

# BRIEFING

## Providing for information sharing across COVID-19 agencies

<b>Date:</b>	26 March 2021	<b>Priority:</b>	High
<b>Security classification:</b>		<b>Tracking number:</b>	2021-2718

Action sought		
	Action sought	Deadline
Hon Chris Hipkins <b>Minister for COVID-19 Response</b>	<p><b>Note</b> officials consider no legislative change is required to support information sharing for COVID-19 border control and managed isolation functions</p> <p><b>Forward and discuss</b> the briefing with the Minister of Customs</p> <p><b>Forward</b> the briefing to the Minister of Immigration and the Minister of Justice for their information.</p>	31 March 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Kara Isaac	General Manager, MIQ Policy	Privacy of natural persons	
Privacy of natural persons	Acting Manager, MIQ Policy		√
	Principal Advisor		

The following departments/agencies have been consulted
Ministry of Health, Office of the Privacy Commissioner, Ministry of Justice, Crown Law Office, Department of Internal Affairs (Government Chief Privacy Officer).

Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments



# BRIEFING

## Providing for information sharing across COVID-19 agencies

<b>Date:</b>	26 March 2021	<b>Priority:</b>	High
<b>Security classification:</b>		<b>Tracking number:</b>	2021-2718

### Purpose

---

This briefing provides further advice on whether legislation is needed to address issues being experienced by MBIE and the New Zealand Customs Service (Customs) in sharing information for the purposes of protecting New Zealand from COVID-19 incursions.

### Executive summary

---

Significant personal information is required to administer the border control and managed isolation functions required to keep COVID-19 out of New Zealand communities.

The 10 March 2021 Ministry of Health Report on proposed content for a COVID-19 Public Health Response Act Amendment Bill included a proposal from MBIE Managed Isolation and Quarantine (MBIE MIQ), MBIE Immigration New Zealand (Immigration NZ) and the New Zealand Customs Service (Customs) for a legislative provision to address issues the agencies are experiencing with sharing personal information to manage the border control pillar of the COVID-19 Elimination Strategy.

The three agencies considered at that time that the legal basis for sharing personal information was fragmented, complex and legally uncertain, and that a well-designed bespoke provision could help address this.

Since putting that proposal forward, we have worked closely with the Crown Law Office, the Privacy Commissioner and the Ministry of Justice to clarify the legal underpinnings for sharing information for border control and MIQ purposes.

Agencies are all now of the view that administrative mechanisms provided through the Privacy Act and the Customs Act (s 316 information sharing agreements) are sufficient but that if Ministers wish to do so a narrowly focussed provision to clarify the authority to share information of assessing, invoicing and recovering MIQ fees could be drafted for insertion in the proposed COVID-19 Public Health Response Act Amendment Bill.

## Recommended action

---

The Ministry of Business, Innovation and Employment recommends that you:

1. **Note** that:
  - a. officials have worked closely with the Crown Law Office, the Privacy Commissioner, the Government Chief Privacy Officer and the Ministry of Justice to clarify the legal underpinnings for sharing information for border control and MIQ purposes
  - b. as a result, officials are of the view that the information sharing authorities provided by the Privacy Act and Section 316 of the Customs and Excise Act are sufficient to support the administration of our border control and MIQ functions
  - c. MBIE MIQ and Customs will continue to work with the Ministry of Justice, the Office of the Privacy Commissioner and the Government Chief Privacy Officer to ensure these tools are being used efficiently and to their full potential
  - d. should Ministers wish to further clarify the authority to share information for the purposes of assessing liability for MIQ charges and recovering those charges, it would be possible to craft a narrowly-specified provision for inclusion in the Covid-19 Public Health Response Amendment Bill to this end

**Noted**

2. **Agree** that the information sharing mechanisms provided by the Privacy Act and Section 316 of the Customs and Excise Act are sufficient to support the information sharing needs of border control and MIQ functions; **and**

**Either**

- a. **agree** that no further legislative amendments are required at this time (recommended option)

**Agree / Disagree**

**Or**

- b. **direct** officials to draft a narrowly focussed provision for inclusion in the Covid-19 Public Health Response Act to make it very clear that agencies can share information for the purposes of assessing liability for and recovering MIQ charges

**Agree / Disagree**

3. **Note** that if you wish to include a narrow provision related to MIQ charging, this will be included in the Cabinet paper the Ministry of Health will provide you on Wednesday 31 March 2020

**Noted**

4. **Note** that where appropriate, agencies will update privacy statements across a range of platforms to improve legal authority and enhance transparency in relation to the collection, use, and disclosure of information.

**Noted**

5. **Note** that regardless of option (a) or (b) a Cabinet paper prepared by the Ministry of Health recommends a legislative amendment that will enable MBIE to require that people in MIQ provide accurate information to support post-departure administration, including for invoicing, contact tracing and post-departure wellbeing checks

**Noted**

6. **Agree** to forward and discuss this paper and recommendations with the Minister for Customs

**Agree / Disagree**

7. **Agree** to forward this paper to the Minister of Immigration and the Minister of Justice for their information.

**Agree / Disagree**



Kara Isaac  
General Manager, MIQ Policy  
MBIE

26.3.21

Hon Chris Hipkins  
Minister for COVID-19 Response

..... / ..... / .....

## Previous advice

---

1. On 10 March 2021, a Ministry of Health Report on the proposed content of a COVID-19 Public Health Response Amendment Bill 2020 (Health Report number 20210563) included a proposal from MBIE Managed Isolation and Quarantine (MBIE MIQ), Immigration New Zealand and Customs for a legislative provision to support the agencies to share the personal information they need to administer their functions in controlling the border and running the managed isolation and quarantine system. You requested further advice on the issues and what such a proposal might look like.

## Protecting New Zealand's border from COVID-19 incursions is a shared responsibility

---

2. Keeping COVID-19 out of New Zealand communities is a shared responsibility across multiple agencies, from the 'core' border agencies, the New Zealand Customs Service (Customs), Immigration New Zealand (INZ) and MBIE MIQ (which includes the NZ Defence Force), to New Zealand Police, the Ministry of Health and District Health Boards, and other organisations such as Maritime NZ and the Aviation Security Service (AVSEC). Support from Oranga Tamariki, iwi, Māori and Pacific organisations including Whānau Ora, is also essential to support the wellbeing of people in managed isolation and quarantine.
3. Information is key to ensuring the border system operates as a safe and efficient system rather than a series of discrete functions. Agencies need personal information for a range of different purposes, including:
  - a. Long range information for **planning and forecasting purposes**, for example on the numbers and categories of people intending to enter New Zealand
  - b. Information on who is arriving in New Zealand – including identity, immigration status, traveller status and movement data - to help **arrange allocation and entry into MIQ**
  - c. Information to assist with **crew changes and shore leave at the maritime border**
  - d. **Information on people within MIQ facilities to ensure their safety and wellbeing**, including residents, workers, and community cases, to ensure they receive their daily health checks and the required COVID-19 tests
  - e. Information on the immigration status (citizenship, residency or visa type) of travellers and past, and intended, movement data to **determine fees liability**. This can include international travel movements after leaving MIQ where that might change fees liability (for example where a NZ citizen intending to stay for 90 days leaves earlier).
4. The consequences of poor quality information can include:
  - a. longer processing times for travellers entering New Zealand and MIQ facilities, increasing risk of exposure to the coronavirus for travellers and front-line workers
  - b. inefficient use of limited MIQ resources (for example duplicate or unused bookings), heavy use of manual reconciliation processes, and difficulty establishing liability for and collecting MIQ charges (currently it is estimated one in three travellers cannot be assessed for charging liability due to poor quality information)
  - c. barriers to implementing government policies, including those intended to mitigate the economic and social impacts of COVID-19 (such as facilitating border exceptions or targets for international students, critical workers or sports or other teams)
  - d. implications for New Zealanders' right to return home.

## **MBIE and Customs' legal authority for collecting, using and sharing personal information**

---

5. The starting point for sharing personal information COVID-19 response purposes is the Privacy Act 2020.

### **MBIE collection and use for MIQ purposes**

6. MBIE MIQ specifies the purposes of collection in the Managed Isolation Allocation System ("MIAS") privacy statement. These purposes are outlined in Annex One. MBIE MIQ may use and/or disclose the information collected for these purposes under various exceptions in the Privacy Act. These purposes can be expanded as and when needed.

#### *Authorisation*

7. MBIE MIQ also relies on the authorisation of an individual from whom information is collected for further uses and disclosures. We consider authorisation is the preferable authority to enable information sharing because:
  - it keeps the individual at the centre of the provision of the public service;
  - it contributes to transparency regarding use and disclosure of their information; and
  - it accords with comments from the Privacy Commissioner regarding authorisation being best practice.
8. Not all MBIE MIQ processes currently obtain authorisation from an individual. We are informed that it is not always considered practical to obtain authorisation (for example because to do so would increase the time taken to process incoming travellers/persons at an MIQ facility, posing risks to individuals and to public health).

#### *Exceptions to Information Privacy Principles (IPPs)*

9. Where purpose and authorisation cannot be used, agencies involved in the COVID-19 response heavily rely on IPP 11(f)(i) as the main authority for disclosure being used. This is the serious threat to public health and safety exception. This requires (before the exchange occurs) an agency to show that they have considered and exercised judgement as to whether the "serious threat to public health" test is met.

#### *Memoranda of Understanding*

10. MBIE MIQ currently has two signed Memoranda of Understanding (MOU) with Customs and Immigration NZ respectively. There is a further MOU in draft with the Ministry of Health. These MOUs set out the authority for using and sharing information, informed by/based on a mixture of the authorities above. All MOUs involve bulk disclosures of personal information on a regular basis under an IPP 11 exception.

### **Customs' disclosure of information to support the Covid-19 response**

11. Customs collects personal and flight information under the Customs and Excise Act 2018<sup>[1]</sup> which can be used for the purpose it was obtained or provided, or for any lawful purpose that relates or is connected to a Customs' function.<sup>[2]</sup> This information is largely received from third parties such as airlines, based on international standards. Industry practice for airlines is to have privacy statements on their websites which provide transparency that information is disclosed to relevant government authorities for customs and immigration purposes.

---

<sup>[1]</sup> Sections 12, 47 to 49, and 53 of the Customs and Excise Act 2020.

<sup>[2]</sup> Section 301 of the Customs and Excise Act 2020.

12. Customs discloses personal information and flight information of arriving passengers, transit passengers and crew to other agencies involved in the Government response to the COVID-19 pandemic. The information disclosure often involves an on-going, regular transfer of large datasets. Customs provides this information relying on IPP11 exemptions and agreements entered into under section 316 of the Customs and Excise Act 2018

#### *Section 316 agreement under the Customs and Excise Act 2018*

13. Customs is able to share information with other agencies under an agreement made in accordance with section 316 of the Customs and Excise Act (2018). These agreements are made between the Minister of Customs and the Minister responsible for the receiving agency, and require consultation with the Office of the Privacy Commissioner. Currently Customs has one section 316 agreement with Police and the Ministry of Health which was put in place to support the response to Covid-19.
14. At times when the COVID-19 response was particularly dynamic, and there were constant changes to the datasets required, the s316 option was not agile enough to respond to frequently changing information needs as the situation developed.
15. However, given that the environment is somewhat more stable now, the concerns around the relative lack of flexibility of a s316 agreement have lessened.

#### *Exceptions to the privacy principles*

16. Like MBIE, Customs also relies on IPP11(1)(f)(i) - the serious threat to public health and safety exception - as authority for disclosure of information and has entered into MOUs etc on this basis.

#### *MOUs*

17. Where Customs relies on the IPP 11 exceptions as authority to disclose information this can be recorded in an MOU. As mentioned above, Customs has signed an MOU with MBIE.

### **Guidance on authorities used**

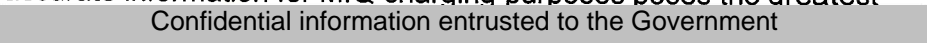
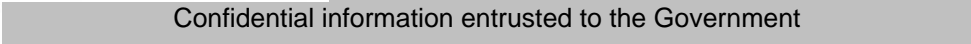
18. The Privacy Commissioner has provided guidance that as the COVID-19 epidemic is considered a severe threat to public health, agencies can rely on the serious threat to public health exception to IPP 11 in the Privacy Act 2020 as authority for sharing identified information.

19.  Legal professional privilege

20. Whilst advice from the Privacy Commissioner, Crown Law and the Government Chief Privacy Officer provides a level of assurance, officials are working to ensure that the basis for information sharing for the issues discussed below are as robust as possible.

### **Implementing the MIQ fees regulations**

---

21. Accessing complete and accurate information for MIQ charging purposes poses the greatest challenge for MBIE MIQ.  Confidential information entrusted to the Government  
 Confidential information entrusted to the Government
22. Under the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 New Zealanders are liable for charges if they left New Zealand after 11 August 2020 or return to NZ for a period of less than 90 days (180 days from 1 June 2021).

23. When a person requests an allocation through MIAS, MBIE MIQ collect information regarding their intention to stay for 90 days or longer, and their visa status. Immigration NZ hold arrival and departure dates for relevant travellers, including temporary entry class visa holders and New Zealand citizens, which MIQ needs to access to accurately recover costs, including where someone may have been dishonest on their form, or their plans had changed.
24. The MIAS privacy statement sets out that one of the purposes for the collection of personal information is for “determining people’s liability to pay charges for managed isolation and invoicing people for those charges”. By accepting the privacy statement and proceeding with their application, individuals provide authorisation not only for their information to be shared with Immigration NZ to validate their details for charging purposes (as well as other purposes), but also for Immigration NZ to disclose information they hold on the individual to MBIE MIQ. For example, movement information that MBIE MIQ use to determine whether or not a person has left within the 90 day period and is therefore liable for charges.
25. Where a person does not interact with MIAS or where Immigration NZ does not have a reasonable belief that a person has authorised the use of Immigration NZ information in this way, INZ relies on another exception in the Privacy Act which is the protection of public revenue exception (IPP11(e)(iii)). If the test is met, this enables Immigration NZ to disclose information to MBIE MIQ for the purpose of assessing travellers’ liability for MIQ charges where MBIE MIQ has not been able to obtain full and accurate information from the individual. The use of this exception has not been tested for charging purposes in the Human Rights Review Tribunal or the Courts.
26. MBIE officials were initially of the view that a specific legislative provision was needed to underpin information sharing between MIQ and Immigration NZ for this purpose. Further analysis suggests that the existing arrangements in place do provide the legal basis required to support information sharing for this purpose and no legislative change is required.
27. If further strengthening is felt necessary over time, this can best be addressed by strengthening the privacy statement and possibly exploring the development of an Approved Information Sharing Agreement (AISA) under the Privacy Act 2020.
28. While we are not recommending it at this stage, legislation remains an option. If you wished to progress this option, we would recommend a tightly specified provision that made it explicit that agencies are able to share information for the purposes of implementing the fees regulations, including assessing liability for and collecting MIQ charges.
29. MBIE MIQ are providing separate advice on including in a provision in the COVID-19 Amendment Bill which would mandate individuals to provide correct contact details and intended destination details, to facilitate invoicing and collection of charges. This would make it an offence to not provide, or provide false or misleading information, which would help resolve data quality concerns. One possibility might be to extend such a provision to cover information sharing as well.

## **Health Information**

---

30. Information sharing also occurs between MBIE MIQ and the Ministry of Health and District Health Boards. A number of arrangements are in place to support that exchange of information under existing legislation, which is considered sufficiently sound at this time. Officials are in the process of developing a Memorandum of Understanding to confirm the processes for information sharing between the agencies.



## Customs recommended way forward

---

31. Customs officials have considered options for legislative change, including possible changes to information collection and sharing purposes.
32. The guidance issued by the Privacy Commissioner on the use of the public health exception in relation to Covid-19 has alleviated some of the concerns Custom had about relying on that exception for the time being. In addition, given that the Covid-19 environment is somewhat more stable now, the concerns around the relative lack of flexibility of a section 316 agreement have lessened.
33. In these circumstances officials now consider existing frameworks are sufficient and do not now recommend any legislative amendment.

## Discussion

---

34. A number of challenges still remain for the border control and managed isolation agencies. At this stage, we do not consider legislation is required. Rather we will continue to work to improve and extend the frameworks established, so they cover existing needs and can be expanded if future needs require that in a timely way.

## Consultation

---

35. MBIE has worked closely with Customs, the Crown Law Office, the Ministry of Justice, the Privacy Commissioner and the Government Chief Privacy Officer in developing this advice. Agencies agree that legislative change is not required at this point.

*Crown Law advice (legally privileged)*

36.  Legal professional privilege

## **Annex One: MIAS Privacy Statement (March 2021)**

---

*Collection of personal information: Information will be collected for the following purposes:*

- enabling people to request one or more places in a managed isolation facility;
- verifying whether people intending to travel to New Zealand have a reserved place in a managed isolation facility, where required, prior to departure for New Zealand;
- managing the flow of people arriving in New Zealand into and out of managed isolation and quarantine facilities, including: allocating persons to appropriate facilities and rooms within facilities including considering any special requests or requirements; and arranging for transport of people to and from facilities;
- determining people's liability to pay charges for managed isolation and invoicing people for those charges;
- managing Managed Isolation and Quarantine Facilities;
- enabling the Ministry of Health to produce or retrieve people's National Health Index Number;
- validating information provided by people with Immigration New Zealand or the Department of Internal Affairs; and
- administering and improving the Managed Isolation and Quarantine function, including contacting people for research purposes.