

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Passenger Movement Charge Collection Act 1978

Passenger Movement Charge Collection (Recovery and Refund of Charges) Regulations 2023

Legislative Authority

The *Passenger Movement Charge Collection Act 1978* (Passenger Movement Charge Collection Act) concerns the collection of the passenger movement charge, which is levied under that Act on the departure of a person from Australia to another country or for an installation in the Greater Sunrise special regime area.

Section 15 of the Passenger Movement Charge Collection Act provides that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which by that Act are required or permitted. In particular, the regulations:

- under paragraph 15(1)(a) may make provision for and in relation to claims for refunds, the allowance of payment of refunds and the recovery of refunds paid incorrectly;
- under paragraph 15(2)(a) may make provision for and in relation to the charging and recovery of fees in respect of the payment of charge, or the payment of an amount to the Commonwealth under an arrangement under subsection 10(1) of the Passenger Movement Charge Collection Act.

Background

On 1 October 2023, the *Passenger Movement Charge Collection (Recovery and Refund of Charges) Regulation 2013* (2013 Regulation) will sunset, and as such, will be automatically repealed by operation of Part 4 of the *Legislation Act 2003* (Legislation Act). The *Passenger Movement Charge Collection (Recovery and Refund of Charges) Regulations 2023* (2023 Regulations) repeals and remakes the 2013 Regulation in substantially similar terms to the scope and operation of the 2013 Regulation.

The passenger movement charge is collected under the Passenger Movement Charge Collection Act. Subsection 6(1) identifies persons liable to pay for the passenger movement charge and provides that a charge in respect of the departure of a person from Australia is payable by the person before the departure.

Under subsection 9(1) of the Passenger Movement Charge Collection Act, a person is entitled to a refund of charge paid by the person if:

- (a) the departure in respect of which the charge was paid does not take place;
- (b) the departure in respect of which the charge was paid takes place, but the person returns to Australia without having entered another country;
- (c) by virtue of section 5, charge was not payable in respect of the departure in respect of which the charge was paid; or
- (d) the person is entitled to a refund under the regulations.

For the purposes of subsection 9(1) of the Passenger Movement Charge Collection Act, the 2013 Regulation prescribes the procedure for which a person entitled to a refund of the passenger movement charge under subsection 9(1) of the Passenger Movement Charge Collection Act may make an application for the refund of the charge. The 2013 Regulation also enables the Commonwealth to recover funds that have been incorrectly paid as refunds of a charge, in situations where the person either obtained or received the refund, to which they were not entitled.

Purpose and effect

The 2023 Regulations ensure that persons entitled to a refund of the passenger movement charge under subsection 9(1) of the Passenger Movement Charge Collection Act, prior to the repeal of the 2013 Regulation, continue to be able to apply for a refund of charges paid. The 2023 Regulations also ensure that the Commonwealth continues to be able to recover incorrectly paid refunds, as a debt owed to the Commonwealth, by action in a court of competent jurisdiction.

Minor drafting changes have been made to reflect contemporary gender neutral terms, and to allow for an application to be made electronically to an authorised officer. The Commonwealth's power to recover incorrectly paid refunds has been expanded to include refunds that were received and not just obtained.

The minor changes to the 2023 Regulations modernise language by removing gendered references and simplify the application process by requiring an application to be made in writing.

Consultation

The 2023 Regulations maintains the ability for persons to apply for a refund of charges paid, where eligible to do so, and broad consultation has not been undertaken as there is no material change from the 2013 Regulation. The Treasury is supportive of the proposed new regulation noting the scope and operational effect of the 2013 Regulation is maintained.

Details and operations

The 2023 Regulations are a legislative instrument for the purposes of the Legislation Act and are not exempt from sunseting framework under that Act.

The 2023 Regulations commence on the day after they are registered on the Federal Register of Legislation.

Details of the 2023 Regulations are set out in the **Attachment A**.

Other

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

Details of the *Passenger Movement Charge Collection (Recovery and Refund of Charges) Regulations 2023*

Section 1 – Name

This section provides that the name of the instrument is the *Passenger Movement Charge Collection (Recovery and Refund of Charges) Regulations 2023* (2023 Regulations).

Section 2 – Commencement

This section sets out, in a table, the date on which each of the provisions contained in the 2023 Regulations commence.

Table item 1 provides for the whole of the 2023 Regulations to commence on the day after those Regulations are registered on the Federal Register of Legislation.

The note under the table in subsection (1) indicates that the table only relates to the provisions of this instrument as originally made and will not be amended to deal with any later amendments of this instrument.

Section 3 – Authority

This section provides that the 2023 Regulations are made under the *Passenger Movement Charge Collection Act 1978* (Passenger Movement Charge Collection Act).

Section 4 – Schedules

This section is the enabling provision for the schedules to the 2023 Regulations and provides that each instrument that is specified in a Schedule to the 2023 Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 to the 2023 Regulations repeals the *Passenger Movement Charge Collection (Recovery and Refund of Charges) Regulation 2013* (2013 Regulation).

Section 5 – Definitions

This section sets out the definitions for the purposes of the 2023 Regulations and defines ‘Act’ to mean the Passenger Movement Charge Collection Act.

In addition, the note in this section clarifies that a number of expressions used in the 2023 Regulations have the same meaning as defined in the Passenger Movement Charge Collection Act. Specifically:

- ‘authorised officer’ means:
 - (a) an officer of Customs; or
 - (b) any other person authorised in writing by the Comptroller- General of Customs to be an authorised officer for the purposes of Passenger Movement Charge Collection Act; and

- ‘charge’ means the passenger movement charge as defined in the Passenger Movement Charge Collection Act.

Section 6 – Refunds of charge

This section is substantially the same as section 6 of the 2013 Regulation.

Subsection 6(1) of the 2023 Regulations provides the application process for a person who is entitled to a refund under subsection 9(1) of the Passenger Movement Charge Collection Act. A person, who has paid the passenger movement charge, is entitled to a refund if:

- the person’s departure does not take place; or
- the person departs Australia and returns without entering another country; or
- the person was exempt from paying the charge by virtue of section 5 of the Passenger Movement Charge Collection Act; or
- is entitled to a refund under the Regulations.

Subsection 6(2) of the 2023 Regulations provides that the application must be made in writing to an authorised officer and accompanied by evidence sufficient to prove the person’s entitlement to the refund of the passenger movement charge sought in the application.

Subsection 6(2) of the 2023 Regulations substantially replicates the operation of subsection 6(2) of the 2013 Regulation, but effectively replaces the expression of ‘given to an authorised officer’ with ‘made in writing to an authorised officer’. This change has the effect of simplifying the application process by allowing for an application to be made electronically and removing the presumption that a person must physically give the application to an authorised officer.

Additionally, the reference to gender at paragraph 6(2)(b) of the 2013 Regulation, ‘to prove his or her entitlement’ has been replaced by ‘to prove the person’s entitlement’. This change has the effect of removing gendered language by removing the reference to modernise the instrument.

Section 7 – Recovery of incorrectly paid refunds of charge

This section is substantially the same as section 7 of the 2013 Regulation.

This section provides for the Commonwealth to recover funds that have been incorrectly paid as refunds of the passenger movement charge, in situations where the person either obtained or received the refund, to which they were not entitled to.

Section 7 of the 2013 Regulation only referred to situations where the refund was ‘obtained’ and the operation of that provision has been updated in the 2023 Regulations to include the words ‘or receives’ to include circumstances where a refund has been incorrectly received.

The requirement that the Commonwealth recover the funds by action in a court of competent jurisdiction remains the same.

Schedule 1—Repeals

Passenger Movement Charge Collection (Recovery and Refund of Charges) Regulation 2013

Item 1 The whole of the instrument

This item repeals the 2013 Regulation, which be redundant as a result of the 2023 Regulations.

Statement of Compatibility with Human Rights

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

Passenger Movement Charge Collection (Recovery and Refund of Charges) Regulations 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

On 1 October 2023, the *Passenger Movement Charge Collection (Recovery and Refund of Charges) Regulation 2013* (2013 Regulation) will sunset, and as such, will be automatically repealed by operation of Part 4 of the *Legislation Act 2003*.

The passenger movement charge is collected under the *Passenger Movement Charge Collection Act 1978* (Passenger Movement Charge Collection Act). Subsection 6(1) identifies persons liable to pay for the passenger movement charge and provides that a charge in respect of the departure of a person from Australia is payable by the person before the departure.

Under subsection 9(1) of the Passenger Movement Charge Collection Act, a person is entitled to a refund of charge paid by the person if:

- (a) the departure in respect of which the charge was paid does not take place;
- (b) the departure in respect of which the charge was paid takes place, but the person returns to Australia without having entered another country;
- (c) by virtue of section 5, charge was not payable in respect of the departure in respect of which the charge was paid; or
- (d) the person is entitled to a refund under the regulations.

For the purposes of subsection 9(1) of the Passenger Movement Charge Collection Act, the 2013 Regulation prescribes the procedure for which a person entitled to a refund of the passenger movement charge under subsection 9(1) of the Passenger Movement Charge Collection Act may make an application for the refund of the charge. The 2013 Regulation also enables the Commonwealth to recover funds that have been incorrectly paid as refunds of a charge, in situations where the person either obtained or received the refund, to which they were not entitled.

The *Passenger Movement Charge Collection (Recovery and Refund of Charges) Regulations 2023* (Disallowable Legislative Instrument) will repeal and remake the 2013 Regulation.

The scope and operation of the Disallowable Legislative Instrument are substantially similar to the scope and operation of the 2013 Regulation. To that effect, the Disallowable Legislative Instrument ensure that persons entitled to a refund of the passenger movement charge under subsection 9(1) of the Passenger Movement Charge Collection Act, prior to the repeal of the 2013 Regulation, continue to be able to apply for a refund of charges paid. The Disallowable Legislative Instrument also ensure that the Commonwealth continues to be able

to recover incorrectly paid refunds, as a debt owed to the Commonwealth, by action in a court of competent jurisdiction.

Minor changes to the Disallowable Legislative Instrument remove gendered references and simplify the application process by requiring an application to be made in writing.

Human rights implications

The Disallowable Legislative Instrument is technical in nature and does not engage any of the applicable rights or freedoms.

Conclusion

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

The Hon Clare O’Neil MP, Minister for Home Affairs