**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Foreign Affairs

**Registration of Deaths Abroad Regulations 2018**

*Registration of Deaths Abroad Act 1984*

The *Registration of Deaths Abroad Act 1984* (the RDA Act) provides for the registration of the deaths of Australian citizens who have died overseas.

Section 28 of the RDA Act provides that the Governor-General may make regulations, not inconsistent with this Act; prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act. It also provides for the manner of giving notices under the Act.

About 1,300 Australians die each year abroad. Most of these deaths are registered under applicable state or territory legislation. However, some deaths occur in circumstances where state and territory governments advise they are not able to effect registration, such as where a strong connection could not be made to an Australian state or territory. In such instances, the RDA Act authorises the Registrar-General of the Australian Capital Territory (the ACT Registrar-General) to register such deaths in a capacity as the Registrar of Deaths Abroad.

The *Registration of Deaths Abroad Regulations 1985* (the RDA Regulations) currently prescribes the manner of making an application for the registration of a death abroad. The RDA Regulations are due to sunset on 1 April 2018.

**Issues giving rise to the need to remake the instrument**

The purpose of the *Registration of Deaths Abroad Regulations 2018* (the proposed Regulations) would be to repeal and remake the RDA Regulations in accordance with Part 4 of Chapter 3 of the *Legislation Act 2003*. The proposed Regulations would be substantially the same but would be modernised to reflect the requirement of contemporary legislation and guidelines. For example, alignment with the Attorney General’s *Department Guidelines on the Recognition of Sex and Gender*.

Personal information collected under the proposed Regulations would be for the purpose of completing an entry on the Register of Deaths Abroad and is consistent with that collected by the Australian Capital Territory (ACT) Government for ACT resident death certificates.

The RDA fees have also been aligned with contemporary fees that are charged by the ACT Registrar-General. The variable component - $46 - reflects the fee currently charged by the ACT government for similar services. This fee is set by the ACT Government in accordance with *ACT Legislation Act 2001* and is indexed annually at 4 per cent. The ACT Government has advised its fees are established with ‘a view to full cost recovery and are comparable with other jurisdictions’. Similar services in NSW attracts a fee of $56, which includes a $9 postage and handling fee (as at 25 January 2018). The ACT government also charges a non-variable mailing fee of $9, which is also calculated on full cost recovery basis.
Attachment A contains a Statement of Compatibility with Human Rights.

Consultation
The Attorney General’s Department and the Australian Capital Territory, Registrar-General as the Registrar of Deaths Abroad, Birth Death and Marriages were consulted during the drafting and passage of the remake of the regulations. They supported the amendments.

Regulatory impact assessment
The Office of Best Practice Regulation (OBPR ID 20337) has advised a regulation impact statement is not needed for the legislation because its measures are of minor policy significance and will not impose a regulatory burden on individuals, businesses, or community organisations.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Registration of Deaths Abroad Regulations 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview

The Registration of Deaths Abroad Act 1984 (the RDA Act) provides for the registration of the deaths of Australian citizens who have died overseas.

Section 28 of the RDA Act provides that the Governor-General may make regulations, not inconsistent with this Act; prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act. It also provides for the manner of giving notices under the Act.

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Around 1,300 Australians die each year abroad. Most of these deaths are registered under applicable state or territory legislation. However, some deaths occur in circumstances where state and territory governments advise they are not able to effect registration, such as where a strong connection could not be made to an Australian state or territory.

For these cases, the RDA Act authorised the Registrar-General of the Australian Capital Territory (ACT Registrar-General) to make these registrations as the National Registrar of Deaths Abroad.

Human rights implications

The proposed remade regulations do not engage any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. For clarity, the registration of deaths under the RDA Act is a non-mandatory regime.

Conclusion

The Amendment Regulations are compatible with human rights as they do not limit any rights or raise any human rights issues of concern.