

EXPLANATORY STATEMENT

Select Legislative Instrument No. 251, 2013

Issued by the Authority of the Minister for Immigration and Border Protection

Customs Act 1901

Customs Amendment (Record Keeping Requirements and Other Measures) Regulation 2013

Subsection 270(1) of the *Customs Act 1901* (the Customs Act) provides, in part, that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to the Act or for the conduct of any business relating to Customs.

The purpose of this Regulation is to amend the *Customs Regulations 1926* to prescribe the particulars which must be kept by a cargo handler under subsection 102CE(3) of the *Customs Act 1901* (the Customs Act).

Section 102CE of the Customs Act was inserted by the *Customs and Auscheck Legislation Amendment (Organised Crime and Other Measures) Act 2013* (the Organised Crime Act) and requires cargo terminal operators to keep a record of each person who enters the terminal. Subsection 102CE(3) provides the record kept by the cargo handler terminal must include such particulars for each person as are prescribed by the regulations.

This Regulation prescribes the particulars, which a cargo terminal operator must record and keep in accordance with section 102CE.

The Organised Crime Act introduces a number of obligations on cargo terminal operators and cargo handlers. Failure to comply with these obligations may result in the CEO of Customs making a declaration a cargo terminal operator or cargo handler not be involved, either indefinitely or for a specified period, in any way, in the loading, unloading, handling or storage of goods subject to Customs control in the cargo terminal. Where a cargo terminal operator fails to comply with the record keeping requirements contained in this Regulation, the CEO may make such a declaration.

The Regulation also contains a minor technical amendment to correct a misdescribed amendment to the *Customs (Prohibited imports) Regulations 1956* made by the *Customs (Prohibited Imports) Amendment (Firearms) Regulation 2013*.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

On 3 October 2013, an exposure draft of the regulation was released to the public for comment over a period of two weeks. Considered feedback was received from industry and the draft regulation was amended incorporating aspects of this feedback to further align with industry record keeping practice while still supporting the intention of the legislation.

Sections 1 to 4 and Schedule 2 of the Regulation commences on the day after the Regulation is registered and Schedule 1, containing the substantive amendments, commences on the later of the day after the regulation is registered and the commencement of Part 2 of Schedule 1 to the Organised Crime Act. This is expected to be 28 November 2013.

Statement of Compatibility with Human Rights

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

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

Overview of the Regulation

Section 102CE of the Customs Act was inserted by the *Customs and Auscheck Legislation Amendment (Organised Crime and Other Measures) Act 2013* (the Organised Crime Act) and requires cargo terminal operators to keep a record of each person who enters the terminal. Subsection 102CE(3) provides the record kept by the cargo handler terminal must include such particulars for each person as are prescribed by the regulations.

Human rights implications

Right to Privacy

This Regulation engages the right to privacy contained in Article 17 of the *International Covenant on Civil and Political Rights* as it requires a cargo terminal operator to collect and store personal information regarding persons who enter cargo terminals.

This measure is consistent with current obligations imposed on other entities involved in the cargo supply chain including customs depot and warehouse licence holders. It will provide Customs and Border Protection greater visibility of persons entering and operating in the cargo terminals that could have access to and interfere with cargo.

Further, the collection of personal information is protected under Australian Law and this instrument does not seek to affect or disapply any of the existing protections.

Conclusion

This legislative instrument is compatible with human rights as, although it engages the right to privacy, the instrument maintains all existing protections contained in Australian law and does not seek to limit the right to privacy in anyway.

Minister for Immigration and Border Protection