

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Foreign Affairs (the Minister)

Australian Passports (Application Fees) Act 2005

Australian Passports (Application Fees) Amendment Determination (No. 2) 2024

Legislative Authority

Section 4 of the *Australian Passports (Application Fees) Act 2005* (the Fees Act) provides that the Minister may by legislative instrument, specify fees in respect of applications for Australian passports, travel-related documents, and for observations on Australian travel documents, in a Minister's determination. Further, section 5 of the Fees Act provides that the Minister may specify different application fees for different purposes in a Minister's determination.

Purpose

The Expenditure Review Committee of Cabinet, in the 2023–24 Mid-Year Economic and Fiscal Outlook (MYEFO) context, announced as part of the 2024–25 Budget, approved the creation of a new processing fee for Australian travel document (ATD) applications.

The fast tracked (5-day) processing fee guarantees the issue of an ATD within 5 business days of the Minister for Foreign Affairs and Trade receiving all the information requested by the Minister for the purpose of being satisfied of the identity, entitlement or eligibility of the applicant.

The *Australian Passports (Application Fees) Amendment Determination 2024* updated the Fees Determination to provide for both the introduction of the fast track passport fee, and the facility to upgrade from fast tracked (5-day) processing to priority (2-day) processing of an Australian travel document application.

The *Australian Passports (Application Fees) Amendment Determination (No. 2) 2024* (the Fees Amendment) makes minor amendments to the *Australian Passports (Application Fees) Determination 2015* (the Fees Determination).

The amendment is to correct a drafting error in which incorrect cross-references were made. The references to ‘item 1’ and ‘item 2’, as they appeared in subsection 6(3) table item 3, were inverted. Subsection 6(3) table item 3 relates to upgrading expedited processing of an Australian travel document application from Fast Track (5-day) processing to Priority (2-day) processing.

Financial Impact

Fees for ATDs are imposed as taxes under the *Australian Passports (Application Fees) Act 2005*.

The Fees Amendment imposes no additional fees on citizens. The Fees Amendment will resolve a cross-reference drafting error at subsection 6(3) of the Fees Determination.

Regulatory impact

The Fees Amendment will impose no additional regulatory impact on Australian citizens or businesses. The Office of Impact Analysis has confirmed that an Impact Analysis is not required (Reference Number OIA24-08045).

Consultation

Consultation for the Fees Amendment was not considered necessary as the amendment is minor and technical.

The *Australian Passport (Application Fees) Amendment Determination 2024*, registered on 4 June 2024, provided for a one-off 15 per cent increase to passport fees and introduction of the Fast Track processing fee. This change was consulted by way of a New Policy Proposal, and in the MYEFO budget context. Consultation was undertaken among Commonwealth agencies as part of the Cabinet decision making process.

Other Matters

Details of the Fees Amendment are set out at:

[Attachment A: Australian Passports \(Application Fees\) Amendment Determination \(No. 2\) 2024.](#)

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

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*.

The Statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the *Australian Passports (Application Fees) Amendment Determination (No. 2) 2024*

Section 1 - Name

This Determination will be named the *Australian Passports (Application Fees) Amendment Determination (No. 2) 2024* (the Fees Amendment).

Section 2 - Commencement

This section provides that the Fees Amendment will commence on the day after the instrument is registered.

Subsection 2(2) provides that any information in column 3 of the table is not part of the Fees Amendment. However, information may be inserted in this column, or information in it may be edited, in any published version of this Determination.

Section 3 - Authority

This section provides that the Fees Amendment is made under the *Australian Passports (Application Fees) Act 2005* (the Fees Act).

Section 4 - Schedules

This section provides that each instrument specified in a Schedule to this instrument is amended as set out in the applicable items within the Schedule.

The instrument to be amended is the *Australian Passports (Application Fees) Determination 2015* (the Fees Determination).

Schedule 1 - Amendments

Schedule 1 to the Fees Amendment provides for amendment to the Fees Determination.

Australian Passports (Application Fees) Determination 2015

Item 1 and Item 2 - Subsection 6(3) (table item 3 column 1)

1. These items correct a cross-referencing error in the Fees Determination that appears in subsection 6(3), table item 3, column 1 (herein referred to as table item 3 for ease of reference) of the Fees Determination:
 - a. Item 1 replaces the reference to ‘in item 2’, that appears in the second line, with a reference to ‘in item 1’.

- b. Item 2 replaces the reference to ‘under item 1’, that appears in the final line, with a reference to ‘under item 2’.
2. As items 1 and 2 are correcting the same issue, the detailed explanation below deals with the amendments collectively.

Operation of relevant table items

3. Item 1 in the table in subsection 6(3) of the Fees Determination refers to the fee payable for priority (2-day) expedited processing of an Australian travel document (ATD) application. A priority processed ATD will be issued within two business days after the applicant gives all the information requested by the Minister for the purpose of being satisfied of the identity, entitlement, or eligibility of the applicant. The priority processing fee is indexed annually.
4. Item 2 of the table in subsection 6(3) of the Fees Determination refers to the fee payable for a fast tracked processing of an ATD. A fast tracked ATD will be issued within five business days after the applicant gives all the information requested by the Minister for the purpose of being satisfied of the identity, entitlement, or eligibility of the applicant. The fast-track fee started at \$100 on 1 July 2024, indexed annually on 1 January.
5. The fee at table item 3 is the amount payable for a person to upgrade from fast tracked (5-day) processing of an ATD application to priority (2-day) processing. The fee to upgrade from fast tracked (5-day) processing to priority (2-day) processing started at the difference between the fast-track fee (table item 2) and the priority processing fee (table item 1) on 1 July 2024. The fee to upgrade will be indexed annually on 1 January.

Cross-referencing error

6. The substantive text at table item 3 correctly describes the ‘Kind of Application’ as being an application for a ‘priority processed travel document’ in circumstances where the applicant has already paid a fee for a ‘fast tracked travel document’. However, the cross-references to item 1 (priority processed) and item 2 (fast-tracked), have been inverted. Meaning the reference to item 1 appears against the reference to ‘fast tracked’ and item 2 against the reference to ‘priority processed’.
7. While there is a drafting error present in the item, the purpose can also be correctly interpreted when read in conjunction with supporting information. The explanatory statement for the *Australian Passports (Application Fees) Amendment Determination 2024* provides that ‘The fee to upgrade from fast track to priority processing is the difference between the priority processing fee and the fast tracked processing fee’. Additionally, the dollar value provided in column 3 makes clear that the amount is the difference between the Priority (2-day) processing fee (\$290) and the Fast Track (5-day) processing fee (\$100) as at 1 July 2024.

8. The provision, table item 3, has operated as intended since the new fee came into effect. No passport applicant has been disadvantaged or incorrectly charged as a result of the drafting error. Nonetheless, best practice is to correct the error. As such, the Fees Amendment has been made to correct the cross-references.
9. By correcting the cross-reference error, item 3 of the table now correctly identifies the correct table items. This provides additional clarity that, in paying the fee in item 3, column 3, a person is upgrading from fast tracked (5-day) processing to priority (2-day) processing.

Statement of Compatibility with Human Rights

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

Australian Passports (Application Fees) Amendment Determination (No. 2) 2024

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 of the Disallowable Legislative Instrument

The principal object of the *Australian Passports (Application Fees) Act 2005* (the Fees Act) is to provide for the imposition, as taxes, of fees in relation to Australian travel documents and for related purposes. The *Australian Passports (Application Fees) Determination 2015* (the Fees Determination) is a critical instrument in supporting the operation of the Fees Act.

The Expenditure Review Committee of Cabinet, in the 2023–24 MYEFO context, announced as part of the 2024–25 Budget, approved the creation of a new processing fee for Australian travel document (ATD) applications. The fast tracked (5-day) processing fee guarantees the issue of an ATD within 5 business days of the Minister for Foreign Affairs and Trade receiving all the information requested by the Minister for the purpose of being satisfied of the identity, entitlement or eligibility of the applicant.

The *Australian Passports (Application Fees) Amendment Determination 2024* updated the Fees Determination to provide for both the introduction of the fast track passport fee, and the facility to upgrade from fast tracked (5-day) processing to priority (2-day) processing of an Australian travel document application.

The Australian Passports (Application Fees) Amendment Determination (No. 2) 2024 (the Fees Amendment) makes minor amendments to the Australian Passports (Application Fees) Determination 2015 (the Fees Determination).

The amendment is to correct a drafting error in which incorrect cross-references were made. The references to ‘item 1’ and ‘item 2’, as they appeared in subsection 6(3) table item 3, were inverted. Subsection 6(3) table item 3 relates to upgrading expedited processing of an Australian travel document application from Fast Track (5-day) processing to Priority (2-day) processing.

Human rights implications

This Amendment Determination engages the right to freedom of movement as set out in Article 12 of the *International Covenant on Civil and Political Rights (ICCPR)*.

Right to freedom of movement

Article 12 of the ICCPR protects the right to freedom of movement: specifically, it states that everyone shall be free to leave any country and that no-one shall be arbitrarily deprived of the right to enter their own country.

The Fees Act and the Fees Determination engage the right to freedom of movement in Article 12 of the ICCPR. This is because the imposition of fees to obtain an Australian travel document could limit the freedom of an Australian citizen to leave Australia, as found in Article 12(2) of the ICCPR.

The amendment corrects a cross-referencing error with respect of introduction of a fast tracked (5-day) processing fee. The Amendment Determination provided both for the fast tracked (5-day) processing fee, and the facility to upgrade from fast tracked (5-day) processing to priority (2-day) processing by paying an upgrade fee.

The fee provides for fast tracked or expedited, processing of a travel document application. A fast tracked passport will be issued within five business days after the applicant gives all the information requested by the Minister for the purpose of being satisfied of the identity, entitlement, or eligibility of the applicant. The fast track fee started at \$100 on 1 July 2024, indexed annually on 1 January.

The fee to upgrade from fast tracked (5-day) processing to priority (2-day) processing started at the difference between the fast track fee and the priority processing fee on 1 July 2024. The fee to upgrade will be indexed annually on 1 January.

The fast track fee and the fee to upgrade from fast tracked (5-day) to priority (2-day) processing is optional and, importantly, provisions to waive or refund this fee on compassionate grounds are included in the amendment to the *Australian Passports Determination 2015* (the Passports Determination).

The introduction of the fast track processing fee provides the option of a cheaper alternative for expedited processing of an application for an Australian travel document, when compared to the priority processing fee, where a person requires their passport urgently but not within two business days. This will make expedited processing more accessible to passport applicants and thereby promotes the right to freedom of movement.

Section 27(1) of the Passports Determination provides for the waiver of a fee where the Minister is satisfied that exceptional circumstances exist in relation to the applicant that warrant waiver of the fee. Section 27(2) of the Passports Determination was amended by the *Australian Passports (Fees) Amendment Determination 2024* to provide for the waiver of the fast track fee and the fee to upgrade from fast tracked (5-day) processing to priority (2-day) processing where the Minister is satisfied there are compassionate grounds for waiver of the fee. This promotes the right to freedom of movement by removing the barrier to expedited processing of an ATD application in specified circumstances.

Conclusion

The Amendment Determination is compatible with human rights because it promotes the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.