

Foreign Passports Determination 2005

EXPLANATORY STATEMENT

PASSPORTS ACT 1938

Issued by the authority of the
Parliamentary Secretary (Foreign Affairs and Trade)

Outline

The *Foreign Passports (Law Enforcement and Security) Act 2005* (**Foreign Passports Act**) complements national security, border protection and law enforcement measures introduced with the *Australian Passports Act 2005*. The *Foreign Passports Determination 2005* specifies competent authorities which can request an order from the Minister responsible requiring a person to surrender a person's foreign travel documents. The Determination also specifies indictable offences against a law of the Commonwealth which might constitute conduct in relation to which an order requiring a person to surrender a person's foreign travel document may be made.

The Foreign Passports Act introduced powers for police and Customs officers to demand and seize foreign travel documents if the Minister responsible has made an order requiring a person to surrender such a document. The powers will help ensure that those persons reasonably suspected of being likely to engage in serious offences or harmful conduct are prevented from leaving Australia on a foreign travel document.

The provisions are necessary to combat the misuse of foreign travel documents in Australia. The misuse of foreign travel documents can be associated with identity fraud and other criminal activity, including terrorism.

The procedure for demanding the surrender of a foreign travel document is, in summary, that a competent authority makes a request to the Minister responsible that the Minister order the surrender of a person's foreign travel document for reasons relating to:

- Australian law enforcement matters (section 13);
- international law enforcement cooperation (section 14); or
- potential for harmful conduct (section 15).

An enforcement officer may then demand that the person surrender the person's foreign travel document (subsection 16(2)).

Notes on sections

Section 1 – Name of Determination

1. Section 1 provides that the Determination is the *Foreign Passports Determination 2005*.

Section 2 – Commencement

2. Section 2 provides that the Determination will commence the day after it is registered.

Section 3 – Definition

3. Section 3 defines “Foreign Passports Act” to mean the *Passports Act 1938*.

4. The title of the *Passports Act 1938* will be changed to the *Foreign Passports (Law Enforcement and Security) Act 2005*, as a result of an amendment made by the *Australian Passports (Transitionals and Consequential) Act 2005*, with effect from the commencement of sections 3 to 58 of the *Australian Passports Act 2005*. These sections are proclaimed to commence on 1 July 2005. The *Foreign Passports Amendment Determination 2005 (No 1)* will amend this section to substitute *Foreign Passports (Law Enforcement and Security) Act 2005* for *Passports Act 1938*.

Section 4 – Australian law enforcement matters

5. Competent authorities relating to Australian law enforcement matters will typically be the Australian Federal Police (AFP) and State and Territory police. Such agencies do not need to be specified as they are described in paragraph (a) of the definition of competent authorities in subsection 13(2) of the *Foreign Passports Act 2005*.

6. The Attorney-General and the Secretary of and SES employees in the Attorney-General’s Department are specified as competent authorities. This complements a practice established in 1997, under which the Attorney-General and his officers may request the refusal of an Australian passport of a person who is wanted for prosecution by Commonwealth law enforcement agencies for serious criminal offences, and is overseas.

Section 5 – Competent authorities – international law enforcement cooperation

7. The power under the *Foreign Passports Act* to demand a person’s foreign travel documents for reasons relating to international law enforcement cooperation complements Australian law enforcement objectives to offer full and reciprocal assistance to counterparts around the world in enforcing foreign laws.

8. Competent authorities relating to international law enforcement cooperation matters are limited to an agency or an employee of the Commonwealth. In this way, the *Foreign Passports Act* and the Determination only give standing to Australians to make these requests. They may be specified in accordance with paragraphs (b) and (c) of the definition of competent authority in subsection 14(2) of the *Foreign Passports Act*.

9. The competent authorities are the Secretary of and SES employees in the Attorney-General’s Department. These authorities have responsibility for, or powers, functions or duties in relation to international law enforcement cooperation matters.

Section 6 – Reasons relating to potential for harmful conduct

10. A competent authority may request the Minister to demand the surrender of a foreign travel document where the competent authority suspects on reasonable grounds that: (a) the person is likely to engage in specified conduct; and (b) the person should be made to surrender a foreign travel document in order to prevent them from engaging in that conduct (Foreign Passports Act, subsection 15(1)). The Foreign Passports Act specifies various types of conduct (subsection 15(1)(a)(i) to (iv)). The first three were elements in the 1938 Act. The fourth type will be conduct that might constitute an indictable offence against the Foreign Passport Act.

11. Section 6 specifies the Commonwealth indictable offences which might constitute the conduct, as permitted under the Foreign Passports Act (subsection 15(1)(a)(v)). The offences include many of the offences in the *Criminal Code* which have an extended geographical jurisdiction. Other offences - relating to internationally protected persons, drug trafficking, prohibited imports and prohibited exports, child sex tourism and child abduction - are transnational in nature.

12. Section 6 specifies these offences by reference to Schedule 1 of the *Australian Passports Determination 2005* the *Australian Passports Determination 2005*. This ensures that similar powers in relation to Australian and foreign travel documents remain consistent.

Section 7 – Competent authorities – potential for harmful conduct

13. The Secretary of and SES employees in the Attorney-General's Department and the AFP are specified (subsections 7(2) and 7(3)(a), respectively). These authorities have responsibility for, or powers, functions or duties in relation to international law enforcement cooperation matters as noted above (section 4). The elements of many of these matters overlap with the elements of potential harmful conduct.

14. Subsection 7(3)(a) specifies the Australian Customs Service. Customs has responsibility for, or powers, functions or duties in relation to indictable offences under the *Customs Act 1901* which are specified in the *Australian Passports Determination 2005* (Schedule 1 Part 2).

15. Subsection 7(3)(c) specifies the Australian Security Intelligence Organisation. One of its functions is to advise the Minister for Foreign Affairs in respect of matters relating to security where those matters are relevant to the Minister's functions and responsibilities (*Australian Security Intelligence Organisation Act 1979*, paragraph 17(1)(c)). This advice takes the form of a request for the demand of surrender of a foreign travel document for the reason that a person would be likely to engage in conduct that might prejudice the security of Australia or a foreign country (Foreign Passports Act , subparagraph 15(1)(a)(i)).