Foreign Passports (Law Enforcement and Security) Act 2005

No. 15, 1938 as amended

Compilation start date: 1 December 2014
Includes amendments up to: Act No. 116, 2014
About this compilation

This compilation

This is a compilation of the Foreign Passports (Law Enforcement and Security) Act 2005 as in force on 1 December 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 1 December 2014.

The notes at the end of this compilation (the endnotes) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.
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An Act relating to foreign passports and other foreign travel documents

Part 1—Preliminary

1 Short title

This Act may be cited as the *Foreign Passports (Law Enforcement and Security) Act 2005*.

2 Commencement

This Act shall commence on a date to be fixed by Proclamation.

4 Extension of Act to Territories

This Act shall extend to the Territories.

5 Interpretation

In this Act, unless the contrary intention appears:

*ASIO* means the Australian Security Intelligence Organisation.

*Australia* includes the Territories.

*competent authority* means a competent authority for the purposes of section 13, 14 or 15.

*document* includes:

(a) any paper or other material on which there is writing; or
(b) any paper or other material on which there are marks, figures, symbols or perforations that are:
   (i) capable of being given a meaning by persons qualified to interpret them; or
   (ii) capable of being responded to by a computer, a machine or an electronic device; or
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(c) any article or material (for example, a disk or a tape) from which information is capable of being reproduced with or without the aid of any other article or device.

*enforcement officer* means:
(a) an officer of Customs within the meaning of the *Customs Act 1901*; or
(b) a member or a special member of the Australian Federal Police; or
(c) an officer of the police force of a State or Territory; or
(d) a person, or a person who is one of a class of persons, authorised in writing by the Minister to exercise the powers and perform the functions of an enforcement officer.

*foreign passport* means a passport issued by or on behalf of the government of a foreign country.

*foreign travel document* means:
(a) a foreign passport; or
(b) a document of identity issued for travel purposes by or on behalf of the government of a foreign country (whether or not also issued for another purpose).

*Minister's determination* means an instrument made by the Minister for the purposes of this Act under section 24.

### 5A Application of the Criminal Code

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

**Note:** Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
Part 2—Enforcement officers’ powers in relation to foreign travel documents

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13 Request relating to Australian law enforcement matters

(1) If a competent authority believes on reasonable grounds that:

(a) a person is the subject of an arrest warrant issued in Australia in respect of an indictable offence against a law of the Commonwealth, a State or Territory; or

(b) a person (including a person who is in prison) is prevented from travelling internationally by force of:

(i) an order of a court of the Commonwealth, a State or Territory; or

(ii) a condition of parole, or of a recognisance, surety, bail bond or licence for early release from prison, granted under a law of the Commonwealth, a State or Territory; or

(iii) a law of the Commonwealth, or an order or other direction (however described) under a law of the Commonwealth;

the competent authority may request the Minister to make an order under section 16 in relation to the person’s foreign travel documents.

(2) In this section:

competent authority, in relation to a circumstance mentioned in paragraph (1)(a) or (b), means:

(a) a person who has responsibility for, or powers, functions or duties in relation to, that circumstance under a law of the Commonwealth, a State or Territory (other than a person who is specified in a Minister’s determination as not being a competent authority in relation to the circumstance); or
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(b) a person specified in a Minister’s determination as a competent authority in relation to the circumstance.

_prevented from travelling internationally_ includes:

(a) required to remain in Australia; and
(b) required to surrender a passport; and
(c) not permitted to apply for a passport; and
(d) not permitted to obtain a passport.

14 Request relating to international law enforcement co-operation

(1) If a competent authority believes on reasonable grounds that:

(a) a person is the subject of an arrest warrant issued in a foreign country in respect of a serious foreign offence; or
(b) a person (including a person who is in prison) is prevented from travelling internationally by force of:

(i) an order of a court of a foreign country; or
(ii) a condition of parole, or of a recognisance, surety, bail bond or licence for early release from prison, granted under a law of a foreign country, or other similar arrangement made under a law of a foreign country; or
(iii) a law of a foreign country, or an order or other direction (however described) under a law of a foreign country.

the competent authority may request the Minister to make an order under section 16 in relation to the person’s foreign travel documents.

(2) In this section:

_competent authority_, in relation to a circumstance mentioned in paragraph (1)(a) or (b), means:

(a) a member of the diplomatic staff of an Australian mission, being a person who is a member of the diplomatic staff of the mission within the meaning of the Vienna Convention on Diplomatic Relations; or
(aa) a consular officer of an Australian consulate, being a person who is a consular officer (but not an honorary consular officer) within the meaning of the Vienna Convention on Consular Relations; or
(b) an employee of the Commonwealth who is specified in a Minister’s determination as a competent authority in relation to the circumstance; or

(c) a non-corporate Commonwealth entity (within the meaning of the Public Governance, Performance and Accountability Act 2013) that is specified in a Minister’s determination as a competent authority in relation to the circumstance.

Note 1: The text of the Vienna Convention on Diplomatic Relations is set out in Australian Treaty Series 1968 No. 3. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department’s website.

Note 2: The text of the Vienna Convention on Consular Relations is set out in Australian Treaty Series 1973 No. 7. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department’s website.

prevented from travelling internationally includes:

(a) required to remain in the foreign country concerned; and

(b) required to surrender a passport; and

(c) not permitted to apply for a passport; and

(d) not permitted to obtain a passport.

serious foreign offence means an offence against the law of a foreign country:

(a) for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months; or

(b) if the offence does not carry a penalty under the law of the country—the conduct constituting which is, under a treaty to which the country and Australia are parties (being a treaty relating in whole or in part to the surrender of persons accused or convicted of offences), required to be treated as an offence for which the surrender of persons is allowed by the country or Australia; or

(c) the conduct constituting which would, if engaged in in Australia, constitute an indictable offence against this Act; or
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(d) the conduct constituting which would, if engaged in in Australia, constitute an offence specified in a Minister’s determination made for the purposes of subparagraph 15(1)(a)(v).

**15 Request relating to potential for harmful conduct**

(1) If a competent authority suspects on reasonable grounds that:
   (a) unless a person’s foreign travel documents are surrendered, the person would be likely to engage in conduct that:
      (i) might prejudice the security of Australia or a foreign country; or
      (ii) might endanger the health or physical safety of other persons (whether in Australia or a foreign country); or
      (iii) might interfere with the rights or freedoms of other persons (whether in Australia or a foreign country) set out in the International Covenant on Civil and Political Rights; or
      (iv) might constitute an indictable offence against this Act; or
      (v) might constitute an indictable offence against a law of the Commonwealth, being an offence specified in a Minister’s determination; and
   (b) the person should be required to surrender the person’s foreign travel documents in order to prevent the person from engaging in the conduct;

the competent authority may request the Minister to make an order under section 16 in relation to the person’s foreign travel documents.

Note: The text of the International Covenant on Civil and Political Rights is set out in Australian Treaty Series 1980 No. 23. In 2004 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department’s website.

(2) In this section:

*competent authority*: 

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*Foreign Passports (Law Enforcement and Security) Act 2005*
(a) in relation to a circumstance mentioned in subsection (1) that relates to Australia, means:
   (i) a person who has responsibility for, or powers, duties or functions in relation to, the circumstance under a law of the Commonwealth, a State or Territory (other than a person who is specified in a Minister’s determination as not being a competent authority in relation to the circumstance); or
   (ii) a person specified in a Minister’s determination as a competent authority in relation to the circumstance; or
(b) in relation to a circumstance mentioned in subsection (1) that relates to a foreign country, means:
   (i) a member of the diplomatic staff of an Australian mission, being a person who is a member of the diplomatic staff of the mission within the meaning of the Vienna Convention on Diplomatic Relations; or
   (ia) a consular officer of an Australian consulate, being a person who is a consular officer (but not an honorary consular officer) within the meaning of the Vienna Convention on Consular Relations; or
   (ii) an employee of the Commonwealth who is specified in a Minister’s determination as a competent authority in relation to the circumstance; or
   (iii) a non-corporate Commonwealth entity (within the meaning of the Public Governance, Performance and Accountability Act 2013) that is specified in a Minister’s determination as a competent authority in relation to the circumstance.

Note 1: The text of the Vienna Convention on Diplomatic Relations is set out in Australian Treaty Series 1968 No. 3. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department’s website.

Note 2: The text of the Vienna Convention on Consular Relations is set out in Australian Treaty Series 1973 No. 7. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department’s website.
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15A  Request for 14-day surrender relating to security risk  

(1) The Director-General of Security may request the Minister to make an order under section 16A in relation to a person’s foreign travel documents if the Director-General suspects on reasonable grounds that:

(a) the person may leave Australia to engage in conduct that might prejudice the security of Australia or a foreign country; and  

(b) the person should be required to surrender the person’s foreign travel documents in order to prevent the person from engaging in the conduct.  

(2) If the Minister has made an order under section 16A in relation to a person’s foreign travel documents, another request under subsection (1) of this section relating to the person must not be made unless the grounds for suspicion mentioned in that subsection include information first obtained by the Director-General of Security or an officer or employee of ASIO more than 14 days after the Minister made the order.  

(3) The Director-General of Security may, in writing, delegate his or her power under subsection (1) to a Deputy Director-General of Security (within the meaning of the Australian Security Intelligence Organisation Act 1979).  

(4) In exercising power under a delegation, the delegate must comply with any directions of the Director-General of Security.
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Section 16

Division 2—Demands for foreign travel documents

16 Demand for surrender of foreign travel document ordered by Minister on request under section 13, 14 or 15

(1) If a competent authority makes a request under section 13, 14 or 15 in relation to a person, the Minister may order the surrender of the person’s foreign travel documents.

(2) If the Minister has made an order under subsection (1), an enforcement officer may demand that the person surrender to the officer the person’s foreign travel documents.

(3) If the person does not immediately surrender the person’s foreign travel documents, the officer may:
   (a) seize the person’s foreign travel documents; and
   (b) seize any foreign travel document of the person that is not in the possession or control of any person.

(4) Subsection (3) does not authorise an enforcement officer to enter premises that the officer would not otherwise be authorised to enter.

(5) A person commits an offence if:
   (a) an enforcement officer demands under subsection (2) that the person surrender the person’s foreign travel documents; and
   (b) the officer informs the person that the Minister has ordered the surrender of the person’s foreign travel documents and that the officer is authorised to make the demand; and
   (c) the officer informs the person that it may be an offence not to comply with the demand; and
   (d) the person has possession or control of one or more of the person’s foreign travel documents; and
   (e) the person fails to surrender those documents to the officer immediately.

Penalty: Imprisonment for 1 year or 20 penalty units, or both.
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(6) A foreign travel document obtained by an enforcement officer under this section may be retained for so long as there is a competent authority who:

(a) believes on reasonable grounds that a circumstance mentioned in section 13 or 14 applies in relation to the person; or

(b) suspects on reasonable grounds that a circumstance mentioned in section 15 applies in relation to the person.

(7) Despite subsection (6), a foreign travel document must be returned to the person to whom it was issued if, on review by the Administrative Appeals Tribunal:

(a) the Tribunal sets aside the decision of the Minister to order the surrender of the document; and

(b) either:

(i) the Tribunal substitutes a decision not to order the surrender of the document; or

(ii) the Tribunal remits the matter for reconsideration and, on that reconsideration, the Minister decides not to order the surrender of the document.

16A Demand for 14-day surrender of foreign travel document ordered by Minister on request under section 15A

(1) The Minister may, on request under section 15A relating to a person’s foreign travel documents, order the surrender of the documents.

(2) If the Minister has made an order under subsection (1), an enforcement officer may demand that the person surrender to the officer the person’s foreign travel documents.

(3) If the person does not immediately surrender the person’s foreign travel documents, the officer may:

(a) seize the person’s foreign travel documents; and

(b) seize any foreign travel document of the person that is not in the possession or control of any person.
(4) Subsection (3) does not authorise an enforcement officer to enter premises that the officer would not otherwise be authorised to enter.

(5) A person commits an offence if:
(a) an enforcement officer demands under subsection (2) that the person surrender the person’s foreign travel documents; and
(b) the officer informs the person that the Minister has ordered the surrender of the person’s foreign travel documents and that the officer is authorised to make the demand; and
(c) the officer informs the person that it may be an offence not to comply with the demand; and
(d) the person has possession or control of one or more of the person’s foreign travel documents; and
(e) the person fails to surrender those documents to the officer immediately.

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

(6) A foreign travel document obtained by an enforcement officer under this section must be returned, to the person to whom it was issued, 14 days after the Minister made the order under subsection (1) relating to the document.

(7) However, subsection (6) does not apply if, within the 14 days described in that subsection, the Minister makes an order under subsection 16(1). In that case, subsections 16(6) and (7) apply in relation to the foreign travel document as if it had been obtained by an enforcement officer under section 16.

17 Demand for suspicious foreign travel document

(1) An enforcement officer may demand that a person surrender to the officer:
(a) a foreign travel document that has been obtained, or that the officer suspects on reasonable grounds has been obtained, by means of a false or misleading statement, false or misleading information or a false or misleading document; or
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(b) a foreign travel document or other document that has been used, or that the officer suspects on reasonable grounds has been used, in the commission of an offence against this Act.

(2) A person commits an offence if:
   (a) an enforcement officer demands under subsection (1) that the person surrender a document; and
   (b) the officer informs the person that the officer is authorised to demand that document; and
   (c) the officer informs the person that it may be an offence not to comply with the demand; and
   (d) the person has possession or control of the document; and
   (e) the person fails to surrender the document to the officer immediately.

Penalty: Imprisonment for 1 year or 20 penalty units, or both.

(3) A document surrendered to an enforcement officer under this section may be retained for so long as there is an enforcement officer who suspects on reasonable grounds:
   (a) that the document was obtained by means of a false or misleading statement, false or misleading information or a false or misleading document; or
   (b) that the document has been used in the commission of an offence against this Act.

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Part 3—Offences relating to foreign travel documents

18 Making false or misleading statements in relation to foreign travel document applications

(1) A person commits an offence if:
   (a) the person makes a statement (whether orally, in writing or any other way) to another person; and
   (b) the statement:
       (i) is false or misleading; or
       (ii) omits any matter or thing without which the statement is misleading; and
   (c) the statement is made in, or in connection with, an application for a foreign travel document.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) Subsection (1) does not apply:
   (a) as a result of subparagraph (1)(b)(i)—if the statement is not false or misleading in a material particular; or
   (b) as a result of subparagraph (1)(b)(ii)—if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the Criminal Code.

19 Giving false or misleading information in relation to foreign travel document applications

(1) A person commits an offence if:
   (a) the person gives information to another person; and
   (b) the information:
       (i) is false or misleading; or
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(ii) omits any matter or thing without which the information is misleading; and
(c) the information is given in, or in connection with, an application for a foreign travel document.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) Subsection (1) does not apply:
(a) as a result of subparagraph (1)(b)(i)—if the information is not false or misleading in a material particular; or
(b) as a result of subparagraph (1)(b)(ii)—if the information did not omit any matter or thing without which the statement is misleading in a material particular.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the Criminal Code.

20 Producing false or misleading documents in relation to foreign travel document applications

(1) A person commits an offence if:
(a) the person produces a document to another person; and
(b) the document is false or misleading; and
(c) the document is produced in, or in connection with, an application for a foreign travel document.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the Criminal Code.

(3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate):

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(a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
(b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the Criminal Code.

21 Improper use or possession of a foreign travel document

(1) A person commits an offence if:
   (a) the person uses a foreign travel document in connection with travel or identification; and
   (b) the document has been cancelled.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) A person commits an offence if:
   (a) the person uses a foreign travel document in connection with travel or identification; and
   (b) the document was not issued to the person.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(3) A person commits an offence if:
   (a) the person provides another person with a foreign travel document that was issued to the first-mentioned person; and
   (b) the first-mentioned person is reckless as to whether the document is or will be used by the other person in connection with travel or identification.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(4) A person commits an offence if:
   (a) the person has possession or control of a foreign travel document; and
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(b) the person knows that the document was not issued to the person.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(5) Subsections (1), (2), (3) and (4) do not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the Criminal Code.

22 Possessing, making or providing false foreign travel documents

(1) A person commits an offence if:
   (a) the person has possession or control of a document; and
   (b) the person knows that the document is a false foreign travel document.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) A person commits an offence if:
   (a) the person:
      (i) makes a false foreign travel document; or
      (ii) provides a false foreign travel document to another person; and
   (b) the person does so with the intention that the false foreign travel document may be used, acted on or accepted as if it were a passport or document of identity issued by or on behalf of the government of a foreign country.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(3) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the Criminal Code.

(4) In this section:
false foreign travel document:
(a) means a document:
   (i) that purports to be a passport issued by or on behalf of
       the government of a foreign country but that was not
       issued by or on behalf of that government; or
   (ii) that purports to be a document of identity issued for
        travel purposes by or on behalf of the government of a
        foreign country for the purposes of travel but that was
        not issued by or on behalf of that government; and
(b) includes a foreign travel document that has been altered by a
    person who is not authorised to alter that foreign travel
    document.

make, in relation to a false foreign travel document, includes alter
a document so as to make it a false document (whether or not it
was already a false document before the alteration).
23 Administrative review

(1) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Minister under section 16 to order the surrender of a person’s foreign travel documents.

(2) For the purposes of section 27 of the Administrative Appeals Tribunal Act 1975, the only person whose interests are taken to be affected by the decision is the person whose foreign travel documents are ordered to be surrendered.

(3) The Minister may, if the Minister makes a decision in response to a request under section 15, certify that the decision involved matters of international relations or criminal intelligence.

(4) Despite section 43 of the Administrative Appeals Tribunal Act 1975, if the Minister has given a certificate under subsection (3) in relation to a decision, then in any review of that decision the Administrative Appeals Tribunal may only make a decision:
   (a) affirming the Minister’s decision; or
   (b) remitting the decision to the Minister for reconsideration in accordance with any directions or recommendations of the Tribunal.

23A Delegation of Minister’s power to order surrender of documents

(1) The Minister may delegate to an SES employee the Minister’s power to make an order under subsection 16(1) in response to a request made under section 13.

(2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.
24 Minister’s determinations

(1) The Minister may make instruments specifying any of the matters that this Act provides may be specified in a Minister’s determination.

(2) An instrument made under subsection (1) is a legislative instrument.

25 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history
Endnote 5—Uncommenced amendments
Endnote 6—Modifications
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Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2
The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Uncommenced amendments—Endnote 5
The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.
Endnotes

Endnote 1—About the endnotes

Modifications—Endnote 6
If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7
An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8
Endnote 8 includes any additional information that may be helpful for a reader of the compilation.
## Endnote 2—Abbreviation key

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26  Foreign Passports (Law Enforcement and Security) Act 2005
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