

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Customs Act 1901

Migration Act 1958

Home Affairs Legislation Amendment (Digital Passenger Declaration) Regulations 2021

The *Customs Act 1901* (the Customs Act) concerns customs-related functions and is the legislative authority that sets out the customs requirements for the importation of goods into, and the exportation of goods from, Australia.

Subsection 270(1) of the Customs Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Customs Act, prescribing all matters which by the Customs Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Customs Act.

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, regulations can be made pursuant to, or for the purposes of, the provisions listed at Attachment A.

The *Home Affairs Legislation Amendment (Digital Passenger Declaration) Regulations 2021* (the Digital Passenger Declaration Regulations) amend the *Customs Regulation 2015* (Customs Regulation) and the *Migration Regulations 1994* (Migration Regulations) to facilitate the introduction of a digital passenger declaration (DPD), for use by travellers on a voluntary basis. A traveller who chooses to provide the relevant information in a DPD will be exempt from the requirement to complete a passenger card or crew declaration for the purposes of immigration and customs clearance. The Digital Passenger Declaration Regulations will support the rollout of the DPD, including the initial trial basis, for arrivals into Australia by air, from December 2021.

The Digital Passenger Declaration Regulations make the following amendments.

Schedule 1 – Migration Amendments

Schedule 1 amends the Migration Regulations to:

- remove the requirement to provide a passenger card to a clearance officer if the traveller has provided a DPD and the DPD has not been withdrawn;

- allow a clearance officer to require the provision of the passenger card in circumstances specified in a legislative instrument; and
- introduce grounds to provide a discretion to cancel a visa if the DPD in relation to the visa holder was incorrect at the time it was provided, or if the visa holder or a person in charge of the visa holder on the relevant flight or voyage has provided incorrect information in relation to the DPD.

Schedule 2 – Customs Amendments

Schedule 2 amends the Customs Regulation to:

- remove the requirement to use the passenger card or crew declaration to provide information to a Collector about accompanied or unaccompanied personal or household effects of a traveller if the traveller completes a DPD, provides a Collector with the code relating to the goods that is provided by the departmental system that processes the DPD, and updates or provides any further information if required, which can be done orally or in writing; and
- allow a Collector to require the completion of the passenger card or crew declaration if the Collector reasonably suspects that the DPD in relation to the personal effects is not, or is no longer, accurate or complete.

Consistent with the Digital Transformation Agency’s Digital Government agenda, the Government approved funding in the 2021-22 budget for the digitisation of the passenger card and crew declaration data collection process at the border. The DPD is the first use case on a Whole of Government digital platform (Permissions Platform) led by the Department of Home Affairs (the Department) that will enable a streamlined risk assessment process for travellers at the border. It will support the Government’s four stage plan to safely reopen Australia’s borders to international travellers following the COVID-19 pandemic.

The DPD offers a voluntary digital alternative to the paper-based passenger card and crew declaration as the primary method of collecting information from incoming travellers for risk assessment by the Department, the Department of Agriculture, Water and the Environment, and the Department of Health.

The DPD has four components – trip details and identity, quarantine planning, COVID-19 health declarations, and border declarations. A traveller who completes the trip details and identity component and the border declaration component is exempt from the requirement to provide a passenger card or crew declaration. While it is mandatory for travellers to provide information about vaccination status, under the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2021*, it is not mandatory to use the DPD for this purpose. The information can be provided in other forms.

Implementation of the DPD will commence from December 2021 with replacement of the Australia Travel Declaration for COVID-19 risk assessment occurring shortly thereafter. This phase will include a trial of the border declaration component of the DPD (including migration, customs and biosecurity questions). This trial applies to travellers arriving by air.

A wider staged rollout of the border declaration will occur from March-June 2022 with the release of an updated version of the DPD with enhanced functionality. Border agencies are aiming for full national implementation of all components of the DPD by the end of June 2022.

The Digital Passenger Declaration Regulations commence on the day after they are registered on the Federal Register of Legislation.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment B](#).

Details of the Regulations are set out in [Attachment C](#).

The Department and the Australian Border Force (ABF) worked closely with key stakeholders including the Department of Health, the Department of Agriculture, Water and the Environment, Australian Transaction Reports and Analysis Centre, Australian Bureau of Statistics, State and Territory agencies and industry, during the development of the DPD. Industry briefings have been ongoing since the announcement of the DPD, including briefings to the National Passenger Facilitation Committee and the Tourism Visa Advisory Group. The ABF will continue to engage with stakeholders on the operational implications and process changes required to implement the DPD. Communication to travellers on the DPD will occur through a number of channels including the Department's website, other government websites and industry partners such as travel agents and airlines.

The consultations undertaken are consistent with the requirements of subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments and has advised that a Regulation Impact Statement is not required. The OBPR reference is 43699.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

AUTHORISING PROVISIONS***Customs Act 1901***

Subsection 270(1) of the *Customs Act 1901* (the Customs Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Customs Act, prescribing all matters which by the Customs Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Customs Act.

In addition, the following provision is relevant:

- section 71AAAB requires an owner of Subdivision 1AA goods, in circumstance specified in the regulations, to provide information specified in the regulations, and in the circumstances and the form and manner specified in the regulations.

Migration Act 1958

Subsection 504(1) of the *Migration Act 1958* (the Act) provides (in part) that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, without limiting the generality of the foregoing, may make regulations:

...

(c) making provision for or in relation to the furnishing or obtaining of information with respect to:

- (i) persons on board a vessel arriving at a port in Australia in the course of, or at the conclusion of, a voyage or flight that commenced at, or during which the vessel called at, a place outside Australia; and
- (ii) persons on board a vessel leaving a port in Australia and bound for, or calling at, a place outside Australia; and
- (iii) persons on board an aircraft arriving at or departing from an airport in Australia, being an aircraft operated by an international air carrier;

In addition, the following provisions are relevant:

- subsection 31(1) provides that there are to be prescribed classes of visas;
- Paragraph 116(1)(g) provides that: (1) Subject to subsections (2) and (3), the Minister may cancel a visa if he or she is satisfied that: ... (g) a prescribed ground for cancelling a visa applies to the holder;
- Paragraph 166(1)(b) provides that a person, whether a citizen or non-citizen, who enters Australia must, without unreasonable delay ... (b) provide to a clearance authority any information (including the person's signature, but not any other personal identifier) required by this Act or the regulations;
- Subsection 506(1) provides that regulations under paragraph 504(1)(c) may provide for the giving of different information about different classes of people;

- Subsection 506(2) provides that the regulations are to provide for the giving of information, in the form of answers to questions on a form, to be known as a passenger card, by non-citizens travelling to Australia, other than non-citizens exempted by the regulations;
- Subsection 506(3) provides that the questions for a non-citizen required by subsection 506(2) may include, but are not limited to, questions about any or all of the following:
 - (a) the non-citizen's health;
 - (b) any criminal convictions in Australia or a foreign country of the non-citizen;
 - (c) the purpose of the new arrival's going to Australia;
 - (d) any unpaid debts to the Commonwealth of the non-citizen;
 - (e) any removal or deportation from, or refusal of admission into, Australia or a foreign country of the non-citizen.

ATTACHMENT B**Statement of Compatibility with Human Rights**

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

Home Affairs Legislation (Digital Passenger Declaration) Regulations 2021

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

In accordance with requirements outlined in the *Migration Act 1958* (the Migration Act) and the *Migration Regulations 1994* (the Migration Regulations), all travellers arriving into Australia, with some limited exceptions, must provide a completed passenger card on arrival. The passenger card is a paper card that has been used for many decades as part of Australia's border entry requirements. The Australian Border Force (ABF) administers this requirement at airports and ports.

The collection of passenger information for the purposes of the Migration Act is authorised under paragraph 504(1)(c) of the Migration Act. All information provided by travellers is expected to be current and correct (section 102 and paragraph 105(1)(b) of the Migration Act). ABF officers collect the passenger cards from travellers upon arrival in Australia.

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 information that can be collected for the purposes of the Migration Act is outlined in regulation 3.01 and regulation 3.02 of the Migration Regulations.

Under the *Customs Act 1901* (the Customs Act), the passenger card is an approved form for making a customs declaration about accompanied and unaccompanied personal and household goods (called Subdivision AA goods). For subsection 71AAAB(1) of the Customs Act, section 27 of the *Customs Regulation 2015* (the Customs Regulation) sets out the circumstances and the form in which information is to be provided to a Collector in order for the Collector to consider whether to authorise, or refuse to authorise, the delivery of Subdivision AA goods into home consumption. Information about Subdivision AA goods is provided to a Collector on an approved form, which is the incoming passenger card.

The information collected from passenger cards is used by the Department of Home Affairs (the Department) for a range of immigration and customs clearance purposes, including:

- identifying traveller health or character concerns
- identifying goods that may be subject to customs duty (section 68 of the Customs Act)
- identifying goods which may be prohibited or subject to restriction upon arrival in Australia (section 71 Customs Act)
- as evidence in migration proceedings (section 271 of the Migration Act), and
- as a source of information used to assess a New Zealand citizen's eligibility for the grant of a Special Category Visa (SCV) (section 32 of the Migration Act).

The Department is permitted to share the information collected from passenger cards with other agencies for certain purposes under the:

- *Privacy Act 1988* (the Privacy Act);
- Migration Act;
- and
- *Australian Border Force Act 2015* (the ABF Act).

Agencies who receive access to passenger card information include the Department of Agriculture and Water Resources for biosecurity purposes, the Australian Bureau of Statistics for statistical purposes, the Australian Federal Police for law enforcement purposes, the Australian Transaction Reporting and Analysis Centre (AUSTRAC) for currency and related purposes, and other intelligence agencies for intelligence-sharing purposes.

Amendments

First announced in October 2020 and consistent with the Digital Transformation Agency's Digital Government agenda, the Department of Home Affairs (including the ABF) is working towards delivering the Digital Passenger Declaration (DPD), a digital alternative to the paper passenger card that will enable a more streamlined border clearance process. The DPD will also support the Government's four stage plan to safely reopen Australia's borders to international travellers following the COVID-19 pandemic.

The Home Affairs Legislation Amendment (Digital Passenger Declaration) Regulations 2021 (the Digital Passenger Declaration Regulations) amend the Customs Regulation and the Migration Regulations to facilitate the use of the DPD as a voluntary alternative to the incoming passenger card, in situations where, to comply with customs and immigration requirements, the traveller is required to complete a passenger card. The Digital Passenger Declaration Regulations will support the initial rollout of the DPD, initially on a trial basis, from December 2021.

The DPD will include four categories of information:

1. Identity and trip details, which can be provided and updated until departure for Australia.
2. Quarantine survey which can be provided and updated until check-in.
3. Health/COVID-19 questions, which can be provided and updated until departure for Australia.
4. Border declaration, including migration, customs and biosecurity questions, which can be provided and updated until the person is immigration cleared.

Travellers entering Australia will be able to complete the DPD on their mobile device or computer. To submit a DPD requires completion of the identity and trip details. Travellers then have a choice as to what further components they wish to complete and submit. Travellers do not have to use the DPD to submit any of the above categories of information. Information relating to the identity, trip details and border declaration components may instead continue to be provided by way of the paper passenger card, while information relating to quarantine, health and COVID-19 may be provided to the Australian Government by other appropriate means.

Specifically, the Digital Passenger Declaration Regulations make the following key changes.

Customs Regulation 2015

- removes the requirement to use the passenger card or crew declaration to provide information to a Collector about accompanied or unaccompanied personal or household effects of a traveller if the traveller completes a DPD, provides a Collector with the code relating to the goods that is provided to the traveller by the departmental system that processes the DPD, and updates or provides any further information if required, which can be done orally or in writing; and
- allows a Collector to require the completion of the passenger card or crew declaration if the Collector reasonably suspects that the DPD in relation to the personal effects is not, or is no longer, accurate or complete.

Migration Regulations 1994

- removes the requirement to provide a passenger card to a clearance officer if the traveller completes a DPD and the DPD has not been withdrawn;
- allows a clearance officer to require the provision of the passenger card in circumstances specified in a legislative instrument. Provision has been made for the circumstances to be specified in a legislative instrument to provide flexibility. As this is new technology and a significant departure from existing border clearance practices, flexibility is required. For example, circumstances that might be specified in the legislative instrument could relate to technology or systems interruptions; and
- introduces grounds to provide a discretion to cancel a visa if the DPD in relation to the visa holder was incorrect at the time it was provided, or if the visa holder or a person in charge of the visa holder on the relevant flight or voyage has provided incorrect information in relation to the DPD.

The Migration Act currently provides, in sections 109 and 116, for the cancellation of a visa where a person provides incorrect information on their passenger card or in relation to their passenger card. Paragraph 116(1)(g) of the Migration Act also provides for further circumstances in which the Minister may cancel a visa to be prescribed in the Migration Regulations (see regulation 2.43). The discretionary ground to cancel a non-citizen's visa for incorrect information provided in the DPD in new paragraph 2.43(1)(na) is intended to replicate the existing cancellation grounds for passenger cards where information has instead been provided by way of the DPD.

The new cancellation ground may be considered in the following two circumstances. The first circumstance is where the non-citizen provides a DPD and the DPD was incorrect at the time it was provided. A typical situation is where a non-citizen declares that they have no criminal convictions and it is determined that this information is not correct. The second circumstance is where the holder of the visa or a person in charge of the holder on the relevant flight or voyage (e.g. a parent) has provided incorrect information in relation to the DPD. For example, where a traveller has declared criminal convictions in the DPD, however, provides incorrect information about this declaration (e.g. the number or nature of convictions) when questioned by a clearance officer in immigration clearance. In both of the above circumstances, the visa cancellation ground is only available if the DPD has not been withdrawn. While a DPD can be withdrawn at any time until the non-citizen is immigration cleared, if the DPD is withdrawn the non-citizen is required to provide a passenger card. This ensures that discretionary consequences are enlivened where a non-citizen provides incorrect information via either the passenger card or DPD.

Like the existing cancellation grounds for incorrect information relating to passenger cards, the new cancellation ground applies to all visas. However, a permanent visa cannot be cancelled under section 116 if the holder of the visa is in the migration zone and was immigration cleared on last entering Australia.

The new discretionary visa cancellation ground is necessary to avoid inconsistent outcomes based on a non-citizen's choice of whether to provide a DPD or a passenger card. Without this ground, the provision of incorrect information about a non-citizen in a passenger card would be a basis for cancellation of the non-citizen's visa, but the provision of the same incorrect information in a DPD would not be a basis for cancellation. It would lead to different outcomes in identical cases and weaken the integrity of the visa cancellation regime.

The Digital Passenger Declaration Regulations also amend the Public Interest Criterion at item 4013 in Schedule 4 to the Migration Regulations. The criterion imposes an exclusion period for persons who have had a visa cancelled. The amendment inserts a reference to the new cancellation ground at paragraph 2.43(1)(na). The amendments are consequential to the introduction of the DPD as an alternative to the passenger card. The amendment ensure the same exclusion period applies whether the visa was cancelled on the basis of incorrect information in a DPD or in a passenger card.

Human rights implications

The Digital Passenger Declaration Regulations 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 liberty – Article 9(1) of the ICCPR;
- Rights relating to family and children – Articles 17 and 23 of the ICCPR and Article 3 of the *Convention on the Rights of the Child* (CRC).
- Non-refoulement obligations – Article 3(1) of the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) and Articles 6 and 7 of the ICCPR;
- Expulsion of aliens – Article 13 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 ground 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 amendments made by the Digital Passenger Declaration Regulations allow individuals travelling to Australia to provide customs and migration information to the ABF in the form of the DPD, in addition to the existing mechanism for providing this information via the passenger card. The DPD does not impose any new conditions that would limit the rights of a person to equality and non-discrimination. To assist with accessibility of the DPD, the DPD will be available via web browser, as well as available as a mobile application download on mobile phone and smart devices for both IOS and android systems. The DPD will include explanatory help text that will assist users to navigate the interface, submit information, and upload any associated documentation. To ensure people from non-English speaking backgrounds are able to complete the DPD, the DPD terms of use, privacy notice, and DPD information web pages, will all be available in several languages other than English.

Consistent with the Web Content Accessibility Guidelines, the DPD will also include descriptive labels for all links, buttons, and form fields, sufficient contrast ratio for text and backgrounds, ensuring that all images have text alternatives, and touch targets being large enough for accurate user activation. It is planned that the DPD will include bluetooth keyboard accessibility, talkback screen reader (Android), VoiceOver, (iOS), Accessibility Scanner app (Android). Individuals who are unable or unwilling to access or use a web browser, mobile phone or smart device to complete the DPD can still fulfil their border declaration requirements by using the existing paper form to complete the passenger card.

These measures ensure the DPD is usable by all travellers, regardless of age, ethnicity or disability, and, together with the continued availability of the paper passenger card, the ability to use the DPD as a voluntary alternative way to fulfil border declaration requirements is consistent with the right to equality and non-discrimination.

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 amendments made by the Digital Passenger Declaration Regulations do not impose any greater or additional restrictions or conditions on the right of persons to enter Australia, including on citizens or others for whom Australia may be their 'own' country. The amendments do not require additional information as a condition of entry; but rather provides another mechanism for providing information already required. As noted above, persons who are unable to, or do not wish to, use the DPD to provide the information to facilitate their border clearance are able to use the existing paper passenger card.

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 attacks on his honour and reputation.'

The amendments made by the Digital Passenger Declaration Regulations engage the right to privacy to the extent that they allow the use of the information voluntarily provided in the DPD to meet existing border clearance requirements under Commonwealth legislation as an alternative to the use of the passenger card (and crew declaration). Although these

amendments do not themselves establish the DPD, further information about the privacy-related aspects is provided for context.

The collection, storage, use and disclosure of personal information by the Department is undertaken in accordance with the Australian Privacy Principles contained in the Privacy Act. Information that has been provided to the Department pursuant to a statutory obligation is also subject to the disclosure provisions in the ABF Act. In addition, ‘personal identifiers’, which includes biometric information such as photographs and signatures and information derived from biometric information, is subject to requirements in Part 4A of the Migration Act, “Obligations relating to identifying information”, which provides for a range of rules and offences relating to the access, disclosure and use of identifying information. This is consistent with the United Nations Human Rights Committee General Comment 16 in which the Committee stated that the gathering and holding of personal information on computers, databanks and other devices (that is, the use of information technology) must be regulated by law and that effective measures must be taken to ensure that the information collected is not accessed by persons who are not authorised by law to receive, process or use it.

The Digital Passenger Declaration Regulations do not change the information required to meet immigration clearance requirements under the Migration Act. Likewise, the amendments do not change the way that the ABF and partner border and law enforcement agencies use the migration and customs information voluntarily provided via the DPD. They are assessed for the same purposes as where a passenger card is completed, and are shared with the same border agencies for the same purposes.

The DPD uses a consent-based approach. For persons who choose to complete the DPD, any privacy concerns that may arise in the future will be assessed against the Australian Privacy Principles, and in accordance with the Privacy Impact Assessment, and managed through the DPD Privacy Plan. All data stored in Departmental systems and applications is encrypted to ensure that the information is confidential and secure. In addition to the cyber security policy and procedural framework, the Department has established processes for assessing and reporting data breaches under the Notifiable Data Breaches Scheme in accordance with Part IIIC of the Privacy Act.

The Department, in conjunction with other agencies, has a critical role in protecting Australia’s borders and national security efforts to combat terrorism, trans-national crime and irregular migration.

The Department already collects migration and customs information, for the lawful purpose of border clearance processing, by way of the existing passenger card and crew declaration. If a traveller has voluntarily provided relevant information in advance via the DPD, they would generally not be required to provide a completed passenger card on arrival. The ability to use the DPD as an alternative way of meeting existing border clearance requirements, and to store, use and disclose that information voluntarily provided in accordance with relevant legislation, is aimed at ensuring the integrity of identity, security, immigration, customs, biosecurity and other border clearance checks of people entering Australia. Any limitation on the right to freedom from interference with privacy of persons who choose to provide border clearance information through the DPD is lawful, reasonable, necessary, and proportionate to achieving the legitimate aim of maintaining the integrity and security of Australia’s borders, while improving the facilitation of travellers to Australia.

Right to liberty

Article 9(1) of the ICCPR states:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

The purpose of the Migration Act is to ‘regulate, in the national interest, the coming into and presence in Australia of non-citizens’. A visa holder whose visa is liable for cancellation may be detained under s192 of the Migration Act for up to four hours for the purposes of questioning. An officer may then question the individual who has been detained about the person’s visa and matters relevant to that visa. A person whose visa is cancelled becomes an ‘unlawful non-citizen’ under the Migration Act and is liable for removal under s198 and/or immigration detention under s189 of the Migration Act.

Subsection 116(1)(g) of the Migration Act provides that the Minister may cancel a visa if a prescribed ground in the Migration Regulations applies. Relevantly, the amendments to the Migration Regulations made by the Digital Passenger Declaration Regulations prescribe a new ground for cancellation (paragraph 2.43(1)(na)) in circumstances where an individual has provided incorrect information in a DPD, or in relation to the DPD. As such, the amendments engage the right to liberty to the extent that a non-citizen may have their visa cancelled under the new cancellation ground and may be liable for immigration detention.

The discretionary ability to cancel an individual’s visa in these circumstances is aimed at achieving a legitimate purpose – ensuring the integrity of the border clearance process and the migration program. The cancellation ground reflects the existing ability to cancel a visa under s109 of the Migration Act if the person provides incorrect information on the passenger card. The new cancellation ground ensures that that ability is retained where the person provides the information by way of the DPD, rather than on the passenger card.

Decision-makers exercising the discretion to cancel a person’s visa will be guided by comprehensive policy guidelines and will take into account the individual’s circumstances, relevant international obligations, seriousness of the breach and the consequences for the individual. The individual will be given the opportunity to provide reasons why the visa should not be cancelled, and procedural fairness is afforded in the visa cancellation process. Judicial review of a decision to cancel is available. As such, the visa cancellation decision, and any consequent detention are not arbitrary. Rather they constitute a proportionate response to the individual circumstances of each case.

Rights relating to families and children

Article 3(1) of the CRC states:

In all actions concerning children, whether undertaken by a public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

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 attacks on his honour and reputation.’

This is mirrored in Article 16 of the CRC.

Article 23(1) of the ICCPR states:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

These obligations may be engaged where the new visa cancellation ground for incorrect information provided by way of the DPD is used in relation to family groups or other cases involving children, and the effect would be that the persons whose visas are cancelled may be detained or removed pursuant to the Migration Act. Temporary visa holders who are members of the family unit (including spouses, partners and children) of a person whose temporary visa is cancelled will have their visas consequentially cancelled by operation of law. In most cases, this means that a family travelling together will be removed together if the primary holder has their visa cancelled.

As noted above, the discretionary ability to cancel an individual's visa in these circumstances is aimed at achieving a legitimate purpose – ensuring the integrity of the border clearance process and the migration program. The cancellation ground reflects the existing ability to cancel a visa under s109 of the Migration Act if the person provides incorrect information on the passenger card. The new cancellation ground ensures that that ability is retained where the person provides the information by way of the DPD, rather than on the passenger card.

The discretionary decision to cancel a visa under paragraph 2.43(1)(na) of the Migration Regulations will allow the decision-maker to appropriately weigh the best interests of any children and the impact on family members in Australia against other considerations, including the risks to the Australian community from persons who have provided incorrect information as part of border clearance processes, for example in relation to the existence of criminal convictions. Accordingly, on the basis that the best interests of the child are treated as a primary consideration in the exercise of the discretion to cancel a visa, and the impact on family members is appropriately balanced with the risks the person may pose to the Australian community, this amendment is consistent with Articles 3(1) and 16 of the CRC, and Articles 17 and 23 of the ICCPR.

The amendment will also extend Public Interest Criterion 4013 so that visa applicants who have had a previous visa cancelled under new paragraph 2.43(1)(na) in the last three years cannot satisfy the criterion unless there are compelling reasons to justify the grant of the visa. This amendment ensures the same exclusion period applies whether the visa was cancelled on the basis of incorrect information in a DPD or in a passenger card. This will engage the rights under Articles 17 and 23 of the ICCPR to the extent that the visa applicant has family members who reside in Australia to whom Australia's international legal obligations apply. This is because it will affect the ability of the visa applicant's family members residing in Australia to have physical contact with the visa applicant. The amendments however, do not prevent family members from maintaining contact using other means, in particular those they would ordinarily use to maintain contact whilst not visiting each other.

Further, the exclusion from the grant of a subsequent visa following visa cancellation is temporary and subject to a discretion to grant the visa despite the visa applicant not meeting Public Interest Criterion 4013 where:

- there are compelling circumstances that affect the interests of Australia; or
- compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, justifying the granting of the visa within three years after the cancellation.

This exception allows for the consideration of family unity issues and the best interests of children in Australia in the context of the individual circumstances of particular visa applicants. As such, the amendment is consistent with the rights under Articles 17 and 23 of the ICCPR and Articles 3 and 16 of the CRC.

Non-refoulement obligations

Article 6 of the ICCPR states:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7 of the ICCPR states:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 3(1) of the CAT states:

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

As a person whose visa is cancelled is liable for removal from Australia under the Migration Act the amendment potentially engages Article 3(1) of the CAT and Articles 6 and 7 of the ICCPR. As noted above, the aim of the new cancellation ground is to replicate the existing ability to cancel a visa where a person has provided incorrect information on a passenger card, to the situation where they instead provide that information through the DPD.

Australia remains committed to its international obligations concerning *non-refoulement*. There is scope for these obligations to be considered as part of the decision to cancel a visa or through the protection visa process if the person makes a claim for Australia's protection from these kinds of harm. Individuals would not be subject to removal unless and until any claims for protection they may have had been assessed according to law and, in accordance with s197C of the Migration Act, will not be removed to the relevant country if *non-refoulement* obligations are identified through the protection visa process. As such, this amendment does not affect Australia's commitment to complying with its *non-refoulement* obligations in relation to Article 3 of the CAT and Articles 6 and 7 of the ICCPR.

Expulsion of aliens

Article 13 of the ICCPR states:

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Under international law, Australia has the right to take reasonable steps to control the entry and stay of aliens. Decisions to cancel a visa for the provision of incorrect information will be

made in accordance with the Migration Act and the Migration Regulations including under new paragraph 2.43(1)(na) of the Migration Regulations.

To the extent individuals will have their visa cancelled which leads to their expulsion, the processes are in accordance with Article 13 in that, prior to a decision to cancel, the visa holder is provided with adequate opportunity to put forward reasons as to why their visa should not be cancelled to a delegated officer. Procedural fairness provisions for visa cancellations are enshrined in Subdivision E of the Migration Act and will apply to these decisions.

A decision to cancel a visa under the new cancellation ground at paragraph 2.43(1)(na) will be subject to merits review by the Administrative Appeals Tribunal if the visa holder is in the migration zone and has been immigration cleared. Merits review is not available if the visa holder is in immigration clearance. This is an existing distinction set out in subsection 338(3) of the Migration Act. In these circumstances, judicial review in Australian courts is available. As such, this amendment does not infringe on Article 13 of the ICCPR.

Conclusion

The changes made by the Digital Passenger Declaration Regulations are for the legitimate purpose of ensuring the integrity of border clearance processes. Therefore, the amendments are compatible with human rights as, to the extent they may limit some human rights for persons who choose to use the DPD to provide border clearance information, those limitations are reasonable, necessary and proportionate to their objectives.

The Hon Karen Andrews MP

Minister for Home Affairs

Details of the *Home Affairs Legislation Amendment (Digital Passenger Declaration) Regulations 2021***Section 1 – Name**

This section provides that the name of the instrument is the *Home Affairs Legislation Amendment (Digital Passenger Declaration) Regulations 2021* (the Amendment Regulations).

Section 2 – Commencement

This section provides for the commencement of the instrument.

Subsection 2(1) provides that each provision of the regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

The table states that the regulations commence on the day after registration on the Federal Register of Legislation.

A note clarifies that this table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of the regulations. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 of the table provides the date/details of the commencement date.

Section 3 – Authority

This section provides that the instrument is made under the *Customs Act 1901* (the Customs Act) and the *Migration Act 1958* (the Migration Act).

Section 4 – Schedules

This section provides for how the amendments in the regulations operate.

Schedule 1—Migration amendments***Migration Regulations 1994*****Item [1] – After paragraph 2.43(1)(n)**

This item inserts a new ground for visa cancellation, as paragraph 2.43(1)(na) of the *Migration Regulations 1994* (the Migration Regulations). The cancellation ground is prescribed under section 116 of the Migration Act, which provides: “(1) Subject to subsections (2) and (3), the Minister may cancel a visa if he or she is satisfied that: ... (g) a prescribed ground for cancelling a visa applies to the holder”. The Minister has a discretion to cancel on the new ground, after considering all relevant circumstances.

The discretionary ground to cancel a non-citizen's visa, in new paragraph 2.43(1)(na), may be considered in the following two circumstances.

The first circumstance is where the non-citizen provides a digital passenger declaration (DPD) and the DPD was incorrect at the time it was provided. A typical situation is where a non-citizen declares that they have no criminal convictions and it is determined that this information is not correct.

The second circumstance is where the holder of the visa or a person in charge of the holder on the relevant flight or voyage (e.g. a parent) has provided incorrect information in relation to the DPD. For example, a passenger might acknowledge, in the DPD, that he or she has criminal convictions (which is a 'yes' or 'no' answer), but then provide incorrect information to a clearance officer about the nature of the criminal convictions.

In both of the above circumstances, the visa cancellation ground is only available if the DPD has not been withdrawn. While a DPD can be withdrawn at any time until the non-citizen is immigration cleared, if the DPD is withdrawn the non-citizen is required to provide a passenger card. This ensures that discretionary consequences are enlivened where a non-citizen provides incorrect information via either the passenger card or DPD.

A person who has voluntarily submitted relevant information in advance via the DPD would generally not be required to provide a completed passenger card on arrival. The new discretionary cancellation ground in relation to incorrect information in, or in relation to, a DPD is complementary to the existing grounds for cancellation of visas on the basis that incorrect answers have been provided in a passenger card. The visa cancellation powers relating to passenger cards have been in the Migration Act since 1994. There are two powers. Section 109 in Subdivision C of Division 3 of Part 2 of the Migration Act is available if the visa holder has been immigration cleared (see subsection 107(1)). Section 109 allows cancellation if the Minister is satisfied that the non-citizen has not complied with section 102 of the Migration Act, which states: "*A non-citizen must fill in his or her passenger card in such a way that: (a) all questions on it are answered; and (b) no incorrect answers are given.*" The other cancellation power is at paragraph 116(1)(d) of the Migration Act. It allows cancellation of a visa if the holder has not entered Australia, or has entered Australia and has not been immigration cleared, if the visa "*would be liable to cancelled under Subdivision C (incorrect information given by the holder) if its holder had so entered and been immigration cleared*".

The new discretionary visa cancellation ground is necessary to avoid inconsistent outcomes based on a non-citizen's choice of whether to provide a DPD or a passenger card. Without this ground, the provision of incorrect information about a non-citizen in a passenger card would be a basis for cancellation of the non-citizen's visa, but the provision of incorrect information in a DPD would not be a basis for cancellation. It would lead to different outcomes and weaken the integrity of the visa cancellation regime.

The questions asked, and declarations required, by the border declaration component of the DPD cover information required for migration, customs, health, biosecurity, and anti-money laundering purposes.

The DPD may also be used to provide COVID-19 vaccination information and related declarations, which is the information that can currently be provided using the Australia Travel

Declaration. The new cancellation ground will apply to incorrect information in this component of the DPD. A deliberate attempt to deceive border officials in relation to vaccination or health status would be viewed seriously, however the discretionary nature of the provision allows the decision maker to examine whether there are reasons not to cancel – that is, mitigating factors. For instance, under the discretionary framework, a decision maker might decide not to cancel where a person would suffer significant hardship if his or her visa were cancelled.

A decision to cancel a visa under the new cancellation ground at paragraph 2.43(1)(na) will be subject to merits review by the Administrative Appeals Tribunal if the visa holder is in the migration zone and has been immigration cleared. Merits review is not available if the visa holder is in immigration clearance. This is an existing distinction set out in subsection 338(3) of the Migration Act.

A decision to cancel a visa under the new cancellation ground at paragraph 2.43(1)(na) will be judicially reviewable.

Item [2] – After regulation 3.03AA

This item inserts regulation 3.03AB into the Migration Regulations. The purpose of regulation 3.03AB is to provide an exemption from the requirement to provide answers to the immigration clearance questions on a passenger card when a DPD has been provided.

The role of the passenger card in immigration clearance

The requirements relating to the entry of a person at the border are set out in Division 5 of Part 2 of the Migration Act. The process is called ‘immigration clearance’. Section 166 of the Act deals with the requirement to provide evidence of identity and other information. Section 172 of the Act defines the end point of immigration clearance, which is the point at which a person is ‘immigration cleared’. To be immigration cleared it is necessary to comply with section 166 and meet the other requirements specified in that section.

The passenger card is one component of the processes involved in compliance with paragraph 166(1)(b). The other requirements, as set out in section 166, relate to presentation of a passport, visa, and personal identifiers such as a facial image presented to an authorised system.

The passenger card is authorised by section 506 of the Migration Act. In particular, subsection 506(2) of the Migration Act states that: “*The regulations are to provide for the giving of information, in the form of answers to questions on a form, to be known as a passenger card, by non-citizens travelling to Australia, other than non-citizens exempted by the regulations*”.

The relevant regulations are set out in Part 3 of the Migration Regulations – **Part 3– Immigration clearance and collection of information**, under paragraph 166(1)(b) of the Migration Act. The regulations require all persons arriving in Australia, with certain exceptions (e.g. transit passengers, military personnel entering under approved arrangements, guests of government, foreign dignitaries, certain airline crew), to complete a passenger card and provide the completed passenger card to an officer (regulations 3.01 and 3.06).

In addition to questions relevant to immigration clearance, the passenger card asks a series of eleven questions that relate to customs, biosecurity, anti-money laundering, and public health.

These questions are not required by the Migration Act, but relate to other Commonwealth legislation and functions. In particular, the declarations are necessary for customs and biosecurity clearances at the border.

The passenger card also serves an additional function for New Zealand passport holders, who can lawfully travel to Australia without a visa and apply for a Subclass 444 (Special Category) visa on arrival. In that situation, the passenger card is an approved form for making the visa application. That is, presentation of the passenger card, in conjunction with the presentation of a New Zealand passport, constitutes the application for the visa (unless SmartGate is used, in which case certain questions must be answered on the SmartGate, in lieu of using the passenger card as the visa application form). The DPD will also be an approved form for the Subclass 444 (Special Category) visa application.

The role of the DPD

The DPD is a digital product developed to streamline entry to Australia. In the longer term it may replace the passenger card. From December 2021, the DPD will begin to be rolled out and will involve the use of an app or online form on a mobile phone or other digital device.

The DPD will have four components and can be completed in stages. The four components are – trip details and identity, quarantine planning, COVID-19 health declaration and border declaration. The traveller must first complete the trip details, which includes identity. Once this is done, each subsequent component is optional on the DPD and can be completed separately. The final component, which is the border declaration, contains the migration questions and the other questions that relate to customs, biosecurity, anti-money laundering, and health.

The effect of regulation 3.03AB

The effect of subregulation 3.03AB(1) is that a passenger card does not have to be provided if a DPD has been provided. The DPD must be complete, in the sense that the traveller must have completed at least the first component (trip details and identity) and fourth component (border declarations) in order to be exempt from the passenger card.

There are two situations in which a passenger card will be required despite the submission of a DPD, as set out in paragraph 3.03AB(1)(b).

The first situation is that a passenger card must be provided if the DPD is withdrawn. Because the DPD is used voluntarily, provision is made for withdrawal at any time up until being immigration cleared. In that situation, the person defaults back to the requirement to provide a passenger card (unless another DPD is provided).

The second situation is that a passenger card must be provided if a clearance officer has required the person who provided the DPD to provide a passenger card. Subregulation 3.03AB(2) provides that “*a clearance officer may require the person to provide a completed passenger card if circumstances specified in an instrument under subregulation (3) exist*”. Subregulation 3.03AB(3) provides the authority for the Minister to make the legislative instrument.

Provision has been made for the circumstances to be specified in a legislative instrument to provide flexibility. As this is new technology and an adjustment to existing border clearance

practices, some flexibility is required. For example, circumstances that might be specified in the legislative instrument could relate to technology or systems interruptions.

Item [3] – Paragraph 4013(2)(d) of Schedule 4

This item amends the public interest criterion at item 4013 in Schedule 4 to the Migration Regulations. The criterion imposes an exclusion period for persons who have had a visa cancelled. The amendment inserts a reference to the new cancellation ground at paragraph 2.43(1)(na) (see item 1 above). The amendments are consequential to the introduction of the DPD. The amendment ensures the same exclusion period applies whether the visa was cancelled on the basis of incorrect information in a DPD or in a passenger card.

Schedule 2—Customs amendments

Customs Regulation 2015

Introductory comments

Section 68 of the Customs Act requires certain goods to be entered for home consumption or warehousing. An entry for home consumption is made by submitting an import declaration, in respect of the goods, to the Department of Home Affairs (the Department).

Under paragraph 68(1)(d) of the Customs Act, goods that are accompanied or unaccompanied personal or household effects of a traveller are excluded from the requirement to enter the goods for home consumption or warehousing. Under section 71AAAA of the Customs Act, goods covered by paragraph 68(1)(d) are defined as Subdivision AA goods.

Subdivision AA goods are subject to customs control, under paragraph 30(1)(ad) of the Customs Act, from the time of their importation until they are delivered into home consumption in accordance with section 71 of the Customs Act, or they are exported to a place outside Australia, whichever happens first.

Section 71 of the Customs Act requires a person, as the owner of Subdivision AA goods, to give information to the Department in the circumstances specified in section 71AAAB of the Customs Act, and requires a Collector to either authorise, or refuse to authorise, the delivery of the goods into home consumption under section 71.

A Collector is any officer of Customs doing duty in the matter in relation to which the expression is used.

The information to be given under section 71AAAB of the Customs Act is information specified in the regulations, in the circumstances specified, and at the time and in the manner and form specified; see subsection 71AAAB(1) of the Customs Act.

Under subsection 71AAAB(2), the release of Subdivision AA goods from customs control requires an authority to deal to be given by a Collector having regard to information given by the owner of the goods to a Collector under subsection 71AAAB(1).

For subsection 71AAAB(1), section 27 of the Customs Regulation sets out the circumstances and the form in which information is to be provided to a Collector in order for the Collector to

consider whether to authorise, or refuse to authorise, the delivery of Subdivision AA goods into home consumption. Information about Subdivision AA goods is provided to a Collector on an approved form, the incoming passenger card or crew declaration.

New section 27A prescribes simplified information requirements, for the purposes of subsection 71AAAB(1), to be met by a person on arrival in Australia where the person has submitted a DPD in advance. The DPD is a voluntary process, using an online form, which will be made available to travellers. It will also be available to be used by a person, as an alternative to a paper form, to provide information relating to the person's health status, including their vaccinations against the disease commonly known as COVID-19.

Items [1] and [6]

Item [1] amends section 27 of the Customs Regulation such that the current requirement to require information to be provided by a person, who is the owner of Subdivision AA goods, to a Collector becomes subsection 27(1). This amendment is a consequence of the amendments made by item [6] of the Amendment Regulations, which inserts subsections 27(2) and (3) into the Customs Regulation.

Subsection 27(2)

New subsection 27(2) provides that a person is not required to comply with the requirement under subsection 27(1) to provide information (that is, to provide information in an approved form) about Subdivision AA goods if:

- (a) a person has complied with new paragraph 27A(2)(a) in relation to the goods; and
- (b) before a Collector makes a decision under subsection 71AAAB(2) of the Customs Act about the goods, a Collector does not require the person to provide information about the goods under subsection 27(1) of the Customs Regulation.

New section 27A is inserted by item [7] of Schedule 2 to the Amendment Regulations to prescribe information requirements to be met by those who have submitted a DPD before arriving in Australia. The customs related questions contained in the DPD form about Subdivision AA goods, and the declarations contained in the border declaration component of the DPD, are the same as the incoming passenger card. Therefore, where a person has submitted a DPD in advance, the information about Subdivision AA goods that the person must provide to a Collector when arriving Australia would in most cases be simpler.

Where a person does not satisfy the requirements in new subsection 27(2) (in particular, if the person has not submitted a DPD before arriving in Australia), the person is required to provide information about Subdivision AA goods in accordance with subsection 27(1) (that is, in an approved form, which is currently the incoming passenger card or crew declaration).

Subsection 27(3)

The purpose of new subsection 27(3) is to set out limited circumstances under which a Collector may request a person to provide information in an approved form under subsection 27(1), even though the person has complied with new paragraph 27A(2)(a) after submitting a DPD in advance. The prescribed circumstances are that the Collector reasonably suspects that

the DPD (referred to in new subsection 27(3)) provided by the person earlier is not, or is no longer, accurate or complete.

The exercise of this power is not subject to merits review because it is for intermediate information gathering (in order to determine whether or not an authority to deal can be granted), which means the ‘decision’ to require the information to be provided under subsection 27(1) is only preliminary and procedural.

Items [2] to [5]

These items amends section 27 of the Customs Regulation to omit references to ‘approved statement’.

An approved statement is a statement approved by the Comptroller-General of Customs under section 4A of the Customs Act for electronically providing information to the Department.

Under the present amendments to the Customs Regulations, the provision of information electronically to the Department will be accommodated by new section 27A instead. Consequently, the reference to an approved statement in section 27 is redundant and is omitted.

Item [7] - After section 27

This item inserts a new section into the Customs Regulation for the purposes of subsection 71AAAB(1) of the Customs Act.

New section 27A sets out alternative requirements to section 27 of the Customs Regulation for the provision of information about Subdivision AA goods. Under new subsection 27(2), where a person satisfies the requirements in new section 27A, the person is not required to satisfy the requirements in subsection 27(1).

New section 27A contains the three subsections as follows.

Subsection 27A(1)

Subsection 27A(1) provides that, for the purposes of subsection 71AAAB(1) of the Customs Act, if:

- (a) a person is the owner of Subdivision AA goods imported into Australia; and
 - (b) the person has indicated to a Collector that the person has submitted a DPD about the goods to a departmental system that processes DPDs;
- the person must comply with subsection 27A(2).

A person may voluntarily elect to electronically submit information to the Department through a DPD so that they are subject to simplified information requirements about Subdivision AA goods when arriving Australia.

A person who submits information in this manner will be provided with a code, generated by a departmental system that processes DPDs, in relation to Subdivision AA goods. The code will vary depending on the information provided about the goods. For example, it may be a symbol that immediately indicates to a Collector that the goods satisfy certain requirements.

Subsection 27A(2)

Subsection 27A(2) provides that the person mentioned in subsection 27A(1) must:

- (a) provide a Collector with a code generated by the departmental system that processes DPDs that indicates whether or not the goods are eligible to be authorised for delivery into home consumption under section 71 of the Act, by showing the Collector the code in the form generated by the system; and
- (b) if the DPD about the goods is not, or is no longer, accurate or complete—provide any information required to correct or to complete the declaration to a Collector orally or in writing; and
- (c) if, before a Collector makes a decision under subsection 71AAAB(2) of the Act about the goods, a Collector requires the person to provide further information to clarify whether or not the goods are eligible to be authorised for delivery into home consumption under section 71 of the Act—provide the further information to a Collector orally or in writing.

Where the person has submitted information about the goods via DPD, and where the person is not requested to comply with the requirement under subsection 27(1), the Collector must have regard to the information provided in accordance with new subsection 27A(2), in particular whether or not the goods are eligible to be authorised for delivery into home consumption under section 71 of the Act, in considering whether to authorise, or refuse to authorise, the delivery of Subdivision AA goods for that purpose.

Subsection 27A(3)

Subsection 27A(3) provides that a person in charge of the person on the relevant flight or voyage into Australia may provide a confirmation or information on behalf of the person for the purposes of this section.

This provision expressly permits a person to respond on behalf of another person for providing information to a Collector, for example a parent providing information to a Collector about the their children’s Subdivision AA goods.

Item [8] - Subsection 65(2)

Section 65 requires a proprietor of an inwards duty free shop to display signs in the shop in the approved form that clearly state the conditions with which, for the purposes of the *Customs Acts*, a traveller must comply in relation to the purchase of goods at the shop, and related matters.

Customs Acts means the Customs Act and instruments (including rules, regulations or by-laws) made under this Act and any other Act, and any instruments (including rules, regulations or by-laws) made under any other Act, relating to customs in force within the Commonwealth or any part of the Commonwealth.

Under subsection 65(2), if confectionary is available for sale in the shop the proprietor of the shop must display signs that clearly state “The confectionary you have purchased from this outlet has been approved for entry to Australia by Quarantine and does not need to be declared on your incoming passenger card. However, please remember you must declare any other items of food or anything which you can eat, which you have purchased before arriving in Australia”.

This item amends subsection 65(2) of the Customs Regulation to insert the words ‘or digital passenger declaration’ after the words ‘passenger card’.

The effect of this amendment is that the sign in the inwards duty free shop also specifies that confectionary purchased in the shop has been approved for entry to Australia by Quarantine and does not need to be declared on your DPD.

Item [9] - In the appropriate position in Part 18

This item inserts a transitional provision into the Customs Regulation such that, if at a time in the period:

- (a) starting on the day (the commencement day) that Schedule 2 to the Amendment Regulations commences; and
 - (b) ending 3 months after the commencement day;
- a proprietor displays a sign that meets the requirements in subsection 65(2) of the Customs Regulation, as in force immediately before the commencement day, then the proprietor is taken to have complied with subsection 65(2), as amended by that Schedule, in relation to that time.

In effect, this item gives the proprietor of an inwards duty free shop a 3 month period during which the relevant sign could be updated to insert the new wording. During that 3 month period, they will not be regarded as having failed to comply with the requirement to include the additional wording.