

## **Privacy Commissioner's submission to the Foreign Affairs, Defence and Trade Committee on the Brokering (Weapons and Related Items) Controls Bill**

### **Introduction**

1. The Brokering (Weapons and Related Items) Controls Bill ("the Bill") establishes a regime to regulate the brokering of weapons and related items by New Zealanders and New Zealand entities. The purpose of the Bill is to prevent New Zealanders and New Zealand entities from engaging in brokering where there is a risk of the movement of weapons or related items to illegitimate users or undesirable destinations.
2. The Bill will put in place measures to support New Zealand's commitments under the United Nations Arms Trade Treaty which New Zealand ratified in 2014, and which requires all parties to the Treaty to take steps to regulate the brokering of international trade in conventional arms.
3. The new regime will have extra-territorial effect given the cross-border nature of brokering and the desire to prevent New Zealand persons and entities from evading regulation by relocating to another country without controls. The regime will therefore apply not only to persons and entities in New Zealand but also to New Zealand citizens and individuals ordinarily resident in New Zealand operating abroad.
4. This submission focusses on two provisions in the Bill - the creation of a public register that records details of registered brokers, and the disclosure of information to overseas authorities.
5. I support the proposed legislative provisions. I am pleased to note the modified suppression provision in relation to the public register of brokers. This modification follows comments I made during consultation with the Ministry of Foreign Affairs and Trade ("the Ministry") on an earlier version of the Bill.

### **Removal of personal information by the Secretary**

6. Clause 17 of the Bill requires the Secretary of Foreign Affairs and Trade ("the Secretary"), when approving an application for registration, to enter on the public register the broker's full name and trading name; the date of registration and the date of its expiry; and any other particulars that may be prescribed in regulations.

7. Clause 40(4) of the Bill provides for the Secretary to omit or remove any particular information prescribed in regulations under Clause 17 if the person requests the Secretary to do so on the basis that the information is personal information and that disclosure of that information on the public register would constitute an unreasonable interference with the privacy of any individual.
8. I was consulted on an early draft of this Bill where the ability of the Secretary to omit or remove information was limited to information about a broker's dwelling house if that would constitute an unreasonable interference with the privacy of an individual. Because the nature of personal information to be included in the register can be supplemented by passing regulations, I considered that tightly limiting the removal power would prevent the Secretary from justifiably omitting or removing any personal information on privacy grounds.
9. I am pleased to note that the Ministry responded to my concern by changing clause 40(4) so that any personal information can be omitted or removed from the public register if the Secretary considers that the disclosure would constitute an unreasonable interference with the privacy of the individual.
10. Given the amendments to the power to omit or remove information, I have considered the Bill further. I note that the threshold to be applied before omitting or removing information has been taken from section 66 of the Privacy Act (the Act). An "interference with privacy" is a high threshold to meet. It is used to consider whether a complaint raised under the Act involves a breach of the Act and has or may result in apparent privacy harm (such as affecting actual economic loss or significant injury to feelings) to the individual.
11. In the context of omitting or removing information from a public register, the unreasonable interference with privacy threshold may be too high. I recommend that the Committee consider alternative thresholds. For example, Section 239 of the Land Transport Act provides that the Registrar of Motor Vehicles may limit the supply of personal information where that would be likely to prejudice the privacy or personal safety of any person.
12. I recommend that Clause 40(4)(b) be amended as follows:  
  
Remove the words "...would constitute an unreasonable interference with the privacy of any individual."  
  
Insert the words "...would be likely to prejudice the privacy or personal safety of any individual."
13. On a technical drafting note, the consequential amendment to Schedule 2 of the Privacy Act 1993 should refer to Section 40 of the Brokering (Weapons and Related Items) Control Act rather than section 41 as currently drafted.



### Disclosure of information to overseas authority

14. I support the ability of the Secretary to disclose information to an overseas authority under Clause 39 given the conditions that will be imposed on the Secretary and the expected small scale of information sharing involved. The cross-border nature of brokering necessarily involves information sharing across borders to enable appropriate monitoring and enforcement of the regime.
15. Clause 39 of the Bill enables the Secretary to disclose any information held by the Secretary to an overseas authority for the purpose of assisting that authority to carry out its functions relating to the regulation or monitoring of brokering activity, and the prevention, detection, investigation, prosecution, or punishment of offences that are offences under the Bill.
16. Disclosures of information by the Secretary are subject to conditions stating the use that the overseas authority may make of the information, and either that the overseas authority must not subsequently disclose that information to another party, or that the information may be disclosed in whole or in part subject to certain conditions. In addition, the Secretary must make a record of the information that was disclosed, the overseas authority or authorities to which it was disclosed, and the conditions imposed in relation to that information.
17. The Ministry notes in its Regulatory Impact Statement<sup>1</sup> that it is aware of only a small number of New Zealand individuals and entities either based here or overseas who are, or are intending to carry out brokering.

### Recommendation and conclusion

18. I recommend that Clause 40(4)(b) be amended as follows:

Remove the words "...would constitute an unreasonable interference with the privacy of any individual."

Insert the words "...would be likely to prejudice the privacy or personal safety of any individual."

19. I do not seek to speak to this submission but would be pleased to appear before the Committee should the Committee find that helpful in its consideration of this Bill.



John Edwards  
Privacy Commissioner

---

<sup>1</sup> <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mfat-roa-jun17.pdf>

