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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**PASSPORTS LEGISLATION AMENDMENT
(2015 MEASURES NO.1) DETERMINATION 2015**

EXPLANATORY STATEMENT

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

EXPLANATORY STATEMENT

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

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PASSPORTS LEGISLATION AMENDMENT (2015 MEASURES NO.1) DETERMINATION 2015

Outline

The Passports Legislation Amendment (2015 Measures No.1) Determination 2015 (the Amendment Determination) amends the Australian Passports Determination 2015 (the Passports Determination) and the Foreign Passports (Law Enforcement and Security) Determination 2015 (the Foreign Passports Determination). The amendments ensure these determinations remain consistent with the *Australian Passports Act 2005* and the *Foreign Passports (Law Enforcement and Security) Act 2005* following amendments to these Acts made by the *Passports Legislation Amendment (Integrity) Act 2015* (the Amendment Act). The Amendment Determination also provides for some minor or technical amendments to the Passports Determination.

The primary amendments:

- repeal sections 9A and 25A from the Passports Determination as these provisions are now provided for in the Passports Act as amended;
- replace ‘passport’ with ‘travel document’ in several sections, consistent with amendments to the Passports Act, to clarify that these provisions apply to all Australian travel documents and not just passports;
- provide for the name on a travel-related document issued on the Minister’s own initiative;
- enable the issue of a replacement passport in ‘exceptional circumstances’ and for any name change, not just name changes for which a fee waiver may apply; and
- clarify that the Minister may disclose information relating to court orders with the issuing court in relation to a child travel document application, to protect children from abduction and to safeguard the rights of persons with parental responsibility.

Regulation Impact

These amendments will impose no regulatory impact on Australian citizens or businesses.

The Office of Best Practice Regulation (OBPR) advised that the changes to the passports legislation in the Amendment Act and as part of the amending and remaking of the passports determinations on 1 October 2015 were likely to have a minor regulatory impact on businesses or individuals (OBPR reference number is ID 17161). The amendments in the Amendment Determination flow from these primary amendments, with the addition of some minor or technical amendments.

Consultation

The following entities were consulted on relevant amendments in the Amendment Act: 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; Family Court of Australia; Family Court of Western Australia; Family Law Council; Federal Circuit Court; Standing Councils on Health, Community, Housing and Disability Services and Advisory Councils; State and Territory registrars of births, deaths and marriages; State Solicitor's Office of Western Australia; and State and Territory police.

The following entities were consulted on relevant amendments in the Amendment Determination: Attorney-General's Department; Australian Security and Intelligence Organisation; and the Department of Immigration and Border Protection.

Passports Legislation Amendment (2015 Measures No.1) Determination 2015

Preliminary

Notes on Clauses

Clause 1 – Name

1. This Determination will be named the *Passports Legislation Amendment (2015 Measures No.1) Determination 2015*.

Clause 2 – Commencement

2. Subsection 2(1) provides for the commencement of the Amendment Determination and its schedules in the commencement information table.
3. Table item 1 provides that the Amendment Determination will commence on the later of 1 October 2015 or the day after the instrument is registered.
4. Table item 2 provides that Schedule 1 will commence on the later of 1 October 2015 or the day after the instrument is registered.
5. Table item 3 provides that Schedule 2 will commence on the later of the day after the instrument is registered and the day Parts 1 and 2 of Schedule 1 to the Amendment Act come into force.
6. Table item 4 provides that Schedule 3 will commence on 1 January 2016.
7. Subsection 2(2) provides that any information in column 3 of the commencement information table is not part of the Amendment Determination. However, information may be inserted in this column, or information in it may be edited, in any published version of this Determination.

Clause 3 – Authority

8. 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.
9. The *Foreign Passports (Law Enforcement and Security) Act 2005* (the Foreign Passports Act) empowers the Minister to respond to law enforcement matters that involve foreign travel documents. Section 24 gives the Minister the authority to specify matters provided in the Foreign Passports Act in a determination.

Clause 4 – Schedules

10. 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 in a Schedule to this instrument has effect according to its terms.

Schedule 1—Miscellaneous amendments

Australian Passports Determination 2015

Item 1 – Paragraphs 10(3)(h) and (i)

11. Item 1 switches the numbering of paragraphs 10(3)(h) and 10(3)(i) consistent with the ordering of these paragraphs in the Australian Passports Determination 2005 and with the Department of Foreign Affairs and Trade's (the Department's) passport issuing systems. This amendment will help minimise the systems changes required to implement the Passports Determination when it commences on 1 October 2015.

Item 2 – Subsection 17(2) (at the end of the table)

12. 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.
13. Item 2 amends the table in subsection 17(2) to add a new provision for the validity of a replacement passport issued in 'exceptional circumstances'. For example, an exceptional circumstance may be where a replacement passport is issued to a person whose appearance has changed significantly from their existing passport photo following a serious injury or illness.
14. 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 or in the new circumstance mentioned above), gender, expiry date or to correct an error made by the Department. In most cases, including under this new 'exceptional circumstances' provision, the validity of the replacement passport will be the same as that on the existing passport.
15. This amendment is intended to provide a cheaper and simpler alternative—in exceptional circumstances—to applying for and paying for a new full validity passport, depending on the remaining validity of the existing passport.

Item 3 – At the end of paragraph 20(3)(d)

16. Section 20 specifies the personal information that the Minister may disclose in order to be satisfied of, among other things, the person's identity or entitlement to be issued an Australian travel document. 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). Division 2 includes provisions for refusing to issue an Australian travel document to a child where there is not consent from all persons with parental responsibility for the child or a court order permitting the child to have an Australian travel

document (section 11). This section is intended to protect children from international parental child abduction and to safeguard the rights of persons with parental responsibility.

17. Subsection 20(3) of the Passports Determination specifies what information may be disclosed in order to confirm or verify existing information in relation to an Australian travel document application. Paragraph 20(3)(d) relates specifically to applications for child travel documents.
18. The Amendment Determination adds a new subparagraph 20(3)(d)(iii) to clarify that the Department may disclose information relating to court orders or court proceedings concerning a child travel document applicant that may affect his or her entitlement to be issued a travel document or who has parental responsibility for the child.
19. On occasion the court orders provided with a child travel document application are incomplete, incorrect or have been superseded by new orders. The ability to verify with the issuing court that the court orders are correct, remain valid and that there are no further orders or proceedings pending in relation to the child travel document applicant is important in protecting children from international parental child abduction and in safeguarding the rights of persons with parental responsibility.

Item 4 – Paragraph 29(1)(c)

20. Section 29 provides that certain decisions set out in the Passports Determination may be delegated to Departmental officers or to a person specified by the Minister.
21. Item 4 repeals paragraph 29(1)(c) as it is not necessary. The head power providing authority to issue an Australian travel document, which includes issuing a travel document to a child, is contained in sections 7 and 9 of the Passports Act. The Minister's powers in these sections have been delegated under section 51 of the Passports Act.

Schedule 2—Amendments relating to amendments of relevant Acts

Australian Passports Determination 2015

Item 1 – Section 9A

22. Section 9A provides that certain provisions in the Passports Determination apply to Australian travel-related documents as well as to Australian passports—that is to all Australian travel documents.
23. The Passports Act, as amended by the Amendment Act, replaces the word ‘passport’ with ‘travel document’ in a number of sections (primarily in Division 2 of Part 2), to clarify that the relevant provision applies to all Australian travel documents and not just passports. This was intended to simplify the legislation by removing the need to refer to section 9A of the Passports Determination to determine which provisions in the Passports Act and in the Passports Determination apply to which travel documents.
24. Item 1 repeals section 9A as it is redundant now that the Passports Act incorporates these provisions. This reflects a series of amendments contained in the Amendment Determination that replace the word ‘passport’ with ‘travel document’ to clarify that the relevant provision applies to any document issued for the purposes of travel: that is, Australian travel-related documents as well as Australian passports.

Item 2 – Division 2 of Part 2 (heading)

25. Consistent with item 1, item 2 replaces the heading of Division 2 of Part 2 to clarify that this division applies to all Australian travel documents and not just passports.

Items 3 to 6 – Section 10

26. Section 10 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.
27. Consistent with item 1, item 3 replaces the heading of section 10 to clarify that this section applies to all Australian travel documents and not just passports.
28. Consistent with item 1, item 4 clarifies that subsection 10(1) applies to all Australian travel documents and not just passports.
29. Item 5 adds a new paragraph to reflect amendments to section 11 of the Passports Act that change the emphasis relating to consent for a child travel document from the child *travelling internationally* to the child *having an Australian travel document*. The Department’s role is to issue travel documents. Once issued, the Department has no control over when or where that child may travel. As such, it is more appropriate that the

matter of consent for the issue of a child travel document relates primarily to the child *having an Australian travel document*.

30. Consistent with this amendment, item 5 adds a new paragraph to subsection 10(2) of the Passports Determination to include a reference to court proceedings that may affect the rights of a child to have an Australian travel document. However, court proceedings (or orders) that may affect the rights of a child to *travel internationally* remain relevant in determining whether to issue a travel document to a child, as having a travel document is a prerequisite to international travel.
31. Consistent with item 1, item 6 clarifies that these paragraphs apply to all Australian travel documents and not just passports.

Item 7 – Section 14

32. Subsection 14(3) of the Passports Act defines competent authorities for the purpose of requesting the Minister cancel or refuse to issue an Australian travel document on the grounds of potential for harmful conduct under subsection 14(1) of the Passports Act. Subsection 14(3) of the Passports Act, as amended, removes the unnecessary and technical distinction between circumstances relating to Australia and circumstances relating to a foreign country, in which a competent authority may make a refusal/cancellation request on the grounds of potential for harmful conduct.
33. Section 14 of the Passports Determination specifies competent authorities for the purpose of making an Australian travel document refusal/cancellation request under section 14 of the Passports Act.
34. Item 7 repeals section 14 of the Passports Determination and replaces it with a new section 14.
35. Consistent with the amendments to subsection 14(3) of the Passports Act new section 14 of the Passports Determination removes the unnecessary and technical distinction between competent authorities for requests relating to circumstances in Australia and circumstances in a foreign country.
36. Following this amendment any competent authority specified in section 14 of the Passports Determination may make an Australian travel document refusal/cancellation request in relation to a circumstance set out in subsection 14(1) of the Passports Act relating to Australia or a foreign country.
37. Item 7 also removes the Australian Intelligence Security Organisation (ASIO) as an entity from the list of competent authorities, while retaining the Director-General of Security and Deputy Director-General of Security. This amendment is consistent with other related amendments to the Passports Act that are intended to streamline the decision making process.

38. The rest of the competent authorities remain the same, however, the paragraphs have been reordered consistent with the reordering of subsection 14(3) of the Passports Act.

Items 8 to 9 – Section 15

39. Consistent with item 1, item 8 replaces the heading of section 15 to clarify that this section applies to all Australian travel documents and not just passports.
40. Section 15 provides for the issue of concurrent Australian passports in limited circumstances.
41. Consistent with item 1, item 9 clarifies that section 15 applies to all Australian travel documents and not just passports.

Items 10 to 12 – Section 17

42. 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.
43. Item 10 repeals the heading of section 17 to clarify that section 17 relates only to the validity of Australian passports. The period of validity for Australian travel-related documents are provided for in sections 6 to 9 of the Passports Determination.
44. Item 11 repeals subsection 17(1) as it is redundant now that paragraph 20(1)(b) of the Passports Act, as amended, incorporates this provision.
45. Following the repealing of subsection 17(1), item 12 amends subsection 17(2) to note that the power to determine periods of validity for passports in the Passports Determination is still derived from section 20(2) of the Passports Act.

Items 13 to 18 – Section 18

46. 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.
47. Items 13 to 18 clarify that section 18 applies to all Australian travel documents and not just passports.

Items 19 to 20 – Section 19

48. Section 19 provides for circumstances, other than damage, that result in an Australian passport ceasing to be valid. For example, if the holder dies.

49. Items 19 to 20 clarify that section 19 applies to all Australian travel documents and not just passports.

Items 21 to 22 – Section 25

50. Section 25 of the Passports Determination 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.
51. Item 21 repeals subsection 25(1) and replaces it with a new subsection 25(1) to remove the reference to section 25A, consistent with its repeal in item 23, and to ensure the reference to section 53 of the Passports Act is consistent with the new numbering of this section as amended.
52. Item 22 adds a new subsection 25(10A) to provide the Minister with discretion to issue a travel-related document in a name other than a name mentioned in the Passports Act or elsewhere in the Passports Determination, only in the limited circumstances provided for in paragraph 9(1A)(b) of the Passports Act.
53. The Passports Act, as amended, includes a new provision in paragraph 9(1A)(b) for the issue of a travel-related document on the Minister's own initiative to facilitate a lawful extradition, removal, deportation or prisoner transfer to or from Australia.
54. There is no existing provision for the Minister to use a name on an Australian travel document that is not supported by the necessary documentation or is not at the request of the person. For example, an unlawful non-citizen in Australia who is subject to a lawful removal order may have no personal identification documentation and may not request a particular name be used if they do not wish a travel document to be issued to them. As such, subsection 25(10A) provides for a decision on the name to be used on a travel-related document issued in these circumstances. This provision is necessary to support the operation of paragraph 9(1A)(b) of the Passports Act.
55. The name will not be arbitrarily selected. It will be based on the most recent, official record or information available pertaining to the person, with the intention that the name will be the most recent name that the person is known by. For example:
- . for Australian citizens, wherever possible, the name will be the person's most recent registered name according to the person's Australian birth or citizenship certificate or the name registered with a State or Territory registrar of births, deaths and marriages, or the name on the person's most recent Australian travel document; and
 - . for non-citizens present in Australia, wherever possible, the name will be the name that is recorded in departmental systems of the Department of Immigration and Border Protection.

Item 23 – Section 25A

- 56. Section 25A provides that a name or signature may be refused if the Minister considers it unacceptable, offensive or inappropriate.
- 57. Item 23 repeals section 25A as it is redundant now that subsection 53(4) of the Passports Act, as amended, incorporates these provisions.

Item 24 – Section 27

- 58. 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 Passports Determination may specify the circumstances in which application fees may be waived.
- 59. Item 24 amends section 27 to clarify that the discretion to waive a fee is the Minister's discretion, which may then be delegated. This ensures the language in section 27 is consistent with the language in section 28, which relates to the Minister's discretion to refund a fee.

Item 25 – Paragraph 29(1)(j)

- 60. Section 29 provides that certain decisions set out in the Passports Determination may be delegated to Departmental officers or to a person specified by the Minister.
- 61. Item 25 repeals paragraph 29(1)(j) as it will be redundant following the repeal of section 25A in item 23.
- 62. Item 25 replaces this paragraph with a new paragraph 29(1)(j) to provide that a decision made under new subsection 25(10A) is delegable. This is appropriate as the decision to issue an Australian travel-related document under paragraph 9(1A)(b) of the Passports Act is also delegable under section 51 of this Act.

Item 26 – Section 30

- 63. Section 30 provides for merits review for specified decisions in the Passports Determination.
- 64. Item 26 removes the references to decisions made under section 25A as they will be redundant following the repeal of Section 25A in item 23.

Foreign Passports (Law Enforcement and Security) Determination 2015

Item 27 – Section 9

65. Subsection 15(2) of the Foreign Passports Act defines competent authorities for the purpose of requesting the Minister make an order to demand the surrender of a person's foreign travel documents under subsection 15(1) of the Foreign Passports Act. Subsection 15(2), as amended, removes the unnecessary and technical distinction between circumstances relating to Australia and circumstances relating to a foreign country, in which a competent authority may request an order to demand the surrender of a person's foreign travel documents.
66. Section 9 of the Foreign Passports Determination specifies competent authorities for the purpose of requesting an order to demand the surrender of a person's foreign travel documents on the grounds of potential for harmful conduct under section 15 of the Foreign Passports Act.
67. Item 27 repeals section 9 of the Foreign Passports Determination and replaces it with a new section 9.
68. Consistent with the amendments to subsection 15(2) of the Foreign Passports Act new section 9 removes the unnecessary and technical distinction between competent authority requests relating to circumstances in Australia and circumstances in a foreign country.
69. Following this amendment any competent authority specified in section 9 of the Foreign Passports Determination may request an order to demand the surrender of a person's foreign travel documents in relation to a circumstance set out in subsection 15(1) of the Foreign Passports Act relating to Australia or a foreign country.
70. Item 7 also removes ASIO as an entity from the list of competent authorities, while retaining the Director-General of Security and Deputy Director-General of Security. This amendment is consistent with other related amendments to the Passports Act that are intended to streamline the decision making process.
71. The rest of the competent authorities remain the same, however, the paragraphs have been reordered consistent with the reordering of subsection 15(2) of the Foreign Passports Act.

Schedule 3—Other amendments

Australian Passports Determination 2015

Item 1 – Subsection 17(2) (table item 15, column 1)

- 72. Section 17 sets out the validity periods for different passport types and circumstances.
- 73. Paragraph 27(b) of the Passports Determination provides a discretionary waiver for the issue of a replacement passport for a change of name in certain circumstances.
- 74. Item 1 amends table item 15 in subsection 17(2) to provide that a replacement passport may be issued for any name change, and not just in the circumstances for which a waiver may apply under paragraph 27(b). The replacement passport application fee would apply to a replacement passport issued for a name change in other circumstances.
- 75. This amendment is intended to encourage persons to update their Australian passport with their most recent registered name, by providing a cheaper and simpler alternative to purchasing a new passport.

Statement of Compatibility with Human Rights

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

Passports Legislation Amendment (2015 Measures No.1) 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 principal object of the *Australian Passports Act 2005* (the Passports Act) is to provide for the issue and administration of Australian passports. The Australian Passports Determination 2015 (the Passports Determination) is a critical instrument in supporting the operation of the Passports Act.

The *Foreign Passports (Law Enforcement and Security) Act 2005* (the Foreign Passports Act) provides powers for responding to law enforcement matters that involve foreign travel documents. The Foreign Passports (Law Enforcement and Security) Determination 2015 (the Foreign Passports Determination) is a critical instrument for the implementation of the Foreign Passports Act.

The Passports Legislation Amendment (2015 Measures No.1) Determination 2015 (the Amendment Determination) amends the Passports Determination and the Foreign Passports Determination consistent with amendments to the Passports Act and the Foreign Passports Act made by the *Passports Legislation Amendment (Integrity) Act 2015* (the Amendment Act).

For the purpose of this statement, the primary amendments:

- provide for the name on a travel-related document issued on the Minister's own initiative;
- enable the issue of a replacement passport in 'exceptional circumstances' and for any name change, not just name changes for which a fee waiver may apply; and
- clarify that the Minister may disclose information relating to court orders with the issuing court in relation to a child travel document application, to protect children from abduction and to safeguard the rights of persons with parental responsibility.

The Amendment Determination also provides for some minor or technical amendments to the determinations. These amendments do not have any substantive effect on the law and do not engage any human rights issues.

Human rights implications

These amendments engage the following human rights:

- the right to freedom of movement (Article 12 of the International Covenant on Civil and Political Rights (ICCPR));

- . the right to a fair hearing in a suit of law under Article 14(1) of the ICCPR; and
- . the right not to be subjected to arbitrary or unlawful interferences with privacy (Article 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 (Article 12(3)). Under Article 12(4), no one shall be arbitrarily deprived of the right to enter his own country.

Section 17: Period of validity

Section 17 of the Passports Determination specifies the period of validity for different types of passports and different circumstances in which a passport may be issued. These provisions engage the right to freedom of movement as a passport enables people to exercise the right of freedom of movement but do not have any other impact on the right as a person may apply for a new passport at any time.

The amendments to table items 15 and 17 in subsection 17(2) enable the issue of a replacement passport in ‘exceptional circumstances’ and for *any* name change, not just name changes for which a fee waiver may apply.

An ‘exceptional circumstance’ may be where a replacement passport is issued to a person whose appearance has changed significantly from their existing passport photo following a serious injury or illness.

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 or in the new circumstance mentioned above), gender, expiry date or to correct an error made by the Department. In most cases, including under this new ‘exceptional circumstances’ provision, the validity of the replacement passport will be the same as that on the existing passport.

This amendment engages a person’s right to freedom of movement but it does not limit this right as a person may apply for a new passport at any time.

In addition, the imposition of fees to obtain an Australian travel document could affect the ability of an Australian citizen to leave Australia. This amendment provides for the option of a cheaper alternative to purchasing a new passport in certain circumstances and thereby promotes the right to freedom of movement. Section 27(1) of the Passports Determination also provides for the waiver of a fee where the Minister is satisfied that exceptional circumstances exist in relation to the applicant that warrant waiver of the fee.

2. 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. Personal information includes any information relating to a person's identity, including their name. 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.

Section 20: Disclosure

Section 20 specifies the personal information that the Minister may disclose in order to be satisfied of, among other things, the person's identity or entitlement to be issued an Australian travel document. The entitlement of an Australian citizen to be issued an Australian travel document (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). Division 2 includes provisions for refusing to issue an Australian travel document to a child (section 11) where there is not consent from all persons with parental responsibility or a court order permitting the child to have an Australian travel document. This section is intended to protect children from international parental child abduction and to safeguard the rights of persons with parental responsibility.

Subsection 20(3) of the Passports Determination specifies the type of information that may be disclosed in order to confirm or verify existing information in relation to an Australian travel document application. Paragraph 20(3)(d) relates specifically to applications for child travel documents.

The Amendment Determination adds a new subparagraph 20(3)(d)(iii) to clarify that the Department may disclose information to the relevant court relating to court orders or court proceedings concerning a child travel document applicant that may affect his or her entitlement to be issued a travel document or who has parental responsibility for the child.

On occasion the court orders provided with a child travel document application are incomplete, incorrect or have been superseded by new orders. The ability to verify court orders relating to a child travel document application with the relevant court is important in protecting children from international parental child abduction and in safeguarding the rights of persons with parental responsibility. In verifying court orders with the issuing court the minimum information necessary is disclosed in order to confirm the court orders are correct, remain valid and that there are no further orders or proceedings pending in relation to the child travel document applicant. In most cases only the court order number is disclosed to the issuing court.

The Department's disclosure and information collection activities are provided for by law (Division 1 of Part 5 of the Passports Act) and are consistent with the *Privacy Act 1988* and the Australian Privacy Principles. The disclosure and collection of information in the Passports

Determination (including section 20) 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 whether there are factors that affect the entitlement of a child passport applicant to be issued an Australian travel document.

This amendment also engages and promotes the human rights contained in the Convention on the Rights of the Child (CRC) which provides that: State Parties shall ensure the protection and care necessary for a child's well-being (Article 3); and that States shall 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 (Articles 5 and 18).

Section 25: Names on Australian travel documents

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

The Minister may specify circumstances where these rules do not apply in the Passports Determination. Section 25 of the Passports Determination specifies circumstances in which another name can be used. These circumstances include a change in relationship status, where the person is an Indigenous Australian whose birth has not been registered and where the Minister considers that there are other exceptional circumstances.

New subsection 25(10A) of the Passports Determination will provide that the name on a travel-related document, issued on the Minister's own initiative under paragraph 9(1A)(b) of the Passports Act, may be a name determined by the Minister.

There is currently no provision for the Minister to use a name on an Australian travel document where this is not supported by the necessary documentation or is not at the request of the person. However, under new paragraph 9(1A)(b) in the Passports Act, the Minister may issue a travel-related document to a person on the Minister's own initiative to facilitate a lawful extradition, removal, deportation or prisoner transfer to or from Australia. In some cases, there may be no documentation to support a particular name and the person may not request a particular name be used. For example, an unlawful non-citizen in Australia who is subject to a lawful removal order may have no personal identification documentation and may not request a particular name be used if they do not wish a travel document to be issued to them. In order to support the operation of paragraph 9(1A)(b) of the Passports Act this amendment is required to provide for a decision on the name to be used on a travel-related document issued in these circumstances.

The name will not be arbitrarily selected. It will be based on the most recent, official record or information available pertaining to the person, with the intention that the name will be the most recent name that the person is known by. For example:

- for Australian citizens, wherever possible, the name will be the person's most recent registered name according to the person's Australian birth or citizenship certificate or the name registered with a State or Territory registrar of births, deaths and marriages, or the name on the person's most recent Australian travel document; and
- for non-citizens present in Australia, wherever possible, the name will be the name that is recorded in departmental systems of the Department of Immigration and Border Protection.

This provision is limited to only those circumstances provided for in paragraph 9(1A)(b) of the Passports Act.

These amendments engage the right to privacy as personal information includes any information about a person including their name. Importantly, the Minister will not arbitrarily select a person's name but will use the name that the person has been previously known as wherever this is possible. Where this is not possible, the name will be provided with due respect to the dignity of the person. As such, any limitation on a person's right to privacy that is imposed by these provisions will be lawful and not arbitrary. The limitation is a reasonable one given the circumstances surrounding the issue of travel-related documents under paragraph 9(1A)(b) of the Passports Act, which are necessary to protect national security and public order and, accordingly, are consistent with human rights.

3. The right to a fair hearing

To the extent that an individual's right to seek a review of a decision constitutes a 'suit at law' such that it would be covered by Article 14 of the ICCPR, the exclusion from merits review of a decision under new subsection 25(10A) would engage the right to a fair hearing in a suit of law.

A decision made under subsection 25(10A), to enable the Minister to issue a travel-related document in a name other than a name mentioned in the Passports Act or elsewhere in the Passports Determination, is not subject to merits review, consistent with the Passports Act which excludes from merits review a decision to issue an Australian travel-related document under paragraph 9(1A)(b).

Decisions made on a ground referred to in paragraph 9(1A)(b) are not reviewable because the decision to issue an Australian travel-related document to facilitate a lawful extradition, deportation, removal or prisoner transfer is procedural. The expulsion decision forms the basis for the Minister's document issue decision. There is no provision for the Minister to make a decision to issue a travel-related document under paragraph 9(1A)(b) without a lawful decision already having been made that requires the person to travel. Review rights relate to the decision to require a person to travel, and not to the Minister's decision to issue the person a travel-related document to facilitate that travel.

A decision to issue the travel-related document in a particular name under new subsection 25(10A) should also not be reviewable as it could frustrate the process for a lawful requirement

for the person to travel. As stated above, the name that the travel-related document is issued in will not be an arbitrary decision, but based on the best available information.

Any limitation on the right to a fair hearing, to the extent that it applies to a right to seek review of a decision made under new subsection 25(10A), is reasonable and necessary to prevent delays in lawful extraditions, removals, deportations and prisoner transfer processes.

Conclusion

The amendments to the Passports Determination and the Foreign Passports Determination are compatible with human rights because to the extent that they 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.