

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Foreign Affairs

### ***Consular Fees Act 1955***

#### ***Consular Fees Regulations 2018***

The *Consular Fees Act 1955* (the Act) provides for the charging of fees for consular acts performed by Australian diplomatic and consular officers and designated other officers and employees of the Commonwealth. The consular acts referred to in the Act are notarial services. Fees are not charged for the delivery of consular assistance to Australians overseas.

Section 6 of the Act provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act, and, in particular, providing for when the prescribed fees are not payable, as well as when the prescribed fees may be collected in local currency.

The *Consular Fees Regulations 1990* (the 1990 Regulations) currently prescribes the fees for the provision of notarial services (specified as consular acts for the purposes of the Act). The 1990 Regulations are due to sunset on 1 October 2018

#### **Issues giving rise to the need to remake the instrument**

The purpose of the *Consular Fees Regulations 2018* (the proposed Regulations) would be to repeal and remake the 1990 Regulations in accordance with Part 4 of Chapter 3 of the *Legislation Act 2003*. The proposed Regulations remain substantially the same as the 1990 Regulations and continue to prescribe the fee payable for the provision of specified notarial services.

The fee structure in the 1990 Regulations was amended in 2016 following a recommendation from the 2015 Functional and Efficiency Review of the Foreign Affairs and Trade Portfolio. The amended fees reflected inflation increases and were better aligned with the costs of delivering notarial services and comparable commercial providers. The fees continue to compare favourably to recommended notarial fees charged by Australian public notaries and alternative Australian commercial providers.

*Smartraveller.gov.au* notes that notarial services fees are increased in line with the Consumer Price Index (CPI) as published by the Australian Bureau of Statistics (ABS) on 1 January each year. Consular fees are also displayed at all points of service delivery, which Consular Officers refer to before providing a notarial service.

Details of the proposed Regulations are set out in **Attachment A**.

**Attachment B** contains a Statement of Compatibility with Human Rights.

**Consultation**

The Australian Bureau of Statistics was consulted during the development of the indexation methodology.

**Regulatory impact assessment**

The Office of Best Practice Regulation (OBPR ID 21077) has advised that a regulatory impact statement is not required for the legislation because it is not intended to or expected to change behaviour.

**Details of the proposed *Consular Fees Regulations 2018***

**Section 1 Name**

This section provides for the instrument to be cited as the *Consular Fees Regulations 2018*.

**Section 2 Commencement**

This section provides for the Regulations to commence the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 Authority**

This section provides that the *Consular Fees Regulations 2018* is made under the *Consular Fees Act 1955*.

**Section 4 Schedule(s)**

This section would provide that each instrument that is specified in Schedule 1 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

**Section 5 Definitions**

This section provides the definitions for the terms used within the Regulation.

**Section 6 Consular acts and fees**

This section prescribes the fees payable for the consular acts listed in Column 1.

**Section 7 Fees not payable for consular acts performed for governments**

This section prescribes when a fee is not payable for a consular act.

**Section 8 Fees may be paid in local currencies**

This section provides that if a consular act is performed outside of Australia, the fee payable may be made by payment in the currency of that place.

**Section 9 Indexation of fees**

This section provides that the fees detailed in Section 6 are to be indexed in January each year. It also sets out the prescribed index methodology.

**Schedule 1 - Repeals**

Schedule 1 repeals the whole of the *Consular Fees Regulations 1990*.

## **Statement of Compatibility with Human Rights**

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

### ***Consular Fees Regulations 2018***

This disallowable 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**

The *Consular Fees Act 1955* (the Act) provides for the charging of fees for consular acts performed by Australian diplomatic and consular officers and designated other officers and employees of the Commonwealth. The consular acts referred to in the Act are notarial services. Fees are not charged for the delivery of consular assistance to Australians overseas.

The *Consular Fees Regulations 1990* currently prescribes the fees for consular acts specified as being a consular act for the purposes of the Act. The *Consular Fees Regulations 1990* are due to sunset on 1 October 2018

#### **Human rights implications**

The *Consular Fees Regulation 2018* do not engage any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. For clarity, the registration of deaths under the *Consular Fees Act 1955* is a non-mandatory regime.

#### **Conclusion**

This disallowable legislative instrument is compatible with human rights as it does not limit any rights or raise any human rights issues of concern.