

2016

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**AUSTRALIAN PASSPORTS (APPLICATION FEES) AMENDMENT (2016
MEASURES NO.1) DETERMINATION 2016**

EXPLANATORY STATEMENT

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

AUSTRALIAN PASSPORTS (APPLICATION FEES) AMENDMENT (2016 MEASURES NO. 1) DETERMINATION 2016

Outline

The *Australian Passports (Application Fees) Amendment (2016 Measures No. 1) Determination 2016* (the Amendment Determination) amends the *Australian Passports (Application Fees) Determination 2015* (the Application Fees Determination) primarily to provide for the travel document fee increases announced by the Government in the 2016-17 Budget. Revenue raised from this measure will be used by the Government to help offset the increased cost of providing consular services and fund policy priorities.

In addition, the Amendment Determination provides for a number of minor amendments to simplify the Application Fees Determination following the implementation of a number of new measures on 1 January 2016, now that this date has passed.

Financial impact

The financial impact of the Amendment Determination will be to raise around \$170 million over four years from 2016-17 by increasing fees for Australian travel documents. Fees for Australian travel documents are imposed as taxes under the *Australian Passports (Application Fees) Act 2005*. From 1 January 2017, the cost of each five-year validity passport issued to children aged 0-15 and persons aged 75 or over will increase by \$10; the cost of all other Australian travel documents will increase by \$20 (except for provisional travel documents which have a nil fee); and the fee for priority processing of passport applications will increase by \$54.

Regulatory impact

The Amendment Determination will impose no additional regulatory impact on Australian citizens or businesses. The Office of Best Practice Regulation advised that no Regulation Impact Statement is required (reference number 21233).

Consultation

The Department of Finance was consulted on the fee increases for Australian travel documents.

Australian Passports (Application Fees) Amendment (2016 Measures No.1) Determination 2016

Preliminary

Notes on Clauses

Clause 1 - Name of determination

1. Clause 1 provides that the name of this determination will be the *Australian Passports (Application Fees) Amendment (2016 Measures No. 1) Determination 2016* (Amendment Determination).

Clause 2 - Commencement

2. Subclause 2(1) provides that the Amendment Determination will commence on 1 January 2017.
3. Subclause 2(2) provides that any information in column 3 of the table in subclause 2(1) 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

4. The *Australian Passports (Application Fees) Act 2005* (Application Fees Act) empowers the Minister to impose, as taxes, fees for Australian travel documents and related purposes. Section 8 gives the Minister the authority to specify matters provided in the Application Fees Act in a determination. The Application Fees Determination supports the operation of, and provides functional detail to, the Application Fees Act.

Clause 4 - Schedules

5. Clause 4 provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule has effect according to its terms.

Schedule 1—Amendments

Australian Passports (Application Fees) Determination 2015

Item 1 – Section 4 (definition of *business day*)

1. Section 4 provides for a definition of business day that refers to the *Acts Interpretation Act 1901* (AIA) definition of that term. Under paragraph 13(1)(a) of the *Legislation Act 2003*, that definition in the AIA will apply in the Application Fees Determination. This amendment repeals the definition of business day as it is not necessary.

Item 2 – Before subsection 5(1)

2. Section 5 sets out the application fees for Australian travel documents.
3. This amendment inserts a new subheading for subsection 5(1).

Item 3 – Subsection 5(1)

4. Subsection 5(1) sets out the annual CPI indexation of application fees for Australian travel documents provided for in items 1, 2, 4, 6-9 and 12-16 of the table in subsection 5(3).
5. This amendment clarifies that this subsection is for the purposes of section 4 of the Application Fees Act.

Item 4 - Paragraph 5(1)(b)

6. Paragraph 5(1)(b) sets out the annual CPI indexation for a later calendar year than 1 January 2015.
7. This amendment clarifies that paragraph 5(1)(b) will no longer apply to any future calendar year, only to the calendar year 2016. Subsection 5(2) will provide for annual CPI indexation for later calendar years.

Item 5 - Subsection 5(2)

8. Subsection 5(2) sets out the annual CPI indexation of application fees for Australian travel documents provided for in items 3, 7, 10 and 11 of the table in subsection 5(3).
9. This amendment repeals this subsection and replaces it with annual CPI indexation for items 3, 7, 10 and 11 for the calendar year 2016, and for all items (1-16) for the calendar year 2017 and future years.
10. In addition, these amendments provide for the application fee increases for Australian travel documents announced in the Government's 2016-17 Budget. The application fee increases are:
 - i. \$20 increase for ten-year validity passports, diplomatic, official, emergency and replacement passports, convention travel documents, certificates of identity and

documents of identity, from 1 January 2017—after CPI has been applied to the current fee (items 1, 3, 5, 7, 10, 11, 13, 14 and 15);

- ii. \$10 increase for five-year validity passports issued to children aged 0-15 and persons aged 75 and over, from 1 January 2017—after CPI has been applied to the current fee (items 2 and 4).

11. Annual CPI indexation will continue to apply to these fees on 1 January each year.

Item 6 - Subsection 5(3) (table item 3, column 1, paragraphs (b) and (c))

12. Section 5 sets out the application fees for Australian travel documents. Table item 3 provides for the application fee for a passport issued to a child aged 16 or 17.
13. This amendment simplifies table item 3 by removing the reference to applications lodged on or after 1 January 2016, now that this date has passed.

Item 7 - Subsection 5(3) (table item 6)

14. Section 5 sets out the application fees for Australian travel documents. Table item 6 provides for the application fee for a five-year validity frequent traveller passport for a child.
15. This amendment repeals this table item as the Department of Foreign Affairs and Trade (DFAT) no longer issues these passports. This is because, pro rata, five-year validity passports already have slightly more visa pages per year of validity (6.8) as a ten-year validity frequent traveller passport (6.6).

Item 8 - Subsection 5(3) (table item 7, column 1, paragraphs (b) and (c))

16. Section 5 sets out the application fees for Australian travel documents. Table item 7 provides for the application fee for a ten-year validity frequent traveller passport for a child aged 16 or 17.
17. This amendment simplifies table item 7 by removing the reference to applications lodged on or after 1 January 2016, now that this date has passed.

Item 9 - Subsection 5(3) (table items 8 and 9)

18. Section 5 sets out the application fees for Australian travel documents. Table item 8 provides for the application fee for a five-year validity frequent traveller passport for a person aged 75 or over. Table item 9 provides for the fee for an emergency passport application lodged prior to 1 January 2016.
19. The amendment repeals these two items.
20. Item 8 is repealed because DFAT no longer issues these passports. This is because, pro rata, five-year validity passports already have slightly more visa pages per year of validity (6.8) as a ten-year validity frequent traveller passport (6.6).

21. Item 9 is repealed because 1 January 2016 has now passed. As of 1 January 2016, item 10 applies to emergency passports.

Item 10 - Subsection 5(3) (table items 10, column 1)

22. Section 5 sets out the application fees for Australian travel documents. Table item 10 provides for the fee for an emergency passport application lodged on or after 1 January 2016.

23. This amendment simplifies table item 10 by removing the reference to applications lodged on or after 1 January 2016, now that this date has passed.

Item 11 - Subsection 5(3) (table items 11, column 1)

24. Section 5 sets out the application fees for Australian travel documents. Table item 11 provides for the application fee for a replacement passport application.

25. This amendment simplifies table item 11 by removing the reference to applications lodged on or after 1 January 2016, now that this date has passed.

Items 12 to 14 - Subsection 5(3) (notes)

26. These amendments repeal notes 1 and 2, as they are no longer necessary now that 1 January 2016 has passed, and adjusts the numbering of the remaining notes accordingly.

Item 15 - Subsection 5(4)

27. Subsection 5(4) provides for fees to be rounded up to the nearest dollar following CPI indexation.

28. Following the amendments to section 5 provided for in the above items, this amendment clarifies that subsection 5(4) applies to all relevant provisions in section 5.

Item 16 – Before subsection 6(1)

29. Section 6 sets out additional fees that may be payable in addition to an application fee for an Australian travel document.

30. This amendment inserts a new subheading for subsection 6(1).

Item 17 – Subsection 6(1)

31. Subsection 6(1) sets out the annual CPI indexation of additional fees that may be payable in addition to an application fee for an Australian travel document provided for in items 1 and 3 of the table in subsection 6(3).

32. This amendment clarifies that this subsection is for the purposes of section 4 of the Application Fees Act and that it applies only to item 3 of the table in subsection 6(3) now that item 1 has been repealed (see amending item 20).

Item 18 - Paragraph 6(1)(b)

33. Paragraph 6(1)(b) sets out the annual CPI indexation for a later calendar year than 1 January 2015.
34. This amendment clarifies that paragraph 6(1)(b) will no longer apply to any future calendar year, only to the calendar year 2016. Subsection 6(2) will provide for annual CPI indexation for later calendar years.

Item 19 - Subsection 6(2)

35. Subsection 6(2) sets out the annual CPI indexation of additional fees that may be payable in addition to an application fee for an Australian travel document provided for in item 2 of the table in subsection 6(3).
36. This amendment repeals this subsection and replaces it with annual CPI indexation for item 2 for the calendar year 2016, and for items 2 and 3 for the calendar year 2017 and future years.
37. The amendments also provide for a \$54 increase to the priority processing fee, as announced in the Government's 2016-17 Budget. The fee increase will be applied after CPI indexation.
38. The priority processing fee is an optional fee for persons who wish to have their passport application processed within two business days (not including delivery time). There is provision in the *Australian Passports Determination 2015* to waive or refund this fee on compassionate grounds, for example if a person needs to travel urgently because of the death or serious illness of a close relative.
39. Annual CPI indexation will continue to apply to the priority processing fee on 1 January each year.

Item 20 – Subsection 6(3) (table item 1)

40. Section 6 sets out additional fees that may be payable in addition to an application fee for an Australian travel document.
41. The Amendment Determination simplifies the table by removing references to applications lodged prior to 1 January 2016, now that this date has passed. When the Application Fees Determination was made in October 2015 it provided for a different priority processing fee to apply to applications lodged prior to 1 January 2016 (item 1) from those lodged on or after 1 January 2016 (item 2). This amendment repeals item 1 as it is no longer necessary.

Item 21 – Subsection 6(3) (cell at table item 2, column 1)

42. Section 6 sets out additional fees that may be payable in addition to an application fee for an Australian travel document.
43. This amendment simplifies table item 2 by removing the reference to applications lodged on or after 1 January 2016, now that this date has passed.

Items 22 and 23 – Subsection 6(3) (notes)

44. This amendment repeals note 2, as it is no longer necessary now that 1 January 2016 has passed, and removes the numbering of notes as only one note remains.

Item 24 - Subsection 6(4)

45. Subsection 6(4) provides that the additional fees set out in section 6 are payable in addition to the application fees for an Australian travel document set out in section 5.
46. Following the amendments to section 5 provided for in the Amendment Determination, this amendment clarifies that subsection 6(4) applies to all relevant provisions in section 5.

Item 25 - Subsection 6(5)

47. Subsection 6(5) provides for fees to be rounded up to the nearest dollar following CPI indexation.
48. Following the amendments to section 6 provided for in the above items, this amendment clarifies that subsection 6(5) applies to all relevant provisions in section 6.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Australian Passports (Application Fees) Amendment (2016 Measures No. 1) Determination 2016

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in Section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the instrument

The *Australian Passports (Application Fees) Amendment (2016 Measures No. 1) Determination 2016* (the Amendment Determination) amends the *Australian Passports (Application Fees) Determination 2015* (the Application Fees Determination) primarily to provide for the travel document fee increases announced by the Government in the 2016-17 Budget.

In addition, the Amendment Determination provides for a number of minor amendments to simplify the Application Fees Determination following the implementation of a number of new measures on 1 January 2016, now that this date has passed.

Human rights implications

The Amendment Determination engages the right to freedom of movement as set out in Article 12 of the International Covenant on Civil and Political Rights (ICCPR).

Right to freedom of movement

Article 12 of the ICCPR protects the right to freedom of movement: specifically, it states that everyone shall be free to leave any country and that no-one shall be arbitrarily deprived of the right to enter their own country.

The Application Fees Act and the Application Fees Determination engage the right to freedom of movement in Article 12 of the ICCPR. This is because the imposition of fees to obtain an Australian travel document could limit the freedom of an Australian citizen to leave Australia, as found in Article 12(2) of the ICCPR.

The travel document fee increases provided for in this Amendment Determination are: \$10 for five-year validity passports issued to children aged 0-15 and persons aged 75 or over; \$20 for all other Australian travel documents (except for provisional travel documents which have a nil fee); and \$54 for priority processing of passport applications. The priority processing service is optional and, importantly, there are provisions to refund this fee on compassionate grounds in the *Australian Passports Determination 2015* (Determination).

These increases, particularly when viewed in the context of the cost of overseas travel, are unlikely to restrict the freedom to leave one's own country protected by Article 12(2) of the ICCPR. In addition, sections 27 and 28 of the Determination provide for the waiver and refund of fees in certain circumstances, for example in the case of a natural disaster. Further, a decision not to waive or refund a fee under sections 27 and 28 of the Determination is reviewable under paragraphs 48(i) to (k) of the *Australian Passports Act 2005*.

As such, the Amendment Determination is consistent with Australia's obligations in relation to freedom of movement under international law.

Conclusion

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