

# Departmental Disclosure Statement

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## **Customs and Excise (Arrival Information) Amendment Bill**

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the New Zealand Customs Service.

The New Zealand Customs Service certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

11 October 2022

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## Part One: General Policy Statement

This Bill amends the Customs and Excise Act 2018 (the **principal Act**) to provide for clearer arrival information obligations to help with customs-related border management matters, such as collection of revenue and detection of restricted or prohibited goods. The Bill also aims to improve the collection of arrival information by introducing new offences to enforce the system.

The changes in the Bill support the digitising of the paper arrival card. While a digital arrival card can be implemented using existing legislation, changes are desirable to improve the enforcement and functionality of the system.

In particular, this Bill provides for the following:

- an explicit obligation on arriving passengers to provide prescribed arrival information:
- 2 new offences – one for failing to provide prescribed arrival information and one for providing arrival information that is erroneous in a material particular:
- a power to make regulations -
  - to set the time by which arrival information must be provided to the New Zealand Customs Service (**Customs**):
  - to exempt persons from the requirement to complete arrival information:
- a power for Customs to collect certain information about persons arriving in New Zealand to verify compliance with traveller requirements set out in legislation administered by other agencies.

### **New regulation-making powers**

Regulations may require arrival information to be provided before a person enters New Zealand from a point outside New Zealand. This may be needed to improve future border risk management.

Regulations may exempt people from the requirement to provide arrival information. This may be needed where it is not practical or necessary to collect arrival information from a particular class of persons, for example, persons rescued at sea.

### **Verification of traveller requirements**

The Bill also enables Customs to collect information to verify people's compliance with traveller requirements under legislation administered by other agencies.

In order for Customs to verify compliance on behalf of other agencies, it needs the authority to do so and the ability to use information held by the agency to complete the verification. That authority would need to be provided by other legislation.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	NO
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	NO
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<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	NO
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	YES
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Two regulatory impact statements were completed on 23 May 2022 and provided to the Cabinet Social Wellbeing Committee in advance of consideration of policy proposals relating to arrival information (through the New Zealand Traveller Declaration (NZTD) system).

These were titled “New Zealand Traveller Declaration Tranche 3 Enforcement” and the “New Zealand Traveller Declaration Tranche 3 Information Sharing and Administration Settings”.

Copies of these regulatory impact statements can be found at—

- <https://www.customs.govt.nz/ris>
- <https://treasury.govt.nz/publications/informationreleases/ris>

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	NO
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<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	NO
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	NO
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	NO
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	NO

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	YES
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	YES

The improvements to passenger processing with the NZTD system could be affected by the level of compliance with the NZTD. The electronic medium may have a lower uptake than the paper medium. However, support will be put in place to assist people with their NZTD in order to reduce any potential reduction in processing benefits.

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

#### 3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The International Labour Organization's Maritime Labour Convention (MLC) 2006 was considered. This sets out the minimum rights of a seafarer. This includes the right to shore leave to benefit their health and well-being. No proposals in this Bill affect that right. Seafarers may need to provide arrival information but there are no mechanisms preventing them from having shore leave through the arrival information requirements.

### Consistency with the government's Treaty of Waitangi obligations

#### 3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

A Treaty of Waitangi analysis was undertaken at the policy approval stage. It found that border agencies must be cognisant of working to ensure Māori data is treated appropriately. Officials are undertaking work to understand how the principles of Māori data sovereignty might apply to how Customs collects, uses, and manages the personal information of travellers coming across the border including that collected through the arrival information.

The digital divide for Māori is much higher than for many other groups of people in New Zealand and measures to ensure equitable access to, and outcomes of, are being considered and further developed.

### Consistency with the New Zealand Bill of Rights Act 1990

#### 3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	YES
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	NO
<p>Clause 28B sets out two offences. They are a person commits an offence if the person:</p> <ul style="list-style-type: none"> <li>• 28B(1)(a) fails to comply with the requirement to provide Customs with the information prescribed by chief executive rules and provide the information in a way prescribed by these rules and within the prescribed time set out in regulations</li> <li>• 28B(1)(b) provide Customs with information required prescribed in chief executive rules that is erroneous in a material particular.</li> </ul> <p>A person who commits either offence set out 28B(1) is liable on conviction to a fine not exceeding \$1,000.</p> <p>These two offences will be prescribed as infringement offences in the Customs and Excise Regulations 1996.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	YES
The Ministry of Justice was consulted on the two new offences prior to seeking Cabinet Policy approval.	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	YES
The Bill provides for clearer arrival information obligations, by amending the current provisions relating to the collection of arrival information. Arrival information includes personal information, such as name and occupation. The sharing of arrival information collected by Customs will continue to rely on existing information sharing provisions in the Act.	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	YES
<p>The Privacy Commissioner comments were:</p> <p><i>The Privacy Commissioner recommends the proposed Bill should include the type of information that may be collected for the New Zealand Travel Declaration Card and not leave it to the Chief Executive Rules to prescribe this. Using Chief Executive powers to make rules to prescribe the type of information that may be collected, allows for the types of information to be changed without any transparency or oversight from the public or Parliament (a change from the expectations of the current Customs and Excise Act 2018). This may result in over-collection of personal information that goes beyond the intended purpose of the Bill and unduly impacts on individual privacy rights.</i></p> <p>The comments were considered but no action was considered necessary to address the comments. Appendix One sets out the detail the reasons for this.</p>	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	NO
There was insufficient time to undertake external consultation.	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	NO
A voluntary pilot is planned to test the digital arrival card prior to the commencement of this legislation. Some experience on using electronic information systems at the border has been gained through the use of the NZTD system to support New Zealand's response to COVID-19.	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	NO
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	NO
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	NO
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## Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	YES
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	NO
<p>The Bill proposes two new strict liability offences to provide for enforcing the requirement to provide arrival information. Clause 28B sets out two offences. They are:</p> <p>A person commits an offence if the person:</p> <ul style="list-style-type: none"> <li>• 28B(1)(a) fails to comply with the requirement to provide Customs with the information prescribed by chief executive rules and provide the information in a way prescribed by these rules and within the prescribed time set out in regulations</li> <li>• 28B(1)(b) provide Customs with information required prescribed in chief executive rules that is erroneous in a material particular.</li> </ul> <p>A person who commits either offence set out 28B(1) is liable on conviction to a fine not exceeding \$1,000.</p> <p>These two offences will be prescribed as infringement offences in the Customs and Excise Regulations 1996.</p> <p>A strict liability offence is proposed to address a gap in the ability to enforce the requirement to provide arrival information. It is strict liability because of the nature of the offence (something is either done or not done), and it provides a low-cost and easy to administer way to encourage compliance (e.g. it allows for creation of low-level infringement offences). While strict liability offences mean if the person meets the offence they may be pursued for the offence, enforcement officers may exercise discretion in considering the circumstances of the failure. In addition, there are processes in existing legislation that provide a defendant with an opportunity to appeal the issuing of an infringement notice for the offending.</p>	

## Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	NO
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## Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	NO
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## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	YES
<p>Clause 28A(4) provides that regulations may prescribe exemptions from the requirement of every person arriving in New Zealand to provide Customs with the information prescribed by the chief executive rules.</p> <p>The exemption power is necessary for circumstances where it is not practical to collect arrival information from a person, such as a person rescued at sea. In addition, exemption powers may be considered where there are limited benefits in collection of arrival information in a particular circumstance. Regulation-making power provides a timely process for making, amending or removing exemptions whilst having the checks and balances of Cabinet, and Executive Council. Regulations are subject to the Legislation Act 2019 and must be presented to the House of Representatives, who can disallow them.</p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	YES
<p>Clause 28A(3) provides a regulation-making power to set the point in the traveller's journey when they must submit arrival information. This provides flexibility about when information is required. Regulation-making power provides a timely process for setting or amending when arrival information is required.</p> <p>Clause 28A(1) provides the information required is prescribed by chief executive rules. In addition, 28A(2)(a) provides for chief executive rules to prescribe the way information must be provided. They are secondary legislation for the purposes of Legislation Act 2019 publication requirements. They come into force 28 days after notification in the Gazette. The Minister must present them to the House of Representatives, who can disallow them.</p>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	NO
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## Appendix One: Further Information to Part Three

This section provides further information to support question 3.5.1. Was the Privacy Commissioner consulted about these provisions?

*The Privacy Commissioner recommends the proposed Bill should include the type of information that may be collected for the New Zealand Travel Declaration Card and not leave it to the Chief Executive Rules to prescribe this. Using Chief Executive powers to make rules to prescribe the type of information that may be collected, allows for the types of information to be changed without any transparency or oversight from the public or Parliament (a change from the expectations of the current Customs and Excise Act 2018). This may result in over-collection of personal information that goes beyond the intended purpose of the Bill and unduly impacts on individual privacy rights.*

The Privacy Commissioner's comment was considered but no action taken because:

- The information the Customs and Excise Act 2018 allows to be prescribed by a chief executive rule must still be information Customs is permitted to collect for the purposes of the Act.
- Prescribing arrival information required in chief executive rule aligns with how the Act currently works
- In relation to arrival information in particular, section 53 of the Act provides a description of the types of information it would be permitted to require for the purposes of clause 28A of the Bill
- There is Parliamentary oversight of chief executive rule because they are secondary legislation for the purposes of the Legislation Act 2018. This means the Minister must present a chief executive rule to the House of Representatives and the House of Representatives may disallow a chief executive rule
- A member of the public has a range of avenues to raise any concerns about the chief executive rules including Customs, a member of Parliament or a Parliamentary Committee
- The chief executive of Customs is not permitted to delegate the rule-making power in section 421, so retains oversight and final decision making control over the process.