

EXPLANATORY STATEMENT

CEO Instrument of Approval No. 11 of 2012

Customs Act 1901

Subsection 4A(1) of the *Customs Act 1901* (the Act) defines an approved form as a form that is approved, by instrument in writing, by the Chief Executive Officer of Customs (**CEO**). Subsection 4A(2) of the Act provides that the instrument by which a form is approved by the CEO under subsection 4A(1), is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Under paragraph 6(d) of the *Legislative Instruments Act 2003*, approved forms are legislative instruments.

Background

Paragraphs 68(1)(d) to (i) of the Act list certain classes of goods which, if imported into Australia, are not required to be entered. Goods that are the accompanied personal or household effects of a passenger of a ship or an aircraft are such a class of goods (paragraph 68(1)(d) refers). Despite being exempt from formal import entry requirements, subsection 71AAAB(1) of the Act provides that the owner of such goods must, in the circumstances specified in the regulations, provide, under section 71, the information specified in the regulations at the time and in the manner and form specified in the regulations.

Regulation 41 of the *Customs Regulations 1926* provides that if a Collector requires information under subsection 71AAAB(1) of the Act, then it must be provided in an approved form or an approved statement.

Instrument

CEO Instrument No. 11 of 2012 approves the "Incoming passenger card" form (No. 15 MLY (Design date 09/12)) as the approved form for the purposes of providing, in the Malay language, information required under subsection 71AAAB(1) of the Act in relation to imported goods that are accompanied personal or household effects of a passenger of a ship or aircraft.

The change from the previously approved "Incoming passenger card" form is a change to Question 2 to reflect the reduction of the duty free concession amount from 250 cigarettes or 250g of tobacco products to 50 cigarettes or 50g of tobacco products, which will take effect on 1 September 2012.

Consultation

Consultation was not required under section 17 of the *Legislative Instruments Act 2003* as the instrument is of a minor or machinery nature and does not substantially alter existing arrangements.

Commencement

The instrument commences on 1 September 2012.

Statement of Compatibility with Human Rights

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

CEO Instrument of Approval No. 11 of 2012

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

CEO Instrument No. 11 of 2012 approves the "Incoming passenger card" form (No. 15 ARA (Design date 09/12)) as the approved form for the purposes of providing, in the Malay language, information required under subsection 71AAAB(1) of the Act in relation to imported goods that are accompanied personal or household effects of a passenger of a ship or aircraft.

This instrument replaces the previously approved incoming passenger card to reflect the reduction of the duty free concession amount from 250 cigarettes or 250g of tobacco products to 50 cigarettes or 50g of tobacco products, which will take effect on 1 September 2012.

Human Rights implications

The Incoming Passenger Card potentially raises implications in relation to the right to privacy contained in Article 17 of the *International Covenant on Civil and Political Rights*. However, for the reasons set out below, this legislative instrument does not engage, impact on, or limit in any way, the right to privacy.

The Incoming Passenger Card requires the passengers of incoming ships and aircraft to provide personal information including their name, date of birth, passport number and intended address in Australia. This personal information is used to administer Customs, quarantine, statistical, health, wildlife and currency laws of Australia and its collection is authorised by law. This law is precise and is reasonable in these circumstances.

The person from whom the information is collected is notified on the Incoming Passenger Card the purposes for which the information is collected and that the collection of the personal information is authorised by law. They are also notified of the agencies to whom the information will be disclosed, being agencies administering the above laws and those entitled to receive this information under Australian law. The Incoming Passenger Card also advises passengers of the availability of the leaflet titled "Safeguarding your personal information" for further information about their rights.

Further, the collection of personal information is protected under Australian Law and this instrument does not seek to disapply any of the existing protections.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Michael Carmody, Chief Executive Officer, Australian Customs and Border Protection Service