 52B or 52C of the *Australian Citizenship Act*
22 *2007*.

1 **Part 3—Amendments contingent on the Federal**
2 **Circuit and Family Court of Australia Act**
3 **2020**

4 *Australian Citizenship Act 2007*

5 **15 Subsection 52A(2) (note 1)**

6 Omit “Federal Circuit Court”, substitute “Federal Circuit and Family
7 Court of Australia”.

8 **16 Subsection 52B(1) (note 1)**

9 Omit “Federal Circuit Court”, substitute “Federal Circuit and Family
10 Court of Australia”.

11 **17 Subsection 52C(1)**

12 Omit “Federal Circuit Court”, substitute “Federal Circuit and Family
13 Court of Australia”.

14 *Migration Act 1958*

15 **18 Subsection 503A(2) (note 1)**

16 Omit “Federal Circuit Court”, substitute “Federal Circuit and Family
17 Court of Australia”.

18 **19 Subsection 503B(1) (note 1)**

19 Omit “Federal Circuit Court”, substitute “Federal Circuit and Family
20 Court of Australia”.

21 **20 Subsection 503C(1)**

22 Omit “Federal Circuit Court”, substitute “Federal Circuit and Family
23 Court of Australia”.

1 **Schedule 2—Non-disclosure certificates**
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3 *Australian Citizenship Act 2007*

4 **1 Before section 46**

5 Insert:

6 **Subdivision A—Provisions relating to making decisions**

7 **2 Before section 50**

8 Insert:

9 **Subdivision B—Provisions relating to offences and search**
10 **warrants**

11 **3 Before section 51B**

12 Insert:

13 **Subdivision C—Provisions relating to Parliament**

14 **4 After section 51C**

15 Insert:

16 **Subdivision D—Provisions relating to review of decisions and**
17 **disclosure of information**

18 **5 Before section 53**

19 Insert:

20 **52G Restrictions on disclosure of certain information etc.**

21 Despite anything else in this Act (except section 52B), the
22 Secretary of the Department must not give a document or
23 information to the Administrative Appeals Tribunal in relation to
24 the Tribunal's review of a decision if the Minister certifies, in
25 writing, that disclosing any matter contained in the document, or
26 disclosing the information, would be contrary to the public interest:

- 1 (a) because it would prejudice the security, defence or
2 international relations of Australia; or
3 (b) because it would involve the disclosure of deliberations or
4 decisions of the Cabinet or of a committee of the Cabinet.

5 Note: See also section 52J (general provisions relating to sections 52G and
6 52H).

7 **52H Administrative Appeals Tribunal's discretion in relation to**
8 **disclosure of certain information etc.**

- 9 (1) This section applies to a document or information if:
10 (a) the Minister has certified, in writing, that disclosing any
11 matter contained in the document, or disclosing the
12 information, would be contrary to the public interest for any
13 reason specified in the certificate (other than a reason set out
14 in paragraph 52G(a) or (b)) that could form the basis for a
15 claim by the Crown in right of the Commonwealth in a
16 judicial proceeding that the matter contained in the
17 document, or the information, should not be disclosed; or
18 (b) the document, the matter contained in the document, or the
19 information, was given to the Minister, or to an authorised
20 Commonwealth officer, in confidence.

21 Note: See also section 52J (general provisions relating to sections 52G and
22 52H).

- 23 (2) If the Secretary of the Department gives the document or
24 information to the Administrative Appeals Tribunal in accordance
25 with a requirement of or under this Act in relation to the Tribunal's
26 review of a decision, the Secretary:
27 (a) must notify the Tribunal in writing that this section applies to
28 the document or information; and
29 (b) may give the Tribunal any written advice that the Secretary
30 thinks relevant about the significance of the document or
31 information.
- 32 (3) After being notified under subsection (2), the Administrative
33 Appeals Tribunal:
34 (a) may have regard to any matter contained in the document, or
35 to the information, for the purpose of exercising its powers in
36 relation to the decision; and

- 1 (b) may, if the Tribunal thinks it appropriate to do so having
 2 regard to any advice given by the Secretary under
 3 subsection (2), disclose any matter contained in the
 4 document, or the information, to the applicant or to any other
 5 person who has given oral or written evidence to the Tribunal
 6 in relation to the decision.
- 7 (4) The Administrative Appeals Tribunal must give a direction under
 8 subsection 35(4) of the *Administrative Appeals Tribunal Act 1975*
 9 in relation to information about a matter if:
 10 (a) the Tribunal discloses the matter under subsection (3) of this
 11 section; and
 12 (b) the Tribunal is satisfied that it is in the public interest that
 13 disclosure of the matter be prohibited or restricted.
- 14 (5) Subsection 35(5) of the *Administrative Appeals Tribunal Act 1975*
 15 does not apply in considering whether to give a direction under
 16 subsection 35(4) of that Act in relation to a matter disclosed under
 17 subsection (3) of this section.

18 **52J General provisions relating to sections 52G and 52H**

19 *Requirements of natural justice hearing rule*

- 20 (1) For the purposes of the review of a decision by the Administrative
 21 Appeals Tribunal, sections 52G and 52H are taken to be an
 22 exhaustive statement of the requirements of the natural justice
 23 hearing rule in relation to the information or documents to which
 24 those sections apply.

25 *Relationship with the Administrative Appeals Tribunal Act 1975*

- 26 (2) Sections 52G and 52H apply despite any provision of the
 27 *Administrative Appeals Tribunal Act 1975*.

28 **Subdivision E—Delegation and regulation-making power**

29 **6 Before subsection 53(1)**

30 Insert:

1 *Delegation by the Minister*

2 **7 At the end of section 53**

3 Add:

4 *Delegation by the Secretary*

5 (3) The Secretary may, by writing, delegate to any person all or any of
6 the Secretary's functions or powers under this Act or the
7 regulations.

8 (4) Section 53 of the *Australian Border Force Act 2015* does not apply
9 in relation to a function or power under this Act.

10 **8 Application provision**

11 Sections 52G to 52J of the *Australian Citizenship Act 2007*, as inserted
12 by this Schedule, apply in relation to applications made after the
13 commencement of this item to the Administrative Appeals Tribunal for
14 review of decisions (whether the decisions were made before or after
15 that commencement).