

EXPLANATORY STATEMENT

Migration Act 1958

Migration (IMMI 18/002: Eligible Passports) Instrument 2018

(Section 175A)

1. Determination IMMI 18/002 is made under section 175A of the *Migration Act 1958* (the Act).
2. The instrument repeals *IMMI 14/079 (F2014L01165): Eligible Passports Instrument 2014* made under section 175A of the Act 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 operates, under section 175A of the Act, to specify that a kind of passport is an “eligible passport” for the purposes of Division 5 of Part 2 of the Act. Division 5 of Part 2 of the Act regulates the immigration clearance of persons entering Australia. The determination specifies that all valid passports are “eligible passports” with the exceptions of travel documents with certain characteristics specified in Schedule 1 to the instrument and specified travel documents in Schedule 2 to the instrument.
4. This instrument is substantively the same as the instrument it repeals (IMMI 14/079) except for the following two changes:
 - a. the instrument determines Somali passports are excluded from being a kind of valid passport that is an “eligible passport” for Division 5 of Part 2 of the Act; 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 excluded from being a kind of valid passport that is an “eligible passport” for Division 5 of Part 2 of the Act.

5. The purpose of this instrument is to clarify that Somali passports are not a kind of passport that is an “eligible passport” for Division 5 of Part 2 of the Act. This is a clarification of the previous determination (IMMI 14/079) which specified that “Somali travel documents” are not considered to be an “eligible passport” for Division 5 of Part 2 of the Act, and the term “travel documents” is interpreted to include “passports”.
6. 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 from the previous determinations’ list of passports that are not considered to be “eligible passports” for Division 5 of Part 2 of the Act. This change will mean that Turkish passports with endorsements identifying the holder as an official of the Turkish Republic of Northern Cyprus will be considered an “eligible passport” for Division 5 of Part 2 of the Act. This 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.
7. The Department of Foreign Affairs and Trade was consulted about the development of this instrument.
8. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference: 23419).
9. 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.
10. This instrument commences on the day after it is registered on the Federal Register of Legislation.