

Australian Passports Act 2005

AUSTRALIAN PASSPORTS AMENDMENT DETERMINATION (NO. 1) 2013

Issued by the Authority of the Minister for Foreign Affairs

Authority

The *Australian Passports Act 2005* (the Act) empowers the Minister for Foreign Affairs to issue Australian travel documents and perform related functions. Section 57 gives the Minister the authority to specify matters provided in the Act in a determination. The current determination made under this power is the *Australian Passports Determination 2005* (the Determination). The Determination supports the operation of, and provides functional detail to, the Act.

Purpose

The *Australian Passports Amendment Determination 2013 (No.1)* (the Amendment Determination) amends the Determination to bring it up to date with Commonwealth anti-discrimination legislation, remove ambiguities, strengthen the legislative basis for existing policy and practice and produce improved client service outcomes.

The Amendment Determination will:

- limit the Minister for Foreign Affairs' discretion when considering the 'special circumstances' in the Determination to issue an Australian passport to a child without the consent of each person with parental responsibility while the child is the subject of proceedings before an Australian court that may affect the rights of a child to travel internationally or may affect who has parental responsibility;
- remove the specified period of no contact with the non-consenting parent in relation to passport applications for children 16 years old or older, allowing the Minister for Foreign Affairs to exercise the same level of discretion as currently provided for children under the age of 16 years old;
- remove ambiguity regarding the maximum periods of validity for concurrent passports, replacement passports following a change of name and those issued to a person whose passport has been lost or stolen multiple times;
- expand the group of persons eligible for a fee waiver due to a change of name to include persons who enter or cease to be in a registered or de facto relationship, or who are transitioning to another gender;
- allow a fee equal to one lost/stolen passport fee to be waived where a travel document that has been reported as lost or stolen is subsequently recovered and can be produced at interview for a replacement travel document within three months of its reported loss or theft;

- include spouses, partners in a de facto or registered relationship and dependants in the category of persons eligible for a refund of a priority processing fee on compassionate grounds;
- allow a person to use a name which appeared on their most recent previous Australian passport in a new Australian travel document, subject to certain conditions;
- permit only persons who were born and are resident overseas and who are unable to change their name with an Australian Registry of Birth, Deaths or Marriages (RBDM) to use a name from a foreign marriage certificate or foreign name change certificate in their Australian travel document if the foreign certificate has been legalised and post-dates their Australian citizenship;
- allow the Minister to determine that titles, awards and decorations, not awarded directly to, or not conferred directly on, the applicant by the Crown or Commonwealth (for example, titles purchased by the applicant) are unacceptable for use in an Australian travel document;
- permit the Minister to delegate the power to extend the validity of Certificates of Identity (COIs) and Convention Travel Documents (CTDs) which are issued to refugees and certain humanitarian visa holders; and
- add the Commissioner of the Philippines Bureau of Immigration to the list of persons to whom information may be disclosed for the purposes of preventing the unlawful use of travel documents.

Other minor technical and consequential changes will be made to support the operation of the substantive amendments, correct drafting errors and update references to other legislation.

The Amendment Determination will have a minimal direct or indirect financial impact for the Commonwealth. Amendments to fee waiver and priority processing fee refund provisions which will, *inter alia*, apply to persons in registered or de facto relationships, seek to strengthen the legislative basis for existing practice and bring the provisions into line with anti-discrimination legislation. In most cases these fee waivers/refunds are currently provided under alternative provisions. Notwithstanding these amendments, the number of gratis passports will continue to be insignificant relative to the total number of passports issued annually.

Consultation

Consultation has been conducted with the Attorney-General's Department (AGD), the Department of Immigration and Citizenship (DIAC), State and Territory RBDMs and the branch responsible for privacy and freedom of information policy formerly located within the Department of Prime Minister and Cabinet (now located within AGD).

The Amendment Determination commences on the day after it is registered.

The Amendment Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Australian Passports Amendment Determination 2013 (No. 1)

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 of the instrument

The *Australian Passports Amendment Determination 2013 (No.1)* (the Amendment Determination) amends the *Australian Passports Determination 2005* (the Determination) to support the effective and equitable operation of the *Australian Passports Act 2005* (the Act). The Amendment Determination removes ambiguities in the previous instrument and improves client service outcomes. The substantive amendments are as follows:

- Subsection 2.1(2) will be expanded so that the Minister for Foreign Affairs cannot consider the ‘special circumstances’ in the Determination in relation to the issue of an Australian passport to a child without the consent of each person with parental responsibility while the child is the subject of proceedings before an Australian court which may affect the child’s right to travel internationally, or may affect who has parental responsibility;
- Subsection 2.1(3)(e) will be repealed, removing the specified period of no contact with the non-consenting parent in relation to passport applications for children 16 years old or older;
- The wording used in subsection 5.1(2) will be clarified to better describe the maximum periods of validity for concurrent passports (5.1(2)(e)), replacement passports following a change of name (5.1(2)(j)) and passports issued to persons whose passport has been lost/stolen multiple times (5.1(2)(d));
- Paragraph 8.2(b) will be expanded to include persons who change their name due to entering or ceasing to be in a registered or de facto relationship, or as a result of transitioning to another gender, in the group of persons eligible for a fee waiver;
- Section 8.2 will also be amended to allow for a fee equal to one lost/stolen passport fee to be waived where the travel document that has been reported as lost or stolen is subsequently recovered and can be produced at interview for a replacement travel document within three months of its reported loss or theft;
- Subsection 8.3(3) will be amended to include spouse and de facto partner (including a registered relationship partner) in the category of persons eligible for a refund of a priority processing fee on compassionate grounds, as well as persons who need to travel with their primary carer who would be eligible for such a refund;

- Subsection 9.1(2) will be amended to include persons who enter or cease to be in a registered relationship, or whose partner in a registered relationship dies, to revert to a name the person used before entering the relationship, where that name was registered in Australia or appeared on their Australian citizenship certificate, provided it has not been superseded;
- New subsection 9.1(2A) will allow the name that has appeared on a person's most recent previous Australian passport to appear in a subsequent Australian travel document, subject to certain conditions;
- Subsections 9.1(7) and 9.1(8) will be amended to only allow those persons who were born and are resident overseas and who are unable to access an Australian Registry of Birth, Deaths and Marriages (RBDM) to change their name, to use a name on their Australian travel document from a foreign marriage certificate or foreign name change certificate if it has been legalised and it post-dates their Australian citizenship;
- Paragraph 9.1(11)(d) will be amended to reflect the original policy intention that only titles awarded to, or conferred on, the applicant by the Crown or Commonwealth (as opposed to titles purchased by the applicant) may be treated as unacceptable for use in an Australian travel document;
- Subsection 10.1(1) will be amended to allow the Minister to delegate the power to extend the validity of Certificates of Identity (COIs) and Convention Travel Documents (CTDs); and
- Schedule 3 will be amended to include the Commissioner of the Philippines Bureau of Immigration in the list of persons in Parts 1, 2 and 3 to whom information may be disclosed for the purposes of section 45 and paragraphs 46(a) and (b) of the Act.

Human rights implications

The Amendment Determination engages the following human rights:

- the rights of parents and children under Articles 3, 5, 11 and 18 of the *Convention on the Rights of the Child* (CRC);
- the rights of equality and non-discrimination under Articles 2, 16 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR);
- the right to freedom of movement under Article 12 of the ICCPR; and
- the right to family, privacy and reputation under Article 17 of the ICCPR.

Rights of parents and children

Article 3 of the CRC requires that the best interests of the child be a primary consideration in all actions concerning children. Articles 5 and 18 of the CRC protect the rights of both parents, or other persons with parental responsibility where applicable, to make decisions and take actions in relation to the upbringing of a child. Article 11 of the CRC provides that states should take measures to combat the illicit transfer and non-return of children abroad.

Subsection 11(1) of the Act states that the Minister for Foreign Affairs must not issue an Australian passport to a child unless each person who has parental responsibility for the child consents to the child travelling internationally, or an order of a Commonwealth, State or Territory court permits the child to travel internationally. Subsection 11(2) of the Act authorises the Minister to issue an Australian passport without the consent of all persons with parental responsibility in circumstances specified in a legislative instrument. Section 2.1 of the Determination sets out the 'special circumstances' in which the Minister may issue a passport to child even though a person who has parental responsibility for the child has not provided his or her consent to the child travelling internationally.

Child subject of court proceedings

Existing subsection 2.1(2) of the Determination prevents the Minister from issuing a passport without parental consent in special circumstances where there are court proceedings underway which may affect the right of the child to travel internationally. The Amendment Determination expands subsection 2.1(2) to include situations where a child is the subject of any proceedings before an Australian court which may affect the child's right to travel internationally or may affect who has parental responsibility. As a result, the Minister or his or her delegate will no longer be able to issue an Australian travel document to a child without the consent of each person with parental responsibility or an Australian court order permitting international travel where any such proceedings are pending or in progress in relation to the child.

This amendment recognises that, as issues pertaining to parental responsibility or the right of a child to travel internationally may arise for consideration at any stage in court proceedings relating to a child, the child should not be issued with a passport while such proceedings are pending or underway without the consent of all persons with parental responsibility. In effect, this amendment prevents one parent removing a child from Australia using an Australian travel document without the consent of all other persons with parental responsibility or an Australian court order permitting such action, until such time as all relevant court proceedings have been finalised. This aims to mitigate the risk of child abduction. Accordingly, the amendment promotes the rights of children not to be transferred illicitly abroad and protects the rights of other persons with parental responsibility while matters relevant to the child are still before the courts.

The Minister will retain the ability under subsection 11(2) of the Act to issue a passport to a child without the consent of each person with parental responsibility in circumstances where, for example, the Minister is satisfied that the child's welfare would be adversely affected if the child was not able to travel internationally. This is consistent with Article 3 of the CRC which requires that the best interests of the child be a primary consideration in all actions concerning that child.

Removal of specified period of no contact for children 16 years old or older

Existing paragraph 2.1(3)(d) of the Determination allows the Minister or his or her delegate to issue an Australian travel document to a child without the consent of all persons with parental responsibility where there has been no contact between the child and the non-consenting parent for a substantial period before the application is made.

Existing paragraph 2.1(3)(e) of the Determination allows the Minister to issue a passport to a child who is at least 16 years old without full parental consent where the child has had no contact with the non-consenting parent for at least two years or, if the child is self-supporting and living independently, one year before the application is made. The Amendment Determination repeals paragraph 2.1(3)(e). As a result, the Minister will be able to exercise the same level of discretion in determining what is a substantial period of no contact in relation to children who are 16 years old or over as currently provided for children under the age of 16 years old, as set out in paragraph 2.1(3)(d). Except for in certain limited circumstances, DFAT takes reasonable steps to contact the non-lodging parent to seek their consent before issuing a travel document to the child.

In most cases, the periods of two years of no contact (or one year if living independently) in relation to children aged 16 years or over will continue to be applied under policy and set out in passport policy guidance. However, removing the specified time periods allows the Minister or his or her delegate to fully consider the unique circumstances of each individual case and the best interests of the child, consistent with Article 3 of the CRC.

Right to respect for the family

Article 17 of the ICCPR states that no one shall be subjected to arbitrary or unlawful interference with their family and that everyone has the right to the protection of the law against such interference.

As outlined above, the amendment to subsection 2.1(2) of the Determination prevents the Minister from issuing a passport to a child without the consent of each person with parental responsibility where any Australian court proceedings which may affect a child's right to travel internationally or who has parental responsibility are pending or in progress. This amendment protects the right not to be subject to arbitrary or unlawful interference with one's family by requiring the consent of both parents (or other persons with parental responsibility) before the issue of a passport. As noted, this will prevent one parent removing a child from Australia using an Australian travel document without the consent of the other parent in situations where relevant court proceedings relating to the child are pending or underway. This amendment prevents the primary and proper role of the courts in relation to disagreements between persons with parental responsibility from being frustrated by the removal of a child while court proceedings are in progress.

Right to freedom of movement

Article 12 of the ICCPR protects the right to freedom of movement, specifically that everyone shall be free to leave any country including their own. The issue of passports and other travel-related documents is critical to the fulfilment of an individual's right to freedom of movement.

Delegation of power to extend the validity of COIs and CTDs

The amendment to subsection 10.1(1) of the Determination will permit the Minister to delegate his or her power to extend the validity of Convention Travel Documents (CTDs) and Certificates of Identity (COIs). A CTD may be issued to non-Australian citizens recognised by Australia as refugees in accordance with the United Nations Convention relating to the Status of Refugees of 28 July 1951 and its 1967 Protocol. A COI is typically issued to a stateless person or a person who is unable to obtain a valid travel document from the country of their nationality (for example, certain humanitarian visa holders). Where a person travels overseas on a COI or CTD and the document expires, the Minister's delegate would be permitted to decide to extend the validity of the document to facilitate the person's return to Australia without the need to apply for a new travel document, provided there has been no change to their Australian visa status.

While the issue of COIs and CTDs engages the right to freedom of movement, this amendment does not affect any substantive entitlements; rather it aims to achieve more efficient administrative processes.

Rights of equality and non-discrimination

Articles 2, 16 and 26 of the ICCPR set out the rights of all individuals to equal treatment and protection under the law, as well as freedom from discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 2(2) specifically provides that State Parties should undertake steps to adopt legislative or other measures to give effect to these rights.

The Amendment Determination advances equal and non-discriminatory treatment under the law for persons in de facto relationships, registered relationships and members of the sex and gender diverse community who are transitioning to their preferred gender.

Existing paragraph 8.2(b) of the Determination allows for the waiver of the fee when applying for a new passport due to a change of name following marriage or divorce or on the death of a person's spouse. The amendments to paragraph 8.2(b) extend the categories of client who are eligible to access a fee waiver to persons who choose to change their name as a result of entering or ceasing to be in a de facto relationship or registered relationship as defined by sections 2E and 2F respectively of the *Acts Interpretation Act 1901*. These amendments recognise the legal status of de facto relationships and registered relationships in line with other Commonwealth legislation designed to prevent discrimination against same-sex couples and their children in Commonwealth laws.

The amendment to paragraph 8.2(b) will also allow individuals whose name has changed as part of transitioning to their preferred gender to be eligible for a fee waiver when applying for a replacement passport in their new name. This change is in line with Australian Government efforts to remove discrimination on the grounds of gender identity and sexual orientation, and is reflected in the DFAT policy relating to sex and gender diverse passport applicants which was introduced in September 2011 following community consultation.

The Amendment Determination will also amend subsection 8.3(3) to include those in registered or de facto relationships in the list of persons eligible for a refund of a priority processing fee on compassionate grounds. Similarly, subsection 9.1(2) will enable persons whose registered relationship has ceased, or whose partner in a registered relationship has died, to revert to a name used and reflected in specified documentation before they registered that relationship.

Right to privacy and reputation

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy and that everyone has the right to the protection of the law against such interference. Laws which allow for the collection, use and disclosure of personal information engage the right to privacy.

Section 45 of the Act authorises the Minister to disclose personal information in relation to the status of an Australian travel document, for example, if the travel document is lost, stolen or suspicious. Paragraphs 46(a) and (b) of the Act authorise the Minister to, on request, disclose personal information for the purposes of:

- confirming or verifying information relating to an applicant for an Australian travel document, or a person to whom an Australian travel document has been issued; and
- facilitating or otherwise assisting the international travel of a person to whom an Australian travel document has been issued.

‘Personal information’ is understood to have the same meaning as in the *Privacy Act 1988*.

The Amendment Determination adds the Commissioner of the Philippines Bureau of Immigration (the Commissioner) to the list of persons to whom information may be disclosed in Parts 1, 2 and 3 of Schedule 3 of the Determination. This will allow the Minister to disclose information to the Commissioner for the purpose of informing him or her about the status of an Australian travel document (for example, whether it was reported as lost or stolen or is a suspicious travel document). It will also allow the Minister to, on request, disclose information to the Commissioner for the purpose of confirming or verifying information relating to an applicant for, or holder of, an Australian travel document.

The right to privacy may be subject to permissible limitations where those limitations are provided by law and are not arbitrary. In order for limitations not to be arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

(i) *Legitimate objective*

The purpose of the amendments is to support the operation of the Regional Movement Alert System (RMAS) between Australia and the Philippines. RMAS is an initiative of the Asia-Pacific Economic Cooperation (APEC) forum intended to prevent the use of passports by terrorists or other serious criminals. The United States and New Zealand are participants in RMAS together with Australia, and the heads of border agencies in these countries are already specified in the Determination as persons to whom information may be disclosed under section 45 and subsections 46 (a) and (b) of the Act.

Under RMAS, passport data of persons from participating countries travelling to the territory of another participating country have their passports verified prior to their gaining entry. RMAS enables authorities to detect lost, stolen, invalid and counterfeit travel documents before a passenger arrives at their destination, and also facilitates border processing for genuine travellers, for example, by allowing authorities to resolve data entry or processing errors. However, the Philippines will not have direct access to Australian passport data. The system will provide a yes/no response that a passport verifies against Australian data holdings.

RMAS will be implemented on a reciprocal basis with the Philippines following a trial period. Australia has an interest in receiving information from the Philippines regarding persons who may be seeking to enter Australia using fraudulent, lost or stolen passports.

(ii) *Reasonable, necessary and proportionate*

As noted above, the disclosure of personal information is provided for by law. Sections 45 and 46 of the Act, together with the Determination, set out:

- the purposes for which disclosures may be made;
- the persons to whom disclosures may be made;
- the personal information which may be provided; and
- in the case of disclosures made under section 46, a requirement that the Minister has received a request for the information.

When lodging an application for an Australian passport, each applicant, or parent in the case of a child applicant, signs an acknowledgement stating they understand that:

- the Department of Foreign Affairs and Trade (DFAT) may publicise or pass details of any lost or stolen document to federal, state, territory or foreign governments, including police and other agencies, and international organisations, such as Interpol, to restrict the illegal use of these documents; and
- DFAT may confirm or verify the validity of any Australian travel document, or disclose the minimum necessary information held in relation to their Australian travel document to facilitate their international travel, or disclose the information for other specified purposes, on the request of specified organisations.

The disclosure of personal information for these purposes enables government authorities to identify persons who are attempting to travel internationally using a lost, stolen, invalid or counterfeit travel document, and facilitates the movement of genuine travellers. Preventing the movement of persons using such travel documents is critical to combating transnational and other serious crime, and protecting the identity of Australian passport holders.

Memoranda of Understanding are in place between Australia and the current participating countries, United States and New Zealand, covering, *inter alia*, the need to observe strict privacy requirements. A similar arrangement will be concluded with the Philippines before RMAS is implemented.

If a passport does not match DFAT's records prior to or on entry to the Philippines, DFAT will disclose sufficient information to enable a decision to be taken as to the bona fides of the traveller. The power to disclose information is discretionary and is limited to the minimum information necessary to achieve the specified purpose. RMAS does not involve countries directly accessing or transferring passport data. Data is validated at the source and is not exchanged.

Conclusion

This instrument is compatible with human rights because it advances the protection of human rights, and to the extent that it limits any human rights, those limitations are reasonable, necessary and proportionate.

NOTES ON CLAUSES 1-4

Clause 1: Name of determination

1. Clause 1 provides that the name of the Determination is the *Australian Passports Amendment Determination 2013 (No.1)*.

Clause 2: Commencement

2. Clause 2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Clause 3: Authority

3. Clause 3 provides that the Determination is made under section 57 of the *Australian Passports Act 2005*.

Clause 4: Schedule(s)

4. Clause 4 provides that each instrument specified in the Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule has effect according to its terms.

NOTES ON ITEMS 1 – 22

Schedule 1 – Amendments

Item 1: Interpretation

1. The Amendment Determination advances equal and non-discriminatory treatment under the law for persons in de facto and registered relationships. Item 1 adds definitions to section 1.3 to support the operation of paragraph 8.2(b) and subsections 8.3(2) and 9.1(2) (as amended):

- “de facto partner” has the meaning given by section 2D of the *Acts Interpretation Act 1901* which includes both a person in a de facto relationship and a person in a registered relationship;
- “de facto relationship” is defined in section 2F of the *Acts Interpretation Act 1901*;
- “registered relationship” is defined in section 2E of the *Acts Interpretation Act 1901*.

Children’s passports

Items 2 – 4: Special circumstances

2. Section 2.1 sets out the special circumstances in which the Minister may issue a passport to a child even though a person who has parental responsibility for the child has not provided his or her consent to the child travelling internationally. Item 2 expands the operation of subsection 2.1(2) so that special circumstances cannot be considered in circumstances where the Minister has been provided with court documents demonstrating that a child is the subject of proceedings before an Australian court that may affect the child’s right to travel internationally or may affect who has parental responsibility (as this could, in turn, also affect the child’s right to travel internationally). The amendment recognises that the courts may, at any stage in proceedings, consider issues that may affect parental responsibility or the right of the child to travel internationally. Consistent with the objective of the child passport provisions of the Act to protect a child from abduction and the rights of parents, this amendment aims to mitigate the risk that the issue of an Australian passport to a child could facilitate their removal by one parent while the courts are seeking to resolve a dispute about parental responsibility.

3. Item 3 repeals paragraph 2.1(3)(e) which provides that the Minister may issue a passport to a child 16 years old and over without the consent of all persons with parental responsibility where the period of no contact with the child's non-lodging parent is more than two years, or, if the child lives independently of all persons with parental responsibility, one year. The removal of this provision will allow the Minister to exercise the same level of discretion to determine what is a substantial period of no contact between the child and the non-lodging parent in deciding whether to issue a passport to a child aged 16 years old or over, as currently provided for children under 16 years in paragraph 2.1(3)(d). In most cases, the periods of no contact in relation to children aged 16 years or over – two years, or one year if living independently – will continue to be applied under policy. However, the amendment affords the Minister greater flexibility to consider the particular circumstances of each case and the child's best interests when deciding whether to issue a passport to a child. Except for certain limited circumstances, the Department of Foreign Affairs and Trade (DFAT) takes reasonable steps to contact the non-lodging parent to seek their consent before issuing a travel document to the child.
4. Item 4 is a technical amendment to reflect that the definitions of 'child welfare law', 'family violence' and 'family violence order' are located in section 4 of the Family Law Act 1975, not in Part VII of that Act.

Concurrent, diplomatic and official passports

Item 5: Diplomatic and official passports

5. Item 5 corrects a spelling error, replacing 'dependent' with 'dependant'.

Validity

Items 6 – 8: Period of validity

6. Item 6 amends ambiguous wording in paragraph 5.1(2)(d) to clarify that the maximum period of validity for a passport issued to a person whose travel documents have been lost and/or stolen at least three times in the five years before the date of the application for the passport is five years. The five-year maximum period of validity will remain unchanged.
7. Item 7 corrects an error in paragraph 5.1(2)(e) concerning the maximum three year period of validity for a concurrent passport. This validity should apply to concurrent passports issued under all circumstances listed in section 4.1, not just paragraph 4.1(a). The three-year maximum period of validity will remain unchanged.

8. Item 8 amends the wording in paragraph 5.1(2)(j) to state that a replacement passport for a change of name in the circumstances of amended paragraph 8.2(b) of the Determination is valid for the period ending when the passport being replaced would otherwise have ceased to be valid.

Fees

Items 9 - 10: Waiver

9. Existing paragraph 8.2(b) provides that an application fee may be waived for a replacement passport for persons who have changed their name as a result of a specified event; currently marriage, divorce or death of a spouse. Events that will be added to this provision by the amendment in Item 9 are: entering or ceasing to be in a registered relationship; entering or ceasing to be in a de facto relationship; death of a partner from a registered relationship or a de facto relationship; and transitioning to another gender. The purpose of this waiver is to encourage and enable a person who changes his or her name due to such specified events to harmonise the name that appears on their passport with the name that they are using, or intend to use, in their other identity documents and by which they are, or intend to be, known in the community.

10. The inclusion of registered relationships and de facto relationships in this provision is in line with Commonwealth legislation designed to prevent discrimination against same-sex couples and their children.

11. Those changing their name as a result of entering or ceasing to be in a registered relationship will not be required to register their name change with an Australian Registry of Births, Deaths and Marriages (RBDM) because paragraph 53(3)(ca) of the Act allows registered relationship certificates to be used as a source of a name on a passport.

12. A person who is seeking a name change as a result of entering or ceasing to be in a de facto relationship or because of the death of their de facto partner will not have official documents issued by a government authority evidencing their relationship status. As such, these clients must register a name change with an Australian RBDM or its overseas equivalent (provided they satisfy the requirements in new subsection (9.1(8))), or obtain an Australian citizenship certificate in the new name from the Department of Immigration and Citizenship (DIAC), in order for the new name to be used in an Australian travel document.

13. Item 9 also extends the application fee waiver to a person who, as part of a process of transitioning to their preferred gender, has registered a name change with an Australian RBDM or its overseas equivalent (provided they satisfy the requirements in new subsection 9.1(8)), or has obtained an Australian citizenship certificate in the new name from DIAC. This amendment follows the introduction by DFAT on 14 September 2011, following community consultation, of new policy guidelines designed to make it easier for sex and gender diverse people to obtain a passport in their preferred gender. In ensuring the appropriateness of the proposed terminology, DFAT conducted ongoing consultation with members of the sex and gender diverse community. DFAT notes that the

Human Rights Commission paper of 2011 “Addressing sexual orientation and sex and/or gender identity discrimination” recognises that terminology is strongly contested. The amendments to paragraph 8.2(b) are intended to allow flexibility in the application of this provision to cover a range of individual circumstances. Where a person’s individual circumstances do not fit within this provision, the Minister retains the discretion to grant the person a fee waiver in view of special circumstances, in accordance with paragraph 8.2(j).

14. Item 9 also has the effect of removing the limitation that an application for a fee waiver under 8.2(b) must be made within one year of the event leading to a change of name. This amendment recognises that clients may change their name several years after the specified event has occurred. It also provides administrative fairness to clients who only become aware of the provision after a year has elapsed since the event.

15. Item 9 further removes the limitation that a person may only obtain one fee waiver for each event during the life of the travel document. For example, a person may be able to obtain a fee waiver for a name change due to marriage, divorce and a subsequent remarriage within the life of the passport.

16. Item 9 introduces a limitation that the fee waiver for change of name under paragraph 8.2(b) may only be accessed by clients if there is more than two years validity remaining on their current passport. As a client’s replacement passport would be issued with the remaining validity period from their original document, this new limitation ensures that they will be eligible to use the streamlined renewal process when applying for a subsequent passport which requires that the passport to be replaced was issued with a minimum of two years validity.

17. Item 10 inserts new paragraph 8.2(ia) which will operate to reduce unnecessary fee processing and to improve client service. Where a client reports their travel document as lost or stolen for the first time in the preceding five years, but subsequently finds it and can produce it when applying for a new travel document within three months of it being recorded as lost or stolen, they will be eligible for a waiver equivalent to the value of one lost/stolen fee as specified in Schedule 4 Part 4, Item 4.2. Currently, such clients must pay the fee and then apply for a refund under subsection 8.3(5). If the client has lost/had stolen more than one travel document, they will only be able to apply for a refund under subsection 8.3(5).

18. Item 10 operates in parallel to subsection 8.3(5) which provides a refund of an amount equal to the fee listed at Item 4.2 to clients where they find the lost document within three months after the recorded loss, but after they have paid a lost/stolen fee in relation to a new application. New paragraph 8.2(ia), consistent with subsection 8.3(5), aims to encourage a client who recovers a travel document that they reported as lost or stolen to return it to DFAT for physical cancellation in order to reduce the opportunity for fraudulent misuse.

Item 11: Refunds

19. Subsection 8.3(2) provides for a refund of the priority processing fee for a travel document where the client needs to travel urgently or at short notice due to the death or serious illness of a close relative. Item 11 operates to update the list of relatives in subsection 8.3(3) to include a spouse, a partner from de facto relationship and a partner from a registered relationship (see Item 1). Item 11 also extends eligibility for the priority processing fee refund to a person who needs to accompany their primary carer who would themselves qualify for a refund on compassionate grounds. This provision is intended to apply to a child or a dependant adult who is unable to be left behind by their primary carer.

Name on travel document, endorsements and observations

Items 12 - 17: Name on travel document

20. The provisions in section 9.1 of the Determination regarding the name on a travel document are intended to complement the requirement that the Minister must be satisfied of the identity of the person (section 8 of the Act). Subsection 53(3) of the Act provides that the name in an Australian travel document must 'except in the circumstances specified in a Minister's determination', be the name on either the person's birth certificate; Australian citizenship certificate; Australian marriage certificate; Australian registered relationship certificate; or Australian name change certificate. Section 9.1 of the Determination lists the circumstances in which the name on a person's travel document may be a name other than a name mentioned in paragraphs 53(3)(a) to (d) of the Act.

21. The amendments to section 9.1 of the Determination are intended to improve client service, ensure compliance with Commonwealth anti-discrimination legislation, and strengthen DFAT's confidence in the authenticity of foreign documentation provided in support of a name change.

22. Item 12 is concerned with circumstances where a person wishes to change the name in their travel document as a result of divorce, ceasing to be a partner in a registered relationship (see Item 1), or because that person's spouse or partner in a registered relationship has died. Subsection 9.1(2) allows a person in any of these circumstances to obtain a travel document in a name they held before their change in relationship status, provided that name is registered with an Australian RBDM or is stated on an Australian citizenship certificate, and has not been replaced by a subsequent name registered with an Australian RBDM or a name stated on an Australian citizenship certificate.

23. Given that a de facto relationship need not be registered with an Australian RBDM, a person may not have any official documents issued by a government authority evidencing their relationship status. Therefore, a person who is seeking a name change in their travel document as a result of entering or ceasing to be in a de facto relationship or because of the death of their de facto partner, must produce a name change certificate from an Australian RBDM, or have obtained an Australian citizenship certificate in the new name from DIAC, in order for the new name to be used in an

Australian travel document. These clients will also be required to supply additional documentary evidence of their change of relationship status in order to access the fee waiver.

24. Item 12 also inserts new subsection 9.1(2A) which will allow for the issue of a passport in a name shown in a person's most recently issued passport, provided the passport was issued with at least two years validity on or after 20 August 1986 when new citizenship regulations came into force. However, if since their last passport was issued, a client has registered a new name with an Australian RBDM or DIAC, they will not be permitted to use their name from a previous passport. This provision addresses an omission from subsection 53(3) of the Act, and improves outcomes for clients who reasonably expect to be able to replace or renew their Australian passport in a name which was previously accepted, in some cases, for decades.

25. Item 13 amends 9.1(4) to update the reference to the *Australian Citizenship Act 1948* to reflect the enactment of the *Australian Citizenship Act 2007*. A revised definition of Australian citizenship certificate will be included in 9.1(12) to cover any certificates or notices issued as evidence of Australian citizenship (see Item 17 below).

26. Item 14 substitutes new wording for subsection 9.1(7) and 9.1(8) to allow a travel document to be issued to a person who was born and resides overseas and who is unable to obtain a change of name from an Australian RBDM, to use the name specified in a foreign marriage certificate or foreign name change certificate only if the foreign certificate is legalised (see Item 17 which inserts definitions of the terms "foreign marriage certificate", "foreign name change certificate" and "legalised"). The new legalisation requirement strengthens DFAT's confidence in the authenticity of a foreign certificate provided as evidence of a name to be used on a travel document. A foreign marriage or name change certificate must post-date a person's Australian citizenship. This recognises that, for DFAT's purposes, the name appearing on a person's Australian birth certificate or Australian citizenship certificate is their base name.

27. In the event that a person born overseas and living overseas is unable to provide a legalised foreign marriage or name change certificate, for example if there is no official legalisation process in the relevant country, the person may use that name if, on the request of the person, in exceptional circumstances, the Minister considers it desirable that another name appear on the travel documentation in accordance with subsection 9.1(9).

28. Item 14 also removes the ability of a person born and residing overseas who is unable to obtain a name change certificate from an Australian RBDM (or overseas equivalent), to use the name by which he or she is commonly known (if the Minister considers it desirable). This reflects the policy intention that whenever possible, only names appearing on documents that can be verified with the authority which issued them should be used on an Australian travel document.

29. Item 15 amends subsection 9.1(11)(d) to reflect the original policy intention that only titles, awards or decorations awarded to, or conferred on, the applicant by the Crown or under a law of the Commonwealth should be acceptable for use in an Australian travel document, as opposed to titles purchased by the applicant.

30. Item 16 updates the note which references the source of the text of the Convention on International Civil Aviation, referred to in paragraph 9.1(11)(k).

31. Several additional items are defined in 9.1(12) to support the operation of the amendments to subsections 9.1(7) and (8) outlined in Item 14, and update references to citizenship legislation as noted above. Item 17 adds definitions for the following terms:

- “Apostille Convention”
- “Australian citizenship certificate”
- “foreign marriage certificate”
- “foreign name change certificate” – the form of a foreign name change certificate may vary and may include, for example, a foreign registered relationship certificate where that certificate has the effect of allowing the person to change their name in that country.
- “legalised” – there are broadly two methods of legalisation (also known as authentication) for foreign public documents. Countries that are parties to the Apostille Convention place an apostille on the certificate, or on a separate document affixed to the certificate, in accordance with the requirements of the Apostille Convention. Certificates that originate from countries that are not signatories to the Apostille Convention can be verified by a process involving a “chain of authentication”, whereby each authenticating party is able to verify the signature (and/or stamp or seal) of the preceding authentication. This authentication process differs in each country. DFAT must be satisfied that a valid legalisation process has been followed, whether by means of an apostille or authentication, in order to accept a foreign marriage or name change certificate as evidence of a name to be used on a travel document. As noted above, the legalisation process provides DFAT with greater assurance regarding the authenticity and equivalency of foreign documents.

Miscellaneous

Item 18: Delegation of Minister’s powers

32. The Minister has delegated his power to issue Convention Travel Documents (CTDs) and Certificates of Identity (COIs) to refugees and certain humanitarian visa holders under sections 6.1 and 6.2 of the Determination respectively to specified officers listed in the Australian Passports Act

2005 – Authorisations and Delegations instrument. COIs and CTDs are travel documents generally issued to non-Australian citizens to facilitate their travel between Australia and an overseas destination. A COI is typically issued to a stateless person or a person who is unable to obtain a valid travel document from the country of which they are a national (for example, certain humanitarian visa holders). A CTD may be issued to non-Australian citizens recognised by Australia as refugees in accordance with the *United Nations Convention relating to the Status of Refugees* dated 28 July 1951 and its 1967 Protocol.

33. Item 18 amends subsection 10.1(1) to permit the Minister to delegate the power to extend the validity of these documents in subsections 6.1(5) and 6.2(3) of the Determination, for example, where the visa holder travels overseas and their travel document expires. This corrects an oversight in the original Determination. This amendment will not affect any substantive entitlements; rather it aims to achieve more efficient administrative processes.

Item 19: Criminal Code offences

34. Item 19 corrects the format of the citation in Schedule 1, Part 2, Clause 4.

Item 20 – 22: Persons to whom personal information may be disclosed

35. Item 20 adds the Commissioner of the Bureau of Immigration of the Philippines (the Commissioner) to the list of persons to whom information may be disclosed for the purpose of section 45 of the Act. Under section 45, the Minister may disclose personal information about the status of an Australian travel document, for example, whether a passport has been reported as lost or stolen or is suspicious. These additions enable the implementation of the Regional Movement Alert System (RMAS) with the Philippines which has been designed principally to prevent transnational crime and terrorist movement.

36. Item 21 adds the Commissioner to the list of persons to whom information may be disclosed for the purpose of paragraph 46(a) of the Act. Paragraph 46(a) allows the Minister, on request, to disclose information for the purpose of confirming or verifying personal information relating to an applicant for an Australian travel documents, or a person to whom an Australian travel document has been issued. Similarly, Item 22 allows for the disclosure of information to the Commissioner for the purposes of paragraph 46(b) of the Act, enabling the disclosure of personal information for the purpose of facilitating or otherwise assisting the international travel of a person to whom an Australian travel document has been issued. The title “Part 3 – Disclosure for purpose mentioned in paragraph 46(b) of Australian Passports Act” is reinserted after Schedule 3, Part 2, Clause 10, correcting an error of omission in a previous amendment to the Determination.

37. Disclosure of personal information under section 45 and subsections 46(a) and (b) of the Act assists DFAT to protect the integrity and security of Australian passports, as well as facilitate the movement of holders of Australian travel documents.

38. In 2005 Asia-Pacific Economic Cooperation (APEC) leaders endorsed an initiative of the APEC Business Mobility Group to develop a Regional Movement Alert List, the forerunner to the current RMAS, with the objective of combating terrorist threats through strengthening the capacity of participating economies to detect lost, stolen and otherwise invalid travel documents before the passenger arrives at their destination. Under RMAS, passport data of persons from participating countries travelling to the territory of another participating country is verified prior to entry. RMAS does not involve countries directly accessing or transferring each other's passport data. Data is not exchanged. The response is limited to a "Y" for a valid passport or a "N" for an invalid passport. If a passport does not match, sufficient information is disclosed to enable a decision to be taken as to the bona fides of the traveller. The disclosure of information is discretionary and the minimum necessary to achieve the specified purpose.

39. The Philippines will not have direct access to Australian passport data. When an Australian travel document which has been reported as lost or stolen or is otherwise suspicious is presented by a passenger to a participating member of RMAS, it causes a message to be sent from DIAC to the overseas border control authority of the country to which the passenger is travelling. The DFAT Consular Emergency Centre, which provides an around-the-clock service, is then able to share or verify information it holds to protect the identity of the proper holder of the travel document in question and to prevent the improper use of the document. Where a lost or stolen passport is being used illegally, the disclosure facilitates the detection of fraud, protects the genuine holder and enables the passport to be removed from circulation. For genuine travellers, where there has been a data entry error which would cause them to be detained on entry, disclosure of information can assist in confirming identity and minimising inconvenience.

40. Guidance about disclosures is provided for officers in passports policy and procedures. Memoranda of Understanding are also in place between Australia and the current participating countries – the United States and New Zealand – and a similar memorandum is now under negotiation with the Philippines which will be concluded before any information is shared. The United States Secretary of Homeland Security and the Secretary of the New Zealand Department administering the Immigration Act 2009 (NZ) are already included in Schedule 3 parts 1, 2 and 3 of the Determination. DIAC has played a major role in providing the technical support to facilitate the Philippines' participation.