

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 Securities and Investments Commission, Australian Secret Intelligence Service, and ComCare; amend the reference to the *First Home and Housing Construction Grants Act 2000 (SA)* by request from the Revenue South Australia Department of Treasury and Finance; make a technical amendment to the details of the classes of persons specified for the Department of Immigration of Citizenship: make urgent amendments to the purposes for which Attorney-General's Department accesses movement records.
9. Consultation was undertaken with ComCare, Australian Securities Investments Commission, Australian Secret Intelligence Service, Defence, the Tax Practitioners Board, Revenue South Australia Department of Treasury and Finance and Attorney-General's Department for updating 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 14708).
12. This Instrument, IMMI 12/123, commences on the day after the date of registration on the Federal Register of Legislative Instruments.

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) No. 12/123

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 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*- Access to movement records, which states-

"(!)For subparagraph 488(2)(a)(vii) of the Act, Commonwealth, State or Territory legislation specified by the Minister in an instrument in writing for this subregulation is prescribed.

Note: Under subsection 488(1) of the Act, a person must not read, examine, reproduce, use or disclose any part of the movement records. However, subparagraph 488(2)(a)(vii) of the Act permits the Minister to authorise an officer to perform 1 or more of those actions for the purposes of prescribed Commonwealth, State or Territory legislation.

(2) For paragraph 488(2)(g) of the Act:

- (a) an agency of the Commonwealth, a State or a Territory specified by the Minister in an instrument in writing for this paragraph is prescribed; and
- (b) an employee of a prescribed agency who is specified by the Minister in an instrument in writing for this paragraph is prescribed; and
- (c) a purpose specified by the Minister in an instrument in writing for this paragraph is prescribed.

Note: Under subsection 488(1) of the Act, a person must not read, examine, reproduce, use or disclose any part of the movement records. However, 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 1 or more of those actions for a prescribed purpose."**

This legislative instrument updates the information contained in the existing Regulation 3.10A Instrument (IMMI 12/055) signed on 4 September 2012.

Human rights implications

This Legislative Instrument engages the prohibition against arbitrary or unlawful interference with privacy. Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR) states that:

'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Article 17(2) of the ICCPR states that:

'Everyone has the right to the protection of the law against such interference or attacks.'

The extent to which an individual is entitled to a right to privacy in Australia is governed by the *Privacy Act 1988* (the Privacy Act). Section 14 of the Privacy Act contains the Information Privacy Principles which assist Government departments to ensure the lawful collection, solicitation, storage, record keeping, access, use and disclosure of personal information. It is intended that the proposed dissemination of the Movements Reconstruction database will be executed in accordance with the Privacy Act. Article 17(2) affords the right to legal protection against the aforesaid 'arbitrary or unlawful attacks'.

The possible imposition on privacy through the sharing of movement records information has lawful authority and is necessary to meet the policy objectives of Regulation 3.10A.

The policy objective of Regulation 3.10A is to provide for the Minister to stipulate relevant legislation under which movement records may be disclosed and used. Such prescription regarding when movement records may be disclosed strives to ensure that individuals are protected from arbitrary or unlawful interference with their privacy (that is, through the arbitrary disclosure of movement record information). Therefore, the proposed amendments are consistent with Australia's obligations under Articles 17(1) and 17(2) of the ICCPR.

Conclusion

This legislative instrument engages the right to privacy as articulated in Article 17 of the ICCPR and is compatible with the relevant human rights obligations for the reasons outlined above.

**The Hon. Brendan O'Connor,
Minister for Immigration and Citizenship**