

## Explanatory Statement

The *Australian Passports Act 2005* (the Act) provides in section 57 for the Minister to specify matters as provided in the Act in a determination. The current determination made under this power is the *Australian Passports Determination 2005* (the Determination).

This Explanatory Statement is for the *Australian Passports Amendment Determination 2010 (No. 1)* (the Amendment Determination), which amends the Determination.

The principal object of the Act is “to provide for the issue and administration of Australian passports, to be used as evidence of identity and citizenship by Australian citizens who are travelling internationally”. Sections 45 and 46 provide for disclosure of specified kinds of personal information to specified persons for specified purposes.

Disclosure of personal information assists the Australian Passport Office (APO) to protect the integrity and security of Australian passports, and to facilitate their use as evidence of identity and citizenship for Australians travelling overseas.

The Amendment Determination will expand the number of persons to whom disclosures of specified kinds of personal information can be made, for particular purposes.

Disclosures will continue to be made in accordance with the *Privacy Act 1988*. Information disclosed is discretionary and will continue to be the minimum necessary to achieve the specified purpose.

Guidance surrounding such disclosures will be provided for staff in the Manual of Australian Passports Issue. Current disclosure advice will be amended consistent with the Information Privacy Principles including Information Privacy Principle 11.3.

All information disclosed would be provided with guidance on how the Government expects the information to be used and protected. Where the frequency of disclosure to a particular person warrants it, a memorandum of understanding (or similar arrangement) would be negotiated.

### **Disclosure under section 45 of the Act - information about Australian travel documents that are lost, stolen, suspicious etc**

When a person presents an Australian travel document which is lost, stolen or suspicious, it is important for the APO to be able to share or verify information it holds. This enables it to protect the identity of the proper holder of the travel document in question, and to prevent the improper use of the document.

The Department of Immigration and Citizenship, and the Australian Customs and Border Protection Service are the front line in border control and in most cases would be the first to detect such a document if it were presented for travel to Australia.

The Amendment Determination will specify the Secretary of the Department of Immigration and Citizenship, and the Chief Executive Officer of the Australian Customs and Border Protection Service as two additional persons to whom the Minister may disclose personal information.

While the Amendment Determination is specifying two additional persons to whom personal information may be disclosed for the purposes of section 45 of the Act, the kinds of information able to be disclosed under section 45 of the Act will not change as a result of the Amendment Determination.

**Disclosure under subsection 46(a) of the Act - for the purpose of 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.**

The Secretary of the Department of Immigration and Citizenship and the Chief Executive Officer of the Australian Customs and Border Protection Service are to be specified to enable information to be disclosed so that these front line agencies can ensure that travel documents are being used by those to whom they were legitimately issued.

The Regional Movement Alert System (RMAS) is a project of the Asia-Pacific Economic Cooperation (APEC) Business Mobility Group. It helps governments detect and prevent the use of lost, stolen and otherwise invalid passports. The United States of America and New Zealand, are, along with Australia, participants in this project. Personal information is already disclosed to border control agencies in these countries for the purposes of informing them about the status of lost, stolen, suspicious etc. Australian travel documents (section 45 of the Act).

The Amendment Determination will also specify the heads of the border control agencies in these RMAS countries as persons to whom personal information may be disclosed for the purposes of subsection 46(a) of the Act.

While the Amendment Determination is specifying four additional persons to whom personal information may be disclosed for the purposes of subsection 46(a) of the Act, the kinds of information able to be disclosed under subsection 46(a) of the Act will not change as a result of the Amendment Determination.

**Disclosure under subsection 46(b) of the Act – for the purpose of facilitating or otherwise assisting the international travel of a person to whom an Australian travel document has been issued.**

In the majority of cases, persons held up at international borders through passport irregularities are innocent of fraud. Disclosure of personal information in this context is principally for the purpose of facilitating or assisting travel which might otherwise be impeded.

The Amendment Determination will specify the United States Secretary of Homeland Security as a person to whom personal information may be disclosed for this purpose.

The following three persons have already been specified for this purpose: the Secretary of the Department of Immigration and Multicultural and Indigenous Affairs (the reference will be updated to reflect the current Department name), the Chief Executive Officer of the Australian Customs Service (the reference will be updated to reflect the current agency name) and the Secretary of the New Zealand immigration authority.

While the Amendment Determination is specifying one additional person to whom personal information may be disclosed for the purposes of subsection 46(b) of the

Act, the kinds of information able to be disclosed under subsection 46(b) will not change as a result of the Amendment Determination.

**Disclosure under subsection 46(d) of the Act – for the purpose of the operation of family law and related matters.**

Currently no persons are specified by the Determination as being persons to whom information may be disclosed for this purpose. The Amendment Determination will add a new Part (Part 5) to Schedule 3 to provide for two specifications to be made of persons to whom personal information may be disclosed under subsection 46(d) of the Act.

Requests for information which would fall into this category usually come in the form of court subpoenas. While these are currently complied with, it is seen as appropriate for passports legislation to include provisions allowing disclosure of information to all Australian courts.

The Amendment Determination also specifies the Commonwealth Central Authority under the *Hague Convention on the Civil Aspects of International Child Abduction* and the *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*. This is in order to enable passport related information to be disclosed to it where necessary in relation to children covered by those Conventions or related family members.

The kinds of information that can be disclosed to these entities as a result of the Amendment Determination is the same as that which can be disclosed under subsections 46(a) and (b), plus any other information that is necessary to meet the request.