

## Privacy Commissioner's Submission to the Foreign Affairs, Defence and Trade Committee concerning the Maritime Powers Bill

### Executive summary

1. I am pleased to provide a submission on the Maritime Powers Bill (the **Bill**).
2. The Privacy Act 2020 (the **Privacy Act**) is New Zealand's main privacy law. One of the Privacy Commissioner's functions under the Privacy Act is to examine proposed legislation that may affect the privacy of individuals.
3. There are a range of provisions in the Bill that refer to personal information as it is defined in the Privacy Act. Based on conversations between my Office and the Ministry of Foreign Affairs and Trade, it is my expectation that the collection, retention, use and disclosure of personal information will be subject to the principles and protections afforded by the Privacy Act.

### The relationship between the Privacy Act and the Bill

4. The Privacy Act is a principles-based piece of legislation. The 13 Information Privacy Principles (**IPPs**) in the Privacy Act provide a framework to govern the collection, retention, use and disclosure of personal information.
5. The Bill defines 'personal information' as having 'the same meaning as in section 7(1) of the Privacy Act 2020'.
6. There are a number of provisions in the Bill that explicitly provide for the disclosure of personal information, including:
  - *Clause 37 – Secretary of Foreign Affairs and Trade responsible for seeking consent* provides for the Secretary, when seeking consent from a flag State for the exercise of the powers under this Bill, to disclose personal information to the flag State as necessary to enable consideration of the request.
  - *Clause 42 – Disclosure of personal information by enforcement officer* provides for an 'enforcement officer' to disclose personal information obtained in exercise of powers under the proposed Act to a public sector agency in New Zealand, as if the information had been obtained in New Zealand.
  - *Clause 45 – Reporting of exercise of powers to flag State or coastal State* provides for the Secretary to disclose personal information overseas if they are satisfied that it is reasonably necessary to do so for the purpose of complying with New Zealand's international obligations.
7. In discussions during the development of the Bill, the Ministry of Foreign Affairs and Trade advised my Office that the Privacy Act was intended to apply to provisions of the Bill. I support this approach, as the Privacy Act is a complementary framework for the management of personal information under this Bill.
8. IPP 12 in the Privacy Act governs the sending of personal information overseas and requires that there are adequate privacy protections in the other jurisdiction before

personal information is shared. However, personal information can still be sent overseas if it is for the purpose of the maintenance of the law, or to avoid endangering someone's health and safety. IPP 12 is a new provision which was introduced with the new Privacy Act in December 2020.

*The treatment of biometric information*

9. Clause 28 of the Bill requires certain persons to provide biometric information for the purpose of establishing or verifying the identity of that person for law enforcement purposes.
10. Because the Bill adopts the broad definition of 'personal information' from the Privacy Act, the Bill's definition of 'biometric information' will also be a form of 'personal information' under both the Bill and the Privacy Act. Biometric information is especially sensitive given it relates to the innate biological characteristics of a person (e.g. fingerprints); its collection and handling should therefore be managed very carefully.
11. I have made it a priority of my Office to consider the collection, retention, disclosure and use of biometric information, to ensure that it is being done so with all due care and sensitivity, in accordance with the expectations of the Privacy Act.
12. Clause 28 of the Bill only allows for the collection of biometric information from those who have been detained or arrested, and only when it is necessary for the enforcement officer to confirm the identity of a person for law enforcement purposes. I support the inclusion of clause 28 with respect to the collection of biometric information, as this provision places a higher threshold for collection.

**Recommendations**

13. I support the passage of the Bill as it is currently drafted, noting the applicability of the Privacy Act to its provisions that refer to personal information / biometric information.
14. I trust my comments are of use to the Committee in its consideration of the Bill. I do not seek to be heard on my submission but am happy to appear before the Committee if that would be of assistance.



John Edwards  
**Privacy Commissioner**

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