

2013–2014–2015

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**AUSTRALIAN PASSPORTS (APPLICATION FEES)
DETERMINATION 2015**

EXPLANATORY STATEMENT

(Circulated by authority of the Minister for Foreign Affairs,
the Hon Julie Bishop MP)

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Issued by the authority of the Minister for Foreign Affairs and Trade

Australian Passports (Application Fees) Determination 2015.....	5
Notes on Sections	5
Part 1 – Preliminary	5
Part 2 – Fees	5
Part 3 – Application and transitional provisions	8
Statement of Compatibility with Human Rights.....	9
Overview of the instrument	9
Human rights implications	9
Conclusion	10

AUSTRALIAN PASSPORTS (APPLICATION FEES) DETERMINATION 2015

Outline

The Australian Passports (Application Fees) Determination 2015 (Application Fees Determination) is a new determination that remakes and amends the provisions in the Australian Passports Determination 2005 (2005 Determination) that relate to fees for Australian travel documents. The Application Fees Determination will come into force on 1 October 2015 as the 2005 Determination sunsets under the *Legislative Instruments Act 2003*.

The principal object of the *Australian Passports (Application Fees) Act 2005* (the Application Fees Act) is to impose, as taxes, fees in relation to Australian travel documents and for related purposes. The Application Fees Determination is a critical instrument for the implementation of the Application Fees Act as it prescribes the fees payable under that Act.

The Application Fees Determination covers:

- application fees for travel documents;
- additional fees that may be payable in relation to a travel document application; and
- the indexation of fees.

In addition to a number of minor, technical amendments, the Application Fees Determination provides for the following principal amendments:

- adding an application fee for an emergency passport instead of charging the priority processing fee;
- adding an application fee for a replacement passport—essentially a reprint of an existing passport;
- removing penalty fees for lost/stolen passports to strengthen the integrity of the Australian passports system by encouraging lost/stolen passports to be reported immediately so they may be cancelled to prevent their unlawful use; and
- increasing the priority processing fee.

Regulation Impact

The Office of Best Practice Regulation (OBPR) has advised that the proposed changes to the passports determinations are likely to have a minor regulatory impact on businesses or individuals and as such a Regulation Impact Statement is not required. The OBPR reference number is ID 17161.

Consultation

The following entities were consulted on the proposed amendments to the passports legislation: Attorney-General's Department; Austrade; Australian Crime Commission; Australian Customs and Border Services Agency; Australian Federal Police; Australian Government Solicitor; Australian Privacy Commissioner; Australian Security and Intelligence Organisation; Australian Transaction Reports and Analysis Centre; Commonwealth Director of Public Prosecutions;

Commonwealth Ombudsman; Department of Finance; Department of Human Services; Department of Immigration and Border Protection; Department of Prime Minister and Cabinet; Standing Councils on Health, Community, Housing and Disability Services and Advisory Councils; State and Territory registrars of births, deaths and marriages; and State and Territory police.

Australian Passports (Application Fees) Determination 2015

Notes on Sections

Part 1 – Preliminary

Section 1 - Name

1. This determination will be named the *Australian Passports (Application Fees) Determination 2015*.

Section 2 - Commencement

2. The Application Fees Determination will commence on 1 October 2015.

Section 3 – Authority

3. The Application Fees Determination is made under the *Australian Passports (Application Fees) Act 2005*.

Section 4 – Definitions

4. The Application Fees Determination includes a definition of ‘business day’.

Part 2 – Fees

Section 5 – Application fees

5. Section 5 sets out the application fees for Australian travel documents.
6. Subsection 5(1) sets the base year for the Application Fees Determination as 2015. Application fees are subject to indexation based on the All Groups Consumer Price Index (CPI indexation). Application fees are updated annually on 1 January to include CPI indexation.
7. Subsection 5(2) provides that the new fees that will commence on 1 January 2016 will be subject to CPI indexation. These fees will be adjusted for CPI indexation at the time of commencing on 1 January 2016—that is, the fees as set out in table items 3, 7, 10 and 11 in subsection 5(3) will be the fees as set out in column 2 plus CPI indexation on 1 January 2016.
8. The table in subsection 5(3) sets out the fees for specific travel documents and circumstances. This subsection amends the 2005 Determination by adding three new application fees to commence on 1 January 2016.

9. Table item 3 in subsection 5(3) provides for a new fee to issue children aged 16 and 17 a ten-year validity passport for the same cost as an adult ten-year validity passport. As a result the ten-year frequent traveller passport would also apply to a 16 or 17 year old (table item 7). The consent requirements for issuing child passports under section 11 of the *Australian Passports Act 2005* (the Passports Act) and section 10 of the Australian Passports Determination 2015 (the Determination) will continue to apply to 16 and 17 year olds.
10. Table item 10 in subsection 5(3) provides for an application fee for an emergency passport, to cost the same as a certificate of identity. Currently the priority processing fee is paid in place of an emergency passport application fee. Consistent with all other passports, it is more appropriate that an application fee is charged and not the priority processing fee. The priority processing fee will not be charged in addition to the application fee—an emergency passport will still be processed within two business days where possible and once all required documentation has been provided.
11. Table item 11 in subsection 5(3) provides for an application fee for a replacement passport, to cost the same as a certificate of identity. A replacement passport is a reprint of an existing passport with a new passport number and in some cases with a slight amendment. For example, the replacement passport may change the surname, photo (for a child under five), gender, expiry date or to correct an error made by the Department. In some cases the fees for these replacement passports may be waived.

Section 6 – Additional fees in relation to applications

12. Section 6 sets out additional fees that may be payable in addition to an application fee for an Australian travel document.
13. Subsection 6(1) sets the base year for additional fees as 2015. Additional fees are subject to CPI indexation. Additional fees are updated annually on 1 January to include CPI indexation.
14. Subsection 6(2) provides that the increased priority processing fee to apply from 1 January 2016 will be adjusted for CPI indexation at the time of commencing on 1 January 2016—that is, the fee as set out in table item 2 of subsection 6(3) will be the fee as set out in column 2 plus CPI indexation on 1 January 2016.
15. The table in subsection 6(3) sets out additional fees that may be payable in addition to an application fee for an Australian travel document. This subsection amends the 2005 Determination to increase the priority processing fee.
16. Table item 2 in subsection 6(3) provides that from 1 January 2016 the priority processing fee will cost the same as a child passport. In 2015 this represents an increase of \$14. This fee is in addition to the standard application fee, except in relation to emergency passports. Emergency passports will be processed within two business days where possible and once

all required documentation has been provided, for the cost of the emergency passport application fee.

17. Around ten per cent of applicants require the urgent issue of travel documents. This demand affects significantly the Department's capacity to provide the full range of passport services. The fee increase reflects the added demand that priority requests place on the passport issuing system.
18. Table item 3 in subsection 6(3) incorporates *Australian Passports Amendment Determination 2015 (No. 1)* which provides for an additional fee for passport applications lodged overseas from 1 July 2015. This fee is in addition to the standard application fee, the lost/stolen fee (if applicable) and the priority processing fee. This fee will only apply to full-validity passport applications lodged overseas.
19. The note following the table in subsection 6(3) clarifies that the additional fee for child passport applications lodged overseas will apply to children aged 16 and 17 (even though they will receive a ten-year validity passport after 1 January 2016) and the additional fee for adult passport applications lodged overseas will apply to persons aged 75 or over even if they choose to purchase a five-year validity passport.
20. The Application Fees Determination amends the 2005 Determination to remove the penalty fees for lost/stolen passports from 1 January 2016. For applications lodged before 1 January 2016, the 2005 Determination will apply in relation to fees associated with lost/stolen passports.
21. This is part of a package of measures designed to protect the integrity of the Australian passports system including: removing penalty fees for lost/stolen passports and reducing passport validities for persons whose passports have been lost/stolen more than once in a five-year period.
22. In some circumstances, the penalty fees may act as a disincentive for persons to report a lost/stolen passport to the Department. The new measures are designed to encourage persons to report a lost/stolen passport immediately. An Australian travel document that has been reported as lost or stolen will be permanently and immediately cancelled under paragraph 22(2)(b) of the Passports Act. Until cancelled, these passports are at risk of being used fraudulently. Reducing passport validities for persons whose passports have been lost/stolen more than once in a five-year period is designed to protect passports at greater risk of being lost/stolen from being used fraudulently.
23. Fraudulently obtained travel documents are a key enabler for serious crime such as drug trafficking, people smuggling and terrorism. Lost/stolen travel documents can provide criminals with the potential to assume another identity, to carry out criminal activity in another name, and to travel illegally.

24. This provision complements section 15 of the Passports Act that provides that the Minister may refuse to issue a travel document to a person who has lost or had stolen two or more passports in the past five years.

Section 7 – Indexation factor

25. Section 7 sets out the formula to calculate the CPI indexation applied to Australian travel document fees.

Part 3 – Application and transitional provisions

Section 8 – Application of determination

26. Section 8 provides that the Application Fees Determination will apply to Australian travel document applications lodged on or after the commencement of this Determination and subject to the *Australian Passports Determination 2015*.
27. Section 31 of the *Australian Passports Determination 2015* provides that the provisions in the 2005 Determination will continue to apply in relation to:
- . an application, and any related fees, that is lodged before 1 October 2015; and
 - . an application, and any related fees, to replace a passport that was lost/stolen that is lodged before 1 January 2016. For example, a passport application to replace a lost/stolen passport that is lodged on 31 December 2015 will incur the additional lost/stolen fee unless the associated lost/stolen waiver or refund provisions apply, as set out in the 2005 Determination.

Statement of Compatibility with Human Rights

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

Australian Passports (Application Fees) Determination 2015

This 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

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The principal object of the *Australian Passports (Application Fees) Act 2005* (the Application Fees Act) is to impose, as taxes, fees in relation to Australian travel documents and for related purposes. The Application Fees Determination is a critical instrument for the implementation of the Application Fees Act as it prescribes the fees payable under that Act.

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- . increasing the priority processing fee.

Human rights implications

The Application Fees Determination engages the right to freedom of movement under Article 12 of the ICCPR.

The Application Fees Act and the Application Fees Determination engage the right to freedom of movement in Article 12 of the ICCPR. This is because the imposition of fees to obtain an Australian travel document could limit the freedom of an Australian citizen to leave Australia, as found in Article 12(2) of the ICCPR. This could be the case, for example, if the fees set were so high as to be prohibitively expensive. However section 5 of the Application Fees Act caps the fees to be imposed at \$1,000 in a financial year (in 2005 terms), subject to indexation. Further, the Application Fees Determination does not prescribe any fee in excess of \$376 (again subject to indexation).

Some of the amendments in the Application Fees Determination reduce the costs related to Australian travel documents in certain circumstances (removing lost/stolen penalty fees and introducing an option of a replacement passport). While some of the amendments increase the costs related to Australian travel documents in certain circumstances (increase in emergency passport and priority processing fees). Taken together the overall financial impact is an estimated increase in revenue of \$400,000 per year. This is insignificant in the context of total passports revenue of around \$380 million per year.

The fees reflect, in part, the high level of security and integrity measures incorporated into Australian travel documents and the application process that protect the interests of all Australians. The Australian passport is the most valuable identity document used in Australia and is recognised as one of the most secure and trustworthy travel documents in the world. It ensures that Australian travellers are accepted at borders across the world and gives other countries the confidence to allow Australians visa-free access to facilitate their travel. The security features protect Australians from identity theft and supports our national security framework.

These amounts, particularly when viewed in the context of the costs of overseas travel generally, are unlikely to restrict the freedom to leave one's own country protected by Article 12(2). In addition, sections 27 and 28 of the Determination provide for the waiver and refund of fees in certain circumstances, including on compassionate grounds, such as the need to travel due to the death or serious illness of a family member. Further, a decision not to waive or refund a fee under sections 27 and 28 of the Determination is reviewable under paragraphs 48(i) to (k) of the Act.

Conclusion

The Application Fees Determination is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.