

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration and Multicultural Affairs

Migration Regulations 1994

Migration (Australia Travel Declaration—Passenger Card May Be Required) Instrument (LIN 24/075) 2024

- 1 The instrument, departmental reference LIN 24/075, is made under subregulation 3.03AB(3) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument repeals the *Migration (Digital Passenger Declaration—Circumstances where Passenger Card also required) Instrument (LIN 22/015) 2022* in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on the day after the instrument is registered on the Federal Register of Legislation. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 Passengers arriving in Australia are required to comply with the requirements set out in section 166 of the *Migration Act 1958* (the Migration Act) in order to be immigration cleared and enter Australia. For the purposes of complying with section 166, further requirements are set out in Division 3.1 of Part 3 of the Migration Regulations. This includes the requirement in regulation 3.01 to complete a passenger card (also known as an ‘incoming passenger card’), unless specifically exempt from doing so.
- 5 Regulation 3.03AB was inserted into the Migration Regulations by the *Home Affairs Legislation Amendment (Digital Passenger Declaration) Regulations 2021* for the purpose of exempting a person from completing or providing an incoming passenger card if they instead provided a ‘digital passenger declaration’. The digital passenger declaration was introduced during the COVID-19 pandemic to require individuals to declare their COVID-19 vaccination status before travelling to Australia. The digital passenger declaration was decommissioned with the reopening of the Australian border and removal of the requirement for individuals to declare their COVID-19 vaccination status.
- 6 Regulation 3.03AB was amended in October 2024 by the *Home Affairs Legislation Amendment (Australia Travel Declaration and Other Matters) Regulations 2024* to introduce a trial of a new electronic declaration, known as the Australia Travel Declaration (ATD). Regulation 3.03AB(1) provides that a person arriving in Australia is not required to complete or provide a passenger card if they instead provide an ATD. However, under

subregulation 3.03AB(2) of the Migration Regulations, a clearance officer may require a person to provide a completed incoming passenger card if circumstances specified in a legislative instrument exist.

- 7 The purpose of this instrument is to specify the circumstances, for the purposes of subregulation 3.03AB(2) of the Migration Regulations, in which a clearance officer may require a person to provide a completed incoming passenger card, despite an ATD being provided.
- 8 The instrument, at section 6, specifies two circumstances in which a clearance officer may require a person who has provided an ATD to provide a completed incoming passenger card. These circumstances are:
 - the person's Australia Travel Declaration cannot be accessed by a clearance authority;
 - a clearance officer reasonably suspects that the information in the person's Australia Travel Declaration is not accurate or complete.
- 9 These circumstances provide flexibility to ensure a clearance officer has legislative authority to require the information to be provided by way of an incoming passenger card if, for example, the ATD cannot be accessed because of a system outage, or the clearance officer has concerns about the accuracy or completeness of information in the ATD.

Consultation

- 10 The Office of Impact Analysis has been consulted in relation to the amendments and has advised that a detailed Impact Analysis is not required. The OIA reference number is OIA24-07977.
- 11 Consultation in relation to the trial and legislative framework for the ATD was undertaken with the Department of Agriculture, Fisheries and Forestry. The development of the ATD and the ATD pilot were also informed by the work of the Trans-Tasman Seamless Travel Group, including through broad consultation across the aviation and tourism sector. This Group was established in 2023 to deliver on the Australian and New Zealand's Prime Ministers' commitment to explore ways to move closer to seamless travel between the two countries. Chaired by Australian Border Force (ABF) Commissioner Michael Outram and New Zealand Customs Service Chief Executive and Comptroller Christine Stevenson, the group brings together senior leaders from border agencies and industry – including major airlines, international airports, and tourism representatives.

Details of the instrument

- 12 Details of the instrument are set out in **Attachment A**.

Parliamentary scrutiny etc

- 13 The instrument is a disallowable legislative instrument for the purposes of section 42 of the Legislation Act. A Statement of Compatibility with Human Rights has been prepared in relation to the instrument, and provides that the 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*. The Statement is included at **Attachment B** to this explanatory statement.
- 14 The instrument was made by the Minister for Immigration and Multicultural Affairs under subregulation 3.03AB(3) of the Migration Regulations.

Details of the Migration (Australia Travel Declaration—Passenger Card May Be Required) Instrument (LIN 24/075) 2024

- 1 Section 1 provides that the name of the instrument is the *Migration (Australia Travel Declaration—Passenger Card May Be Required) Instrument (LIN 24/075) 2024*.
- 2 Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.
- 3 Section 3 provides that the instrument is made under subregulation 3.03AB(3) of the *Migration Regulations 1994*.
- 4 Section 4 sets out the definitions used in the instrument. The note to section 4 provides that a number of expressions used in this instrument are defined in the *Migration Act 1958* or the *Migration Regulations 1994*. This including the definitions of **Australia Travel Declaration**, **clearance authority**, **clearance officer** and **passenger card**.
- 5 Section 5 provides that an instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule. Schedule 1 to the instrument specifies the *Migration (Digital Passenger Declaration—Circumstances where Passenger Card also required) Instrument (LIN 22/015) 2022*.
- 6 Section 6 specifies, for the purposes of subregulation 3.03AB(2) of the Migration Regulations, the circumstances in which a clearance officer may require the person to provide a completed passenger card.
- 7 The circumstance specified in paragraph 6(a) is where the person’s ATD cannot be accessed by a clearance authority. The meaning of **clearance authority** includes a clearance officer and an authorised system, as defined in section 165 of the Migration Act. This circumstance covers situations where a clearance authority cannot locate the person’s ATD on the departmental system that processes ATDs, and therefore cannot access the relevant information needed for immigration clearance purposes. For example, this provision would apply when a clearance officer cannot access the person’s ATD in the event of a departmental system outage.
- 8 For clarity, even if the person is able to present the electronic message generated by the departmental system that processes such declarations showing that the person has submitted the declaration, or the person is able to show a physical print out of their completed ATD, if a clearance authority cannot access the ATD on a departmental system, a clearance officer may still require the person to provide a completed (paper) incoming passenger card.
- 9 The circumstance specified in paragraph 6(b) is that a clearance officer reasonably suspects that the information in the person’s ATD is not accurate or complete. This enables a clearance officer to request a passenger to provide a completed incoming passenger card if

they suspect the information in the ATD is not complete or accurate. For example, this circumstance could arise where:

- the person's ATD contains incorrect flight details, such as where the person does not travel on the original flight on which they were scheduled to travel to Australia;
- the person identifies and brings an error, inaccuracy or omission in their ATD to the attention of a clearance officer;
- a clearance officer identifies an inconsistency, such as the passport number in the ATD does not match the passport presented by the person, or the name in the ATD does not match the name on the person's passport; or
- the person needs to make a change to their ATD and cannot access it because they cannot access a mobile device.

10 This is similar to the practice that already occurs with incoming passenger cards, where a clearance officer may request a passenger to provide another passenger card if the information is, for example, incomplete, inaccurate or illegible.

11 A clearance officer may require a completed passenger card in either of the circumstances specified in paragraph 6(a) and (b).

12 Schedule 1 to the instrument, read together with section 4 of the instrument, provides that the instrument *Migration (Digital Passenger Declaration—Circumstances where Passenger Card also required) Instrument (LIN 22/015) 2022* is repealed. LIN 22/015 was intended to support the digital passenger declaration by specifying the circumstances when an incoming passenger card was required. As the digital passenger declaration has been decommissioned, LIN 22/015 is no longer required.

Statement of Compatibility with Human Rights

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

Migration (Australia Travel Declaration—Passenger Card May Be Required) Instrument (LIN 24/075) 2024

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

Background

In accordance with section 172 of the Migration Act, passengers arriving in Australia are required to comply with the requirements set out in section 166 of the *Migration Act 1958* (Migration Act) to be immigration cleared. For the purposes of complying with section 166, further requirements are outlined in Division 3.1 of Part 3 of the *Migration Regulations 1994* (Migration Regulations). This includes the requirement in regulations 3.01 and 3.03 to provide a completed passenger card (known as an Incoming Passenger Card or IPC) to a clearance officer, unless exempt from doing so. Those provisions authorise the collection of information from passengers for the purposes of the Migration Act.

Clearance officers collect the passenger cards from travellers upon arrival in Australia. All information provided by travellers is expected to be current and correct (section 102 and paragraph 105(1)(b) of the Migration Act). The information in the passenger card enables travellers, including Australian citizens, to meet immigration clearance requirements under paragraph 166(1)(b) of the Migration Act. The cards also assist clearance officers with directing passengers through the correct exit pathway, or referral to further examination points.

The *Home Affairs Legislation Amendment (Australian Travel Declaration and Other Matters) Regulations 2024* (the ATD Regulations) amended the Migration Regulations to facilitate the use of an electronic declaration, known as the Australia Travel Declaration (ATD), for incoming travellers as a voluntary alternative to completing the paper passenger card. The ATD Regulations support the rollout of the ATD, initially on a trial basis from late October 2024.

The ATD regulations amended the Migration Regulations to exempt a traveller from providing a completed passenger card if the traveller provides an ATD, unless:

- The ATD is withdrawn; or

- A clearance officer requires the traveller to provide a passenger card in circumstances specified in a legislative instrument made under subregulation 3.03AB(3) of the Migration Regulations.

Instrument

The *Migration (Australia Travel Declaration – Circumstances where Passenger Card also required) Instrument (LIN 24/075) 2024* (Instrument) specifies the circumstances, for the purposes of subregulation 3.03AB(2) of the Migration Regulations, in which a clearance officer may require a person to provide a completed passenger card, despite an ATD being provided as follows:

- When the person’s ATD cannot be accessed by a clearance authority;
- When a clearance officer reasonably suspects that the information in the person’s ATD is not accurate or complete.

It is important for the clearance officer to be able to exercise this power in the Migration Regulations in the circumstances specified in the Instrument because without the information being accessible via the ATD, and without it being provided via a passenger card, the traveller would not satisfy one of the requirements to be immigration cleared into Australia.

Examples of the circumstances in which a clearance officer could exercise this power include:

- A clearance officer cannot access the person’s ATD because of a departmental system outage;
- A clearance authority cannot locate the person’s ATD when the person presents themselves to a clearance authority for processing; or
- The person acknowledges or the clearance officer notices an error, inaccuracy or omission in the ATD.

Human rights implications

The Instrument may engage the following rights:

- Right to equality and non-discrimination – Article 2(1) and Article 26 of the International Covenant on Civil and Political Rights (ICCPR), Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD);
- Freedom of movement – Article 12 of the ICCPR and Article 18 of the CRPD;
- Right to privacy – Article 17(1) of the ICCPR

Right to equality and non-discrimination

Article 2(1) of the ICCPR provides that States undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognised in the ICCPR without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Similarly, Article 26 of the ICCPR provides that the law shall prohibit any discrimination and guarantee to all persons equal and effective

protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Further, the CRPD contains a number of principles, obligations and rights, including Article 5, relating to the non-discriminatory treatment of persons with a disability.

The Instrument specifies circumstances in which a clearance officer may require a person to provide a completed passenger card despite having provided an ATD. These circumstances relate to when the ATD cannot be accessed in a practical sense or where the information may not be accurate with a view to ensuring the traveller is able to comply with existing immigration clearance requirements. This does not impose any new conditions that would limit the rights of a person to equality and non-discrimination. There are existing mechanisms that make the passenger card accessible to a range of cohorts, including the passenger card being printed in 13 different languages.

Right to freedom of movement

Article 12(4) of the ICCPR prohibits the arbitrary deprivation of the right to enter one's own country. Article 18 of the CRPD obliges States to protect the ability of persons with disabilities to exercise their rights relating to freedom of movement on an equal basis with others.

The Instrument does not impose any greater or additional restriction or conditions on the right of persons to enter Australia, including on citizens or others for whom Australia may be their 'own' country. The Instrument does not require the provision of additional types of information as a condition of entry; but rather reverts the traveller back to the original mechanism (the paper passenger card) for providing information already required.

Right to freedom from interference with privacy

Article 17(1) of the ICCPR states:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attached on his honour and reputation.

The Instrument does not limit the right to privacy because providing a completed passenger card is already a requirement under the Migration Act, and no additional types of information need to be provided by travellers who are required to complete a passenger card despite having completed an ATD in the circumstances specified in the Instrument. The collection, storage, use, and disclosure of personal information collected by the passenger card is undertaken by the Department in accordance with the Australian Privacy Principles contained in the Privacy Act.

Conclusion

The Instrument is compatible with human rights.

The Hon Tony Burke MP
Minister for Immigration and Multicultural Affairs