

EXPLANATORY STATEMENT

Migration Regulations 1994

ACCESS TO MOVEMENT RECORDS (REGULATION 3.10A)

1. This Instrument is made under regulation 3.10A of the *Migration Regulations 1994* ('the Regulations').
2. Subregulation 3.10A(1) of the Regulations provides that for the purposes of subparagraph 488(2)(a)(vii) of the Act, Commonwealth, State or Territory legislation specified by the Minister in an instrument in writing is prescribed.
3. Subregulation 3.10A(2) of the Regulations provides that for paragraph 488(2)(g) of the Act, an agency of the Commonwealth, a State or a Territory, an employee of a prescribed agency, and an employee of a prescribed agency who is specified by the Minister in an instrument in writing for this paragraph is prescribed, and a purpose specified by the Minister in a instrument in writing is prescribed.
4. Subsection 488(1) of the *Migration Act 1958* ('the Act') provides that a person must not read, examine, reproduce, use or disclose any part of movement records otherwise than in accordance with an authority given under subsection 488(2). Subsection 488(2) of the Act provides that the Minister may authorise an officer to perform one or more of the actions prohibited by subsection 488(1).
5. Specifically, subparagraph 488(2)(a)(vii) of the Act permits the Minister to authorise an officer to perform one or more of the actions for the purposes of prescribed Commonwealth, State or Territory legislation. Paragraph 488(2)(g) of the Act permits the Minister to authorise a prescribed employee of a prescribed agency of the Commonwealth, or of a State or Territory, to perform one or more of those actions for prescribed purposes.

6. The purpose of the Instrument is to facilitate the administration of prescribed legislation and minimise fraud against the Commonwealth by enabling access to movement records to be authorised in a controlled and responsive manner.
7. The Instrument operates to allow the use of movement records information by external agencies in order to administer a variety of legislation. The Instrument will allow prescribed employees of prescribed Commonwealth, State or Territory agencies to read, examine, reproduce, use or disclose movement records for prescribed purposes.
8. The Instrument has been updated to reflect the inclusion of the Australian Crime Commission, the Insolvency and Trustee Service Australia and the Tax Practitioners Board.
9. Consultation was undertaken with all agencies included in the Instrument.
10. Under section 42 of the *Legislative Instruments Act 2003* the Instrument is subject to disallowance and, therefore, a Human Rights Statement of Compatibility has been provided.
11. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference 12864).
12. This Instrument, IMMI 12/055, commences on the day after signature.

Statement of Compatibility with Human Rights

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

Commonwealth of Australia

Migration Regulations 1994

ACCESS TO MOVEMENT RECORDS (REGULATION 3.10A)

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 Bill/Legislative Instrument

This Instrument of Authorisation prescribes the legislation, agencies, employees and purposes for which movement records information contained in the Movements Reconstruction database will be shared for the purpose of Regulation 3.10A of the *Migration Regulations 1994*. This legislative instrument updates the information contained in the existing Regulation 3.10A Instrument (IMMI 11/049) signed on 7 December 2011. No human rights are engaged.

Human Rights Implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Michael Minns, Assistant Secretary, Border Operations Branch, Department of Immigration and Citizenship