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Paper prepared by:	New Zealand Customs Service
Date considered by Cabinet:	29 June 2022
Name of paper:	Establishing an enduring legislation framework for the New Zealand Traveller Declaration
Cabinet Reference:	SWC-22-MIN-0127
Purpose of the paper:	This Regulatory Impact Statement provided advice to Ministers on the key information sharing and administration settings necessary to implement Tranche three of the New Zealand Traveller Declaration.

Some parts of this paper have been redacted under section 9 (2) (h) of the Official Information Act 1982.



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Regulatory Impact Statement - New Zealand Traveller Declaration Tranche 3 Information Sharing and Administration Settings

Coversheet

Purpose of Document	
Decision sought:	<i>Information sharing and Administration Settings for Tranche 3 of the New Zealand Traveller Declaration</i>
Advising agencies:	<i>New Zealand Customs Service</i>
Proposing Ministers:	<i>Minister for Customs</i>
Date finalised:	<i>23/05/22</i>
Problem Definition	
<p>The policy problem for this RIS is consideration the appropriate controls to regulate the Crown’s ability to collect, use, and disclose individual and commercial information for the operation of Tranche 3 of the New Zealand Traveller Declaration (NZTD).¹</p> <p>The NZTD is a digital system being delivered in three tranches, already agreed by Cabinet, which enables health and border agencies to collect a large amount of personal, and in some instances, commercial, information directly from travellers. This information is important for assessing risk and enabling compliant travellers to quickly cross the border.</p> <p>Tranche 3 will move New Zealand further towards a safer and smarter border through enabling both an improved customer experience, underpinned by better facilitation and border risk management, and, in the event of future pandemics or other border closures, smoother border management and better information to intending travellers and to carriers.</p> <p>The importance of enabling a digital system has been highlighted by the COVID-19 pandemic. The response to the pandemic increased the amount of information required from travellers before they were able to enter New Zealand.</p>	

¹ The NZTD is being delivered in three tranches. Tranche 1 went live on 25 March 2022. The focus for each of the tranches is as follows:

- Tranche 1 – establishment of a digital system to enable travellers to share health information in advance of travel to support the opening up of the border
- Tranche 2 – expansion of the NZTD to the maritime space as well as system improvements such as integration with other systems
- Tranche 3 – scaling capacity to support pre-COVID passenger volumes and adding other declarations such as immigration and biosecurity declarations.

Given the volume and the sensitivity of some of the information, there should be appropriate checks and balances on the Crown's ability to collect, use, and disclose this information.

Executive Summary

The NZTD is already in place. Under Tranche 1 travellers must provide information such as proof of vaccination or a COVID-19 pre-departure test before travelling to New Zealand.² To reflect the changing health requirements and further support the acceleration of our economic recovery in line with the Reconnecting New Zealanders framework, [CAB-21-MIN-0305 refers] and to support the safer and smarter border initiative, additional declarations are being added to the NZTD. The NZTD will have ongoing value and use beyond COVID-19 as a digital arrival declaration system at our borders.

By Tranche 3, the platform will provide a single place for all travellers to make their complete travel declaration, replacing the existing physical arrival card. It will provide utility beyond the COVID-19 response with sufficiently flexible capability to enable additional health-related questions or requirements to manage any other border risks that may emerge in the future.

Issue in this RIS: establishing the appropriate legislative safeguards to regulate Crown handling and use of individual and commercial data for the operation of Tranche 3 of the NZTD:

- **option 1:** use of privacy legislation and information sharing arrangements (status quo)
- **option 2:** use of the existing Customs and Excise Act 2018 (C&E Act) provisions (preferred)
- **option 3:** create a bespoke regime for the NZTD.

The New Zealand Customs Service (Customs) has experience with operating IT systems that collect information from airlines, traders, and other parties and then sharing that trade and traveller information with other agencies so they can complete the processing of goods and travellers at the border. Because of this experience, it is anticipated that Customs will administer the NZTD on behalf of other agencies. This will require changes to the C&E Act to ensure there are appropriate legislative safeguards to regulate the Crown's handling and use of individual and commercial data for the operation of Tranche 3 of the NZTD.

Limitations and Constraints on Analysis

Policy work has had to be developed in a truncated timeframe and there have been competing issues with ongoing work to implement Tranche 1 of the NZTD and the re-opening of the border.

There is a limited timeframe to have primary legislation changes made by March 2023 to allow immediate piloting and full implementation of the system from 30 June 2023 as outlined in the NZTD business case agreed by Cabinet. Because of this there has been no consultation with the public on the contents of this RIS. There has been extensive engagement with Crown agencies on the policy approach. Engagement is happening with the public through the wider NZTD programme communications work with a Māori

² For a large number of travellers, these health requirements are rapidly changing. For example, New Zealand citizens no longer need to prove that they are vaccinated against COVID-19.

engagement strategy developed and ready for resourcing and implementation. The public will also have the opportunity to comment as part of the select committee process.

Due to the nature of this RIS, there is limited raw data generated on legislative safeguards that is useful for quantified analysis.

Responsible Manager(s) (completed by relevant manager)

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Policy and Strategy

New Zealand Customs Service

Date: 23/05/22

Quality Assurance (completed by QA panel)

Reviewing Agency: New Zealand Customs Service and Ministry for Primary Industries

Panel Assessment & Comment:

The New Zealand Customs Service and Ministry for Primary Industries joint RIA Panel (the Panel) has reviewed the two Regulatory Impact Statements (RIS) prepared by Customs, the 'New Zealand Traveller Declaration Tranche 3 Enforcement' and the 'New Zealand Traveller Declaration Tranche 3 Information Sharing and Administration Settings'.

The Panel consider that the information and analysis summarised in the RISs meets the quality assurance criteria. The Panel did note that no public consultation on the proposals has occurred as there were major constraints in timing during the advice and drafting process. Engagement is happening with the public through the wider New Zealand Traveller Declaration programme communications work (including with Māori). The public will have an opportunity to comment on any amendments to the Customs and Excise Act 2018 to support the implementation of the New Zealand Traveller Declaration during Select Committee consideration.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Previous decisions

1. In September 2021 Cabinet agreed to fund the development of the NZTD (previously referred to as the traveller health declaration system) to operationalise the medium risk pathway³ into New Zealand [CAB-MIN-0305 refers].
2. The policy and administrative settings for Tranche 1 of the NZTD were agreed to by Cabinet in November 2021 [CBC-21-MIN-0178 refers].
3. Funding and development of the remaining functionality and enhancements for Tranche 2 and Tranche 3 of the NZTD were agreed in March 2022 [SWC-22-MIN-0050 refers].
4. The policy, legal, and privacy decisions now need to be sought from Cabinet to implement Tranche 2 and Tranche 3 of the NZTD (the enduring framework post-COVID-19 legislation).
5. The NZTD, developed in Tranche 1, has been a requirement for air passengers since 25 March 2022 to submit traveller health information and receive a traveller pass.⁴ The current legislative basis for the NZTD is via the COVID-19 Public Health Response (Air Border) Order 2021 (Air Border Order).
6. The COVID-19 Public Health Response Act 2020 which empowers the Air Border Order will be automatically repealed by 3 May 2023 if it is not extended by Parliament. The health rationale for COVID-19 measures is changing because the public health risk from the border is now low relative to the domestic risk from COVID-19. This means that the Air Border Order will likely be repealed in the future.

Development of the status quo

7. The NZTD contributes to two Crown policy goals:
 - a. keeping New Zealanders safe from COVID-19
 - b. accelerating our economic recovery.
8. The NZTD will have ongoing value and use beyond COVID-19 as a digital arrival declaration system at our borders, due to be completed by June 2023. The platform will in the future provide a single place for all travellers to make their complete travel declaration, with the intention being to remove the need for a physical arrival card. It will provide utility beyond the COVID-19 response and be sufficiently flexible to enable additional health-related questions or requirements to be added in the future for managing any health threats as or when required (or other border risks).

³ The medium risk pathway was one of three potential pathways outlined in the Reconnecting New Zealanders work. The medium risk pathway was proposed as a way for New Zealand residents and citizens to enter New Zealand without having to enter through a Managed Isolation and Quarantine facility.

⁴ A traveller pass is issued by the NZTD system for Tranche 1 when the health declaration requirements have been met.

9. The NZTD helps to protect the border and keep New Zealanders safe from border and health risks by providing a robust and adaptable approach to risk assessment. It does this by providing the capability to quickly change the risk assessment processes in response to changing requirements.
10. If there is a future pandemic or COVID-19 resurgence, the NZTD will mean that reliance on emergency legislation will be reduced, which will increase transparency and accountability in the future.
11. The current do-not-fly⁵ provisions are a health requirement and are only used when necessary. These are not expected to be in place for Tranche 3 of the NZTD as it is expected that the Air Border Order, which places the expectation on airlines to not board non-compliant travellers, will be repealed. This will make it easier for travellers to enter New Zealand. If there is a rationale for using a do-not-fly provision in the future, there will have to be new analysis confirming that it is a justified limitation on the New Zealand Bill of Rights Act 1990 (NZBORA).
12. Because do-not-fly provisions are hard to rationalise outside of the pandemic context, and because many of the questions on the arrival card can only be fully answered in New Zealand, the NZTD will be moving from a requirement before flying, to a requirement before crossing the immigration line at the airport.
13. In line with previous decisions on Tranche 1 of the NZTD, it is proposed that there will be changes to the C&E Act to:
 - a. establish the purposes for Tranche 3 the NZTD system, and provide for Customs to be accountable for its management. This ensures that the correct controls are in place to regulate the Crown's handling and usage of individual and commercial data
 - b. provide clarity and transparency for the use of the NZTD by agencies with a lawful purpose by making the accountability settings clear for the public to access and understand in legislation
 - c. make amendments to existing legislative instruments, such as regulations and rules to provide for matters such as; completing an NZTD on behalf of someone, applying exemptions, the timing of the declaration, when travellers are required to make a declaration, and the ability to provide the NZTD in multiple languages
 - d. provide an offence for failing to complete the NZTD (this is completed in a separate RIS).
14. This RIS is focused on assessing the appropriate transparency, accountability and checks and balances for Tranche 3 of the NZTD.
15. The other settings for the NZTD such as exemptions and other changes to regulations and rules are a continuation of the existing NZTD settings from Tranche 1. This is required because the NZTD is currently enabled through the Air

⁵ Clause 54 of the Air Border Order requires airlines to not cause an aircraft to arrive in New Zealand unless the carrier has taken reasonable steps to ensure that all travellers on board comply with any COVID-19 provisions.

Border Order. This will be repealed before or at the same time as the COVID-19 Public Health Response Act 2020 (COVID-19 Response Act).

16. A separate RIS is being prepared for the provision of a new offence in the C&E Act.
17. Health and border agencies may need to make changes to their own legislation for the NZTD to operate as a cross agency platform, however, this is being done via separate agency legislation bids as health and border agencies are at separate stages in the development of the policy work.
18. Once the C&E Act has been amended, the existing legislation is flexible enough to ensure the NZTD works across all agencies. This is because many of the required changes will not require primary legislation changes s 9(2)(h) OIA

Implications of requiring a digital declaration from all travellers as part of the NZTD

19. As the administrator for the system, Customs will only be able to share information from the system with agencies that have a lawful purpose for accessing that information.
20. The NZTD will enable several other declarations such as the border cash report to be made digitally which will increase the ease of crossing the border for some travellers as these requirements can be completed offshore.
21. The NZTD does not change current regulatory requirements on travellers entering New Zealand.

Impacted groups

22. Due to the application of controls on the Crown to regulate the Crown's collection, use, and disclosure of information, the Crown is the primary impacted group.
23. These controls to regulate the Crown will mitigate the potential privacy risks and ensure that travellers are aware that the information from them is required to mitigate border risks and complete border processing at the airport.
24. Because of the potential privacy risks health and border agencies need to be able to confirm to travellers that their information is being protected by applying the appropriate controls to regulate the Crown's collection, use, and disclosure of personal and commercial information.
25. Because the NZTD and the arrival card declarations are already in place, and apart from the digitisation of some declarations, there are no changes from the current status quo for travellers because they are already required to make a digital declaration under Tranche 1 of the NZTD and the declarations on the arrival card are not new declarations for travellers.
26. Nearly all travellers will be affected by the requirement to make a digital declaration. There are potential privacy risks because there is a large amount of information that will now be provided digitally.
27. Some groups of travellers who have low levels of digital literacy or access may be affected by the digitisation of the declaration process.

28. Allowing for NZTD to be provided on arrival in New Zealand, in addition to pre-departure, will help ensure that travellers with low levels of digital literacy or access can be supported at the border with their declarations if needed.
29. The Customs' website has guidance to help travellers, and those supporting travellers, to complete the NZTD prior to travel if they would like to do this to ensure that they do not encounter complications completing the NZTD once they arrive in New Zealand. There are also offshore airport liaison officers to provide support at key airports as New Zealand opens the borders and travellers resume travelling. There is more work required to address how maritime arrivals will be supported to complete the NZTD.

What is the policy problem or opportunity?

30. The policy problem for this RIS is establishing the appropriate controls to regulate the Crown's ability to collect, use, and disclose personal and commercial information for the operation of Tranche 3 of the NZTD.
31. The NZTD is a digital system, already agreed by Cabinet, which enables health and border agencies to collect a large amount of information directly from travellers. This information is important for assessing risk and enabling compliant travellers to quickly cross the border.
32. The importance of this has been highlighted by COVID-19 pandemic. The response to the pandemic increased the amount of information required from travellers before they were able to enter New Zealand.
33. Given the volume of information and the sensitivity of some of the information being collected electronically, there should be appropriate checks and balances on the Crown's ability to collect, use, and disclose this information. This is required because if travellers do not trust or understand the reasons for the disclosure, then they may not be as willing to provide the accurate and timely information that Customs and other health and border agencies need to perform their functions.

What objectives are sought in relation to the policy problem?

34. The public policy objective for this RIS is that the NZTD is implemented in a transparent and accountable way with appropriate checks and balances in place on the Crown's management of personal and commercial information.
35. Delivering on this objective should provide a system that:
 - a. is transparent
 - b. is efficient
 - c. has a clear line accountability
 - d. is accessible
 - e. reduces legal risks.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

36. There are five criteria in this RIS:

- a. **Transparency** (the legislative mechanism is transparent and understandable to the public)
- b. **Efficiency** (the approach increases efficiency and is compatible with existing border processes)
- c. **Accountability** (there is a clear line of accountability for all NZTD components)
- d. **Accessibility** (the new digital environment is accessible and does not prejudice travellers with digital literacy and accessibility issues)
- e. **Legal risk** (legal risk is managed by providing a clear provision for the ability to collect, use, and disclose information).

What scope will options be considered within?

37. The scope of this RIS is limited to operationalising the NZTD through the C&E Act because agencies have assessed that they do not need to make primary legislation changes to their own legislation to operationalise Tranche 3 of the NZTD.

38. An inter-agency policy working group has been established to work on the following policy areas:

- a. implementing a declaration platform in primary legislation
- b. ensuring system accessibility for travellers and government agencies
- c. designing a proportionate enforcement regime
- d. ensuring information privacy and transparency principles are met.

39. The following areas are not considered to be in scope:

- a. redesigning the arrival card declarations and arrival processes
- b. addressing the identity binding issue of vaccine credentials
- c. establishing an offshore declaration requirement (outside of any health requirements to this end)
- d. enabling the use of biometrics.

What options are being considered?

Option 1 – use of privacy legislation and information sharing arrangements (status quo)

40. Under this option, Tranche 3 of the NZTD would rely on the Privacy Act 2020 and subpart 5 of part 5 of the C&E Act as well as other arrangements such as

Memorandums of Understanding (MOUs)⁶, or Authorised Information Sharing Agreements (AISAs)⁷ to ensure that the information from the NZTD is collected, used, and disclosed in a way that is transparent, efficient, and accountable.

Option 2 – use of existing C&E Act provisions (preferred)

41. The C&E Act has existing provisions that provides for access and disclosure agreements that could apply to the NZTD.
42. Agencies will be able to use the information collected by Customs only if they are acting lawfully. The format of the information collected should be dealt with in rules.
43. Under this option, the NZTD would make use of the information disclosure and access provisions (including ministerial approval of interagency agreements after consultation with the Privacy Commissioner) already in the C&E Act to disclose Customs information.

Option 3 – create a bespoke regime for the NZTD

44. A new bespoke regime could be created for the NZTD either in the C&E Act or in a new Act.
45. This would set out in a single place the controls that would be placed on the Crown to ensure the transparent, efficient, and accountable collection, use, and disclosure of personal and commercial information from the NZTD.

Proactively Released

⁶ An example of an MOU in this space is the current MOU to share information from Tranche 1 of the NZTD with key agencies.

⁷ An example of an AISA in this space is the AISA with the Ministry of Social Development to share arrivals and departures information to assess eligibility for benefits and payments.

How do the options compare to the status quo/counterfactual?

Key for qualitative judgements:

- ++** much better than doing nothing/the status quo/counterfactual
- +** better than doing nothing/the status quo/counterfactual
- 0** about the same as doing nothing/the status quo/counterfactual

	Option 1 – use of privacy legislation and information sharing arrangements (status quo)	Option 2 – use of existing C&E Act provisions (preferred)	Option 3 – create a bespoke regime for the NZTD
Transparency (the legislative mechanism is transparent and understandable to the public)	0 This approach will not enable additional safeguards when moving to the new status quo	++ This approach would enable privacy and other safeguards to be implemented	++ This approach would enable privacy and other safeguards to be implemented
Efficiency (the approach increases efficiency and is compatible with existing border processes)	0 This option relies on existing processes and legislation so will be efficient and compatible	0 This approach follows the current precedent and processes set out by the C&E Act so will be efficient and compatible	0 This approach would mean new and additional legislative provisions that do not utilise the existing provisions in the C&E Act
Accountability (there is a clear line of accountability for all NZTD components)	0 The current system is complex and there is no single point of accountability	++ This approach establishes that Customs is accountable for the NZTD as the administrator of the system	++ This approach establishes that Customs is accountable for the NZTD as the administrator of the system
Accessibility (the new digital environment is accessible and does not prejudice travellers with digital literacy and accessibility issues)	0 The proposed accessibility measures will be available	0 The proposed accessibility measures will be available	0 The proposed accessibility measures will be available
Legal risk (does not create or retain potential legal risks to Customs and other health and border agencies)	0 Use of information sharing provisions such as multiple MOUs and AISAs could make the information sharing provisions complex which could increase legal risks when compared to using the bespoke provisions in the C&E Act	++ This approach will build on and utilise the existing information sharing provisions in the C&E Act that have been already proven in the traveller and trade space as there have been no privacy breaches, complaints, or legal challenges	+ The NZTD is not implementing new requirements that would require new bespoke legislation so this option may increase legal risks by unnecessarily introducing new and unfamiliar legislative provisions
Overall assessment	0	++	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

46. Officials' advice is that option 2 is the best option to address the policy problem because it enables the NZTD to be implemented with appropriate checks, balances, safeguards, and transparency.
47. This is required because the NZTD is a centralised system that will collect and analyse a large amount of information for several agencies.
48. Option 1 does not increase the transparency of the controls on the Crown because the use of information sharing instruments under the Privacy Act may not be appropriate where information sharing covers a wide range of functions and purposes such as between Customs and MPI where multiple or complex agreements may be required. This approach is more complex than using the bespoke provisions in the C&E Act for option 2.
49. Option 3 would mean adding new bespoke arrangements to the C&E Act or creating a new Act that would potentially override the existing information disclosure provisions in the C&E Act. Introducing new provisions or a new Act could potentially increase legal risks because it would be applying an unfamiliar approach to information collection, use, and disclosure. This is also unnecessary because of the provisions already in the C&E Act which have been proven to address legal risks arising from the processing of goods and travellers.
50. Both options 2 and 3 will achieve the objective of establishing the appropriate controls to regulate the Crown's ability to collect, use, and disclose individual and commercial information. Because both options will achieve the objective, this means that the choice between option 2 and option 3 is potentially a marginal choice. However, Option 3 is not required because the NZTD is not applying such a different approach to border processing that a bespoke system is required to ensure appropriate controls on the Crown.
51. Agencies will not automatically get access to all NZTD information collected by other agencies. Each statute, such as the Biosecurity Act 1993, sets out information sharing requirements for that area. In addition, the Privacy Act 2020 requirements may apply, such as Schedule 3 of the Privacy Act 2020 which provides for sharing of identity information (including between border agencies). Customs will require information sharing arrangements with MoH and MBIE to access any NZTD information collected by these agencies for Customs' purposes.
52. Option 2 is the preferred option because it best delivers on the proposed criteria and provides transparent, efficient, and accountable enabling legislation for the NZTD. The existing provisions in the C&E Act have been proven in the trade and traveller spaces.
53. The proposed measures to increase accessibility can be implemented under all options. The measures to reduce potential barriers are:
 - a. providing the ability to have someone complete their NZTD on their behalf such as whānau/family or a travel agent
 - b. not requiring the NZTD to be completed prior to the immigration line
 - c. providing NZTD in a range of languages to support non English speakers

- d. airport liaison officers in major international airports to assist people making a declaration
- e. allowing paper versions to be used in limited circumstances.

What are the marginal costs and benefits of the option?

Proposal	Preferred option	Summary of costs and benefits
Establishing the appropriate controls to regulate the Crown's ability to collect, use, and disclose personal and commercial information for the operation of Tranche 3 of the NZTD	Use of existing C&E Act provisions	<p>Costs</p> <p>There will be minor costs for making the legislative amendments. These will be met out of baselines</p> <p>There will be one off costs for training and the provision of guidance to Customs, MPI, and other officers at the border</p> <p>Benefits</p> <p>Enabling a new information processing platform will allow the digitisation of the arrival card declarations and provide new tools to assist border operations. This will help to mitigate health and border risks to New Zealand, minimising the social, economic, cultural, and public health impacts of border risks, including future pandemics</p> <p>Travellers will have more options to control and reduce their interactions at the border</p>

Section 4: Delivering an option

How will the new arrangements be implemented?

- 54. Implementation of the preferred option will make use of and build on health and border agencies' existing systems.
- 55. Customs is already familiar with the handling of information and collecting information on behalf of other agencies.
- 56. Communications of any changes to the arrival process will be undertaken as part of the wider communications project for the NZTD.
- 57. It is expected that Tranche 3 of the NZTD will go live in June 2023 with piloting beforehand. There are likely to be impacts for all travellers.

How will the new arrangements be monitored, evaluated, and reviewed?

- 58. Following implementation, the operation of the NZTD information and administration settings will be monitored and reviewed as part of the wider NZTD review process.
- 59. There will be an ongoing programme of improvement and development for the NZTD which will require reviewing the amended legislation for the NZTD.

60. Other statutes could be updated in the future to provide for NZTD information access and sharing.
61. This could also broaden the pool of information that different agencies have access to if they establish a lawful reason to access more information from the NZTD. This may be needed to develop risk management models to help detect border risk and to enable comprehensive improvements to the traveller journey through airports.
62. Customs and other agencies will monitor complaints by travellers to ensure that the controls on the collection, use, and disclosure of information from travellers are appropriate and working as intended.

Section 5: Consultation

What level of consultation has there been?

63. Customs has consulted with agencies who are likely to be affected by the operationalising of Tranche 3 of the NZTD. No public consultation on the proposed amendments has occurred as there were major constraints in timing during the advice and drafting process. Consultation on the approach was undertaken with the following government agencies:
 - a. Department of the Prime Minister and Cabinet
 - b. Ministry of Health
 - c. Ministry of Business, Innovation and Employment (Immigration New Zealand)
 - d. Department of Internal Affairs
 - e. Ministry of Justice
 - f. Ministry for Primary Industries
 - g. Ministry of Foreign Affairs and Trade.
64. The public will have an opportunity to comment on the implementation of the NZTD during Select Committee consideration of the Amendment Bill.
65. A Māori partnership engagement plan has been developed and work is underway to resource it for appropriate implementation.