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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

AUSTRALIAN PASSPORTS 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

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AUSTRALIAN PASSPORTS DETERMINATION 2015

Outline

The Australian Passports Determination 2015 (the Determination) amends and remakes the *Australian Passports Determination 2005* (2005 Determination) in accordance with its sunset date of 1 October 2015, under the *Legislative Instruments Act 2003*.

As part of the remaking of the Determination, the provisions in the 2005 Determination relating to fees for Australian travel documents have been removed to form a new determination, the Australian Passports (Application Fees) Determination 2015, to implement the *Australian Passports (Application Fees) Act 2005*.

The principal object of the *Australian Passports Act 2005* (the Passports Act) is to provide for the issue and administration of Australian passports. The Determination remains a critical instrument for the implementation of the Passports Act.

The Determination covers:

- . the issue of travel-related documents;
- . special circumstances for the issue of a passport to a child;
- . competent authorities for making a passport refusal/cancellation request for matters relating to law enforcement, international law enforcement or potential for harmful conduct;
- . offences for the purpose of making a passport refusal/cancellation request;
- . validity periods for different travel documents;
- . concurrent, diplomatic and official passports;
- . when travel documents are not valid;
- . disclosure of personal information for limited purposes;
- . exceptions for a name that may appear on a person's travel document;
- . waivers and refunds of fees; and
- . delegations and reviewability of decisions.

The Determination reorders and renumbers the provisions in the 2005 Determination consistent with the order of the Passports Act. It embeds the schedules of the 2005 Determination in the body of the Determination for ease of reference. It modernises and simplifies the provisions from the 2005 Determination while remaining largely the same.

The Determination provides for the following key amendments:

- . removing the ability to extend convention travel documents and certificates of identity and instead providing that they may be replaced overseas in exceptional circumstances;
- . refining and clarifying the special circumstances where a passport may be issued to a child without full parental consent or an Australian court order;
- . adding offences for the purpose of refusing or cancelling a passport on law enforcement and security grounds;
- . reducing passport validities for persons who have lost or had stolen two or more passports in a five year period;
- . issuing 16 and 17 year olds ten-year validity passports, instead of five-year validity passports; and
- . clarifying that the Department of Foreign Affairs and Trade (the Department) may validate any document provided as evidence of identity or citizenship.

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 Determination 2015

Notes on Sections

Part 1 – Preliminary

Section 1 – Name

1. The Determination will be named the *Australian Passports Determination 2015*.

Section 2 – Commencement

2. The Determination will commence on 1 October 2015.

Section 3 – Authority

3. The *Australian Passports Act 2005* (the Passports Act) empowers the Minister to issue Australian travel documents and perform related functions. Section 57 gives the Minister the authority to specify matters provided in the Passports Act in a determination. The Determination supports the operation of, and provides functional detail to, the Passports Act.

Section 4 – Schedules

4. Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 – Definitions

5. The Determination includes some additional definitions, for example: ‘contactless integrated circuit’ and ‘business day’.
6. Acts of general application including the *Acts Interpretation Act 1901* apply to terms used in the Determination.

Part 2 – Australian travel documents

Division 1 – Issue of travel-related documents

Section 6 – Minister may issue convention travel documents

7. Section 6 provides for the issue of convention travel documents.
8. Subsections 6(1), 6(2) and 6(3) set out the eligibility requirements for a person to be issued a convention travel document.

9. The Minister may issue a convention travel document (also referred to as a *titre de voyage*) to a person who is in Australia, is not an Australian citizen and is recognised by Australia as a refugee, in accordance with the Convention relating to the Status of Refugees (1954 ATS 5) and the Protocol relating to the Status of Refugees (1973 ATS 37) (collectively referred to as the Refugee Convention). Article 28 is the key provision. The holder of a convention travel document may only re-enter Australia if the holder has a valid Australian visa with re-entry rights.
10. Subsection 6(4) provides for the issue of a convention travel document to a person who is overseas in limited circumstances.
11. Subparagraph 6(4)(f)(i) retains the existing provision that a convention travel document may be issued to a person who is overseas to replace a convention travel document that has been lost, stolen or damaged—and only if the person has a valid Australian visa with re-entry rights.
12. Consistent with International Civil Aviation Organization (ICAO) standards the Determination removes the ability to extend the validity of convention travel documents. These standards require that Contracting States (such as Australia) must not extend the validity of their machine readable travel documents. This is because extensions may be annotated on the travel document creating a situation where that information conflicts with the information in the machine readable zone on the data page and on the contactless integrated circuit. This may raise concerns about fraud and security, impacting on the usability of the document at borders.
13. Subparagraph 6(4)(f)(ii) provides that a convention travel document may be issued to a person who is overseas if the person had previously been issued a convention travel document and if the Minister is satisfied that exceptional circumstances exist—where a document may have previously been extended. The person must have a valid Australian visa with re-entry rights. In practice, circumstances warranting a convention travel document to be issued overseas are rare.
14. Subsections 6(5) and 6(6) set out the validity periods for convention travel documents consistent with paragraph 5 of the schedule to the Refugee Convention. These validity periods are expressed as maximums and may be reduced depending on the circumstances of the applicant. For example, the validity period may be reduced because the applicant has applied for Australian citizenship but cannot postpone travel until after naturalisation.

Section 7 – Minister may issue certificates of identity

15. Section 7 provides for the issue of certificates of identity.
16. Subsection 7(1) sets out the eligibility requirements for a person to be issued a certificate of identity.

17. The Minister may issue a certificate of identity to a person who is in Australia, is not an Australian citizen and is recognised by Australia as a stateless person in accordance with the Convention relating to the Status of Stateless Persons (1974 ATS 20). Article 28 of this Convention is the key provision.
18. In addition, a certificate of identity may be issued to a person who is in Australia, is not an Australian citizen and is unable to obtain a travel document from their country of citizenship. For example, where the person's country of citizenship is not represented in Australia and as such, they are unable to obtain a travel document from their country of citizenship in order to travel home.
19. The holder of a certificate of identity may only re-enter Australia if the holder has a valid Australian visa with re-entry rights.
20. Subsection 7(2) provides for the issue of a certificate of identity to a person who is overseas in limited circumstances.
21. Subparagraph 7(2)(e)(i) retains the existing provision that a certificate of identity may be issued to a person who is overseas to replace a certificate of identity that has been lost, stolen or damaged—and only if the person has a valid Australian visa with re-entry rights.
22. Consistent with ICAO standards the Determination removes the ability to extend the validity of certificates of identity. Subparagraph 7(2)(e)(ii) provides that a certificate of identity may be issued to a person who is overseas if the person had previously been issued a certificate of identity and if the Minister is satisfied that exceptional circumstances exist—where a document may have previously been extended. The person must have a valid Australian visa with re-entry rights. In practice, circumstances warranting a certificate of identity to be issued overseas are rare.
23. Subsections 7(3) and 7(4) set out the validity periods for certificates of identity. Subsection 7(4) amends the 2005 Determination to provide for a maximum validity of two years—instead of three—consistent with paragraph 5 of the schedule to the Stateless Persons Convention. These validity periods are expressed as maximums and may be reduced depending on the circumstances of the applicant.

Section 8 – Minister may issue documents of identity

24. Section 8 provides for the issue of documents of identity.
25. Paragraph 8(1)(a) provides that documents of identity may be issued to Australian citizens where it is considered unnecessary or undesirable to issue a passport.
26. Paragraph 8(1)(b) provides that a document of identity may be issued to a national of another Commonwealth country who is unable to obtain a travel document from their own country. Such occasions arise infrequently.

27. Documents of identity are primarily issued free of charge to Australian citizens for travel between mainland Australia and Norfolk Island. From 1 July 2016, under the *Norfolk Island Legislation Amendment Act 2015*, travel documents will no longer be required for Australian citizens to travel between mainland Australia and Norfolk Island.
28. Other situations where a document of identity may be issued include:
- . where a person is being repatriated to Australia, for example for a medical or other emergency;
 - . where a person is being deported, removed or extradited to Australia;
 - . to enable travel until the Minister is satisfied the person meets all the requirements for a passport to be issued (such as citizenship); and
 - . where a person is overseas at the time their passport is refused/cancelled under the Passports Act, to enable them to return to Australia.
29. The ability to issue documents of identity in these kinds of situations enables the Government to balance competing priorities in the International Covenant on Civil and Political Rights (1980 ATS 23, Article 12) such as ensuring freedom of movement for a person with enabling the Minister to guard against identity crime and protect the integrity of Australian passports.
30. Subsection 8(2) sets out the validity periods for documents of identity. These validity periods are expressed as maximums and may be reduced depending on the circumstances of the applicant. Documents of identity may be issued with short-term validity or for a single journey.

Section 9 – Minister may issue provisional travel documents

31. Section 9 provides for the issue of provisional travel documents.
32. Subsection 9(1) provides that provisional travel documents may be issued to Australian citizens overseas when they are unable to obtain another Australian travel document; for example, because there is no Australian mission in the country they are in. These documents may be issued if an identity document is required to permit an Australian to travel from one foreign country to another country where there is an Australian mission where the person may obtain a passport or other Australian travel document. Provisional travel documents are issued by Australian Honorary Consuls and other countries' missions (such as missions representing Canada) in places where Australia has in place consular sharing arrangements.
33. Subsections 9(2) and 9(3) set out the validity periods for provisional travel documents. These validity periods are expressed as maximums and may be reduced depending on the circumstances of the applicant. In practice, provisional travel documents are normally issued with a ten-day validity.

Section 9A – Application of the Passports Act to travel-related documents

34. Section 9A provides that Division 2 of Part 2 and subsections 20(1) and 20(2) of the Passports Act apply to travel-related documents as well as to passports (except documents of identity in relation to section 12 of the Passports Act).

Division 2 – Reasons the Minister may refuse to issue an Australian passport

35. The entitlement of an Australian citizen to be issued an Australian passport (section 7 of the Passports Act) is subject to the Minister being satisfied of the person's citizenship and identity (section 8 of the Passports Act) and is affected by Division 2 of the Passports Act (Reasons the Minister may refuse to issue an Australian passport).

Subdivision A – Children

Section 10 – Special circumstances in which the Minister may issue an Australian passport to a child

36. The objectives of the child passport provisions are to protect a child from international parental child abduction and to safeguard the rights of persons with parental responsibility.
37. Subsection 11(1) of the Passports Act sets out the basic requirements for a child to be issued a passport. These requirements are:
- . consent of all persons with parental responsibility for a child; or
 - . an order of a court of the Commonwealth, a State or a Territory that permits the child to have a passport, to travel internationally, or to live or spend time with another person who is outside Australia.
38. The Passports Act provides for a number of exceptions to the basic requirements for the issue of a passport to a child (paragraphs 11(2)(a) to (d) of the Passports Act) including:
- . circumstances specified in a Minister's determination as special circumstances exist;
 - . child welfare;
 - . the child needs to travel urgently because of a family crisis and it has not been possible to contact the non-consenting person within a reasonable period; or
 - . the child has been outside of Australia for less than 12 months and the Minister considers a passport should be issued to enable the child to return to Australia.
39. Section 10 of the Determination sets out special circumstances in which a passport may be issued to a child without the consent of all persons who have parental responsibility for that child or a court order for travel. These special circumstances provide the Minister with a discretion to issue a passport to a child when it is not possible to meet the basic requirements or it is inappropriate to expect the basic requirements to be met.

40. Approximately 5,500 children's cases are considered under these provisions annually. These provisions are important tools for the Department to fulfil its obligation to issue passports to children.
41. Subsection 10(2) provides that the special circumstances do not apply if the Minister has been provided with court documents demonstrating that there are proceedings in a court of the Commonwealth, a State or a Territory that may affect the rights of a person in relation to the child or the child's right to travel internationally.
42. Even if an applicant satisfies one or more of the special circumstances, the Minister may refuse to issue a passport to a child to meet the objectives of protecting a child from international parental child abduction or to safeguard the rights of persons with parental responsibility.

Paragraphs 10(3)(a) to 10(3)(c) – non-consenting person unable to be contacted or does not respond

43. Paragraph 10(3)(a) sets out the circumstance when neither the applicant nor the Minister is able to contact the non-consenting person within a reasonable period of time. This Determination removes the reference in the 2005 Determination to 'locating' a non-consenting person as in practice it is sometimes possible to locate the person but it is still not possible to contact them.
44. The Department will take reasonable measures to contact the non-consenting person using available sources, including (but not limited to) using contact details held by the Department for the purpose of performing functions under the Passports Act.
45. In most cases, the period in which the non-consenting person is given to respond to a written request for consent from the Department is ten business days.
46. Paragraph 10(3)(b) sets out the circumstance where a non-consenting person is either missing and/or presumed dead. This Determination amends the 2005 Determination to clarify that under this circumstance a person may be missing and/or presumed dead. A person may be missing but not confirmed dead, as there may be no death certificate.
47. Paragraph 10(3)(c) sets out the circumstance where the non-consenting person is medically incapable of consenting, for example, if the person is in a coma.

Paragraph 10(3)(d) – no contact between child and parent

48. Paragraph 10(3)(d) provides grounds to issue a passport to a child where the non-consenting person has not had contact with the child for a substantial period of time.

49. In most cases, a substantial period during which there has been no contact is considered to be up to two years, but may be less depending on the age of the child and the circumstances of the application.

Paragraph 10(3)(e) – no contact between child and parent overseas

50. Paragraph 10(3)(e) provides grounds to issue a passport to a child where the non-consenting person is overseas and has not had contact with the child since the child has been in Australia. This provision is normally used in circumstances where the parents were separated before the child immigrated or moved permanently to Australia.

Paragraphs 10(3)(f) and 10(3)(g) – family violence

51. Paragraph 10(3)(f) provides grounds to issue a passport to a child if a family violence order has been issued against the non-consenting person.
52. A *family violence order* is defined as ‘an order (including an interim order) made under a prescribed law of a State or Territory to protect a person from family violence’ (subsection 4(1) of the *Family Law Act 1975* (Family Law Act)). *Family violence* is defined in subsection 4AB(1) of the Family Law Act. The prescribed laws are set out in the *Family Law Regulations 1984* (Schedule 8).
53. Paragraph 10(3)(g) permits the Minister to consider evidence of family violence if the child is overseas. This is necessary as family violence orders, pursuant to paragraph 10(3)(f), are defined as those made under a State or Territory law in Australia.
54. These are important provisions as it is often not appropriate to contact the non-consenting person to seek consent where there is family violence. Ordinarily, where the non-consenting person is a person with parental responsibility for the child for the purposes of the Passports Act, this power would not be used if a court order (including a family violence order or family law order) permits access or contact between the non-consenting person and the child.

Paragraph 10(3)(h) – outside Australia – need to travel or reside internationally

55. Paragraph 10(3)(h) sets out the circumstance where a passport may be issued if the child is outside Australia and the Minister considers there is a need for the child to travel internationally. This provision complements the provisions of the Department’s Consular Services Charter, which sets out the consular services which Australia may provide to Australians overseas.
56. The Determination amends the 2005 Determination to include circumstances where a child is outside Australia and the Minister considers there is a need for the child to *reside* legally overseas. This provision is intended to protect children who have been residing lawfully overseas—sometimes for most, if not all, of their life—and where a passport is necessary to support the child’s continued lawful residence overseas. Possession of a valid passport

is often a condition of a child's visa. As such, a passport refusal has the potential to affect a child's immigration status in that foreign country including their ability to attend school or seek medical assistance.

57. Importantly, this amendment is not intended to be used in cases where a child is subject to an abduction allegation.

Paragraph 10(3)(i) – Convention country court orders

58. Paragraph 10(3)(i) provides that a child passport may be issued when an order of a court in a country, in respect of which the Hague Convention on the Civil Aspects of International Child Abduction (1987 ATS 2) (Hague Convention) has entered into force for Australia, permits a child to be issued a passport or to travel internationally or to have contact with a person outside the country where the order was made. These countries are listed in the *Family Law (Child Abduction Convention) Regulations 1986* (Schedule 2). This power is consistent with Australia's obligation to respect the rights of custody and of access under the law of other Contracting States, in accordance with Article 1(b) of the Hague Convention.

Paragraph 10(3)(j) – child welfare order of a State or Territory court

59. Paragraph 10(3)(j) provides that a passport may be issued to a child where a State or Territory court makes an order under a child welfare law that grants parental responsibility or guardianship of the child to a person other than the non-consenting person. This is important, as the Passports Act does not recognise the removal of parental responsibility unless it is made pursuant to the Family Law Act.

Travel-related documents

60. Section 10 also applies to the issue of travel-related documents, in accordance with section 9A. Accordingly, the issue of a convention travel document, certificate of identity or provisional travel document to a child would be subject to the same basic requirements, special circumstances and other grounds as those that apply to the issue of a passport. A document of identity may be issued in circumstances where it is not desirable to issue a passport.

Subdivision B – Law Enforcement and Security

61. Subdivision B of Division 2 – Law Enforcement and Security sets out the circumstances in which a competent authority may request that the Minister refuse to issue a passport to a person and/or to cancel a passport that has been issued to a person for reasons relating to:
- . Australian law enforcement matters (section 12 of the Passports Act);
 - . international law enforcement cooperation (section 13 of the Passports Act); or
 - . potential for harmful conduct (section 14 of the Passports Act).

62. Sections 11, 12 and 14 specify competent authorities for the purpose of requesting that the Minister refuse to issue a person a passport or to cancel a passport held by the person on the grounds set out above (sections 12 to 14 and paragraph 22(2)(d) of the Passports Act). Section 13 specifies offences for the purpose of making a refusal/cancellation request under subparagraph 14(1)(a)(v) of the Passports Act.

Travel-related documents

63. Subdivision B – Law Enforcement and Security also applies to the issue of travel-related documents in accordance with section 9A. As noted in section 8, a document of identity may be issued in circumstances where a passport is refused or cancelled under section 12 of the Passports Act.

Section 11 – Persons specified as competent authorities – Australian law enforcement matters

64. Section 11 specifies competent authorities for the purpose of making a passport refusal/cancellation request on the grounds of Australian law enforcement matters under section 12 of the Passports Act. Competent authorities relating to Australian law enforcement matters, such as the Australian Federal Police (AFP) and State and Territory police, do not need to be specified in the Determination as they are described in paragraph 12(3)(a) of the Passports Act.
65. The competent authorities specified in section 11 have responsibility for functions or duties in relation to Australian law enforcement matters. These are the Attorney-General, the Secretary of the Attorney-General’s Department and Senior Executive Service employees of the Attorney-General’s Department. This section is primarily used where a parole condition for a person convicted of a Commonwealth offence requires that the person must seek the permission of the Attorney-General before travelling internationally.

Section 12 – Persons specified as competent authorities – international law enforcement cooperation

66. Section 12 specifies competent authorities for the purpose of making a passport refusal/cancellation request on the grounds of international law enforcement cooperation under section 13 of the Passports Act. The power under the Passports Act to refuse a passport for reasons relating to international law enforcement cooperation complements Australian law enforcement objectives to offer full and reciprocal assistance to counterparts around the world.
67. Competent authorities relating to international law enforcement cooperation matters are limited to an agency or an employee of the Commonwealth. In this way, the Passports Act and the Determination only give standing to Australian officials and entities to make these requests.

68. Subsection 13(3) of the Passports Act specifies the following competent authorities for the purpose of making a refusal/cancellation request in relation to international law enforcement cooperation: an Australian Public Service employee of the Department; a member of the diplomatic staff of an Australian mission (within the meaning of the Vienna Convention on Diplomatic Relations 1961); and a member of the consular staff of an Australian consulate (within the meaning of the Vienna Convention on Consular Relations 1963).
69. The competent authorities specified in subsection 12(1) and paragraph 12(2)(a) of the Determination have responsibility for functions or duties in relation to international law enforcement cooperation matters. These are the Secretary of the Attorney-General's Department, and Senior Executive Service employees in the Attorney-General's Department and the Australian Federal Police.
70. The AFP's functions are set out in the *Australian Federal Police Act 1979* and are subject to the direction of the Minister responsible (section 8 and subsection 37(2)). The Ministerial Direction issued on 12 May 2014 expects the AFP to deliver on a number of key strategic priorities, including, amongst other things, countering the threat of terrorism and violent extremism, and preventing, deterring, disrupting and investigating serious and organised criminal activities.
71. Paragraph 12(2)(b) specifies the Australian Trade Commission, to the extent that it performs consular functions within the consular district of Vancouver, Canada. The territory covered in the consular district of Vancouver is agreed between Australia and Canada and is set out in the Schedule of Australian Overseas Missions and their Responsibilities issued by the Department.

Section 13 – Minister may refuse to issue an Australian passport – reasons relating to potential for harmful conduct

72. A competent authority may make a refusal/cancellation request if the competent authority suspects on reasonable grounds that: (a) the person is likely to engage in specified conduct; and (b) the person should be refused a passport in order to prevent the person from engaging in that conduct (subsection 14(1) of the Passports Act). The Passports Act lists various types of conduct (subparagraphs 14(1)(a)(i) to (v)).
73. Section 13 of the Determination specifies Commonwealth indictable offences for the purpose of a competent authority passport refusal/cancellation request pursuant to paragraph 14(1)(a)(v) of the Passports Act. The specified offences are serious and have an extended geographical jurisdiction or are transnational in nature. Refusing to issue a passport on the grounds that a person's conduct might constitute such an offence is appropriate given the serious nature and international nexus of the offences. It ensures that the passport legislation complements Australia's law enforcement objectives.

74. The Determination updates the offences listed in Schedule 1 of the 2005 Determination to address changes in the Criminal Code and other legislation. It also adds the following offences which are serious and transnational in nature:
- . treason, urging violence and advocating terrorism;
 - . espionage and similar activities;
 - . trafficking in persons and debt bondage;
 - . child sex offences and child pornography offences; and
 - . parts of the *Charter of the United Nations Act 1945* that relate to terrorism.

Section 14 – Persons specified as competent authorities – potential for harmful conduct

75. Subsection 14(3) of the Passports Act defines competent authorities for the purpose of making a passport refusal/cancellation request in relation to circumstances in Australia and circumstances in a foreign country. Competent authorities may include: a person who has responsibility for, or powers, duties or functions in relation to, the circumstance under a law of the Commonwealth, a State or Territory; an employee of the Commonwealth or a non-corporate Commonwealth entity specified in a Minister's determination.
76. Section 14 of the Determination specifies competent authorities for the purpose of making a passport refusal/cancellation request on the grounds of potential for harmful conduct under subsection 14(1) of the Passports Act.

Circumstances relating to Australia

77. Subsection 14(1) of the Determination specifies the Secretary of the Department and Senior Executive Service employees in the Department as competent authorities for the purpose of making a passport refusal/cancellation request to prevent a person from engaging in conduct which might constitute an indictable offence under the Passports Act in relation to circumstances in Australia (subparagraph 14(1)(a)(iv)).
78. Executive Level 2 Australian Public Service employees in the Department were specified as competent authorities for this purpose in the 2005 Determination. Under the Determination such employees will no longer be specified as competent authorities. Given the gravity of a decision to refuse or cancel a person's passport it is appropriate that a request to the Minister to consider such action be made only by senior officers within the Department.
79. Subsection 14(2) amends the 2005 Determination to specify the following persons as competent authorities for the purpose of making a refusal/cancellation request in relation to circumstances mentioned in subsection 14(1) of the Passports Act that relate to Australia: (a) the Director-General of Security (within the meaning of the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act)), and (b) a Deputy Director-General of Security (within the meaning of the ASIO Act). These persons are specified because they have responsibility for, or powers, functions and duties under the ASIO Act in relation to Australia's national security.

Circumstances relating to a foreign country

80. Subsection 14(3) of the Determination specifies competent authorities for the purpose of making a refusal/cancellation request in relation to circumstances mentioned in subsection 14(1) of the Passports Act that relate to a foreign country.
81. The Secretary of the Attorney-General's Department and Senior Executive Service employees of the Attorney-General's Department are specified because they have responsibility for, or powers, functions or duties in relation to international law enforcement cooperation matters and these interests are often engaged when seeking to prevent potential harmful conduct.
82. The Determination amends the 2005 Determination to specify the Director-General of Security and a Deputy Director-General of Security because they have responsibility for, or powers, functions and duties under the ASIO Act in relation to the carrying out of Australia's responsibilities to any foreign country in relation to threats to security.
83. Subsection 14(4) specifies entities as competent authorities for the purpose of making a refusal/cancellation request in relation to circumstances mentioned in subsection 14(1) of the Passports Act that relate to a foreign country.
84. The reference to the Department of Immigration and Border Protection in paragraph 14(4)(a) replaces the reference to the Australian Customs Service in the 2005 Determination following the integration of these two agencies. The Department of Immigration and Border Protection has responsibility for, or powers, functions or duties in relation to certain indictable offences under the *Migration Act 1958* which are specified in subparagraph 13(2)(e) of the Determination.
85. ASIO is specified as a competent authority because one of its functions is to advise the Minister on security matters – either relating to circumstances in Australia or in a foreign country – that are relevant to the Minister's functions and responsibilities (paragraph 17(1)(c) of the ASIO Act). This advice may be provided in the form of a competent authority passport refusal/cancellation request.
86. The Australian Trade Commission is specified as a competent authority to the extent that it performs consular functions within the consular district of Vancouver.

Subdivision C – Administrative Reasons

Section 15 – Circumstances in which the Minister may issue an Australian passport – concurrent passports

87. Subsection 17(1) of the Passports Act provides that a passport must not be issued to a person who has already been issued with an Australian passport that is still valid or has been suspended under section 22A of the Passports Act. Section 15 of the Determination

sets out the circumstances in which a person may be issued a concurrent passport. These circumstances are not intended to apply where a travel document has been suspended under section 22A of the Passports Act.

88. Paragraph 15(a) provides for the issue of a concurrent passport to avoid significant delays in travel that would otherwise be caused by waiting for a visa to be issued. In considering whether the delays are significant, the Minister will consider whether the travel is essential and cannot be deferred.
89. Paragraph 15(b) provides for the issue of a concurrent passport where the person intends to travel to a country that will not accept travel documents showing evidence of travel to certain other countries.
90. Paragraph 15(c) provides for the issue of a concurrent passport in exceptional circumstances.

Travel-related documents

91. Section 15 also applies to the issue of travel-related documents in accordance with section 9A.

Section 16 – Circumstances in which the Minister may issue an Australian passport – diplomatic and official passports

92. Section 16 provides for the issue of a diplomatic or official passport to a person who is travelling for diplomatic or official purposes, or is a dependent of a person travelling for diplomatic or official purposes.

Division 3 – When Australian travel documents are not valid

Section 17 – Period of validity

93. Section 17 sets out the validity periods for different passport types and circumstances. Validity periods are expressed as maximums and may be reduced depending on the circumstances of the applicant.
94. Subsection 20(2) of the Passports Act provides that the Determination may specify the time at which an Australian passport ceases to be valid.
95. Table item 3 in subsection 17(2) creates a new provision that, from 1 January 2016, persons aged 16 or 17 will be issued passports with ten-year validity instead of five-year validity (which are currently issued to persons under 18). The issue of passports with ten-year validity to persons aged 16 and 17 is consistent with current practice in the United Kingdom, the United States, and Canada.

96. Table item 4 in subsection 17(2) provides a person aged 75 or over with an option to apply for a five-year validity passport (\$125 in 2015)—instead of the standard ten-year adult passport (\$250 in 2015).
97. Table item 5 in subsection 17(2) sets the maximum validity of a concurrent passport at three years. Concurrent passports are normally issued for the duration of the proposed travel plus six months up to the maximum of three years.
98. Table item 6 in subsection 17(2) sets the maximum validity of emergency passports at one year. Emergency passports are intended to meet the immediate travel needs of the client. Emergency passports are primarily issued to Australians overseas, most often when their passport is lost/stolen or damaged. In these cases the person is often not able to produce the full documentation required to apply for a new full-validity passport and, as such, it is not appropriate to issue the person with a passport of validity greater than one year.
99. An emergency passport may be issued where:
 - . an applicant cannot complete the full requirements for the issue of a full-validity passport but the Minister is satisfied of the basic requirements for the issue of an emergency passport
 - the basic requirements for the issue of an emergency passport are that the person is an Australian citizen and provides evidence of identity; or
 - . an applicant satisfies the Minister of all requirements and has a need to travel urgently.
100. Table items 7, 8 and 9 in subsection 17(2) set restricted validity periods for passports in specified circumstances due to the limited duration required for travel and in the case of items 7 and 9 the fee may be waived under section 27.
101. Table item 10 in subsection 17(2) updates the 2005 Determination to provide for greater reductions in passport validities for persons who have lost or had stolen more than one passport in a five year period. This subsection provides for: a maximum passport validity of five years for persons who have lost or had stolen two passports in the preceding five years; and a maximum passport validity of two years for a person who has lost or had stolen three or more passports in the preceding five years. These new provisions apply to an application lodged on or after 1 January 2016.
102. 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.
103. 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 is 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 who have lost or had stolen more than one passport in a five-year

period is designed to protect passports at greater risk of being lost/stolen from being used fraudulently.

104. 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.
105. Table item 10 in subsection 17(2) complements section 15 of the Passports Act which 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.
106. If the holder of a lost/stolen passport finds their missing passport and returns it to the Department when lodging an application for a new passport, under subsection 17(3) that passport will not be recorded as lost/stolen for the purpose of determining the maximum validity of the person's next passport.
107. The Determination provides for a new category of passports—replacement passports. A replacement passport is a reprint of an existing passport with a new passport number and in some cases 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.
108. Replacement passports may be issued in the following circumstances:
 - . to replace a passport that has been lost, stolen or damaged—the validity will be the same as the existing passport (table item 11 in subsection 17(2));
 - . to replace a passport that was issued with a limited validity in similar circumstances to when an emergency passport may be issued—the validity will be that of the existing passport if it had been issued with full validity (table item 12 in subsection 17(2));
 - . to replace a passport where all of the blank visa pages have been used—the validity will be the same as the existing passport (table item 13 in subsection 17(2));
 - . to update the photo in a passport of a child under five whose existing passport was issued when they were less than one year old—the validity will be the same as the existing passport (table item 14 in subsection 17(2));
 - . to update the name in a passport of a person whose name has changed due to: marriage; divorce; entering or ceasing to be in a registered or de facto relationship; a person's spouse or partner in a registered or de facto relationship has died; or the person is transitioning to another gender—the validity will be the same as the existing passport (table item 15 in subsection 17(2)); and
 - . to update the gender in a passport of a person whose gender has changed—the validity will be the same as the existing passport (table item 16 in subsection 17(2)).
109. Replacement passports are designed to provide a cheaper and simpler alternative to applying and paying for a new full validity passport depending on the remaining validity of

the existing passport. In some circumstances the fees may be waived under section 27 of the Determination.

110. In most circumstances the validity of the replacement passport will be the same as that of the existing passport (table items 11, 13, 14, 15 and 16 in subsection 17(2)). However, table item 12 in subsection 17(2) provides that the validity of the replacement passport will be the validity that would have applied if the existing passport had been issued with full validity rather than limited validity.

Section 18 – Circumstances in which passports cease to be valid – damage

111. Section 18 sets out the circumstances in which a passport is damaged and ceases to be valid as it is considered no longer usable as evidence of the identity and citizenship of its holder or to facilitate international travel.
112. Paragraph 18(2)(e) clarifies that damaging, tampering or interfering with, or removing, the passport's contactless integrated circuit applies to this section.
113. The purpose of this provision is to remove damaged passports from circulation to prevent their fraudulent use. Accordingly, the decision of the Minister that a passport is no longer usable as evidence of identity or citizenship of its holder or to facilitate international travel is not reviewable.

Travel-related documents

114. Section 18 applies to the issue of travel-related documents in accordance with section 9A.

Section 19 – Circumstances in which passports cease to be valid – other circumstances

115. Section 19 provides for circumstances, other than damage, that result in a passport ceasing to be valid.
116. Subsection 19(1) provides that a passport ceases to be valid when a specified circumstance occurs. The circumstance may be mentioned in an endorsement (or in other advice in writing to the holder). For example, the holder may have been issued a one-way travel document for law enforcement purposes. The travel document ceases to be valid after the holder has used the document to enter the intended country of destination.
117. Subsection 19(2) provides that a passport ceases to be valid if the holder dies or is no longer a citizen.
118. These provisions are important for the integrity of the Australian passports system and complement national law enforcement and security objectives.

Travel-related documents

119. Section 19 applies to the issue of travel-related documents in accordance with section 9A.

Part 3 – Administrative matters

120. Sections 20 to 24 provide for the collection and disclosure of information related to Australian travel documents and, in particular, to confirm the identity of travel document applicants.

121. There are two distinct objectives addressed in these sections:

- collection and use of information to confirm a person’s identity and citizenship and, if necessary, whether the applicant’s entitlement to be issued an Australian passport is affected by Division 2 of the Passports Act (for example, whether a competent authority has made a refusal/cancellation request or whether all persons with parental responsibility for a child have consented to the child having a passport); and
- disclosure of information for limited purposes including:
 - notification that a travel document is lost or stolen or otherwise invalid;
 - confirming or verifying information relating to an applicant for an Australian travel document or a person to whom an Australian travel document has been issued;
 - facilitating or otherwise assisting with the international travel of a person to whom an Australian travel document has been issued;
 - for the purpose of law enforcement;
 - for the purpose of the operation of family law and related matters; and
 - other purposes specified in the Determination.

Division 1 – Information relating to Australian travel documents

122. Division 1 provides for disclosure of information to and by the Minister for the purposes of performing functions under the Passports Act. Collection and use of this information is regulated by the Passports Act (sections 42 to 44) and the *Privacy Act 1988*. The Determination specifies what information may be collected and from whom.

Section 20 – Disclosure of information to and by the Minister

123. Section 20 is a key operational provision. It specifies the personal information (in addition to the information provided with an application) that the Minister may request in order to be satisfied of the person’s citizenship and identity, or eligibility to be issued a particular type of Australian travel document (see, for example, the eligibility requirements in sections 6 to 9 for the issue of convention travel documents, certificates of identity, documents of identity and provisional travel documents).

124. Subsection 20(1) and paragraph 20(2)(a) specify the persons who are authorised to provide this information. Subsection 20(3) specifies what information may be disclosed to these

persons, so that the specified persons can confirm or verify existing information or provide further information.

125. Paragraph 20(1)(a) specifies the Australian Electoral Commission. Applicants are not required to provide Australian Electoral Commission documents with a passport application. This information is provided in accordance with the *Commonwealth Electoral Act 1918* (subsection 90B(4) Item 4 and paragraph 91A(2A)(c)).
126. Paragraph 20(1)(b) specifies persons who issue or sign a document that is relied on by the applicant as evidence of identity, address, entitlement or eligibility. In the Department's current practice, these persons include, but are not limited to:
 - . State and Territory registrars of births, deaths and marriages in Australia (and overseas equivalents), for the purposes of validating details of the birth, death, marriage, divorce, name change or sex of applicant;
 - . officers from the Department of Immigration and Border Protection, to verify citizenship details (for Australians) or residency/visa status (for non-Australians);
 - . State and Territory road traffic authorities, for confirming driver licence details presented as evidence of identity;
 - . representatives from financial institutions, for confirming account details provided as part of the identity validation process;
 - . court officials, to confirm status of proceedings and details of orders, particularly in relation to applications for a child where parents or others with parental responsibility have not provided consent to the child travelling internationally;
 - . officers from State and Territory family and community services (however described);
 - . any other person whose document is relied on in an application for a travel document, such as a medical practitioner, or child welfare organisation worker, who provide information concerning a child.
127. Paragraph 20(1)(c) specifies persons who can provide other information that is considered necessary for the purpose of satisfying the Minister as to the person's identity, entitlement to, or eligibility for, an Australian travel document.
128. Subsection 20(2) specifies that the Minister may disclose the personal information mentioned in subsection 20(3) to a person mentioned in the application or a person mentioned in subsection 20(1).
129. Subsection 20(3) specifies the personal information that the Minister may disclose for subsection 20(2). In order to be able to verify information provided by an applicant, the Minister needs to be able to disclose the minimum necessary information to the persons specified in subsection 42(1) of the Passports Act and in subsection 20(1) above.
130. Paragraphs 20(3)(b) and 20(3)(c) amend the 2005 Determination to clarify that under section 42(5) of the Passports Act the Minister may disclose personal information from *any*

document or other thing used as evidence of a person's identity *or citizenship* for the purpose of performing functions under the Passports Act.

131. These amendments clarify that the Minister is able to validate the expanding range of documents used by applicants as evidence of their identity *and/or citizenship*. For example, driver licences, name change certificates and Immicards are commonly used identity documents. It is essential that the Minister can validate the information on these documents to protect the integrity of the Australian passports system.
132. The following minor amendments have also been made to section 20:
- . changing the word 'guarantor' to 'referee' in paragraph 20(1)(a) and 20(3)(a) as the latter is more widely understood in the Australian community; and
 - . amending subparagraph 20(3)(d)(i) to replace the words 'the child's mother and father' with 'each person with parental responsibility for the child'. This amendment updates the language to include any person with parental responsibility for the child, including same sex parents.

Section 21 – Information that may be requested

133. Subsection 21(1) specifies that the Minister may request any information mentioned in the application form. This provision removes any doubt as to whether particular kinds of information can be requested, by the Minister, in order to satisfy the Minister of the identity or entitlement of an applicant.
134. Subsection 21(2) provides examples of the kind of personal information that the Minister may request to satisfy the Minister of the person's identity or citizenship. The Determination amends the 2005 Determination to clarify that this subsection also relates to citizenship. Australian citizenship is the basis of a person's entitlement to be issued an Australian passport (section 7 of the Passports Act).
135. Paragraph 21(2)(a) updates the 2005 Determination by replacing the words 'the Department of Immigration and Citizenship' with 'the Department of Immigration and Border Protection' consistent with the current name of this agency.
136. Subsection 43(2) of the Passports Act provides that the Minister is not prevented from requesting information that is not specified in the Determination in order to be satisfied of the identity or citizenship of an applicant.

Section 22 – Method of disclosing information

137. Section 44 of the Passports Act permits the Minister to specify that information is to be disclosed in a particular manner or in a particular form.
138. Section 22 of the Determination requires that information disclosed in electronic form must be in a manner compatible with the systems of the Department operated for the purposes of

performing functions under the Passports Act. Paragraph 22(b) requires that information disclosed in hard-copy form must be original documents.

139. These administrative arrangements are necessary to enable the Department to efficiently issue approximately two million passports annually, within the standard period for producing a passport.

Section 23 – Disclosure of information

140. Section 23 embeds in the body of the Determination the schedules from the 2005 Determination that set out what information may be disclosed and to whom.
141. The disclosure of this information is regulated by sections 45 and 46 of the Passports Act and the *Privacy Act 1988*. The disclosure of this information is important for the integrity of the Australian passports system, to assist Australian travellers and to support Australia's law enforcement objectives.
142. Disclosure of this information is subject to memoranda of understanding (or similar arrangements). The principles governing these arrangements are:
- . that the minimum necessary information is disclosed;
 - . that procedures are in place to ensure that genuine passport holders are not unnecessarily hampered and that invalid travel documents are removed from circulation; and
 - . that if information is disclosed to another country under sections 45 or 46 of the Passports Act, that country commits to protect the information in the same manner as it maintains information concerning its own citizens.

Status of an Australian travel document

143. Table item 1 of subsection 23(2) provides for disclosure of information relating to the status of an Australian travel document. Section 45 of the Passports Act provides that the Minister may disclose personal information to a person specified in the Determination for the purpose of informing that person about the status of an Australian travel document, for example, whether it is lost/stolen or otherwise invalid.
144. The notification of information about invalid documents (such as lost/stolen passports) is important to protect the integrity of the Australian passports system and to prevent the fraudulent use of lost/stolen travel documents. Fraudulently obtained 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.
145. Table item 1 of subsection 23(2) provides that the Minister may disclose to foreign border authorities the personal information of persons who have applied for, or been issued with, an Australian travel document. The purpose of the disclosure is to protect the integrity and

security of Australian travel documents by preventing their fraudulent use while facilitating international travel by genuine Australian travel document holders.

146. Australia provides a round-the-clock service to respond to situations where an Australian travel document which has been reported as lost or stolen is presented at a foreign border, or where a foreign border considers an Australian travel document to be suspicious. Where a passport is being used illegally, the disclosure facilitates the detection of fraud, protects the genuine holder and enables the passport to be removed from circulation. For genuine travellers, where there has been a human or data error which would cause them to be detained on entry, disclosure of information can assist in confirming identity and minimising inconvenience.
147. The Australian Government currently has in place memoranda of understanding with New Zealand, the United States, the Philippines, Taiwan and the International Criminal Police Organization (Interpol). As part of a strategy to establish these arrangements with other countries with which Australia shares a high volume of travellers, table items 1, 2 and 3 in subsection 23(2) provide for disclosure to 'any foreign border authority'.
148. The ability to disclose the minimum necessary information to any foreign border authority supports Australia's participation in the Asia-Pacific Economic Cooperation (APEC) Regional Movement Alert System (RMAS). The objective of RMAS is to combat terrorist threats through strengthening the capacity of participating countries to detect lost, stolen and otherwise invalid travel documents. Under RMAS, passport data of persons from participating countries travelling to the territory of another participating country is verified prior to entry.
149. Disclosure of this information also enables countries that are party to the Convention on International Civil Aviation 1944 (Chicago Convention) to meet their obligation to seize the travel documents from a person impersonating the rightful holder of the travel document (Annex 9, Facilitation, 3.46).
150. Through the Australian Federal Police, the Department provides information on lost, stolen and otherwise invalid documents to Interpol. Interpol may authorise another country to access or download this information in accordance with Interpol's Rules on the processing of information for the purposes of international police cooperation (Article 20 of Interpol's Rules). However, the Department and the Australian Federal Police retain control over access rights to Australia's information on Interpol's database, including which countries may access it (Article 5 of Interpol's Rules). In this way, it ensures that the principles governing this arrangement (set out above) are complied with.

Disclosure for particular purposes

151. Section 46 of the Passports Act permits the disclosure of personal information, on request, for the following purposes:
- . confirming or verifying information relating to an applicant for an Australian travel document or a person to whom an Australian travel document has been issued;
 - . facilitating or otherwise assisting the international travel of a person to whom an Australian travel document has been issued;
 - . law enforcement;
 - . operation of family law and related matters; and
 - . a law of the Commonwealth specified in a Minister's determination.

Confirming or verifying information

152. Table item 2 of subsection 23(2) provides for confirmation or verification of information relating to an applicant for an Australian travel document or a person to whom an Australian travel document has been issued. This provision is most often used by organisations when a person has presented their passport as identification for another service. The organisations that may currently request this information are set out in column 3 of this item. The Department will provide information in a manner consistent with the governing principles, set out above. The arrangements are usually set out in a memorandum of understanding.

Traveller facilitation

153. Table item 3 of subsection 23(2) provides for disclosure relating to traveller facilitation. Traveller facilitation is a term familiar to the travel industry. It describes arrangements that make immigration processing faster and smoother for travellers and which more effectively ensure passenger safety and border security.
154. The Department, in cooperation with the Department of Immigration and Border Protection, has established traveller facilitation arrangements with foreign immigration authorities to enable the verification of the validity of Australian travel documents. As a result, the vast majority of international travellers can be processed with minimal intervention and delay.
155. Traveller facilitation is set out in detail in Annex 9 of the Chicago Convention. It provides that in order to facilitate and expedite the clearance of persons entering and departing by air, Contracting States shall adopt border control regulations appropriate to the air transport environment and shall apply them in such a manner as to prevent unnecessary delays. In relation to inspection of documents, Annex 9 provides that Contracting States shall assist aircraft operators in the evaluation of travel documents presented by passengers in order to deter fraud and abuse.

Law enforcement

156. Table item 4 of subsection 23(2) provides for disclosure for law enforcement purposes.

The operation of family law and related matters

157. Table item 5 of subsection 23(2) provides for disclosure for the operation of family law and related matters. In addition to specifying persons from Australian courts, the Secretary of the Attorney-General's Department is specified because the Attorney-General's Department is responsible for Australia's obligations under the Hague Convention relating to child abduction.

The purposes of a law of the Commonwealth

158. Amendments contained in the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* came into force on 1 December 2014, including those enabling welfare payments to be cancelled for individuals whose passports have been cancelled or refused on national security grounds. Table item 6 of subsection 23(2) amends the 2005 Determination to provide for disclosure to the Attorney-General, the Secretary of the Attorney-General's Department, and a Senior Executive Service or Australian Public Service employee of the Attorney-General's Department, of specified information following a decision to refuse to issue or to cancel a passport on security grounds (subparagraph 14(1)(a)(i) of the Passports Act). This disclosure of information is required to enable the specified persons to fulfil their functions under the laws specified in column 1 of this item. The information that may be disclosed includes whether the Minister has refused to issue a passport or cancelled a passport on security grounds pursuant to a competent authority request made under section 14 of the Passports Act.
159. Table items 1 [column 3 (k)], 2 [column 3 (h)] and 3 [column 3 (b)] of subsection 23(2) update the 2005 Determination by replacing the words, 'The Chief Executive Officer of the Australian Customs and Border Protection Service' with 'the Commissioner of the Australian Border Force' consistent with the new title following the establishment of the Australian Border Force.
160. Table items 1 [column 3 (j)], 2 [column 3 (g)] and 3 [column 3 (a)] of subsection 23(2) update the 2005 Determination by replacing the words 'the Department of Immigration and Citizenship' with 'the Department of Immigration and Border Protection' consistent with the current name of this agency.
161. In addition, table items 1, 2 and 3 of subsection 23(2), column 3, amend the 2005 Determination to provide for information sharing with the National Border Targeting Centre (NBTC).
162. Established in 2014, the NBTC is a multi-government agency centre led by the Department of Immigration and Border Protection. The NBTC was established to address the increasing threat posed by organised criminal syndicates that seek to import drugs,

weapons and other contraband through cargo and traveller arrivals. The success of the NBTC relies on information sharing with partner agencies. This amendment will enable the disclosure of passport information in support of the NBTC's law enforcement objectives. Disclosure is subject to the governing principles set out above and to the NBTC Joint Agency Agreement.

163. The NBTC works cooperatively with foreign counterparts. Persons working in the NBTC may include persons from foreign agencies.
164. Subsection 23(3) defines the following terms used in subsection 23(2): *authenticity information; data page information; request information; and status information.*

Section 24 – Methods to be used for confirming evidence of identity

165. Section 24 provides for technical methods of confirming the identity of an applicant for an Australian travel document by using facial recognition technology to match photographs of the applicant and by embedding a contactless integrated circuit into Australian travel documents.
166. Paragraph 24(1)(a) amends the 2005 Determination to provide for photographs to be taken by the Department at the time of lodging an application (similar to obtaining a driver licence). This is in addition to a person being able to provide a photograph to the Department with their passport application.
167. Paragraph 24(1)(a) also amends the 2005 Determination to provide that the photograph of an applicant may be matched with *any* other digitised photograph held by the Department. This is necessary to ensure that a person is not able to obtain passports in multiple identities.

Part 4 – Miscellaneous

Section 25 – Name on travel document

168. Section 25 sets out the circumstances in which a person may use a name on their travel document other than a name mentioned in Section 53 of the Passports Act.
169. Section 53 of the Passports Act provides that the name of the person to whom an Australian travel document is issued must be a name according to the person's birth certificate, Australian citizenship certificate, registered marriage certificate or registered change of name certificate, except in circumstances specified in the Determination. The intention is that the name on a person's travel document is the most recent name that the person is known by and is consistent with their other identity documents.
170. There are limited legal powers relating to the name of a person under Commonwealth law. This makes the Minister's responsibility of satisfying him or herself as to the identity of the person more difficult. The legal responsibility for recording names resides with the

registries of births, deaths and marriages under State and Territory laws (RBDMs). Accordingly, the name registered with RBDMs will normally be used as part of the process for the Minister to be satisfied of the identity of the applicant.

171. These provisions also implement the policy that, whenever possible, only documents that can be verified with the organisation that issued the document will be accepted as evidence of identity or citizenship. The Department has in place a program for automated verification of certificates with the RBDMs and the Department of Immigration and Border Protection.
172. Subsection 25(2) amends the 2005 Determination to clarify that a person may only use a different surname in relation to a marriage or relationship, and not a different given name. A different given name to that on a person's birth or citizenship certificate requires a formal name change (paragraph 25(6)(b)).
173. Subsection 25(3) amends the 2005 Determination to clarify that a person may use a name stated in an Australian travel document if, among other requirements, the document is the most recent Australian travel document issued to the person with a validity of at least two years—even if it is not the most recent travel document issued to the person.
174. Subsection 25(4) specifies arrangements for Indigenous Australians whose birth has not been registered. The use of the person's name must be confirmed by the person's community elders or supported by other evidence, such as advice from a religious leader or appropriate Government organisation within the person's cultural area.
175. Subsection 25(5) addresses the circumstance where a person's name on an Australian citizenship certificate may be different from the name on the person's birth certificate.
176. Subsection 25(6) provides that a person may only use a different name to that on a citizenship, marriage or name change certificate either in accordance with subsection 25(2) or if the person officially changes their name at a registry of births, deaths and marriages.
177. Subsection 25(7) provides that in relation to paragraph 25(6)(b) a person may only use their most recently registered name.
178. Subsections 25(8) and 25(9) provide the framework for a person to use a name listed on their foreign marriage or name change certificate where that person was born overseas and resides overseas and is unable to obtain a name change certificate from an Australian registry. These subsections amend the 2005 Determination by clarifying that it is the *date of the event* (marriage or name change) that is important in determining a person's most recent name for a travel document, not the *date the certificate was issued*.
179. Subsection 25(10) provides that a person may use another name on their travel document in exceptional circumstances. An example may be a court order changing a child's name in circumstances where this change could not be registered.

180. Paragraph 25(2)(b) and subsections 25(5) to 25(9) are designed to ensure that, whenever possible, the Minister can rely on a verifiable trail of names for a person to be satisfied of the identity of the person.
181. Subsection 25(11) provides definitions of: *Australian citizenship certificate*; *foreign marriage certificate*; *foreign name change certificate*; *legalised (certificate)*; and *registered (name)*.

Section 25A – Unacceptable names

182. Subsection 25A(1) provides that a name in the circumstances set out in subsections 25(2) to 25(10) may be refused if the Minister considers it to be unacceptable, offensive or inappropriate.
183. Paragraphs 25A(2)(a) to 25A(2)(h) specify categories of terms which may be treated as unacceptable, without limiting the general power in subsection 25A(1). Section 54 of the Passports Act provides that an Australian travel document remains the property of the Commonwealth at all times. Subsection 53(1) of the Passports Act provides that Australian passports are issued in the name of the Governor-General. In this context, it is not appropriate for Australian travel documents to contain names that fall into the categories specified in paragraphs 25A(2)(a) to 25A(2)(h).
184. Paragraphs 25A(2)(i) to 25A(2)(k) specify categories of characters and symbols which may be treated as unacceptable to ensure the travel document conforms to operational standards. The international standards and recommended practices and procedures for travel documents adopted in accordance with the Chicago Convention (Article 37) referred to in paragraph 25A(2)(k) are currently set out in Document 9303 Machine Readable Travel Documents issued under Annex 9 of the Chicago Convention.
185. Subsection 25A(3) amends the 2005 Determination to provide that a signature of a name in the circumstances set out in subsections 25(2) to 25(10) may also be refused if the Minister considers it to be unacceptable, offensive or inappropriate. A signature may be considered unacceptable even if the name is acceptable.
186. Although names and signatures are rarely considered unacceptable, it is important to have a clear legal basis on which to refuse them if required.

Section 26 – Endorsements and observations

187. Section 26 provides that the Minister may endorse, or make observations on, Australian travel documents to specify particulars as the Minister thinks fit. Endorsements and observations may indicate the status of the holder of a diplomatic or official passport or a title, award or decoration conferred by the Crown.
188. A travel document ceases to be valid on the occurrence of a circumstance specified in an endorsement under subsection 19(1). For example, when a travel document is issued for

travel that has been restricted for law enforcement purposes the travel document would ordinarily be endorsed ‘Valid for one way travel to Australia’. The travel document ceases to be valid after the holder has used the document to enter Australia.

Section 27 – Waiver

189. Section 27 sets out the circumstances in which a fee in relation to an application for a travel document may be waived. Paragraph 56(2)(a) of the Passports Act provides that the Determination may specify the circumstances in which application fees may be waived.
190. Paragraphs 27(a) to 27(k) amend the 2005 Determination by replacing the words ‘the fee is for an application for’ with ‘the fee is in relation to an application for’ to provide for the waiver of other fees related to an application fee; for example, the priority processing fee.
191. Paragraph 27(a) is intended to protect the integrity of the Australian passports system by encouraging parents to update the photo in a young child’s passport to ensure that the child may be easily identified; for example, by border officials. Passports are often issued to babies whose appearance may change significantly in the first years of life.
192. Paragraphs 27(b) to 27(c) are intended to protect the integrity of the Australian passports system by encouraging persons to update their passport in their most recently known name or gender. Paragraph 27(c) updates the 2005 Determination by providing that a fee may be waived to update a passport with a *new gender*, in addition to a *new name* (paragraph 27(b)), as a result of a change of gender. These provisions will minimise problems for passport holders that may occur when the name and/or gender shown on their passport is different from that shown on other documents. It is intended that the fee would normally only be waived once in a ten year period.
193. Paragraph 27(f) provides for a fee to be waived in relation to an application to replace a passport if the period of validity of the original passport was less than the maximum. Such passports would normally be issued when an applicant cannot complete all of the requirements for the issue of an ordinary passport but the Minister is satisfied of the basic requirements for the issue of a passport. These basic requirements are evidence of identity and citizenship.
194. The fee to replace a passport issued with limited validity will not normally be waived following the introduction of the replacement passport application fee. In the circumstance set out in paragraph 27(f), a person is issued a second (replacement) passport which requires the Department to process a second passport application and produce a second passport. As such, it is appropriate that the person also pays for the second (replacement) passport. However, the replacement passport will make this more affordable than purchasing two standard passports as the replacement passport application fee will be less than the standard application fee. It is important to note that it is up to an applicant to provide all the required documentation for the issue of a full-validity travel document.

195. Paragraph 27(g) provides for a fee to be waived in relation to a travel document issued for travel between mainland Australia and Norfolk Island. From 1 July 2016, under the *Norfolk Island Legislation Amendment Act 2015*, travel documents will no longer be required for Australian citizens to travel between mainland Australia and Norfolk Island.
196. Paragraph 27(i) updates the 2005 Determination by adding ‘or removal’ as in practice the Department of Immigration and Border Protection primarily removes, rather than deports, persons from Australia under the *Migration Act 1958*.
197. Paragraph 27(k) provides that the additional fee for applications lodged overseas may be waived. This provision would normally only be used if the application fee is also waived.
198. Paragraph 27(l) provides that a fee may be waived in exceptional circumstances. The subsection amends the 2005 Determination to change the words ‘special circumstances’ to ‘exceptional circumstances’ for consistency with other references in the Determination and to differentiate them from the ‘special circumstances’ relating to issuing a child passport in section 10. An example of an exceptional circumstance may be when a person loses their passport as a result of a natural disaster. In these circumstances the fee to replace the person’s passport may be waived.
199. Section 27 amends the 2005 Determination to remove references to waiving a penalty fee associated with a lost/stolen passport because the Determination will remove these penalty fees from 1 January 2016. For passport applications lodged before 1 January 2016, the provisions in the 2005 Determination relating to penalty fees for lost/stolen passports, including the ability to waive these fees, will continue to apply.

Section 28 – Refunds

200. Section 28 sets out the circumstances in which a fee in relation to an application for a travel document may be refunded. Paragraph 56(2)(b) of the Passports Act provides that the Determination may specify the circumstances in which application fees may be refunded.
201. Similar to subsection 27(1) above, subsection 28(2) provides that a fee may be refunded in exceptional circumstances. The subsection amends the 2005 Determination to change the words ‘extenuating and unusual circumstances’ to ‘exceptional circumstances’ for consistency with other references in the Determination.
202. Paragraph 28(3)(a) amends the 2005 Determination to change ‘48 hours’ to ‘two business days’ for the time taken to issue a passport application where the priority processing fee has been paid and all the required documentation has been provided. This is consistent with current practice. The priority processing option was not intended; for example, to be taken from 5pm on a Friday afternoon to 5pm on a Sunday afternoon. ‘Business day’ is defined by the *Acts Interpretation Act 1901* as being ‘a day that is not a Saturday, a Sunday or a public holiday in the place concerned’. The ‘place concerned’ may include the place

where the passport application is lodged or processed or issued which may be different locations.

203. Subsection 28(5) provides that the additional fee for applications lodged overseas may be refunded if a related application fee was refunded in exceptional circumstances (subsection 28(2)) or on compassionate grounds (subsection 28(3)).
204. Section 28 amends the 2005 Determination to remove references to refunding a penalty fee associated with a lost/stolen passport because the Determination will remove these penalty fees from 1 January 2016. For passport applications lodged before 1 January 2016, the provisions in the 2005 Determination relating to penalty fees for lost/stolen passports, including the ability to refund these fees, will continue to apply.

Section 29 – Delegation of Minister’s powers

205. Section 29 provides that all decisions set out in the Determination may be delegated to Departmental officers or to a person specified by the Minister. With approximately two million passports issued each year it is not practical for the Minister to personally make the wide range of routine and administrative decisions about travel documents and applications for travel documents.
206. In addition to delegating functions to Departmental officers, the Minister has also delegated relevant functions to officers from other entities. For example, officers of the Department of Immigration and Border Protection are delegated to make a decision that an Australian travel document is damaged and ceases to be valid as it is no longer usable as evidence of the identity and citizenship of its holder or to facilitate international travel under paragraph 18(1)(b). This is appropriate as Immigration officials are responsible for checking the passports of passengers when departing Australia.

Section 30 – Review of decisions

207. Section 30 provides for merits review of specified decisions in the Determination.
208. Decisions made under the Determination which will be reviewable in accordance with the procedures set out in the Passports Act, as if they were a reviewable decision pursuant to sections 49 to 50 of the Passports Act, are:
- a decision that in exceptional circumstances, it is desirable that another name appears in the travel document (subsection 25(10));
 - a decision to refuse to issue a passport in a name that the Minister considers to be unacceptable (subsection 25A(1));
 - a decision to refuse to issue a passport with a signature that the Minister considers to be unacceptable (subsection 25A(3)); and
 - a decision to waive or refund a fee (sections 27 and 28).

Part 5 – Application and transitional provisions

Section 31 – Continued operation of *Australia Passports Determination 2005*

209. Section 31 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 is 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.

Schedule 1 – Repeals

210. Schedule 1 provides that the *Australian Passports Determination 2005* will be repealed.

Statement of Compatibility with Human Rights

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

Australian Passports 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

The Australian Passports Determination 2015 (the Determination) amends and remakes the Australian Passports Determination 2005 (2005 Determination) in accordance with its sunset date of 1 October 2015, under the *Legislative Instruments Act 2003*.

The principal object of the *Australian Passports Act 2005* (the Passports Act) is to provide for the issue and administration of Australian passports. The Determination remains a critical instrument for the implementation of the Passports Act.

The Determination covers:

- . the issue of travel-related documents;
- . special circumstances for the issue of a passport to a child;
- . competent authorities for making a passport refusal/cancellation request for matters relating to law enforcement, international law enforcement or potential for harmful conduct;
- . offences for the purpose of making a passport refusal/cancellation request;
- . validity periods for different travel documents;
- . concurrent, diplomatic and official passports;
- . when travel documents are not valid;
- . disclosure of personal information for limited purposes;
- . exceptions for a name that may appear on a person's travel document;
- . waivers and refunds of fees; and
- . delegations and reviewability of decisions.

The Determination reorders and renumbers the provisions in the 2005 Determination consistent with the order of the Passports Act. It embeds the schedules of the 2005 Determination in the body of the Determination for ease of reference. It modernises and simplifies the provisions from the 2005 Determination while remaining substantially the same.

The Determination provides for the following key amendments:

- removing the ability to extend convention travel documents and certificates of identity and instead providing that they may be replaced overseas in exceptional circumstances;
- refining and clarifying the special circumstances where a passport may be issued to a child without full parental consent or an Australian court order;
- adding offences for the purpose of refusing or cancelling a passport on law enforcement and security grounds;
- reducing passport validities for persons who have lost or had stolen two or more passports in a five year period;
- issuing 16 and 17 year olds ten-year validity passports, instead of five-year validity passports; and
- clarifying that the Department of Foreign Affairs and Trade (the Department) may validate any document provided as evidence of identity or citizenship.

Human rights implications

These determinations engage the following human rights:

1. The right to freedom of movement:
 - Art 12 of the International Covenant on Civil and Political Rights (ICCPR).
2. The rights of the child:
 - States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being (Art 3 of the Convention on the Rights of the Child (CRC));
 - States Parties shall respect the responsibilities, rights and duties of parents (Art 5 of the CRC);
 - the right of a child to enter or leave a State Party for the purpose of family reunification (Art 10 of the CRC); and
 - that parents or legal guardians have the primary responsibility for the upbringing and development of the child (Art 18 of the CRC).
3. The right to privacy:
 - the right not to be subjected to arbitrary or unlawful interferences with privacy (Art 17 of the ICCPR).

1. The right to freedom of movement

Article 12(2) of the ICCPR provides that everyone must be free to leave any country, including their own. The right in Article 12(2) may be subject to restrictions provided by law and necessary to protect national security, public order, public health or morals or the rights and freedoms of others (Art 12(3)). Under Article 12(4), no one shall be arbitrarily deprived of the right to enter his own country. A similar right is found in Article 10 of the CRC, Article 18 of the Convention on the Rights of Persons with Disabilities (CRPD), Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and Article 15 of Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

Sections 6 to 9: the issue of travel-related documents

Division 1 of Part 2 of the Determination, which sets out the type of travel-related documents the Minister may issue under section 9 of the Passports Act, engages this right.

Sections 6 and 7 allow the Minister to issue travel-related documents to non-citizen refugees (convention travel documents) and to non-citizens who are about to leave Australia and are stateless or unable to obtain travel documents from the country of which they claim to be a national (certificates of identity). These sections implement Australia's international obligations under Article 28 of the Convention Relating to the Status of Refugees and Article 28 of the Convention relation to the Status of Stateless Persons, which relate to the issuing of travel documents. These provisions promote the right in Article 12(2) of any person to be free to leave any country, by allowing the Minister to provide travel-related documents to persons who might not otherwise have access to them.

The Determination removes the ability to extend the validity of convention travel documents and certificates of identity in accordance with the International Civil Aviation Organization (ICAO) standards. These standards require that Contracting States must not extend the validity of their machine readable travel documents. This is because extensions may be annotated by hand or by a sticker on the travel document creating a situation where that information then conflicts with the information in the machine readable zone on the data page and on the contactless integrated circuit. This may raise concerns about fraud and security, impacting on the usability of the document at borders.

The Determination instead provides that these documents may be issued to a person who is overseas in exceptional circumstances where the document may have previously been extended. As such, the effect of these provisions continue to promote the right in Article 12(2) of any person to be free to leave any country, by allowing the Minister to provide travel-related documents to persons who might not otherwise have access to them.

Section 8 of the Determination allows the Minister to issue travel-related documents to Australian citizens to whom the issue of a passport is unnecessary or undesirable and to nationals of other Commonwealth nations who cannot obtain travel documents from their country of nationality (documents of identity). In relation to Australian citizens, this provision promotes the rights under Articles 12(2) and 12(4) to leave any country and to enter Australia.

There are a number of instances when it might be ‘unnecessary or undesirable’ to issue an Australian passport to an Australian citizen and a document of identity may be issued under this section, including:

- . where a person is being repatriated to Australia, for example for a medical or other emergency;
- . where a person is being deported, removed or extradited to Australia
 - restrictions on travel in these cases are necessary to support law enforcement and relate only to lawful requirements for a person to travel;
- . to enable travel until the Minister is satisfied the person meets all the requirements for a passport to be issued (such as citizenship)
 - this promotes freedom of movement by providing that a person may travel even though they may not meet all requirements for the issue of a passport;
- . where a person is overseas at the time their passport is refused/cancelled under the Passports Act, to enable them to return to Australia
 - this promotes the right in Article 12(4) that no one shall be arbitrarily deprived of the right to enter his own country
 - any restrictions on travel in these cases are necessary to support law enforcement.

In relation to nationals of other Commonwealth nations, section 8 promotes the right in Article 12(2) of any person to be free to leave any country, by allowing the Minister to provide travel-related documents to persons who do not otherwise have access to them.

Section 9 of the Determination allows the Minister to issue provisional travel documents to Australian citizens who are unable to obtain an Australian travel document. These documents are normally issued if a travel document is required to travel from one foreign country to another foreign country where there is an Australian mission to obtain a passport or other Australian travel document. These documents are often issued, under delegation, by Australian Honorary Consuls and other countries’ missions in places where Australia has in place consular sharing arrangements. This provision promotes the rights under Articles 12(2) and 12(4) to freedom of movement.

The Minister’s powers under this Division are discretionary. This is appropriate as there is no entitlement under the Passports Act for a person to be issued a travel-related document. There are sound reasons why the Minister should be able to refuse the grant of a travel-related document to non-citizens and to Australian citizens who are unable to obtain a passport. The issue of a travel-related document is based on confirming a person’s identity and on eligibility according to criteria set out in sections 6 to 9 of the Determination.

ICAO standards require Contracting States to issue their citizens a travel document – in most cases it is appropriate that a person apply to their own country of citizenship for a travel document. In the case of a person who not an Australia citizen, is not a refugee or stateless, and no other compelling reasons apply, the Minister may refuse to issue an Australian travel document if the person has not attempted to obtain a document from their country of citizenship.

An Australian citizen's entitlement to be issued with a passport is subject to the Minister being satisfied of the person's citizenship and identity (section 8 of the Passports Act) and Division 2 of Part 2 of the Passports Act. This Division sets out reasons the Minister may refuse to issue an Australian passport, including in relation to children, law enforcement and security, and administrative reasons such as repeated lost/stolen passports, debts owed to the Commonwealth for expenses incurred in relation to the provision of consular assistance or because the person already holds a valid Australian travel document that enables them to travel.

The consent provisions in section 11 of the Passports Act are designed to protect children from international parental child abduction and to safeguard the rights of persons with parental responsibility. The law enforcement and security provisions are necessary to protect public order and national security consistent with Article 12(3) of the ICCPR. The compatibility of these restrictions is discussed further below.

The ability to refuse to issue a person a passport on the grounds that two or more passports issued to the person have been lost or stolen in the previous five years protects Australian passports at risk of being lost/stolen from being fraudulently used. In practice, this power is rarely used and the Minister may still issue the person a travel-related document or limited validity passport to travel for specific purposes thereby promoting the rights to freedom of movement set out in Article 12.

Sections 11 to 14: law enforcement and security

Subdivision B of Division 2 of Part 2 of the Passports Act sets out circumstances in which a competent authority may request the Minister to refuse to issue an Australian passport to a person or to cancel an existing Australian passport. This subdivision also applies to the travel-related documents discussed above in light of section 9A of the Determination.

A competent authority may request the Minister to cancel or refuse to issue an Australian passport in circumstances including:

- for reasons relating to Australian law enforcement (section 12 of the Passports Act);
- for reasons relating to international law enforcement cooperation (section 13 of the Passports Act); or
- for reasons relating to potential for harmful conduct (section 14 of the Passports Act).

Different competent authorities are listed in the Passports Act for each of sections 12, 13 and 14 and provision is also made for the Minister to specify additional competent authorities under each of these sections in the Determination.

Sections 11, 12 and 14 of the Determination specify additional competent authorities for the purpose of requesting the Minister to refuse to issue an Australian travel document to a person or to cancel a person's existing Australian travel document under sections 12, 13 and 14 of the Passports Act.

Section 13 of the Determination specifies indictable Commonwealth offences for the purposes of a request to refuse or cancel a passport under section 14 of the Passports Act (relating to potential for harmful conduct).

These provisions of the Passports Act and the Determination engage the freedom to leave any country, including one's own, in Article 12(2) of the ICCPR.

Article 12(3) expressly provides that the right in Article 12(2) may be subject to restrictions which are provided for by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the ICCPR. In order to be 'necessary' the UN Human Rights Committee has stated that such restrictions must also conform to the principle of proportionality.

The right in Article 12(4) to enter one's own country may also be restricted, so long as that restriction is not arbitrary. The Human Rights Committee has stated that 'arbitrary' in this context requires that the restriction be reasonable in the particular circumstances.

The restrictions are provided by law and are necessary to facilitate law enforcement, to protect public order and Australia's national security, and to protect the rights and freedoms of others. The safeguards put in place by the Department and in the legislation ensure the use of these powers is reasonable and proportionate. These are set out in more detail below.

It is also important to note that where the Minister refuses to issue an Australian passport to, or cancels the Australian passport of, an Australian citizen overseas under Subdivision B of Division 2 of Part 2, the Minister may still issue the person a travel-related document to allow them to return to Australia—which protects the right in Article 12(4) of the ICCPR.

All decisions pursuant to sections 12, 13 and 14 of the Passports Act are made by the Minister (a refusal to issue a passport pursuant to section 12 may not be submitted to the Minister as it is mandatory and therefore no decision is being made). This has been the practice for previous Governments and Foreign Ministers. However, a decision to cancel a passport following a competent authority request under these sections is delegable under section 51(d) of the Passports Act and it is possible that a future Minister may elect to delegate these decisions. A decision to refuse to issue a passport under these sections is not delegable.

Reasons relating to Australian law enforcement

Section 12 of the Passports Act, combined with section 11 of the Determination, ensures any restrictions on movement are necessary, reasonable and proportionate to achieving the objective of supporting law enforcement measures. They only apply where a 'competent authority' believes on reasonable grounds that a person is the subject of an Australian arrest warrant for an indictable offence or is prevented from travelling internationally by reason of an Australian court order, parole or bail condition, or a law of the Commonwealth or an order or direction made under such a law.

If the Minister receives a competent authority request to refuse a person's passport under section 12 of the Passports Act, the Minister must comply as there is no discretion in the Passports Act to do otherwise. However, the Minister retains the discretion to cancel a passport (subparagraph

22(2)(d) of the Passports Act), and may issue the person a travel-related document to enable the person to return to Australia.

The refusal/cancellation of a person's passport under section 12 is reasonable and necessary to, for example: protect a child from international parental child abduction; or to protect public order and potentially the rights and freedoms of others. If a travel document was issued to a person subject to an arrest warrant for an indictable offence it may allow that person to leave Australia to avoid prosecution and commit further crimes in a foreign country. If a travel document was issued to a child in contravention of a court order that prevented a child from travelling internationally, it may put the child at risk of abduction. It is appropriate that the Passports Act and the Determination are consistent with, and support the operation of, other Commonwealth laws.

Reasonable grounds for a competent authority request under section 12 of the Passports Act would normally involve the existence of a parole or bail court order, an arrest warrant or a parenting order for a child. It is Departmental practice to require that the competent authority request include a copy of the relevant order or document.

It is Departmental practice to only accept competent authority requests if they are authorised by an SES (or equivalent) officer. The competent authorities specified in section 11 of the Determination for the purpose of section 12 of the Passports Act are the Attorney-General, the Secretary of the Attorney-General's Department and SES employees of the Attorney-General's Department.

An important safeguard is that all competent authority requests to cancel a passport under section 12 are decided by the Minister.

The Determination promotes human rights by ensuring that decisions concerning a refusal/cancellation request are taken at the highest levels, in light of their recognised impact on the rights protected by Article 12 of the ICCPR.

In addition, a decision to cancel an Australian travel document pursuant to a request made under section 12 of the Passports Act is reviewable under paragraph 48(c) of the Passports Act.

Section 12 of the Passports Act, in combination with section 11 of the Determination, is necessary, reasonable and proportionate for the legitimate objective of supporting law enforcement measures and protecting children and other persons whose rights and freedoms may be interfered with (Art 12(3) of the ICCPR). The administration of these requests and level of seniority in making a request and in deciding whether or not to cancel a passport further ensures the powers are applied in a reasonable and proportionate manner.

Reasons relating to international law enforcement cooperation

Section 13 of the Passports Act, combined with section 12 of the Determination, ensures any restrictions on movement are necessary, reasonable and proportionate to achieving the objective of supporting law enforcement measures and international law enforcement cooperation. They will only apply where a 'competent authority' believes on reasonable grounds that a person is the

subject of a foreign arrest warrant for a serious offence or is prevented from travelling internationally by reason of a foreign court order, parole or bail condition, or a law of a foreign country, or an order or direction made under such a law or where the issue of an Australian travel document to a person may compromise foreign legal proceedings in relation to a serious foreign offence.

Reasonable grounds for a competent authority request under section 13 of the Passports Act would normally involve the existence of bail orders from a foreign authority or a foreign arrest warrant. It is Departmental practice to require that the competent authority request include a copy of the relevant order or document.

As noted above, it is Departmental practice to only accept competent authority requests if they are authorised by an SES (or equivalent) officer. The competent authorities specified in section 12 of the Determination for the purpose of section 13 of the Passports Act are the Secretary of the Attorney-General's Department, SES employees of the Attorney-General's Department, the Australian Federal Police and the Australian Trade Commission in Vancouver.

With respect to requests made under section 13 of the Passports Act relating to international law enforcement cooperation the Minister has a discretion as to whether to refuse to issue or cancel an Australian travel document (subsection 13(2) and paragraph 22(2)(d) of the Passports Act). An important safeguard is that all competent authority requests under this section 13 are decided by the Minister.

The Determination promotes human rights by ensuring that decisions concerning a refusal/cancellation request are taken at the highest levels, in light of their recognised impact on the rights protected by Article 12 of the ICCPR. For example, a travel document may be issued to a person who is the subject of a foreign arrest warrant if the foreign country had not taken any steps to prosecute or incarcerate the person within a reasonable period.

In addition, a decision to refuse to issue or cancel an Australian travel document pursuant to a request made under section 13 of the Passports Act is reviewable under paragraphs 48(b) and (c) of the Passports Act.

Section 13 of the Passports Act, in combination with section 12 of the Determination, is necessary, reasonable and proportionate to the legitimate objective of supporting international law enforcement cooperation and protecting other persons whose rights and freedoms may be interfered with (Art 12(3) of the ICCPR). The administration of these requests and level of seniority in making a request and in deciding whether or not to refuse or cancel a passport further ensures the powers are applied in a reasonable and proportionate manner.

Reasons relating to potential for harmful conduct

Section 14 of the Passports Act, combined with sections 13 and 14 of the Determination, ensure any restrictions on movement are provided by law and are necessary, reasonable and proportionate to protect national security and to support law enforcement measures. They will only apply where a 'competent authority' suspects on reasonable grounds that, if an Australian travel document were issued to the person, the person would be likely to engage in conduct that

might prejudice the security of Australia or a foreign country, or endanger the health or physical safety of other persons, or interfere with the rights or freedoms of other persons set out in the ICCPR, or might constitute an indictable offence against the Passports Act or another Commonwealth law specified in a Ministerial Determination.

In practice, most competent authority requests pursuant to subsection 14(1) of the Passports Act are made by the Director-General of Security/ASIO. These competent authority requests are made when there are reasonable grounds for suspecting that a person would be likely to engage in conduct that might prejudice the security of Australia or a foreign country, and that the person should be refused an Australian passport in order to prevent the person from engaging in the conduct. An adverse security assessment furnished by ASIO under the *Australian Security Intelligence Act 1979* forms the basis of the competent authority request in these situations.

On occasion, requests are made by a law enforcement agency such as the Australian Federal Police on the basis of a reasonable suspicion that a person would be likely to engage in conduct that might constitute an indictable offence against the Passports Act or a law of the Commonwealth and that the person should be refused an Australian passport in order to prevent the person from engaging in the conduct. Previous and recent relevant convictions may be considered as reasonable grounds for making a request under subparagraph 14(i)(v) of the Passports Act.

The competent authorities specified in section 14 of the Determination for the purpose of section 14 of the Passports Act ensure the persons and entities able to make such a request are limited. In practice, the majority of competent authority requests come from the head of agency or other suitably senior position in the organisation. For those agencies where a specific officer or level of seniority has not been specified, in practice the Department will only accept competent authority requests if they are authorised by an SES (or equivalent) officer.

With respect to requests made under section 14 relating to potential for harmful conduct, the Minister has the discretion to refuse to issue/cancel an Australian passport (subsection 14(2) and paragraph 22(2)(d) of the Passports Act). An important safeguard is that all competent authority requests under section 14 are decided by the Minister.

The Determination promotes human rights by ensuring that decisions concerning a refusal/cancellation request are taken at the highest levels, in light of their recognised impact on the rights protected by Article 12 of the ICCPR.

In addition, a decision to refuse to issue or cancel an Australian travel document pursuant to a request under section 14 of the Passports Act is reviewable under paragraphs 48(b) and (c) of the Passports Act.

Section 13 of the Determination specifies a range of serious indictable offences for the purpose of section 14 of the Passports Act. The Determination updates the references to a number of offences and adds the following offences which are serious and transnational in nature:

- . treason, urging violence and advocating terrorism;
- . espionage and similar activities;
- . trafficking in persons and debt bondage;
- . child sex offences and child pornography offences; and
- . parts of the *Charter of the United Nations Act 1945* that relate to terrorism.

The offences listed in section 13 are included because of their serious and transnational nature. Fraudulently obtained travel documents are a key enabler for serious crime such as drug trafficking, people smuggling and terrorism. The additional offences in relation to terrorism are in response to the Government's key policy objectives to address Australians travelling overseas to join terrorist organisations. The inclusion of these offences protects other persons whose rights and freedoms may be interfered with (Art 12(3) of the ICCPR).

Section 14 of the Passports Act, in combination with sections 13 and 14 of the Determination, is necessary, reasonable and proportionate to the legitimate objective of protecting the security of Australia or a foreign country and protecting other persons whose health or physical safety may be endangered, or whose rights and freedoms may be interfered with as set out in the ICCPR.

In light of the serious nature of the potential for harmful conduct set out in section 14 of the Passports Act, the restrictions imposed on the rights protected by Article 12 of the ICCPR are not arbitrary and are considered necessary to achieve the legitimate objectives of national security, public order and the protection of the rights and freedoms of others. The administration of these requests and level of seniority in making a request and in deciding whether or not to refuse or cancel a passport further ensures the powers are applied in a reasonable and proportionate manner.

Sections 15 and 16: reasons for issuing concurrent travel documents

Sections 15 and 16 of the Determination set out the circumstances in which the Minister may issue an Australian passport to a person who already has a valid Australian travel document. The issue of an Australian passport in these circumstances is otherwise prohibited under section 17 of the Passports Act.

The listed circumstances include:

- . where a person needs a second passport to avoid significant delays in travel that would otherwise be caused by waiting for a visa to be issued;
- . where the person intends to travel to a country that will not accept a travel document showing evidence of travel to another country, and that person's current Australian passport shows evidence of travel to that country;

- . where the Minister is satisfied that other exceptional circumstances exist; and
- . in the case of diplomatic or official passports.

These exceptions to the general prohibition engage the freedom to leave any country, including one's own in Article 12(2) and the right to enter one's own country under Article 12(4) of the ICCPR and promote that right by allowing for the issue of concurrent travel documents in cases where this is necessary to facilitate international travel.

Sections 17 to 19: specifications of when Australian travel documents are valid

Sections 17, 18 and 19 of the Determination specify instances where Australian travel documents, including passports, cease to be valid.

Section 17 specifies the period of validity for different types of passports and different circumstances in which a passport may be issued. These do not limit freedom of movement as a person may apply for a new passport at any time.

Section 18 provides that a passport will cease to be valid if it is damaged and the Minister is satisfied that it is no longer usable as evidence of the identity and citizenship of its holder or to facilitate international travel. Damaged passports are unlikely to be accepted at foreign borders. Further, such documents must be removed from circulation to prevent their fraudulent use. This provision may temporarily limit a person's freedom of movement until they apply for, and are issued with, a new passport.

Section 19(2) provides that a passport ceases to be valid if the holder dies or is no longer a citizen. In the case of a person whose passport is no longer valid because they lose their citizenship, that person will not be entitled to apply for another Australian passport. However, they may still be able to apply for an Australian travel-related document or a travel document from another country to allow them to travel internationally.

Confirming that a person is an Australian citizen and confirming their identity are the two principal requirements that enable a person to be issued an Australian passport. Section 8 of the Passports Act provides that only Australian citizens may be issued a passport. These core requirements protect the integrity of the Australian passport system.

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.

As such, to the limited extent that these factors may limit a person's right to freedom of movement they are reasonable, necessary and proportionate measures to ensure Australian passports are accepted at foreign borders and to ensure the integrity of the Australian passports system. The latter is an aspect of national security and public order, and is not inconsistent with any other rights recognised in the ICCPR. As such, they are a permissible limitation on Articles 12(2) and (4).

Section 26: endorsements and observations

Section 26 provides that in issuing an Australian travel document, the Minister may endorse or make an observation on the travel document to specify such particulars as the Minister thinks fit. Section 19(1) provides that a passport will cease to be valid where it is subject to an endorsement, or other advice in writing to the holder, that it is to cease to be valid on the occurrence of a circumstance mentioned in the endorsement or advice and that circumstance occurs. These sections engage the right to freedom of movement in Article 12(2) and potentially Article 12(4).

It is important to note that the endorsement or observation will not conflict with the expiry date on the travel document. The observation may restrict travel, for example: it may be valid for a one-way trip to Australia; or it may provide that the document will be impounded on return to Australia. These restrictions are primarily used in relation to law enforcement, for example: if a person is being extradited to Australia; or being transferred to Australia under an international prisoner transfer. In these cases it is necessary to impound the document on arrival to support the operation of Australian law enforcement and to prevent the person from travelling overseas to avoid prosecution.

On occasion a travel document may be impounded on arrival in Australia, for example: when the Government issues a travel document to a person to facilitate their emergency evacuation from a foreign country to Australia; or if the passport was a concurrent passport. In each case, the impounding of the document does not restrict the person's freedom of movement as in the former case the person may apply for a new passport immediately and in the latter case the person has an existing passport.

Often the endorsement merely notes the titles and decorations held by the document holder or the status of the passport holder (for example, the position of the diplomatic officer or that a person is travelling on official Australian Government business) and thus would not restrict the right to freedom of movement.

As such, any limitation on the right to freedom of movement occasioned by these provisions is necessary, reasonable and proportionate and therefore permissible under Article 12(3) of the ICCPR.

2. The rights of a child

Articles 3 and 10 of the CRC require the State to protect the rights of children. Article 3 provides that States Parties shall ensure the protection and care necessary for a child's well-being. Article 10 protects the right of a child to leave or enter a State Party for the purposes of family reunification.

Articles 5 and 18 of the CRC require the State to protect the rights, responsibilities and duties of parents or persons with responsibility for the upbringing of children to make decisions and take actions that are in the best interests of the child. Article 5 of the CRC makes it clear that the Government needs to respect the 'responsibilities, rights and duties of parents ... legal guardians or other persons legally responsible for the child'. Article 18 of the CRC states that 'parents or

... legal guardians have the primary responsibility for the upbringing and development of the child’.

Section 10 of the Determination engages these rights by providing for circumstances in which the Minister may issue a passport to child without the consent of all persons who have parental responsibility for that child or a court order for travel. In doing so, it could limit the rights and responsibilities of persons who have parental responsibility for a child who have not consented to the child being issued a passport (non-consenting person).

However, the circumstances are limited to those where it would be reasonable or necessary to limit these rights and responsibilities, and, in those circumstances, promote the child’s right to freedom of movement. For example, the provisions promote the child’s right to freedom of movement in circumstances where the non-consenting person was not contactable or was incapable of consent, or where a family violence order has been issued against the non-consenting person.

The provisions also promote and protect the rights of the child by providing discretion to issue a passport without full consent to ensure the protection and care necessary for a child’s well-being (Arts 3 of the CRC). For example: where a child has resided overseas for some, if not all, of their life and a valid passport is required to continue to lawfully reside in that country and to ensure access to schooling and health care; or where a child has been abandoned in a country where the security environment is such that the child is at extreme personal risk if the child were to remain in the country.

There are also important safeguards in place. The provision does not apply if there are court proceedings pending that may affect the child’s right to travel or who has parental responsibility for the child. Further, the Minister retains a discretion in relation to the issue of the passport and would not normally exercise powers under this section if it was inappropriate to do so.

To the extent that section 10 limits the rights of non-consenting persons with parental responsibility, these are applied in a reasonable and proportionate manner to promote the rights of the child.

3. The right to privacy

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person’s privacy. It provides that persons have the right to the protection of the law against such interferences or attacks. A similar right is found in Article 16 of the CRC and Article 22 of the CRPD. The collection, use and disclosure of personal information engage the right to privacy. Personal information includes any information relating to a person’s identity, including their name.

Sections 20 to 24: disclosure of information

Sections 20 to 23 of the Determination specify the circumstances in which personal information may be disclosed to and by the Minister for the purposes of Division 1 of Part 5 of the Passports Act. This Division of the Passports Act provides for the types of personal information required by the Minister before issuing a travel document (i.e. relating to citizenship and identity), who it

can be obtained from, as well as the circumstances in which the Minister can disclose this information to third parties.

These provisions engage the right not to be subjected to arbitrary or unlawful interferences with privacy in Art 17 of the ICCPR. The UN Human Rights Committee has stated that for interferences with privacy not to be ‘arbitrary’, any interference must be reasonable in the particular circumstances. Reasonableness, in this context, incorporates the notion of proportionality to the end sought and necessity in the circumstances.

The legitimate objectives of these provisions relate to the collection and disclosure of information necessary for the purposes of the Passports Act, including:

- the performance of the Minister’s functions in issuing passports and travel-related documents, particularly in relation to confirming the identity and citizenship of persons applying for such documents or eligibility of persons to be issued a particular type of document;
- to facilitate genuine Australian travel document holders’ international travel;
- for law enforcement purposes, including to identify persons who are attempting to travel internationally using a fraudulently obtained, lost, stolen, invalid or counterfeit travel document; and
- to prevent a person from travelling and engaging in potential harmful conduct.

Confirming that a person is an Australian citizen and confirming their identity are the two principal requirements that enable a person to be issued an Australian passport. Section 8 of the Passports Act provides that only Australian citizens may be issued a passport. These core requirements protect the integrity of the Australian passport system.

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.

Fraudulently obtained travel documents are a key enabler for serious crime such as drug trafficking, people smuggling and terrorism. Robust identity verification processes help prevent identity theft—this protects other persons whose rights and freedoms may be interfered with (Art 12(3) of the ICCPR).

The Department’s disclosure and information collection activities are necessary, reasonable and proportionate. They are provided for by law (sections 45 and 46 of the Passports Act) and are consistent with the *Privacy Act 1988* and the Australian Privacy Principles.

When lodging an application for an Australian travel document, each applicant, or person with parental responsibility in the case of a child applicant, signs an acknowledgement that they have read and understood the ‘Notice’ contained in the information section of the application form

about the collection, use and disclosure of personal information (Australian Privacy Principles 3, 5 and 6).

The disclosure and collection of information in the Determination (sections 20 to 23) is limited by the type of information, the person making the disclosure, the person to whom the disclosure is made and the purposes for which the disclosure is made. As such, any interference with privacy occasioned by these provisions will be provided by law and not arbitrary, as well as reasonable and proportionate to confirming the identity and citizenship of passport applicants, protecting Australia's national security and ensuring Australia's border integrity and, in some cases, making it easier for applicants to confirm their identity on application for a travel document.

The provisions relating to the disclosure of personal information are also limited to information necessary to protect the integrity of the passport system (in particular to prevent the fraudulent use of lost or stolen travel documents), ensure compliance with Australia's criminal and civil laws (including family, tax and social security law), or assist in the identification of applicants for an Australian travel document or the international travel of a person holding an Australian travel document .

It is intended that disclosure of information under these provisions will be subject to memoranda of understanding (or similar arrangements) that will further protect the privacy of persons to whom it relates by ensuring that the minimum necessary information will be disclosed, that procedures are in place to ensure that genuine passport holders are not unnecessarily hampered and invalid travel documents are removed from circulation, and that if information is disclosed to another country, that country commits to protect the information in the same manner as it maintains information concerning its own citizens (Australian Privacy Principle 8). These measures ensure that any disclosure or collection activities are reasonable and proportionate.

The Determination amends the 2005 Determination to clarify that under section 42(5) of the Passports Act the Minister may disclose personal information from any document or other thing used to evidence or indicate a person's identity or citizenship for the purpose of performing functions under the Passports Act. This amendment is necessary to clarify that the Minister is able to validate the wide and expanding range of documents used by applicants as evidence of their identity and/or citizenship. For example, driver licences, name change certificates and Immicards are commonly used identity documents. It is essential that the Minister can validate the information on these documents to protect the integrity of the Australian passports system by helping to detect fraudulent travel document applications.

Similarly, the amendment to section 24 providing that the Department may match an applicant's photograph against any photograph held by or provided to the Department protects the integrity of the Australian passports system by helping to detect fraudulent travel document applications of persons who seek to have travel documents issued in multiple or false identities.

As such, to the extent that these factors may limit a person's right not to be subjected to arbitrary or unlawful interferences with privacy they are reasonable, necessary and proportionate measures to protect persons whose rights and freedoms may be interfered with and to protect national security, public order and the integrity of the Australian passports system. Maintaining the

integrity of the Australian passports system is part of protecting Australia's national security. As such, they are a permissible limitation on Articles 12(2) and (4) of the ICCPR.

Sections 25 and 25A: names

Section 53(3) of the Passports Act specifies the name that must appear on a person's Australian travel document. The name must either be the name on the person's birth certificate, or on their Australian Citizenship Certificate, or the name registered under a State or Territory births, deaths and marriages register.

The Minister may specify circumstances where these rules do not apply in the Determination. Section 25 of the Determination specifies circumstances in which another name can be used. This includes in circumstances of divorce or ceasing to be in registered relationship, where the person is an Indigenous Australian whose birth has not been registered, in certain circumstances where a person has married or changed their name overseas, and where the Minister considers that there are other exceptional circumstances.

Section 25 promotes the right to privacy by increasing the choices available to a person in relation to the name by which they are identified on their Australian travel document while maintaining the integrity of the Australia passport system (including through preventing identity fraud).

Section 25A limits section 25 by providing that it only applies in circumstances where the name, or signature of the name, is not one that the Minister considers to be unacceptable.

Given that passports: remain the property of the Commonwealth Government at all times (section 54 of the Passports Act); are issued in the name of the Governor-General (subsection 53(1) of the Passports Act); and are presented to officials in other countries as evidence of a person's identity and citizenship, a restriction on the use of unacceptable or offensive names and signatures is reasonable and necessary. In practice, this issue rarely arises.

Examples of unacceptable names include names which are or contain: an expletive; a racial or ethnic slur or implication; an obscene or offensive term; a term that could mislead people into believing that the bearer has been awarded or conferred a title, award or decoration; or a string of words that would not commonly be recognised as a name.

Any limitation on a person's right to privacy that is imposed by these provisions will be lawful and not arbitrary and is subject to review. For example, in order to protect the rights and freedoms of others, such as the right to freedom from discrimination, travel documents will not be issued under names which are designed to cause offence to an individual or group of persons. The limitation is a reasonable one to impose on applications for Australian travel documents.

Conclusion

The Determination is compatible with human rights because it advances the protection of human rights. To the extent that it may limit human rights, those limitations provided in law and are reasonable, necessary and proportionate for the Minister to effectively perform the functions set out in the Passports Act—to issue passports and travel-related documents.