

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

PJCHR comments: Second Report of 44th Parliament, tabled 11 February 2014

Response dated: 28 February 2014

Information sought by the committee

3.12 The 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) Bill 2013*.

3.13 The committee sought further information as to the number of CTOs that are not subject to the privacy 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 CTO which is not subject to the private sector provisions of the *Privacy Act*.

3.14 The Minister's response is attached.

Committee's response

3.15 The committee thanks the Minister for his response.

3.16 The Minister notes that the Australian Customs and Border Protection Service (ACBPS) does not at present have access to information that 'would enable it to determine the number of CTOs that are not subject to the private sector provisions of the *Privacy Act 1988*'; and reiterated previous advice to the committee that very few, if any, CTOs would fall within the small business exception to the private sector provisions of the *Privacy Act 1988*. The ACBPS would, however, be able to develop a comprehensive list of CTOs subject to the record-keeping requirements of the *Customs and Auscheck Legislation Amendment (Organised Crime and Other Measures) Act 2013*, due to certain notification requirements on commencement of the changes. This list could provide a basis to seek further information from listed CTOs to determine their small business status.

3.17 In relation to the committee's inquiry as to whether any protections were proposed to ensure the right to privacy of a person who may provide personal information to a CTO not subject to the private sector provisions of the *Privacy Act 1988*, the Minister advised that 'there is no intention to impose any additional

privacy related controls on small businesses operating as CTOs who are not subject to those provisions'.

3.18 The committee notes that the inability to determine the number of CTOs not subject to the private sector provisions of the *Privacy Act 1988* prevents a proper assessment of the extent to which the regulation may limit the right to privacy. The committee recommends that the notification requirements arising from the commencement of the changes be adapted to ensure that the number of CTOs not subject to the relevant provisions of the *Privacy Act 1988* can be identified in future. This capacity would support the development of future policy measures with reference to the right to privacy, and to human rights considerations more generally.

3.19 The committee also notes that, in the absence of any particular protections to ensure the right of privacy of a person who may provide personal information to a CTO not covered by the private sector provisions of the *Privacy Act 1988*, the committee is unable to conclude that the regulation is compatible with the right to privacy.

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The Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013 (the Organised Crime Act) received Royal Assent on 28 May 2013. It amends the Customs Act 1901 and the AusCheck Act 2007 to mitigate vulnerabilities at Australia's borders.

A key measure of the Organised Crime Act was to place statutory obligations on Cargo terminal operators (CTOs) and those that load and unload cargo, which were similar to those that the Customs Act imposes on holders of depot and warehouse licences.

As part of implementing the Organised Crime Act, it was necessary to prescribe certain matters in regulations. Section 102CE of the Organised Crime Act places an obligation on CTOs to keep records of each person who enters a terminal. This obligation does not apply to an employee of the CTO or an officer or employee of the Commonwealth, States or Territories.

The Customs Amendment (Record Keeping Requirements and Other Measures) Regulation 2013 amends the Customs Regulations 1926 to prescribe the details a CTO must keep to satisfy this obligation. These changes took effect on 28 November 2013.

How many Cargo Terminal Operators are not subject to the private sector provisions of the Privacy Act 1988 and what steps are 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?

The Australian Customs and Border Protection Service (ACBPS) does not have access to information that would enable it to determine the number of CTOs that are not subject to the private sector provisions of the Privacy Act 1988. As noted in paragraph 2.2.6 of the Report, it is likely that very few, if any, CTOs would fall within the small business exception to the private sector provisions in the Privacy Act 1988.

New section 102C of the Customs Act 1901 requires that CTOs notify ACBPS of the cargo terminal within 90 days of the commencement of the changes contained in the Organised Crime Act (i.e. 26 February 2014). ACBPS officers have and will continue to deliver information sessions to CTOs on relevant legislative changes contained in the Organised Crime Act. Through section 102C of the Customs Act and the information sessions, ACBPS will develop a comprehensive list of CTOs subject to these legislative provisions.

The list of CTOs, once available, will not contain information that would allow ACBPS to identify those CTOs that are small businesses. ACBPS could subsequently request further information from the listed CTOs to determine small business status.

However, as noted at paragraph 2.2.6 of the Report, there is no intention to impose any additional privacy related controls on small businesses operating as CTOs who are not subject to private sector provisions of the Privacy Act 1988.