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

FRLI: F2013L01968

Portfolio: Immigration and Border Protection

Tabled: House of Representatives and Senate, 2 December 2013

Summary of committee concerns

2.22 The committee seeks further information as to the steps proposed to ensure the right to privacy of a person who provides personal information to a Cargo Terminal Operator who is not subject to the private sector provisions of the *Privacy Act 1988*.

Overview

2.23 This regulation prescribes the particulars that must be kept by Cargo Terminal Operators (CTOs) under subsection 102CE of the *Customs Act 1901* with regard to persons who enter cargo terminals. This requirement was inserted by the *Customs and Auscheck Legislation Amendment (Organised Crime and Other Measures) Act 2013*.

Compatibility with human rights

Statement of compatibility

2.24 The regulation is accompanied by a short statement of compatibility that states that the regulation engages the right to privacy. The statement states that the requirement to collect and store personal information is consistent with current obligations imposed on other entities involved in the cargo supply chain and does not seek to affect or disapply any of the existing protections under Australian Law.

Committee view on compatibility

2.25 Our predecessor committee considered the Customs and Auscheck Legislation Amendment (Organised Crime and Other Measures) Bill 2013 in its *Sixth Report of 2013* and *Tenth Report of 2013*.¹ The committee wrote to the then Minister for Home Affairs seeking information as to the type of personal information to be collected, the proposed use and storage of such information, and the steps proposed to ensure the right to privacy of a person who provides personal information to container terminal operators not covered by the *Privacy Act 1988* (the Privacy Act).²

2.26 In his response, the then Minister advised that:

1 PJCHR, *Sixth Report of 2013*, pp 25-35, and *Tenth Report of 2013*, p 124 and pp 144-147.

2 PJCHR, *Sixth Report of 2013*, p27.

- the information to be collected is consistent with obligations already in place for customs depot and warehouse licence holders and that in many cases, CTOs already collect this information when persons other than employees seek to enter the cargo terminal;
- the private sector provisions in the Privacy Act would apply to CTOs and that very few if any CTOs would fall within the small business exception to these requirements; and
- it was not currently proposed that any additional regulatory controls be imposed on those small businesses operating as CTOs who are not subject to the Privacy Act.³

2.27 The statement of compatibility that accompanies the regulation makes no explicit reference to the private sector provisions in the Privacy Act or to the extent to which CTOs may fall within the scope of the exception for small business.

2.28 The committee intends to write to the Minister for Immigration and Border Protection to seek information as to the number of Cargo Terminal Operators that are not subject to the private sector provisions of the *Privacy Act 1988* and the steps proposed to ensure the right to privacy of a person who provides personal information to a Cargo Terminal Operator who is not subject to the private sector provisions.

3 PJCHR, *Tenth Report of 2013*, p 144-145.