



BRIEFING

Advanced Passenger Processing for outbound travellers

Date:	25 February 2016	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2281 15-16

Action sought		
	Action sought	Deadline
Hon Michael Woodhouse Minister of Immigration	Agree to the recommendations.	29 February 2016
Hon Craig Foss Associate Minister of Immigration	Copy attached for your information	N/A

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Christine Hyndman	Manager, Immigration Policy	04 901 8575	9(2)(a)	✓
Floss Caughey	Senior Advisor, Immigration Policy	04 901 8583		

The following departments/agencies have been consulted					
<input type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
<input type="checkbox"/> Other:			N/A		

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 Withdrawn |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:

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Purpose

To advise you of a potential opportunity to progress a legislative amendment to enable the introduction of a requirement on carriers (air and maritime) to provide advanced passenger processing (APP) and Passenger Name Record (PNR) information for outbound passengers, as is currently the case for inbound passengers, and to seek your agreement in principle to the proposed changes.

Recommended action

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

- a **Note** that the *Government response to the Independent Review of Intelligence and Security*, due to be reported to Cabinet by the end of March 2016, includes consideration of the existing measures to prevent foreign fighters departing New Zealand

Noted
- b **Note** that amending the Immigration Act 2009 to require carriers to provide advance passenger processing (APP) and Passenger Name Record (PNR) information for outbound travellers, as is currently the case for inbound travellers, would have a number of immigration and security benefits, including for the detection of foreign fighters seeking to leave New Zealand

Noted
- c **Note** that Australia amended its legislation in 2014 to extend APP requirements, which had previously required airlines to provide passenger data for all travellers arriving in Australia, to all departing air and maritime travellers to prevent foreign fighters departing Australia.

Noted
- d **Agree in principle** to amendments that would allow the legislative and technology system for APP for outbound travellers to:
 - (i) both collect information and allow for boarding directives
 - (ii) be mandatory (as per inbound) and an infringement and offence regime as per inbound apply so that the provision and quality of the information is assured and boarding directives followed, and
 - (iii) allow Immigration New Zealand (INZ) to share outbound information with other relevant agencies or allow them direct access

Agree/disagree
- e **Agree in principle** that amendments allow the legislative and technology system for PNR for outbound travellers to:
 - (i) collect information
 - (ii) be mandatory and an infringement and offence regime as per inbound apply, and

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Agree/disagree
- e **Agree in principle** that amendments allow the legislative and technology system for PNR for outbound travellers to:
 - (i) collect information
 - (ii) be mandatory and an infringement and offence regime as per inbound apply, and

(iii) allow INZ to share outbound PNR information with other relevant agencies or allow them direct access

Agree/disagree

f **Agree in principle** that INZ be granted express powers to prevent a person departing New Zealand on lost, stolen, invalidated or fraudulent documents

Agree/disagree

g **Note** that, if you agree to recommendations d, e and f, the Ministry will work with Department of Prime Minister and Cabinet (DPMC) to include the proposals in the Cabinet papers they are preparing on the *Government response to the Independent Review of Intelligence and Security*

Noted

h **Note** that, if agreed, officials would consult the Board of Airline Representatives New Zealand Inc (BARNZ) and other agencies on the detail of these proposals and the timeframe for implementation.

Noted



Christine Hyndman
Manager, Immigration Policy
Labour, Science and Enterprise, MBIE

Hon Michael Woodhouse
Minister of Immigration

..... / /

25/2/16

Systematic access to outbound advance passenger processing information requires legislative change

1. The Immigration Act 2009 (Act) requires carriers travelling to New Zealand to provide certain information on all passengers and crew to allow for APP.¹ The information required is specified in regulations and includes personal information provided in the person's passport.²
2. Carriers must provide information about inbound passengers, but only if directed to do so by the chief executive of the Ministry. Currently, 19 airlines have been so directed. While the term "carrier" in the Act applies to both maritime scheduled voyages (such as cruise ships) and airlines, in practice the absence of a maritime APP system means only airlines flying into New Zealand must provide inbound APP information. An infringement regime applies, penalising airlines for:
 - a. not providing the specified information to the APP system, or
 - b. allowing a passenger to board a craft to New Zealand contrary to a directive from the APP system.
3. The New Zealand APP system does collect information about outbound passengers. This is because that information is required by destination countries (e.g. Australia) for those countries' inbound processing, and because outbound APP is required to make Smartgate

¹ Immigration Act 2009, s 96(2).

² Regulation 4(2) of the Immigration (Carriers' Information Regulations) requires: person's name, date of birth, nationality, gender, the number of the passport or certificate of identity, its expiry date and issuer.

work in New Zealand³. However, it is not mandatory for airlines to provide outbound APP information and, as INZ is not authorised to access that outbound information, it does not do so (despite having the practical ability). Neither the Act, nor the Customs and Excise Act 1996, provides for outbound APP. Systematic access to (and mandatory collection of) such information should be beyond doubt, as it is for inbound APP.

Proposals regarding outbound APP

4. The Ministry proposes that the legislative and technology system for APP for outbound travellers should:
 - a. allow for both the collection of information and for boarding directives
 - b. be mandatory and an infringement and offence regime apply (as per inbound) so that the provision and quality of the information is assured and boarding directives are followed, and
 - c. allow INZ to share outbound APP information with other relevant agencies or allow them direct access.

Benefits of proposals regarding outbound APP

Enable the Crown to more effectively manage security and other interests

5. Systematically accessing APP information for outbound travellers would enable the Crown to more effectively :
 - manage border security with regard to the movement of people;
 - preserve international security interests and relationships;
 - uphold the integrity of the justice system, and
 - ensure that people cannot depart New Zealand on travel documents known to have been reported lost, stolen, invalidated or fraudulent.
6. INZ is one of a range of agencies that has a role in managing those interests. However, the Act expressly requires all passengers (including New Zealand citizens) to present themselves to an immigration officer, and surrender documents.⁴ INZ therefore already has an express statutory mandate to monitor and record information about the departure of all passengers. In practice, Customs officers use this power as designated immigration officers.⁵ Furthermore, the Act provides that INZ may require non-New Zealand citizens to produce biometric information on departure.⁶

Early warning of high risk travellers

7. Currently, border agencies only know that a person intends to depart when he or she arrives at the outward immigration processing point (the departure gate). This is particularly problematic when a traveller only presents for check-in a short time before their flight: there is not always sufficient time to address any potential alerts or threats in relation to that traveller.
8. The key benefit of outbound APP is that it would provide INZ (and other agencies) with greater warning of a person's intention to travel than those agencies have at present. This could be several days prior if checking in online, or several hours depending if departing from a domestic port or directly from an international port. The extra warning time would allow

³ Outbound APP would ensure Customs can continue to process passengers through Smartgate. Although Customs does not get direct access to APP information, it does receive pre-directives generated from the APP transactions. Customs uses these directives at the primary line to process travellers and to drive Smartgate.

⁴ Immigration Act 2009, s 119.

⁵ Section 388.

⁶ Section 120.

agencies to better identify high risk travellers and assess their intentions. Such travellers include:

- a. foreign fighters and other people who pose a security threat
 - b. criminals sought for arrest, or prisoners who have escaped or are on parole
 - c. persons using lost, stolen, invalidated or fraudulent travel documents
 - d. travellers who pose a risk to the safety of passengers, crew, or craft, and
 - e. potential perpetrators or victims of people trafficking.
9. That risk assessment in turn would allow various agencies to determine what interventions, if any, should be used to manage the risk. Depending on further policy and operational decisions, INZ could:
- a. advise other agencies, both onshore and offshore, of the high-risk traveller's intentions (for intelligence purposes only)
 - b. issue a do-not-board directive to airlines, and enforce that directive through an infringement regime (if the Act were amended to allow for that)
 - c. require a high-risk traveller to provide biometric information, (with assistance from a constable, and by force if necessary)⁷
 - d. New Zealand Police (NXP) could exercise arrest and investigation powers under current legislation, and
 - e. New Zealand Security Intelligence Service (NZSIS) could use current interview and investigation powers (or any further powers granted by new legislation).
10. Further work is required to determine the exact mix of agencies who would benefit from advance warning by outbound APP. At this stage, INZ, NXP, Customs, Corrections and Aviation Security all have a clear interest.

Facilitation and efficiencies

11. Outbound APP, by providing realtime information about expected departures, could also assist Customs and Avsec with workload management. Facilitation of travel, including for outbound travellers, is important for tourists and business travellers. Rather than relying on airlines to voluntarily provide APP information, removing any legislative doubt would ensure that passengers can continue to be processed via Customs through automated means, that is, via Smartgate.

Maritime APP

6(a)

Requiring APP would not pose a compliance burden on carriers

13. Outbound APP is already done by airlines on an entirely voluntary basis (see paragraph 3 above). Requiring carriers to provide outbound APP would not therefore pose any further compliance burden on airlines as they are already doing it.

9(2)(g)(i)

However, they are already used to having to comply for inbound APP – and for Australian outbound flights.

⁷ Section 288.

9(2)(g)(i)

Legislative provision for Passenger Name Records (PNR) for outbound travellers would also be beneficial

15. A passenger name record (PNR) is a record in an airline's computer reservation system that contains a range of information including the itinerary for a passenger, ticket information, contact details, and means of payment. PNR is a rich source of data used in many countries to detect possible criminal or terrorist threats. In New Zealand, PNR complements APP; APP is only used by around seven countries worldwide, whereas PNR is universally available.
16. Travellers booking inbound travel often book their outbound travel at the same time so INZ is in practice already provided with outbound PNR information. It is important to provide clear legislative authority for INZ to use outbound PNR information.
17. The Ministry proposes that the legislative and technology system for PNR for outbound travellers:
 - a. allow for the collection of information
 - b. be mandatory and an infringement and offence regime (as per inbound) applying, and
 - c. allow INZ to share outbound PNR information with other relevant agencies or allow them direct access.

Express powers to prevent a person departing on stolen or otherwise invalid travel documents

18. The Ministry further proposes that legislation be amended to grant INZ express powers to prevent a person departing New Zealand on lost, stolen, invalidated or fraudulent travel documents. This is so INZ can effectively manage high risk travellers described in paragraph 8, in conjunction with other agencies, e.g. NZP. The International Civil Aviation Organisation dictates that fraudulent travel documents should be taken out of circulation, rather than allowing people to travel on them.

Australia amended its legislation in 2014 to require outbound APP on all air and maritime travellers to prevent foreign fighters leaving Australia

19. Australia amended its legislation in 2014 to extend APP arrangements to departing air and maritime travellers. The amendments imposed an infringement regime for airlines and maritime vessels that fail to comply with the requirement to report on all outbound travellers with the same penalties as for arrivals. This amendment was made as part of a suite of amendments in the Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014 to prevent foreign fighters leaving Australia to take part in overseas conflicts such as Syria.

An opportunity to amend the Act at this time

20. The *Independent Review of Intelligence and Security* is due to be reported at the end of February 2016, with a Cabinet paper expected to be submitted by the end of March 2016. This report includes advice on whether the existing legislation concerning "foreign fighters" is fit for purpose. The officials leading this work have advised that now would be an opportune time to propose amending legislation to require carriers to provide APP information on outbound travellers to enhance border security.

Next steps

21. If you agree, the Ministry will consult with the other relevant agencies and work with DPMC officials to include proposals regarding APP and PNR for outbound travellers in the Cabinet papers they are preparing on the Government response to the Independent Review of Intelligence and Security. Since DPMC expect to submit the Cabinet paper by the end of March 2016, Ministry officials would like to discuss these proposals with you at your meeting on Monday, 29 February 2016.
22. If these proposals are progressed, officials will consult BARNZ and other details on the detail of the proposals and the timeframe for implementation.