

Privacy Commissioner's Submission to the Foreign Affairs, Defence and Trade Select Committee on the Customs and Excise (Arrival Information) Amendment Bill (180-1)

Introduction

1. Thank you for the opportunity to provide a submission on the Customs and Excise (Arrival Information) Amendment Bill.
2. 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.
3. The changes in the Bill support the digitising of the paper arrival card. In particular, this Bill provides for the following:
 - an explicit obligation on arriving passengers to provide arrival information prescribed by the Chief Executive rules
 - introducing two new offences, one relating to the failing to provide prescribed arrival information and the other 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
 - 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.

The Privacy Act 2020

4. The Privacy Act 2020 is New Zealand's primary source of privacy law and governs the collection, use, storage, and disclosure of personal information. It also provides a statutory mandate under section 17 for my Office to examine wider developments or actions that may affect individuals' privacy.

Delegated legislation

5. My comments relate to section 28A in the Customs and Excise (Arrival Information) Amendment Bill that impose a requirement on every person arriving in New Zealand to provide Customs with information prescribed by the Chief Executive rules.

6. I recognise that secondary or delegated legislation is a common practice used when primary legislation would get too detailed or when an area is rapidly evolving and there is a desire to provide for flexibility.
7. Delegated legislation such as the Chief Executive rules has the potential to lack transparency and effective parliamentary scrutiny. Delegated legislation does not receive the same public and parliamentary examination as primary legislation. Using delegated legislation is likely to be inappropriate when changes can impact individual rights.
8. In this instance, the Chief Executive rules give the Chief Executive the power to make rules and prescribe the collection of information that will have wide application without following a process of public scrutiny and accountability. The information collected under the Chief Executive rules might include sensitive information. Collection of sensitive information has the potential to significantly impact individual privacy rights and this process risks doing so without public scrutiny, transparency, and awareness.
9. Without analyzing the types of information that can be prescribed by the Chief Executive rules, my recommendation is to prescribe information in primary legislation to ensure there is appropriate parliamentary oversight to ensure the principle of proportionality is considered and individual rights aren't unduly impacted.

Conclusion

10. I trust my comments in this submission will be of use to the Committee in its considerations. I do not seek to speak to my submission, but I will appear if it will be of assistance to the Committee.



Michael Webster
Privacy Commissioner

16 December 2022