

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (IMMI 18/001: Class of Passports) Instrument 2018

(Public Interest Criterion 4021 of Schedule 4)

1. Instrument IMMI 18/001 is made under Public Interest Criterion 4021 of Schedule 4 to the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals *IMMI 14/073 (F2014L01319): Class of Passports Instrument 2014* made under Public Interest Criterion 4021 of Schedule 4 to the Regulations in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Interpretation Act). Subsection 33(3) of the Interpretation Act states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. The instrument also repeals *IMMI 14/094: Direction (Section 71B)* which was made under subsection 71B(2) of the *Migration Act 1958* (the Act). Subsection 71B(2) of the Act was repealed on 24 March 2016 and IMMI 14/094 currently has no legal effect.
4. Public Interest Criterion 4021(a) provides that the visa applicant must hold a valid passport that was issued to the applicant by an official source, in the form issued by that official source and does not belong to a class of passports specified by the Minister in an instrument in writing. The instrument specifies those classes of passports.
5. The instrument is substantively the same as the instrument it repeals (IMMI 14/073) except for the following two changes:
 - a. the instrument specifies Somali passports for Public Interest Criterion 4021 of Schedule 4 to the Regulations; and
 - b. the instrument removes the reference to ‘Turkish passports identifying the holder as an official of the ‘Turkish Republic of Northern Cyprus’ from the list of

passports that are specified for Public Interest Criterion 4021 of Schedule 4 to the Regulations.

6. The purpose of the instrument is to clarify that Somali passports are a class of passport that an applicant cannot hold in order to satisfy Public Interest Criterion 4021 when applying for a visa. This is a clarification of the previous determination (IMMI 14/073) which specified that “Somali travel documents” are a class of passport that cannot be held to satisfy Public Interest Criterion 4021, and “travel documents” includes “passports”.
7. The instrument also does not include “Turkish passports identifying the holder as an official of the ‘Turkish Republic of Northern Cyprus’” that was part of the list of the previous determinations’ list of travel documents that an applicant cannot hold to satisfy Public Interest Criterion 4021 when applying for a visa. The change will mean that Turkish passports with endorsements identifying the holder as an official of the Turkish Republic of Northern Cyprus will be accepted as a travel document for the purposes of Public Interest Criterion 4021. The change aligns Australia with our international partners (the United States and European Union member states) but does not alter Australia’s long standing policy to recognise only the Republic of Cyprus and support reunification of the island.
8. The Department of Foreign Affairs and Trade was consulted about the development of this instrument.
9. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference: 23419).
10. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
11. This instrument commences on the day after it is registered on the Federal Register of Legislation.