

EXPLANATORY STATEMENT

Migration Regulations 1994

ACCESS TO MOVEMENT RECORDS 2015

(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 for subparagraph 488(2)(a)(vii) and paragraph 488(2)(g) of the *Migration Act 1958*.
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 and descriptions of roles 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:
 - (a) Attorney General's Department
6. 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.
7. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference 19188).
8. The Instrument, IMMI 15/098, commences on 01 July 2015.

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 2015 (REGULATION 3.10A) No. 15/098

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.

Movement records are arrival and departure records of travellers to and from Australia dating from 1981. They may include a traveller's name, date of birth, gender and relationship status, country of birth, departure and/or arrival date, travel document number and country, port code and flight/vessel details, visa subclass and expiry date, and the number of movements.

Regulation 3.10A 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 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 15/068**) signed on 27 March 2015.

In brief, the proposed change to the instrument is to update the roles to Schedule B for the Attorney-General’s Department. None of these amendments to the Instrument of Authorisation regarding movement records make any substantive changes to the law.

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.

As this change merely updates information relating to relevant agencies that is currently prescribed, it does not substantively alter the law. While the disclosure of this information may engage the right to freedom from arbitrary interference with privacy in Article 17(1) of the ICCPR, this measure does not alter the position in relation to that right.

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, 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. Prescription regarding when movement records may be disclosed limits such disclosures to certain legislative regimes only. 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.

The disclosure of movement information in the circumstances under discussion may be necessary for the orderly management of a range of legislation, such as the *Family Law (Child Protection Convention) Regulations 2003* (Cth), the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007* (Cth) or the *Bail Act 1982* (WA). In each of these cases, movements across Australia’s borders can be relevant to the administration of that legislation. As such the disclosure of this information is limited to circumstances where there is a legitimate link to a lawful purpose, which is proportionate to the legitimate goal of managing this range of legislation.

Conclusion

This legislative instrument does not substantively alter the interaction between the Migration Regulations and the right to privacy as articulated in Article 17 of the ICCPR. To the extent that the regulations as a whole limit the right to privacy, as discussed above this is necessary in furtherance of a legitimate goal and is proportionate to that goal. This change is compatible with the relevant human rights obligations for the reasons outlined above.

The Hon Peter Dutton
Minister for Immigration and Border Protection