**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. The purpose of the Instrument is to facilitate the administration of prescribed legislation and minimise fraud against the Commonwealth by enabling authorised access to movement records.
3. The Instrument operates to allow the use of information relating to movement records 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.
4. The instrument has been updated to amend certain Agency names, descriptions of roles and descriptions of purposes in Schedule B to the Instrument so that those descriptions better reflect the way the Instrument is utilised.
5. Consultation was undertaken before the instrument was made with the following stakeholder agencies:
6. RevenueSA
7. Department of Treasury and Finance
8. The State Revenue Office
9. Victoria Department of Treasury and Finance
10. Australian Human Rights Commission
11. Western Australia Police
12. Department of Defence
13. Australian Secret Intelligence Service
14. Australian Taxation Office
15. Department of Human Services
16. 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.
17. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference 2014/16641).
18. The Instrument, IMMI 14/011, commences on 9 May 2014.

**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. 14/011**

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 –

“(1) 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 of 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:

1. 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
2. an employee of a prescribed agency who is specified by the Minister in an instrument in writing for this paragraph is prescribed; and
3. 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 of 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 13/107) signed on 31 October 2013.

**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). The Privacy Act contains the Australian Privacy Principles which regulate how agencies may collect, use, disclose and store, personal information, and how individuals may access and correct personal information held about them. 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. Scott Morrison, MP**

**Minister for Immigration and Border Protection**