



Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS24-000735

Date of Clearance: 12/09/2024

To Minister for Home Affairs, Minister for Immigration and Multicultural Affairs, Minister for Cyber Security

Subject Approval of Text: Migration Amendment (Immigration Clearance Exemption for Transiting Aircraft Crew) Regulations 2024

Timing

S. 47C(1)

Recommendations

That you:

1. S. 47C(1) Migration Amendment (Immigration Clearance Exemption for Transiting Aircraft Crew) Regulations 2024 at **Attachment A**; signed / not signed
2. S. 47C(1) Federal Executive Council Minute Paper at **Attachment B**; signed / not signed
3. initial each page of the Explanatory Memorandum on the bottom right corner at **Attachment C**; and initialled / not initialled
4. approve the Explanatory Statement, including the Statement of Compatibility of Human Rights at **Attachment D**. approved / not approved

Minister for Home Affairs, Minister for Immigration and Multicultural Affairs, Minister for Cyber Security

Signature.....

Date:...../...../2024

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Minister's Comments

Key Issues

1. The Department of Home Affairs (the Department) seeks your approval and consideration of the text of the proposed *Migration Amendment (Immigration Clearance Exemption for Transiting Aircraft Crew) Regulations 2024* (the proposed Regulations) at **Attachment A** and associated supporting documents at **Attachment B**, **Attachment C** and **Attachment D**.
2. The proposed Regulations will insert a new item in Part 2 of Schedule 9 to the *Migration Regulations 1994* (the Migration Regulations), allowing 'transit aircraft crew' scheduled to depart Australia within 90 minutes of their arrival on commercial passenger aircraft to be exempt from the immigration clearance requirement under section 166 of the *Migration Act 1958* (the Migration Act).
3. The documents for your signature, approval and initials (where indicated) are the:
 - Proposed Regulations for your signature **S. 47C(1)** at **Attachment A**;
 - Minute Paper for your signature **S. 47C(1)** at **Attachment B**;
 - Explanatory Memorandum for the proposed Regulations for your initials on each page on the bottom right corner at **Attachment C**; and
 - Explanatory Statement, including the Statement of Compatibility of Human Rights for your approval at **Attachment D**.
4. The proposed Regulations will give effect to the former Minister for Home Affairs the Hon. Clare O'Neil's decision on 18 March 2024 to amend the Migration Regulations to exempt certain transit or turnaround crew on international carriers from immigration clearance (MS23-002161 at **Attachment E**).

5.

S. 47C(1)

6.

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7. The proposed Regulations and other accompanying documents have been finalised and are ready for your consideration and signature. S. 47E(d)

8.

S. 47C(1)

Background

9. Section 166 of the Migration Act requires any person who enters into Australia, regardless of their citizenship status, to present certain evidence of identity and other documents as required under the Migration Act and the Migration Regulations to a clearance authority without unreasonable delay ('immigration clearance'). As a result, all commercial airline crew members are required to disembark the aircraft, proceed to the immigration clearance check point at the airport terminal, collect checked-in baggage (if they have one) and exit the airport upon the clearance authority being satisfied of their compliance with subsection 166(1) of the Migration Act.
10. For transiting crew members with a turnaround departure scheduled on the same commercial aircraft, this also means that they must re-enter the airport security check point immediately upon exiting clearance and head back to their boarding gate within 90 minutes.
11. To minimise the spread of infection during the COVID-19 Pandemic lockdown, the ABF introduced an arrangement allowing for an ABF officer to conduct face-to-face passport checks on the arrival aircraft in lieu of required standard immigration clearance for all transiting commercial airline crew. S. 47E(d)

12.

S. 37(2)(b)

13. As such, the Department proposed (in **Attachment E**) exempting transiting aircraft crew members from the requirement to be immigration cleared.

Migration Amendment (Immigration Clearance Exemption for Transiting Aircraft Crew) Regulations 2024 (the proposed Regulations)

14. Subsection 168(3) of the Migration Act provides that a person in a prescribed class is exempt from complying with the requirement to be immigration cleared. Regulation 3.06 of the Migration Regulations provides that each class of person set out in Part 2 of Schedule 9 to the Migration Regulations is prescribed.

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15. The proposed Regulations will insert a new item in Part 2 of Schedule 9 to specify transiting aircraft crew as the prescribed class that can be exempt from immigration clearance requirements.
16. A person will be a 'transiting aircraft crew' if the person:
- is employed or engaged by an international air carrier as an aircrew member;
 - enters into Australia in the course of their employment or engagement as a member of the crew of an international passenger aircraft;
 - is scheduled to depart Australia as a member of the crew of that aircraft within 90 minutes of the person's arrival into Australia; and
 - does not leave the airport transit lounge except to continue their journey.
17. The transiting aircraft crew will be able to disembark the aircraft upon arrival and have the ability to walk around the airport transit lounge during the 90 minutes.
18. 'Airport transit lounge' is not specifically defined in the Migration Act or the Migration Regulations, but is intended to include all areas within the airport boarding area, including past security check points and before the allocated boarding gate of that aircraft.
19. A similar provision allowing for an immigration clearance exemption is also available for 'transit passengers' confirmed to leave Australia within 8 hours of their arrival into Australia under item 1 in Part 2 of Schedule 9 to the Migration Regulations. The exemption for transit passengers has been in place since before 1994.

20. **S. 42(1)**

Consultation – internal/external

21. **S. 42(1)**

22. **S. 47C(1)**

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23.

S. 47C(1)

Consultation – Secretary / Associate Secretary Immigration / ABF Commissioner

24.

25.

26.

S. 47C(1)

Client service implications

27. By implementing the proposed Regulations, transiting aircraft crew will be exempt from the immigration clearance requirement under section 166 of the Migration Act. S. 47E(d)

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29.

S. 47E(d)

Risks and Sensitivities

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31.

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33.

S. 47E(d)

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Paragraph 245LA(2)(b) of the Migration Act in particular requires the operator of the aircraft to report on each member of the crew who is on, or is expected to be on the flight, with subsection 245LA(5) of the Migration Act and paragraph 3.13D(1)(c) of the Migration Regulations requiring such report be given before they board the departing flight.

34. Furthermore, the ABF will maintain their ability to require airline crew to produce identity documents by conducting random 'spot checks' under section 225 of the Migration Act. That provision authorises an officer to require the 'master of the vessel' to muster the vessel crew and request a member of the crew to provide their identity documents for inspection.

Financial/systems/legal/deregulation/media implications

35. No financial/systems/deregulation/media implications have been identified.

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Attachments

Attachment A *Migration Amendment (Immigration Clearance Exemption for Transiting Aircraft Crew) Regulations 2024*

Attachment B s. 47C(1)

Attachment C s. 47C(1)

Attachment D Explanatory Statement, including the Statement of Compatibility of Human Rights for *Migration Amendment (Immigration Clearance Exemption for Transiting Aircraft Crew) Regulations 2024*

Attachment E MS23-002161

Authorising Officer Cleared by: Jeremy Wolter Acting Assistant Secretary Legislation Branch Date: 12/09/2024 Mob: s. 22(1)(a)(ii)
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Contact Officer: Jeremy Wolter, Acting Assistant Secretary, Legislation Branch, Mob: s. 22(1)(a)(ii)

CC

- Assistant Minister for Immigration
- Assistant Minister for Citizenship and Multicultural Affairs
- Secretary
- ABF Commissioner
- Associate Secretary Immigration
- DC Strategy and Capabilities
- DC Regional Operations
- DS Executive
- GM Immigration Policy
- GM Immigration Compliance
- Chief Finance Officer
- GM Legal
- GM Immigration Operations
- FAS Executive Coordination
- FAS Strategy and Policy Division
- AS Migration and Citizenship Law

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Australian
BORDER FORCE

Submission

For decision

PDMS Ref. Number: MS23-002161

Date of Clearance: 02/02/2024

To Minister for Home Affairs
Minister for Cyber Security

Subject Migration Regulations 1994 Amendments to immigration clearance requirements for crew cohorts

Timing For consideration by **16 February 2024** to enable drafting of the regulations ahead of 24 April 2024 Federal Executive Council meeting. Early consideration of this submission will support the Office of Parliamentary Council (OPC) to begin drafting as soon as possible.

Recommendations

That you:

1. **note** a **s. 47E(d)** is in place to support immigration and customs clearance of commercial air crew, with short turn-around times, at the aircraft arrival gate;
2. **agree** to amend the *Migration Regulations 1994* to exempt commercial air crew departing Australia within 90 minutes of their arrival from the requirement to be immigration cleared under section 166 of the *Migration Act 1958*; and
3. **note** that the Australian Border Force (ABF) will undertake checks to inspect the identity documents of commercial air crew on board the aircraft pursuant to section 225 of the *Migration Act 1958* to ensure compliance with Australian legislation.

noted / please discuss

agreed / not agreed

noted / please discuss

Minister's Comments

s. 47C(1)

Minister for Home Affairs
Minister for Cyber Security

Signature.....

Date: 18/3/2024

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Key Issues

1. This submission seeks your approval to amend the *Migration Regulations 1994* (the Regulations) to exempt commercial aircrew arriving into Australia who are then scheduled to depart Australia within 90 minutes (such as transit or turnaround crew) from the requirement to be immigration cleared under section 166 of the *Migration Act 1958* (the Act).

- 2.

s. 47E(d)

- 3.

4. Legislative amendments to the Regulations are proposed to allow for transitioning aircrew to be exempt from immigration clearance requirements completely. The interim arrangements will come to an end on the making of any regulatory changes. The amendments would mirror the exemptions already in place for transit passengers similarly arriving in Australia and then departing shortly thereafter.
5. All other existing pre-arrival reporting requirements will remain in place. Airlines will still be required to provide reports on all aircrew, including those who would be exempt from immigration clearance requirements under the proposed amendment. Steps are being taken to determine how best to document the arrival and departure of these aircrew.
6. The ability for ABF to carry out 'spot checks' of relevant aircrew will be retained under section 225 of the Act. This allows an ABF officer to request aircrew produce their identity documents for inspection to ensure they are legitimate holders of valid travel documents, conduct face to passport checks, and ensure compliance with Australian law.

- 7.

s. 47E(d)

- 8.

s. 33(1)(a)(i)

- 9.

s. 47E(d)

Background

10. Section 166 of the Act provides that all travellers entering Australia must be immigration cleared as soon as practicable, unless a legislated exemption applies. This includes the requirement for aircrew to present evidence of identity to a clearance authority regardless of the time spent in Australia.
11. As per current requirements, this means that airline crew must disembark the aircraft on arrival and present to the primary line inside the terminal for arrival immigration and border clearance, and then present to the ABF again upon departure.

12.

13.

s. 47E(d)

14. Subsection 168(3) of the Act provides that a person in a prescribed class of persons are not required to comply with section 166. Regulation 3.06 of the Migration Regulations provides that each class of persons listed in Part 2 of Schedule 9 to the Regulations are prescribed for the purposes of section 166 of the Act. Currently, aircrew are not a prescribed class of persons. Transit passengers are listed as a prescribed class. The proposed amendment will prescribe aircrew who are scheduled to depart Australia within 90 minutes of arrival as a class of persons for the purpose of subsection 168(3) of the Act.
15. Subsection 225(2) of the Act allows for an officer to request the master of the vessel, including a commercial aircraft, to muster the vessel's crew in the presence of the officer and request a member of the crew to produce their identity documents for inspection under subsection 225(3). As such, ABF officers will be able to conduct random 'spot-checks' and verify transit aircrew identities before aircraft continues its journey.

Consultation – internal/external

16.

s. 47C(1)

Consultation – Secretary / ABF Commissioner

17. s. 47C(1)

18. s. 47C(1)

Client service implications

19. The benefits from implementing this change would increase efficiencies for turnaround crew with tight scheduled flight times.

20.

s. 47E(d)

21.

Financial/systems/legal/deregulation/media implications

22. Amendments to the *Migration Regulations 1994* are required in order to give effect to this change.

Attachments

23. Nil.

Authorising Officer Cleared by: Alice Stanley Assistant Secretary Traveller Policy and Industry Engagement, Industry and Border Systems Division Date: 2 February 2024 Mob: s. 22(1)(a)(ii)
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Contact Officer Alice Stanley, Assistant Secretary, Traveller Policy and Industry Engagement, Ph: s. 22(1)(a)(ii)

CC Secretary
ABF Commissioner
Deputy Commissioner Strategy and Capability
Deputy Commissioner Regional Operations
Deputy Secretary Executive
A/g Deputy Secretary Immigration
Group Manager Legal
Chief Finance Officer
First Assistant Secretary Industry and Border Systems
Assistant Secretary Legislation

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