

EXPLANATORY STATEMENT

Issued by authority of the Comptroller-General of Customs

Customs Act 1901

Customs (Obligations on Cargo Terminal Operators) Instrument 2023

The *Customs Act 1901* (Customs Act) concerns customs-related functions and is the legislative authority that sets out the customs requirements for the importation, and exportation of goods, to and from Australia.

Section 102CJ of the Customs Act provides that the Comptroller-General of Customs may make legislative instruments to impose obligations on cargo terminal operators if they are necessary or desirable and are for specified purposes. This is in addition to obligations contained within Division 2 of Part VAAA of the Customs Act. Section 102CJ provides the Australian Border Force with flexibility to respond to new and emerging threats.

The purpose of the *Customs (Obligations on Cargo Terminal Operators) Instrument 2023* (Instrument) is to impose the following new obligations on all cargo terminal operators:

- an obligation to provide access by relevant persons to cargo terminals for installation preparatory works, the installation, operation, maintenance or removal of CCTV systems on request;
- an obligation to provide access to conduct infrastructure assessments to ensure functionality; and
- an obligation to provide all reasonable facilities and assistance to relevant persons to perform these functions.

Section 193 of the Customs Act, which amongst other matters, permits an officer of Customs, for the purpose of performing the officer's duties and functions as an officer, and a person assisting an officer of Customs may, for the purpose of assisting the officer to perform those duties and functions, to enter and remain upon any part of a port or airport.

The new obligations have the effect of complementing the ability of officers to enter cargo terminals in ports and airports and enabling them access of those areas for the purposes of installing, maintaining and removing closed circuit television (CCTV) systems. In doing so, the new obligations facilitates improvements to effective security in respect of goods under customs control. The new obligations must be complied with by all cargo terminal operators, and a failure to do so would be a strict liability offence under section 102CK of the Customs Act punishable by a maximum of 60 penalty units.

The Department of Home Affairs and the Australian Border Force have consulted with affected cargo terminal operators, many of which indicated that they would allow the installation of CCTV systems once a legal requirement has been established. Once the Instrument comes into effect, the Australian Border Force will further engage with the industry to inform stakeholders of the new statutory obligation for cargo terminal operators as a measure to strengthen the integrity of Australia's goods trade.

Details of the Instrument are set out in **Attachment A**.

The Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is set out at **Attachment B**.

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

The Instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

Details of the *Customs (Obligations on Cargo Terminal Operators) Instrument 2023*

Section 1 – Name

This section provides that the title of the instrument is the *Customs (Obligations on Cargo Terminal Operators) Instrument 2023* (Instrument).

Section 2 – Commencement

This section sets out, in a table, the date on which each of the provisions contained in the Instrument commence.

Table item 1 provides for the whole of the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section sets out the authority under which the Instrument is made, which is section 102CJ of the *Customs Act 1901* (Customs Act).

Section 4 – Definitions

The note in this section clarifies that a number of expressions used in the Instrument are defined in the Customs Act, including the following:

- (a) cargo terminal,
- (b) cargo terminal operator,
- (c) officer of Customs.

This section sets out the meaning of terms frequently referred to in the Instrument; being terms as follows:

Act means the *Customs Act 1901*.

closed-circuit television includes wholly or partially wireless closed-circuit television.

closed-circuit television system includes the equipment of the closed-circuit television system, and any equipment, materials, utilities or infrastructure required to enable the system to be operated or maintained.

relevant person means:

- (a) an officer of Customs; or
- (b) a person acting on behalf of the Department; or
- (c) a person providing services in relation to the installation, operation, maintenance or removal of a closed-circuit television system operated, or to be operated, by or on behalf of the Department; or
- (d) an officer or employee of a persons mentioned in paragraph (b) or (c).

Section 5 – Purpose of this Part

This section provides guidance that Part 2 of the Instrument is to impose obligations with respect to closed-circuit television (CCTV) systems. The Instrument is intended to outline obligations imposed on cargo terminal operators for the purposes of section 102CJ of the Customs Act.

The purpose of the Instrument is to impose the following new obligations on all cargo terminal operators:

- an obligation to provide access by relevant persons to cargo terminals for installation preparatory works, the installation, operation, maintenance or removal of CCTV systems on request;
- an obligation to provide access to conduct infrastructure assessments to ensure functionality; and
- an obligation to provide all reasonable facilities and assistance to relevant persons to perform these functions.

Section 193 of the Customs Act, which amongst other matters, permits an officer of Customs, for the purpose of performing the officer's duties and functions as an officer, and a person assisting an officer of Customs may, for the purpose of assisting the officer to perform those duties and functions, to enter and remain upon any part of a port or airport.

The new obligations have the effect of complementing the ability of officers to enter cargo terminals in ports and airports and enabling them access of those areas for the purposes of installing, maintaining and removing CCTV systems. In doing so, the new obligations would facilitate improvements to effective security in respect of goods under customs control. The new obligations must be complied with by all cargo terminal operators, and a failure to do so would be a strict liability offence under section 102CK of the Customs Act punishable by a maximum of 60 penalty units.

This instrument is, in part, for the purpose of ensuring compliance with Part VAAA—Cargo terminals of the Customs Act. The Instrument extends the reach of obligations imposed on cargo terminal operators but does so in a way that is consistent with the means specified in the Customs Act.

Examples of such existing obligations include requiring cargo terminal operators to: ensure security of the cargo terminal and goods contained therein, notify of unauthorised access to goods, keep records of all access to the terminal, and to provide all reasonable facilities and assistance to an authorised officer for the effective exercise of their powers under a Customs-related law (within the meaning of the Customs Act).

Section 6 – Installation of closed-circuit television systems

This section sets out the obligations that cargo terminal operators must comply with in relation to the installation of CCTV systems. The purpose of this section is to set out consistent obligations on all cargo terminal operators with respect to installation of CCTV systems.

Subsection 6(1) provides that a cargo terminal operator must, on request by an officer of Customs, provide relevant persons with access to a cargo terminal for the installation of a

CCTV system to be operated by or on behalf of the Department. The request must be made by an officer of Customs with the appropriate authorisations, however, the operations may be undertaken by any relevant persons, as defined.

Subsection 6(2) sets out specified activities for which access must be provided. This subsection is subject to, and does not limit, the scope of subsection 6(1).

Subsection 6(3) sets out specified locations and infrastructure for which access must be provided. This subsection is subject to, and does not limit, the scope of subsection 6(1). The purpose of this subsection is to clarify the parts of a cargo terminal that relevant persons can access to physically install CCTV systems.

Subsection 6(4) provides that a cargo terminal operator must ensure that all reasonable facilities and assistance is given to relevant persons, as defined, to enable the installation of the CCTV system.

Subsection 6(5) clarifies that a request by an officer of Customs made under subsection 6(1) may relate to particular relevant persons or to a class or classes of relevant persons.

The effect of this section is to allow relevant persons access to cargo terminals for the purposes of installing CCTV systems.

Section 7 – Operations, maintenance and removal of closed-circuit television systems

This section sets out the obligations that cargo terminal operators must comply with in relation to the operation, maintenance and removal of CCTV systems. The purpose of this section is to outline consistent obligations on all cargo terminal operators with respect to the maintenance and removal of closed circuit systems.

Subsection 7(1) provides that a cargo terminal operator must, on request by an officer of Customs, provide relevant persons with ongoing access to a cargo terminal for the operation, maintenance or removal of a CCTV system. The request must be made by an officer of Customs with the appropriate authorisations, however, the operations may be undertaken by any relevant persons, as defined.

Subsection 7(2) sets out specified activities for which access must be provided. This subsection is subject to, and does not limit, the scope of subsection 7(1).

Subsection 7(3) provides that a cargo terminal operator must ensure that all reasonable facilities and assistance is given to relevant persons, as defined, to enable the operation, maintenance or removal of the CCTV system.

Subsection 7(4) clarifies that a request by an officer of Customs made under subsection 7(1) may relate to particular relevant persons or to a class or classes of relevant persons.

Statement of Compatibility with Human Rights

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

Customs (Obligations on Cargo Terminal Operators) Instrument 2023

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 *Customs Act 1901* (Customs Act) concerns customs-related functions and is the legislative authority that sets out the customs requirements for the importation and exportation of goods to and from Australia. Section 102CJ of the Customs Act provides that the Comptroller-General of Customs may make legislative instruments to impose obligations on cargo terminal operators if they are necessary or desirable and are for specified purposes.

The purpose of the *Customs (Obligations on Cargo Terminal Operators) Instrument 2023* (Disallowable Legislative Instrument) is to impose the following new obligations on all cargo terminal operators with respect to closed circuit television (CCTV) systems:

- an obligation to provide access by relevant persons to cargo terminals for installation preparatory works, the installation, operation, maintenance or removal of CCTV systems on request;
- an obligation to provide access to conduct infrastructure assessments to ensure functionality; and
- an obligation to provide all reasonable facilities and assistance to relevant persons to perform these functions.

Section 193 of the Customs Act, which amongst other matters, permits an officer of Customs, for the purpose of performing the officer's duties and functions as an officer, and a person assisting an officer of Customs may, for the purpose of assisting the officer to perform those duties and functions, to enter and remain upon any part of a port or airport.

The new obligations have the effect of complementing the ability of officers to enter cargo terminals in ports and airports and enabling them access of those areas for the purposes of installing, maintaining and removing CCTV systems. In doing so, the new obligations would facilitate improvements to effective security in respect of goods under customs control. The new obligations must be complied with by all cargo terminal operators, and a failure to do so would be an offence of strict liability under section 102CK of the Customs Act punishable by a maximum of 60 penalty units.

With respect to CCTV systems, these new obligations achieve an outcome similar to a direction that could be issued under section 102EB of the Customs Act for the installation, maintenance or removal of these systems. However, unlike a direction under section 102EB, the obligation applies to all cargo terminal operators and the CCTV systems are operated and maintained by the Australian Border Force.

The Disallowable Legislative Instrument commences on the day after it is registered on the Federal Register of Legislation.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

The Disallowable Legislative Instrument imposes explicit obligations upon cargo terminal operators in respect of the installation and operation of CCTV systems, similar to the existing power to issue directions to cargo terminal operators in subsection 102EB(1) of the Customs Act. The measure will ensure the adequacy of physical security of cargo terminals and goods at the terminal and allow for an assessment of the risk arising from the conduct of cargo terminal operators, and whether the cargo terminal operator – or each executive officer where the operator is a body corporate – is a fit and proper person.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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