

Amendment to the Cooperative Arrangement
Between
Department of Home Affairs
and
New Zealand Customs Service

The Department of Home Affairs (Home Affairs) and the New Zealand Customs Service (NZCS), hereinafter referred to as "the Participants" note:

- A. NZCS and the Australian Customs Service entered into a Cooperative Arrangement on 22 November 2006 (the Cooperative Arrangement) and a subsequent Second Protocol on 3 December 2009.
- B. The Participants share a common interest in contributing to their government's goals of trans-Tasman border security and passenger facilitation.
- C. The Participants wish to further facilitate trans-Tasman travel and recognise that through forging a closer relationship in relation to the facilitation of trans-Tasman travel, each Participant will be better positioned to achieve organisational objectives, and have reached the following understandings:

Amendment to Cooperative Arrangement

1. Amendments

1.1 The Participants accept that the following changes will be made to the Cooperative Arrangement:

- (a) All references to "Australian Customs Service" are deleted and replaced with "Department of Home Affairs".
- (b) The following is inserted in the "Definitions" in the appropriate alphabetical order:

"biometric information" in relation to a person, means information that comprises:

- (a) one or more of the following kinds of information:
 - (i) a photograph of all or any part of the person's head and shoulders
 - (ii) impressions of the person's fingerprints
 - (iii) a scan of the person's irises.
- (b) An electronic record of the information that is capable of being used for biometric matching.

The **Department of Home Affairs** includes the **Australian Border Force**.

- (c) The following is inserted in clause 1 after sub-clause (a):
 - (aa) facilitate the arrival and departure of people travelling between New Zealand and Australia:
- (d) Clause 5 is deleted and replaced with the following:

5. Information should be promptly exchanged between the Participants and can be exchanged either electronically or physically.
- (e) The following clauses are inserted after clause 5:
- 5A. The Participants will review this Cooperative Arrangement including reviewing the information shared under it, with a view to making any changes necessary to enhance the effectiveness of the information disclosure process in light of the intended use of the information.
 - 5B. The participants will complete a review of this Cooperative Arrangement within 12 months of the date of signature of the Amendment that inserted this clause 5B. The participants will complete subsequent reviews from time to time following the completion of the initial review.
 - 5C. The Participants will co-operate with each other in any review and will use their reasonable endeavours to make available the necessary resources, facilities and information to facilitate each joint review.
 - 5D. Each customs administration may initiate a review at any time on providing 30 days' notice in writing. All notices of review will be in writing and sent to the agency contacts detailed in Annex 1 of this Cooperative Arrangement.

- (f) The following clauses are inserted after clause 10:

Information Relating to Passenger Facilitation and Risk Assessment

- 10A. Each customs administration intend to, on request or on its own initiative, provide the other customs administration with information relating to persons travelling between Australia and New Zealand for the purposes of processing those persons at the border, border security, and the prevention, detection, investigation, prosecution, or punishment of customs offences or other offences punishable by imprisonment.
- 10B. Information disclosed under clause 10A may include (but is not limited to) arrival and departure information, as that term is defined in section 304 of the *Customs and Excise Act 2018 (New Zealand)*.
- 10C. Each customs administration accepts that information provided under clause 10A will not be used or further disclosed by the receiving customs administration except:

- (a) in accordance with this Cooperative Arrangement; or
 - (b) otherwise as required or authorised by law.
- (g)** The contact details at Annex 1 that relate to the Australian Customs Service are deleted and replaced with:

Commander
Border Systems and Program Management Australian
Border Force
Australian Border Force Headquarters 3
Molonglo Drive
Canberra Airport 2609
- (h)** Annex 2 is deleted and replaced with the new sections in the Schedule to this Amendment.

2. Status of this Amendment

- 2.1 Nothing in this Amendment will affect any international treaty to which either Participant's State is a party.
- 3.2 This Amendment will come into effect on the date of signature.
- 3.3 This Amendment is without prejudice to the operation of the Cooperative Arrangement, which continues in effect.

Signed at Auckland on the 22nd day of November 2019 in duplicate.

Michael Outram

Commissioner
Australian Border Force
For the Department of Home Affairs

Bill Perry

Acting-Chief Executive
New Zealand Customs Service

Schedule

Exchange of Information

New Zealand

- (1) The Chief Executive of the New Zealand Customs Service ("the Chief Executive") may disclose information to an overseas agency, body, or person under section 318 of the *Customs and Excise Act 2018 (New Zealand)*, where the functions of that overseas agency, body, or person include:
 - (a) the prevention, detection, investigation, prosecution, or punishment of offences;
 - (b) the processing of international passengers at the border;
 - (c) the protection of border security;
 - (d) the enforcement of a law imposing a pecuniary penalty;
 - (e) the protection of public health and safety; or
 - (f) the protection of public revenue.
- (2) The Chief Executive may not, however, disclose biometric information for the purpose of assisting the Department of Home Affairs to perform the function specified in (1)(d).
- (3) Any information disclosed under this Cooperative Arrangement will be subject to the following conditions:
 - (a) the Department of Home Affairs will only use this information for the purposes set out in (1);
 - (b) appropriate safeguards are applied to protect against unauthorised access, disclosure, use, modification or deletion;
 - (c) subject to any legal requirement relating to retention, the information will only be retained for as long as necessary to carry out the purposes stated in this Cooperative Arrangement; and
 - (d) the Department of Home Affairs will only disclose this information to another domestic law enforcement authority, and the information will only be disclosed for the purpose of law enforcement. The information disclosed will not be used in any legal proceeding without the prior written consent of the New Zealand Customs Service.

- (4) For the purposes of (3)(b) above, appropriate safeguards include:
- (g) The Department of Home Affairs will take reasonable steps to maintain the security of information provided to it by the Chief Executive;
 - (h) All information disclosures pursuant to this Cooperative Arrangement will be conducted securely. All information disclosed will be handled and stored strictly in accordance with any security endorsement or caveat including any New Zealand Government security classification;
 - (i) Information disclosed under this Cooperative Arrangement will not be modified by the Department of Home Affairs without the express written authorisation of the Chief Executive; and
 - (j) Information obtained under this Cooperative Arrangement will be protected at all times from unauthorised dissemination.
- (5) The Chief Executive will make and keep a record of the information that was disclosed to the Department of Home Affairs pursuant to this Cooperative Arrangement.
- (6) Records of the information disclosed to the Department of Home Affairs will be maintained in a way that can be reviewed in accordance with clause 5A of the Cooperative Arrangement .

Australia

- (1) The Australian Government Department of Home Affairs may disclose *personal* and *identifying* information collected under Part 2, Division 5 of the *Migration Act 1958 (Cth)* ("Migration Act") to another person (including a foreign country or agency) in the circumstances permitted under section 336E(2) of that Act, which include:
- (a) a disclosure for the purpose of data-matching in order to identify persons who may be a security concern to Australia or a foreign country;
 - (b) a disclosure for the purpose of identifying persons who may be a security concern to Australia or a foreign country; and
 - (c) a disclosure that is authorised under section 336F of the Migration Act, and is for the purpose (or one or more of the purposes) for which the disclosure is authorised.
- (2) Under section 336F of the Migration Act, the Secretary of the Department of Home Affairs or the Australian Border Force Commissioner may authorise officers to disclose certain information (as

specified in the written instrument of authorisation made by the Secretary or Australian Border Force Commissioner) to:

- (a) a specified foreign country; or
- (b) a specified body of a foreign country that is a police force or police service, a law enforcement body, or a border control body of a foreign country,

for one or more of the purposes set out in section 5A(3) of the Migration Act, which include:

- (c) improving passenger processing at Australia's border;
 - (d) assisting in determining whether a person is an unlawful non-citizen or lawful non-citizen;
 - (e) assisting to identify persons who may be a security concern to Australia or a foreign country; and
 - (f) to combat document and identity fraud in immigration matters.
- (3) The kinds of information that may be disclosed under this Cooperative Arrangement include, but are not limited to, the following kinds of information specified in regulation 3.01 of the *Migration Regulations 1994 (Cth)*:
- (a) name;
 - (b) date of birth and country of birth;
 - (c) citizenship;
 - (d) sex, and marital or relationship status;
 - (e) usual occupation;
 - (f) passport number;
 - (g) if the person is not:
 - (i) an Australian citizen; or
 - (ii) a person who is eligible for the grant of a Special Category visa; or
 - (iii) a person who will on entry be taken to hold a special purpose visa,

the number of the Australian visa held by the person;

- (h) flight number of aircraft or name of ship in relation to the relevant flight or voyage;
 - (i) country in which the person boarded, or intends to disembark from, the aircraft or ship;
- (4) Any information disclosed by the Department of Home Affairs to the New Zealand Customs Service under this Cooperative Arrangement will be subject to the following conditions:
- (a) the New Zealand Customs Service will only use and further disclose the information for the purposes set out in clause (1) and (2) of this section of Annex 2, subject to any law that requires or authorises the use or disclosure of the information for another purpose;
 - (b) if information is used or disclosed for a purpose not specified in clause (1) or (2) of this section of Annex 2, the New Zealand Customs Service will notify the Department of Home Affairs before, or if that is not practicable as soon as practicable after, the use or disclosure;
 - (c) the New Zealand Customs Service will implement and maintain reasonable safeguards to ensure the information is protected against misuse, interference and loss, and against unauthorised access, use or disclosure;
 - (d) information will not be modified without the prior written authorisation of the Department of Home Affairs;
 - (e) personal information will be handled in a manner consistent with the Australian Privacy Principles set out in Schedule 1 to the Privacy Act 1988 (Cth).