

## **The EXPLANATORY STATEMENT**

Issued by the Minister for Immigration and Border Protection

*Australian Border Force Act 2015*

*Australian Border Force (Secrecy and Disclosure) Amendment (2016 Measures No. 1)  
Rule 2016*

Section 58 of the *Australian Border Force Act 2015* (the Act), provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 45 of the Act authorises an entrusted person who is authorised by the Secretary for the purpose of that section to disclose protected information, including a class of protected information, in specified circumstances to:

- a foreign country;
- an agency or authority of a foreign country; or
- a public international organisation.

Paragraph 45(2)(d) of the Act provides that, in relation to a class of protected information that contains personal information, the relevant foreign country, agency or authority of a foreign country, or public international organisation must be prescribed in the rules and that class of information must be prescribed in the rules as a class of information that may be disclosed to that foreign country, agency, authority or organisation before the information can be disclosed.

The *Australian Border Force (Secrecy and Disclosure) Rule 2015* (the Principal Rule) prescribes, the relevant bodies and classes of information for the purposes of paragraph 45(2)(d).

### **Purpose**

The purpose of the *Australian Border Force (Secrecy and Disclosure) Amendment (2016 Measures No. 1) Rule 2016* (the Amendment Rule) is to amend the Principal Rule to include one new foreign agency to which information can be disclosed and the classes of information that may be disclosed, and to expand the classes of information that may be so disclosed to an existing prescribed foreign country. Details of the amendments are at **Attachment A**.

The Amendment Rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

A Statement of Compatibility with Human Rights for the Amendment Rule is at **Attachment B**.

**Consultation**

No consultation was undertaken specifically in relation to the provisions as they are of a minor or machinery nature and do not substantially alter existing arrangements.

**Commencement**

The Amendment Rule commences on the day after it is registered on the Federal Register of Legislation.

**Minister for Immigration and Border Protection**

**Details of the *Australian Border Force (Secrecy and Disclosure) Amendment (2016 Measures No. 1) Rule 2016***

**Section 1 – Name**

This section provides that the title of the Rule is the *Australian Border Force (Secrecy and Disclosure) Amendment (2016 Measures No. 1) Rule 2016*.

**Section 2 – Commencement**

This section sets out, in a table, the date on which the Amendment Rule will commence, and provides that each provision of the instrument as specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of that table, and that any other statement in column 2 is to have effect according to its terms.

The Amendment Rule commences on the day after it is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that the Amendment Rule is made under the *Australian Border Force Act 2015* (the Act).

**Section 4 – Schedule(s)**

This section provides for each instrument that is specified in a Schedule to this instrument to be amended or repealed as set out in the applicable items in the Schedule concerned, and for any other item in a Schedule to this instrument to have effect according to its own terms.

The purpose of this section is to provide for how amendments in this Amendment Regulation are to operate.

**Schedule 1 – Amendments**

*Australian Border Force (Secrecy and Disclosure) Rule 2015*

**Item 1 – Part 10 of Schedule 2 (after table item 10065)**

Part 10 of Schedule 2 to the *Australian Border Force (Secrecy and Disclosure) Rule 2015* (the Principal Rule) prescribes, for the purposes of paragraph 45(2)(d) of the Act, the foreign countries, agencies and authorities of foreign countries, and public international organisations, and the classes of information that may be disclosed to those foreign countries, agencies, authorities or organisations.

This item amends Part 10 of Schedule 2 to the Principal Rule to insert a new item 10065A, which enables protected information to be disclosed to the Indian Navy, and prescribes the classes of information that can be disclosed to that agency.

The purpose of this amendment is to give effect to certain international agreements.

Item 2 – Part 10 of Schedule 2 (item 10102, column 3)

Column 3 of Part 10 of Schedule 2 to the Principal Rule sets out the classes of protected information that can be disclosed to the country, agency, authority or organisation specified in each of the items.

This item amends column 3 of item 10102 to omit the reference to “C, G” and substitute “A, B, C, D, E, F, G”.

This amendment expands the classes of protected information that can be disclosed to the Ministry of Marine Affairs and Fisheries (Indonesia), and is made to give effect to an international agreement.

**Statement of Compatibility with Human Rights**

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

***Australian Border Force (Secrecy and Disclosure) Amendment (2016 Measures No. 1)  
Rule 2016***

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

**Overview**

The *Australian Border Force (Secrecy and Disclosure) Rule 2015* (the Principal Rule), amongst other matters, prescribes:

- the foreign countries, agencies or authorities of foreign countries, and public international organisations and the classes of information that may be disclosed to those foreign countries, agencies, authorities, or organisations for the purposes of paragraph 45(2)(d) of the Act; and
- additional prescribed purposes pursuant to paragraph 46(o) of the Act.

The purpose of the *Australian Border Force (Secrecy and Disclosure) Amendment (2016 Measures No. 1) Rule 2016* (the Amendment Rule) is to amend the Principal Rule to include one new foreign agency to which information can be disclosed and the classes of information that may be disclosed, and to expand the classes of information that may be so disclosed to an existing prescribed foreign country.

The Amendment Rule commences on the day after it is registered on the Federal Register of Legislation.

**Human Rights implications**

*Right to privacy*

The Amendment Rule engages the right to privacy contained in Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR), relevantly being that no one shall be subjected to arbitrary or unlawful interference with his or her privacy.

The Amendment Rule allows the disclosure of prescribed classes of personal information to prescribed bodies. In the Act, ‘personal information’ has the same meaning as in the *Privacy Act 1988* (Privacy Act), which is defined as:

*information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not.*

The ability to disclose personal information in the additional circumstances set out in the Amendment Rule gives effect to the Department’s information sharing needs under

international arrangements with, respectively, the Indian Navy and the Indonesian Government in appropriately controlled circumstances. Authorising the disclosure of such information in these circumstances is therefore lawful, not arbitrary, and is only permitted where the Secretary is also satisfied that the disclosure is for a permitted purpose.

The Amendment Rule is also precise as it states what classes of information, and to whom the information, can be disclosed. For this reason, the impact on individual's privacy is reasonable, necessary and proportionate to give effect to our legitimate operational needs and responsibilities under the arrangements mentioned above.

In addition, the disclosure of personal information is authorised by law under Part 6 of the Act, and consequently complies with Australian Privacy Principles 6 and 8 set out in the Privacy Act which place limits on the disclosure of personal information. Under those Principles, personal information shall not be disclosed unless, amongst other things, the disclosure is authorised by law. Section 51 of the Act sets out the interaction of the Act with the Privacy Act, and relevantly provides that the disclosure, in accordance with section 45 of the Act, of protected information to the extent that the protected information contains personal information, is taken to be a disclosure that is authorised by this Act.

### **Conclusion**

This legislative instrument is compatible with human rights because it does not restrict the right to privacy set out in the ICCPR. The disclosure of personal information in accordance with the instrument is not arbitrary or unlawful and it is consistent with Australia's human rights obligations.

**The Hon. Peter Dutton, Minister for Immigration and Border Protection**