

EXPLANATORY STATEMENT

CEO Instrument of Approval No. 2 of 2014

Customs Act 1901

Subsection 4A(1) of the *Customs Act 1901* (the Act) defines an approved statement as a statement that is approved, by instrument in writing, by the Chief Executive Officer of Customs (**the CEO**). Subsection 4A(2) of the Act provides that the instrument by which a statement is approved by the CEO under subsection 4A(1), is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Under paragraph 6(d) of the *Legislative Instruments Act 2003*, approved statements are legislative instruments.

Background

Paragraphs 68(1)(d) to (j) of the Act list certain classes of goods which, if imported into Australia, are not required to be entered for home consumption or for warehousing. Pursuant to paragraph 68(1)(d), this includes goods that are the unaccompanied personal or household effects of a passenger of a ship or aircraft.

Subsection 71AAAB(1) of the Act provides that the owner of such goods must, in the circumstances specified in the regulations, provide under section 71, the information specified in the regulations at the time and in the manner and form specified in the regulations.

Regulation 41 of the *Customs Regulations 1926* (the Regulations) provides that if a Collector requires information under subsection 71AAAB(1) of the Act, then the owner must provide the information in an approved form or an approved statement.

On 14 September 2005 the CEO approved Instrument No. 73 of 2005 "UNACCOMPANIED PERSONAL EFFECTS (UPE) DECLARATION" as an approved statement to enable passengers of a ship or aircraft to communicate electronically to the Australian Customs and Border Protection Service (ACBPS) information about the passengers' unaccompanied personal or household effects.

Instrument

CEO Instrument of Approval No. 2 of 2014 (**the instrument**) repeals and replaces CEO Instrument of Approval No. 73 of 2005 "UNACCOMPANIED PERSONAL EFFECTS (UPE) DECLARATION" as the approved statement for the purposes of communicating electronically to the ACBPS information in relation to goods that are the unaccompanied personal or household effects of a passenger of a ship or aircraft. The instrument is being re-made to incorporate a new data field at item 72, "Spouse Passport Country of Issue".

The UPE Declaration allows for the personal effects of an individual, or their spouse, or both, to be covered by the declaration. To verify that the unaccompanied personal effects are those of a passenger who was on board a ship or aircraft that arrived in Australia from a place outside Australia, personal information about the owner of the goods is collected as part of the declaration.

Currently, information such as the owner's name, passport number and passport country of issue are collected. If the UPE Declaration contains personal effects of a spouse, then the name and passport number of the spouse are also collected. These data fields become

mandatory once “Spouse Name” has been completed. The new data field will now also require a spouse’s passport country of issue to be collected as part of this process.

This will align the passport information collected for each person covered by the declaration and assist the ACBPS to verify that the unaccompanied personal effects in the declaration are those of a passenger who was on board a ship or aircraft which arrived in Australia from a place outside Australia.

Consultation

The following stakeholders have been consulted and support the amendments:

- Customs Brokers and Forwarders Council of Australia Inc.
- Australian Federation of International Forwarders
- King and Wilson (International Removalists)
- TNT Australia
- DHL Australia
- UPS Australia Pty Ltd
- FedEx Corporation

Commencement

The instrument commences on day after it is registered on the Federal Register of Legislative Instruments.

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 Legislative Instrument

This instrument repeals and replaces CEO Instrument of Approval No. 73 of 2005 dated 14 September 2005 which approved the “UNACCOMPANIED PERSONAL EFFECTS (UPE) DECLARATION” as an approved statement for the purposes of communicating electronically to the ACBPS information in relation to goods that are the unaccompanied personal or household effects of a passenger of a ship or aircraft.

This instrument is being re-made to incorporate an additional data field being the “Spouse Passport Country of Issue” at item 72.

Human Rights Implications

Right to Privacy

The UPE Declaration engages the right to privacy contained in Article 17 of the *International Covenant on Civil and Political Rights*.

The UPE Declaration allows for the personal effects of an individual, or their spouse, or both, to be covered by the declaration. To verify that the unaccompanied personal effects are those of a passenger who was on board a ship or aircraft that arrived in Australia from a place outside Australia, personal information about the owner(s) of the goods is collected as part of the declaration.

Information such as the owner’s name, passport number and passport country of issue are collected. If the UPE Declaration contains personal effects of a spouse, then the spouse’s name and passport information are also collected. This personal information is used to administer Customs, quarantine, statistical, health, wildlife and currency laws of Australia and its collection is authorised by law.

The UPE Declaration notifies applicants of the purposes for which the information is collected and that the collection of the personal information is authorised by law. Applicants are also notified of the agencies to whom the information will be disclosed; being agencies administering the above laws and those entitled to receive this information under Australian law. 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, it maintains all existing protections contained in Australian law and does not seek to limit the right to privacy in anyway.

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