

## **Migration Legislation Amendment (2014 Measures No. 1) Regulation 2014 [F2014L00726]**

*Portfolio: Immigration and Border Protection*

*Authorising legislation: Migration Act 1958*

*Last day to disallow: 26 June 2014 (Senate)*

### **Purpose**

1.555 The Migration Legislation Amendment (2014 Measures No. 1) Regulation 2014 [F2014L00286] (the regulation) amends the Migration Regulations 1994 and the Australian Citizenship Regulations 2007 in relation to visa evidence charges, members of the family unit for student visas, skills assessment validity, foreign currencies and places, substitution of AusAID references, Australian citizenship fees and other measures, and infringement notices.

### **Committee view on compatibility**

#### ***Right to privacy***

1.556 Article 17 of the International Covenant on Civil and Political Rights (ICCPR) prohibits arbitrary or unlawful interferences with an individual's privacy, family, correspondence or home.

1.557 However, this right may be subject to permissible limitations which are provided by law and are not arbitrary. In order for limitations not to be arbitrary, they must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to achieving that disclosure of information.

#### ***Releasing information concerning a person's change of name***

1.558 Schedule 6 of the regulation amends the Citizenship Regulations 2007 in relation to information that may be included in a notice of evidence of Australian citizenship (notice), which is a document that may be provided by the minister as evidence of a person's Australian citizenship. The amendment provides that the minister may list on the back of a citizenship notice additional information about the applicant, including their legal name at the time they acquired Australian citizenship and any other name or date of birth in relation to which a notice has previously been given.

1.559 The committee notes that this measure appears to limit the right to privacy, particularly in relation to respect for personal information through the storing, use and sharing of such information. In particular, the measure appears to reduce a person's control over the dissemination of information about his or her personal life and, as recognised in the statement of compatibility, potentially expose people to risk. In this respect the statement of compatibility notes that the amendment will enable, but not require, the specified information to be listed, because there 'will be

instances where it is not appropriate to include the details of a notice previously given to the person, such as when doing so may endanger the person or a person connected with them'.<sup>1</sup>

1.560 The committee notes that the statement of compatibility does not provide an assessment of the human rights compatibility of these potential limitations on the right to privacy.

1.561 The committee's usual expectation where a right may be limited is that the statement of compatibility set out the legitimate objective being pursued, the rational connection between the measure and that objective, and the proportionality of the measure.

1.562 The committee notes that information regarding the safeguards in place for the storing, use and sharing of such information in relation to this measure is particularly relevant to the assessment of its compatibility with human rights.

**1.563 The committee therefore seeks the advice of the Minister for Immigration and Border Protection as to whether the ability to release information concerning a person's previous changes of name is compatible with the right to privacy.**

#### ***Rights to equality and non-discrimination***

1.564 The rights to equality and non-discrimination are guaranteed by articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR).<sup>2</sup>

1.565 These are fundamental human rights that essential to the protection and respect of all human rights. They provide that everyone is entitled to enjoy their rights without discrimination of any kind, and that all people are equal before the law and entitled without discrimination to the equal and non-discriminatory protection of the law.

1.566 For human rights purposes 'discrimination' is impermissible differential treatment among persons or groups that result in a person or a group being treated less favourably than others, based on one of the prohibited grounds for discrimination.<sup>3</sup>

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1 Explanatory statement, p. 8.

2 See also article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), articles 1, 2, 4 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), article 2 of the Convention on the Rights of the Child (CRC), articles 2, 3, 4 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and articles 3, 4, 5 and 12 of the Convention on the Rights of Persons with Disabilities (CRPD).

3 The prohibited grounds are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Under 'other status' the following have been held to qualify as prohibited grounds: age, nationality, marital status, disability, place of residence within a country and sexual orientation.

1.567 Discrimination may be either direct or indirect. Indirect discrimination may occur when a requirement or condition is neutral on its face but has a disproportionate or unintended negative impact on particular groups.

*Impact of release for persons who have undergone sex or gender reassignment procedures*

1.568 The committee notes that the power to disclose a person's previous name may operate to have a disproportionate effect on, and therefore indirectly discriminate, against persons who have undergone sex or gender reassignment procedures, to the extent that that disclosure could potentially reveal or indicate that history. Indirect discrimination arising in this way would amount to discrimination against individuals on the prohibited grounds of 'other status'.

1.569 In particular, the committee notes that the Australian Government Guidelines on the Recognition of Sex and Gender instruct departments and agencies to 'ensure an individual's history of changes of sex, gender or name...is recorded and accessed only when the person's history is relevant to a decision being made'.<sup>4</sup>

1.570 However, the statement of compatibility does not provide an assessment of this potential limitation on human rights and, with reference to the guidelines cited above, does not beyond a reference to avoiding fraud explain in what circumstances that information may be relevant for disclosure.

1.571 The committee's usual expectation where a right may be limited is that the statement of compatibility set out the legitimate objective being pursued, the rational connection between the measure and that objective, and the proportionality of the measure.

**1.572 The committee therefore seeks the advice of the Minister for Immigration and Border Protection as to whether the ability to release information concerning a person's change of name is compatible with the right to equality and non-discrimination.**

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4 Attorney General's Department, *Australian Government Guidelines on the Recognition of Sex and Gender* (July 2013), <http://www.ag.gov.au/Publications/Documents/AustralianGovernmentGuidelinesontheRecognitionofSexandGender/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.PDF>, p. 7 [accessed 9 July 2014].