



NEW ZEALAND  
**CUSTOMS SERVICE**  
TE MANA ĀRAI O AOTEAROA

# **Establishing the legal framework for Customs' use of the New Zealand Traveller Declaration PRIVACY IMPACT ASSESSMENT**

27 October 2022

V.09

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## Introduction and purpose

1. This Privacy Impact Assessment (PIA) assesses whether the amendments to the Customs and Excise Act 2018 (the Act) comply with the Privacy Act 2020 (Privacy Act) and its related privacy principles. It focuses on the New Zealand Traveller Declaration (NZTD) and the digitisation of the paper-based arrival card.

## Project summary

2. The NZTD is an online platform that will provide a digital declaration. It will enable participating agencies to collect personal, and in some instances, commercial, information directly from travellers. The Government approved the development and implementation of the NZTD as an integral part to build New Zealand's safer and smarter borders.
3. The NZTD will be used by the three agencies that are responsible for processing arriving travellers and managing border risks: New Zealand Customs Service (Customs), Ministry for Primary Industries (MPI) for biosecurity, and Ministry of Business, Innovation and Employment (MBIE) for immigration.
4. The benefits of the digital declaration will include more targeted risk assessment on arrival and reducing unnecessary referrals to border officers. It will also provide an opportunity for travellers to experience a more streamlined experience on arrival.
5. A digital declaration could be implemented using existing Customs legislation; however, changes are desirable to improve the enforcement and functionality of the system.
6. Amendments to the Act will provide for a clear arrival information obligation to help with Customs-related border management matters, such as collection of revenue and detection of restricted or prohibited goods.

## PIA scope

7. The scope of this PIA covers the following amendments to the Act:
  - (a) Explicit obligation on arriving passengers to provide prescribed arrival information.
  - (b) Changes to liability offences relating to (1) failure to provide prescribed arrival information and (2) providing arrival information that is erroneous in a material particular.
  - (c) Establish new regulation-making powers to (1) set when a NZTD Customs declaration must be submitted and (2) allow for exemptions from the requirement to provide arrival information.
  - (d) Provide for the chief executive of Customs to collect arrival information for the purpose of verifying travellers' data entry requirements set by other agencies, where they are specified in other enactments.
8. This PIA does not cover the following:
  - (a) Privacy implications for the technical aspects and operationalisation of the NZTD program.
  - (b) Privacy implications for other agencies' use of the NZTD system.

## Executive risk summary

9. The risk assessment did not identify privacy issues of concern as the amendments to the Act rely on existing information collection and sharing regimes. Regulatory Impact Statements were carried out for information sharing and administration of the NZTD as well as for the enforcement provisions.
10. In addition, the amendments to the Act are unlikely to be contentious because a digital declaration will improve the collection and flow of information as well as it will bring value to managing risks. The information collected will be more reliable as it does not rely on handwritten information.
11. The introduction of regulatory and infringement powers poses some risks. It has been identified that some travellers may not sufficiently understand the legislative requirements to complete a digital declaration and the penalties imposed. Responsive controls have been implemented or are being developed by the NZTD Program. These involve a development of a Communication Strategy and ensuring there is a phased transition to the digital declaration. A detailed description of risks and controls is in Appendix 1 and Appendix 2, respectively.

## Personal information involved

12. The digital declaration will aim to match the information that is currently collected through the paper-based arrival card. Broadly, the following personal information is collected from arriving travellers:
  - Passport number
  - Nationality
  - Full name as in passport
  - Date of birth
  - Country of birth
  - Contact or residential address in New Zealand
  - Email/mobile/phone
  - Occupation or job
  - Travel details (flight number, seat number, overseas port where boarded aircraft/ship).
13. The arrival card also asks travellers questions about their travel and the goods they brought with them.

## Current information flows

14. Personal information is collected on arrival by Customs, MPI and MBIE. Each agency has legislation that provides for the authority to collect information from arriving travellers.
15. The information flow is detailed below:
  - Travellers are required to complete three separate declarations on a single arrival card for Customs, MPI (Biosecurity) and MBIE (Immigration).
  - On arrival, travellers present their arrival card to customs officers, immigration officers and biosecurity officers through the different stages of their arrival journey.

- Depending on the travellers' arrival journey, arrival cards might be collected at different processing points by either Customs, Biosecurity or Immigration.
  - All arrival cards collected by Biosecurity and Immigration are handed to Customs for final count.
  - After the final count, Customs sends arrival cards to Stats NZ.<sup>1</sup>
16. The physical collection of information on the arrival card has some issues. Because many agencies handle the arrival cards, a paper-based system makes protecting information flows more difficult. It also makes it difficult to combine information, thereby providing a barrier to risk management.
17. The move to a digital declaration means improved protection of information flows, and better access to information where authority has been granted under the legislation.

### Future information flows

18. Personal information will continue to be collected by Customs, MPI and MBIE. As opposed to the current system of collection (paper-based), the new system will be a digital declaration. The Information flow is detailed below:
- Travellers will initiate the process using their own devices and submit the information online (travellers can choose whether they want to submit information in advance or when they arrive in New Zealand).
  - Information will be captured through the NZTD, stored in the platform and only authorised personnel will have access to the information.
  - Agencies involved in the processing of arriving travellers will not automatically have access to all the information submitted through the NZTD. They will only have access to information that they have a lawful purpose.
  - Customs will have access to information submitted to other agencies for verification purposes, where it is specified in other enactments.<sup>2</sup>

### Assessment of privacy impacts

19. This analysis summarises the privacy impacts of Customs' amendments to the Act that will enable the use of the NZTD for the Customs component of the arrival declaration.

#### Principle 1: Purpose of collection of personal information

20. This principle requires that agencies must collect personal information for a lawful purpose connected with a function or activity of the agency, and only collect information necessary for that purpose.
21. Consistent with this principle; the collection of information from arriving travellers is for a lawful purpose. Currently a range of provisions in the Act provide the mandate for the requirement to complete an arrival declaration (arrival card). This information is primarily

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<sup>1</sup> Customs shares information under the provisions of the Act and other legislation. Arrangements with Statistics New Zealand (Stats NZ) and MBIE to share arrival cards are in place. Customs sends all arrival cards to Stats NZ, which then send them to MBIE, who becomes the ultimate holder of the arrival cards.

<sup>2</sup> Customs will use existing information sharing provisions in the Act for any information sharing with other agencies.

required to gather information about goods brought by travellers (see Appendix 3 containing information about Customs' collection of traveller information).

22. The implementation of the digital declaration does not create additional authority to make new questions. Customs will use the same questions that appear on the current arrival card. However, some design features will be implemented to help travellers to answer the questions. This may include text fields, dropdown lists, checkboxes and tooltips.

#### Principle 2: Source of personal information

23. This principle states that personal information shall be collected directly from the subject of the information, unless one or more of the specific exceptions apply.
24. Customs is consistent with this principle; information will be collected directly from the individual when they make use of the NZTD to submit their digital declaration. Travellers themselves will initiate the collection process by accessing the web portal.
25. Customs will establish new regulation-making powers to allow for exemptions from the requirement to complete the Customs declaration where there is an urgent situation. The chief executive of Customs will set rules for different processes for the NZTD, where appropriate for specific travellers and at the air and maritime borders.
26. The NZTD Programme is assessing equity and accessibility issues. There will be a range of customer support mechanisms to assist travellers where they have disabilities, language barriers or do not have internet capability and underage.

#### Principle 3: Transparency about the collection of personal information

27. This principle requires that agencies should be open about why they are collecting personal information and what they will do with it. Agencies should take the steps to help people understand the reasons the information is being collected.
28. Customs is consistent with this principle; the amendments to the Act will provide clarity regarding arrival information obligations and exemptions. It will also provide clarity regarding offences and penalties as well as the timing in which arrival information must be provided to Customs.
29. The NZTD programme will develop a communication and information strategy to ensure that the public and stakeholders are aware of the changes to the collection mechanism. This will also include communicating the legislative changes.
30. The NZTD Programme will ensure that a clear privacy statement is in place for the Customs declaration. Travellers will see the privacy statement before they commence completing their Customs declaration.

#### Principle 4: Manner of collection of personal information

31. This principle states that personal information shall be collected in a way that is lawful and seen as fair and reasonable in the circumstances.

32. Customs is consistent with this principle; the digital declaration is non-intrusive. Information will be collected directly from individual travellers or an authorised person on their behalf who will be able to use their own devices to submit information. Only necessary information will be required consistent with the provisions of the Act.
33. Under Customs legislation, all persons arriving in New Zealand and reporting to Customs have the obligation to complete an arrival declaration, including children or young persons. In relation to children and young persons, the NZTD programme is considering mechanisms where parents will be able to make declarations on behalf of their child. This process is currently in place through the arrival card declaration and will continue.
34. Customs has also considered emergency circumstances in which it may be unreasonable for a traveller to make a digital declaration. Customs will use a new regulation-making power to exempt certain travellers from making a declaration when there is an emergency.

#### Principle 5: Storage and security of personal information

35. This principle requires that an agency that holds personal information must ensure that it is protected by adequate security safeguards against loss, misuse or unauthorised access.
36. This principle is outside the scope of this PIA; Storage and security of personal information is being considered by the NZTD programme and reported separately.

#### Principle 6 and 7: Access to and correction of personal information

37. These two principles require that if an agency holds any personal information, and individual shall be entitled to determine if the agency holds such information, and to have access to that information and request correction.
38. Customs is consistent with these principles; adheres to the principles of the Privacy Act and the Official Information Act 1982; individuals have the right to ask Customs to access any information that we hold about them and to request correction of that information where it is incorrect. Customs will continue to follow existing processes when they receive a request for access to / or correction of personal information.
39. Individuals will be advised they can view and request correction of their personal information in the privacy statement of their digital declaration. Existing policies are in place for the Customs aspect of the NZTD system and will be dealt with by the appropriate teams at Customs.

#### Principle 8: Accuracy of personal information to be checked before use

40. This principle requires that an agency must check before using or disclosing personal information that it is accurate, up-to-date, complete, relevant and not misleading.
41. Customs is consistent with this principle; it will take all reasonable steps to ensure that the information collected is accurate, up to date, complete, relevant and correct. Customs will primarily rely on the accuracy of the information provided by travellers themselves when they make use of the NZTD. Customs understands that travellers may submit incorrect

details either accidentally or deliberately. Travellers will be able to verify and update information when submitting their declaration.

#### Principle 9: Agency no to keep personal information for longer than necessary

42. This principle requires that an agency should not keep personal information for longer than it is required for the purposes for which the information may lawfully be used.
43. Customs is consistent with this principle; Customs follows the requirements of the Public Records Act 2005 and ensures that personal information is not retained for longer than is necessary to allow Customs to conduct its lawful activities at the border.

#### Principle 10: Limits on use of personal information

44. This principle means that agencies can generally only use personal information for the purpose it was collected, and there are limits using personal information for different purposes. Sometimes other uses are allowed, such as use that is directly related to the original purpose, or if the person in question gives their permission for their information to be used in a different way.
45. Customs is consistent with this principle; the information collected for the digital declaration is to be used consistently with the purposes set out on Customs legislation (See IPP1). Customs purposes for using arrival information does not change with the digitisation of the arrival declaration.
46. Cabinet approved Customs to establish the ability for the chief executive of Customs to undertake verification for other agencies' traveller data entry requirements, where specified in other enactments. A new provision will give the authority for the lawful use and restricts use to the specific purpose of verifying NZTD data-entry requirements.

#### Principle 11: Limits on disclosure of personal information

47. This principle means that an agency may generally only disclose personal information for the purpose for which it was originally collected or obtained. Sometimes other reasons for disclosure are allowed, such as disclosure for a directly related purpose, or if the person in question gives their permission for the disclosure.
48. Customs is consistent with this principle; there are existing limits to the disclosure of personal information. Customs will continue to adhere to the existing provisions under the Act and the Privacy Act to share and disclose information.
49. Subpart 6 of the Act "Disclosure of Information" contains the statutory provisions for sharing information and the requirement for publication of agreements entered by Customs:
  - Disclosure to government agencies.
  - Disclosure to private sector organisations.
  - Disclosure to overseas authority.
50. Ministers sign agreements with agencies after consultation with the Privacy Commissioner. The chief executive of Customs must sign agreements with private sector agencies and overseas authorities after consultation with the Privacy Commissioner.



## Principle 12: Disclosure of personal information outside New Zealand

51. This principle sets rules around sending personal information to organisations or people outside New Zealand. An agency may only disclose personal information if the receiving end is subject to the Privacy Act because they do business in New Zealand; will adequately protect the information or is subject to privacy laws that provide comparable safeguards to the Privacy Act.
52. Customs is consistent with this principle; will continue to adhere to the provisions of the Privacy Act. The Act contains existing limits to the disclosure of personal information outside New Zealand. The limited circumstances (as stipulated in section 318 of the Act) are to assist an overseas authority to carry out its functions related to:
- (a) the prevention, detection, investigation, prosecution, or punishment of offences; or
  - (b) the processing of international passengers at the border; or
  - (c) the protection of border security; or
  - (d) the enforcement of a law imposing a pecuniary penalty; or
  - (e) the protection of public health and safety; or
  - (f) the protection of public revenue.

## Principle 13: Unique identifiers

53. This principle sets restrictions on assigning identifying numbers and other unique identifiers to individuals. The principle states that an agency can only assign identifiers to people when it is necessary for its functions.
54. This principle is outside the scope of this PIA; the assignment of unique identifiers is being considered by the NZTD programme and reported separately.

### Assessment of resultant / controlled risk

Overall risk assessment and requirement	Y/N
This Privacy Impact Assessment has identified risks that need to be added to the Risk Register	Yes The introduction of regulatory powers and infringement powers associated with these powers must be documented.

## Signatures

Name and Position	Signature	Date
Kathryn MacIver Group Manager Policy and Strategy Project Owner		27/11/2022
Mat Black NZTD Programme Director Project Sponsor	FYI	27/11/2022
<i>[DCE-level required if project involves sharing information with another agency]</i>	N/A	
<i>[Representative of other agency if project involves sharing with another agency]</i>	N/A	
Privacy officer <i>[Necessary when there are significant privacy risks]</i>	N/A	

## Document management

### Version history

Version	Date	Author and role	Description
0.1	20/06/2022	Vinka Cisternas-Torres	Initial draft
0.2	20/06/2022	Vinka Cisternas-Torres	Responding to feedback from Covid Policy team
0.3	18/07/2022	Vinka Cisternas-Torres	Redrafting and responding to feedback from Legal, NZTD PMO and IS&P
0.4	25/07/2022	Vinka Cisternas-Torres	Redrafting following advice from Legal, IS&P and NZTD PMO
0.5	01/08/2022	Vinka Cisternas-Torres	Redrafting following further advice from Legal and IS&P
0.6	15/09/2022	Vinka Cisternas-Torres	Redrafting for final stage, sharing with OPC along with Bill and other documents.

0.7	21/10/2022	Vinka Cisternas-Torres	Final draft
0.8	26/10/2022	Kevin Linnane	Resultant risk accepted and action to document controls recommended.
0.9	27/10/2022	Vinka Cisternas-Torres	Final editing

## Risk, consultation and signature

### Consultation

Consultation team	Team member	Date consulted	Advice given	Advice incorporated
Legal (initial consult)	Grant Rewi	30/06/22	Provided initial review of the document.	Changed scope of the PIA to fit legal advice.
NZTD Programme (initial consult)	Pip Rudhallhyett	19/07/22	Provided clarification on upcoming PIAs including technical aspects of the NZTD programme for maritime and air borders.  Risks regarding changes to legislation are yet to be assessed.	Changed aspects that are part of the NZTD programme as these are not part of this PIA (noted that further PIAs will be required)
ISP (initial consult)	Kevin Linnane & Benjamin Scully	22/07/22	Provided initial review of the document.	Re-drafted and added recommendations into the working documents.
Legal (second consult)	Grant Rewi	01/08/22	No major issues, mostly advised to keep it in scope.	Re-drafted to eliminate principles that are not legislation focused.
ISP (second consult)	Kevin Linnane	01/08/22	No major issues, advised some areas are not legislation focused, can delete some IPPs as PIAs will be drafted by the NZTD Programme. Will verify the risk assessment appendix and provide feedback.	Re-drafted to eliminate principles that are not legislation focused.



## Appendix 1 - Project Risks

Risk #	Risk rating	Reasoning	Mitigations / Controls	Residual risk
R0	Medium	Mandatory requirement for travellers to make a declaration online poses a risk without considering a phased stage to move from paper-based to digital, including without having alternative methods for where digital is not possible.	<p>C0 – NZTD Programme Roadmap</p> <p>A phased approach to move from paper-based to digital including accessibility, usability and inclusion measures.</p> <p>C4 – NZTD Policy</p> <p>Regulatory Impact Statement NZTD Tranche 3 Enforcement</p>	Very Low
R1	High	<p>Travellers might not sufficiently understand the new legislative changes imposing:</p> <ul style="list-style-type: none"> <li>• Offences relating to failure to make and to make an erroneous declaration.</li> <li>• Setting time for when declarations must be submitted.</li> <li>• Exemptions from the requirement to complete a digital declaration.</li> </ul>	<p>C1 – Communication Strategy</p> <p>A communications strategy will be in place for the whole programme. This covers stakeholder and public campaign maritime borders and industry awareness campaign strategy air/maritime. (This is part of the NZTD programme)</p> <p>C2 – Assistance processes and policies</p> <p>Policies will be in place to ensure travellers are informed about the new declaration process and consequences. Airlines and partners will be enabled to support the transition.</p> <p>C4 – NZTD Policy</p>	Very Low

			Regulatory Impact Statement NZTD Tranche 3 Enforcement	
R2	Medium	Travellers might not sufficiently understand their legal and privacy rights.	C3 – NZTD Customs Privacy Statement	Low
R3	High	Enabling Customs to conduct verification processes regarding data entry requirements of other agencies using the NZTD and to take actions regarding compliance and non-compliance poses a risk under IPP1.	C4 – Regulatory Impact Statement NZTD Tranche 3 Information Sharing and Administration Settings	Very Low

## Appendix 2 - Analysis of Control

Control	Control Description and Implementation	Validations	Effectiveness
C0 – NZTD Programme	<p>Passive control</p> <p>The NZTD programme sets out the roadmap, which contains a summary of all project implementation.</p> <p>(Control owner: NZTD programme)</p>	<p>The NZTD programme considers pilots and transition period to move from paper-base to digital. This includes a phased approach for the phasing-out of the paper-based arrival card.</p> <p>The NZTD programme is considering accessibility, usability and inclusion issues in various scenarios. Will implement assistance for these scenarios.</p>	<p>High Developing</p>
C1 – NZTD Communications Strategy	<p>Passive control</p> <p>The communications strategy is part of the NZTD programme.</p> <p>(Control owner: NZTD programme)</p>	<p>The strategy includes:</p> <ul style="list-style-type: none"> <li>• Stakeholder and public campaign strategy for maritime borders.</li> <li>• Industry awareness campaign strategy for air and maritime.</li> </ul> <p>Public communications strategy for air and maritime.</p>	<p>High Developing</p>
C2 – NZTD Customer Support	<p>Passive control</p> <p>Customer support is part of the NZTD programme.</p> <p>(Control owner: NZTD programme)</p>	<p>This includes primarily the development of a customer support change management plan, as well as plans for operational changes that will include:</p> <ul style="list-style-type: none"> <li>• Airport operations change management plan.</li> <li>• Maritime change management.</li> </ul> <p>Ongoing change management activities.</p>	<p>High Developing</p>

C3 – NZTD Customs Privacy Statement	Passive control NZTD Customs declaration privacy statement (Control owner: Customs Information Sharing and Privacy team)	A new privacy statement will be drafted by the Customs Information Sharing and Privacy team in consultation with Legal and Policy.	High Developing
C4 – NZTD Policy	Passive control Provides clear standards for the implementation of the Customs and Excise (Arrival Information) Amendment Bill	Regulatory Impact Statement: <ul style="list-style-type: none"> <li>• NZTD Tranche 3 Information Sharing and Administration Settings</li> <li>• NZTD Tranche 3 Enforcement</li> </ul> Consulted with agencies including the Ministry of Justice and the Department of the Prime Minister and Cabinet.  Diagnosis of the policy problem conducted, addresses the policy problem and provides options table.	High In Place



## Appendix 3 - Customs' collection of traveller information

### Why Customs collects information?

Customs has existing authority to collect information to conduct its lawful activities at the border. Customs' functions are empowered by the Customs and Excise Act 2018 (the Act) and summarised as:

- Preventing risks and threats reaching or crossing our borders, such as COVID-19, drugs, illegal weapons, and objectionable material.
- Ensuring New Zealand's trade flows efficiently across borders.
- Providing a streamlined experience for travellers across borders.
- Collecting revenue on behalf of the Crown.

### Which legislative authority enables Customs to collect information on the arrival card?

The Act establishes a regime for the collection and disclosure of information, both, the personal information of individual travellers and the commercial information of goods and shipments.

Section 53 of the Act specifies that *"Customs may for the purpose of passenger and crew processing, monitoring the movement of craft and persons, and border security, collect any information about craft and persons arriving in, or departing from, New Zealand:*

*(a) details of craft movements, including the craft name and registration number or identifier, estimated date and time of arrival or departure, and place of origin and destination:*

*(b) personal information, including the person's name, date of birth, sex, biometric information, passport number, nationality, and travel movements."*

At present, a range of provisions provide the mandate for the arrival card information:

- Section 421 of the Act allows the chief executive to make rules prescribing any matter that the Act provides. Further, the chief executive has the power to require the way in which anything is to be done (without limitation) this includes the power to prescribe:
  - (a) any form that must be used:
  - (b) any information that must be provided:
  - (c) any declaration that must provided:
- The Customs (Arriving Passenger and Crew Declarations) Rules 2018 (principal rules) apply to persons arriving in New Zealand and are made for the purposes of prescribing the form and declaration required to enable personal baggage and household effects to be deemed entered under regulation 26(1)(b)(i) of the Customs and Excise Regulations 1996.

- The principal rules require that *“all persons arriving in New Zealand and reporting to Customs under section 28 of the Act must complete any form and make any declarations in accordance to these rules”*. This includes forms for passengers, aircrew and ship crew declarations. Section 28 of the Act requires that every person arriving in New Zealand must report to Customs (or the Police) to enable Customs to carry out any function under the Act in relation to that person.
- The subsequent Customs (Arriving Passenger and Crew Declarations) Amendment Rules 2019 prescribe for a new arrival card, and a new electronic version of the card that may be used by arriving travellers using the appropriate electronic processing system approved by the chief executive under section 296 of the Act.