Border Security Bill

2 May 2003

Attorney-General

Border Security Bill PCO5147/13
Our Ref: ATT114/1124(19)

1. I have considered the Border Security Bill for consistency with the New Zealand Bill of Rights Act 1990 ("BORA"), with the assistance of Andrew Butler, Crown Counsel. In my view, there is no BORA inconsistency in relation to any provision of the Bill.

Overview of Bill

2. The Bill amends the Customs and Excise Act 1996 ("the 1996 Act") and the Immigration Act ("the 1987 Act"), with the purpose of enhancing border security.

Amendments to the 1996 Act

3. The amendments to the 1996 Act include tightening up the definition of "goods subject to Customs control"; strengthening provisions concerning advance notification of intended arrival of a craft in New Zealand and the information to be provided on arrival of a craft; providing new powers to Customs to access information related to travel held on databases etc by people involved in the commercial international travel business (eg airlines, travel operators, etc); extending the power of Customs' officials to question persons at the border about identity, address, travel movements etc; extending powers of search in relation to vehicles and goods, examination of goods, detention of persons and goods; as well as creating new offences related to these new powers. All of the new provisions have been considered for BORA consistency and all are considered to be consistent.

Amendments to the 1987 Act

4. The amendments to the 1987 Act include strengthening the provisions concerning the information to be provided to Immigration by an international carrier; allowing for Immigration to make immigration decisions (a) prior to passengers boarding overseas and (b) by means of an automated electronic system; strengthening the provisions around provision of information by persons seeking admittance to New Zealand; as well as creating new offences related to these new powers. In my view these amendments to the 1987 Act are not inconsistent with BORA.

5. In the rest of this advice I set out my reasons for concluding that the new powers given by the Bill are not BORA-inconsistent. I deal first with the relevant amendments to the 1996 Act and then with those to the 1987 Act.

BORA Issues - Amendments to the 1996 Act

6. In this section, I will address:

6.1 Provisions in the new Part 3A dealing with Customs access to, and use of, information about
border-crossing goods, persons and craft.

6.2 The protection from liability conferred by the new s 38O.

6.3 Provisions conferring on Customs an enhanced power to question and detain.

I deal with each in turn.

Part 3A - access to information about border-crossing goods, persons and craft

7. A new Part 3A is to be inserted in the 1996 Act by clause 8 of the Bill. The purpose of the new Part 3A is to give Customs officials routine access to information about goods and craft travelling into or departing from New Zealand that is held by persons and firms operating in the travel industry ("travel industry operators"). It will also give routine access to travel-related information held about border-crossing persons at and around the time that they cross the border; however, access to travel-related personal information in other situations can be obtained only under a search and viewing warrant, or under an emergency process that is subsequently validated by warrant.

8. Access to the information described above will enable the authorities to, for example, cross-check the accuracy of information provided by travellers, or pursue queries in relation to any security threat that a particular person may pose to New Zealand.

9. Because this scheme involves compulsory access to information, including personal information, it impinges upon reasonable expectations of privacy in relation to that information which members of the public, and travel industry operators, would have. There is, therefore, a prima facie infringement of s 21 BORA, which protects everyone against unreasonable search or seizure.

Information in relation to craft and goods

10. To the extent that the new provisions allow Customs authorities wide access to information held by travel industry operators about craft and goods, I consider that any infringement of s 21 BORA is a justified limit in terms of s 5 BORA. The transportation of goods and the operation of a craft internationally both involve participation in a heavily regulated field and, more importantly, involve only marginal intrusions on expectations of privacy since little personal

information is involved. In addition, routine access to such information is important to enable Customs to perform its functions effectively.

Information in relation to persons

11. Access to information held by travel industry operators about individuals is in a different class. At present, the information compulsorily required to be provided at the point of entry by Customs and Immigration authorities is relatively confined, requiring name, address, date of birth, nationality, craft, passport details and so on (see current s 279(b)). The intent of new Part 3A is to substantially broaden the range of information that can be accessed, including, for example, previous history of travel movements (internal and international), methods of payment and seating arrangements. Such information can be used to build a more complete individual profile of travellers. In this regard, I note that the commentary to the new Interim Rule issued by the United States Customs Service ("USCS") [1] states that an airline's automated Passenger Name Record ("PNR") database "may consist of 5 data elements or in excess of 50 data elements, depending upon the particular record and carrier". In short, a substantial amount of travel-related personal information may be held by a travel industry operator and could reveal significant information about aspects of the lifestyle of the person in respect of whom it is held.

12. Allowing law enforcements authorities such as Customs [2]open or unrestricted access to personal information stored by travel industry operators would constitute a substantial departure from the limits normally placed on the activities of such agencies and would amount to a significant incursion on the right of people within New Zealand to be left alone. In my view, allowing open access to personal information (even if only personal information related to travel) without restriction (e.g., without any requirement of reasonable belief or suspicion of wrongdoing by the person whose personal information is being sifted or without any temporal restriction) could not be a justified limit under s 5 BORA on the right to be free from unreasonable search and seizure guaranteed by s 21 BORA.

13. At the same time, however, it is well recognised that persons who engage in international travel and cross international frontiers can legitimately be required to sacrifice aspects of their privacy in return for the ability to travel internationally and cross borders. In other words, at and around the time of travel, expectations of privacy are lower: see eg R v Simmons [1988] 2 SCR 495. Moreover, I accept that recent developments in anti-terrorism and border security practices suggest that the availability of information to Customs and Immigration officials in advance of a person's arrival in New Zealand, or in advance of a person's departure from New Zealand, will enable officials to make more meaningful assessments of the security and other risks that a particular person or persons may pose to New Zealand and to other countries with whom New Zealand is co-operating in maintaining international security.

14. I also note that since the events of 11 September 2001, the travel-related personal information acquisition powers of many customs and immigration

authorities worldwide are being reviewed and augmented. The USCS has issued an Interim Rule which requires airlines to provide the USCS with electronic access to any and all PNR data elements concerning the identity and travel plans of a passenger in relation to any flight leaving from, or landing in, the United States, to the extent that the carrier does have the requested data elements in its reservation system and/or departure control system.[3] More recently, the US Immigration and Naturalization Service ("INS") has proposed a new rule (in terms of the Enhanced Border Security and Visa Entry Reform Act 2002) to require the submission of arrival and departure manifests electronically in advance of arrival in/departure from/the US. [4] Similar patterns of change to border control legislation are observable in Australia [5] and Canada.[6]

15. The approach adopted by an overseas government as a response to perceived terrorist threats should not necessarily affect the weighing exercise to be undertaken in New Zealand for BORA-consistency purposes. However, given that s 5 BORA refers to limits that are reasonable in a "free and democratic country", it is legitimate to have regard to what comparable states are doing and regard as necessary in this field.

16. Against this background, I believe that there is an important distinction between the position of people at or close to the time they enter or depart New Zealand, and that of people who have entered or departed at some point in the past. In my view, it is BORA-consistent for Customs authorities to have routine access to travel-related information held by travel industry operators about people who are travelling to/from New Zealand on the date of their arrival/departure and for a penumbral period around their arrival/departure dates. That recognises the importance of the decision that has to be made at the border, enabling the authorities to take action when it matters most.

17. Beyond that, however, the usual protections of a warrant procedure should apply: when one moves away from immediate border security and immigration assessment needs into accessing information held in respect of travellers who have been processed and have entered, or left, New Zealand, there is no convincing reason why the traditional protections for personal information should not remain in place and be observed. Moreover, any scheme permitting access to personal travel-related information must contain sufficient protections (for example, by way of definition of the information that can be searched and seized and the circumstances in which search and seizure can occur) to ensure that any interference with expectations of privacy is, in all the circumstances, reasonable. In my view the scheme created by new Part 3A meets these requirements. I discuss the scheme in more detail below.

Information which may be accessed

18. By virtue of new s 38E(1) a "person concerned in the movement of goods, persons or craft" [7]must give Customs access to information that that person holds "for the purpose of facilitating another person's travel to, or departure from New Zealand". Information about border-crossing persons includes, but is not limited to, that person's name, date of birth, place of birth, nationality,

sex, passport details, contact details, identity of craft on which the person has travelled/is travelling/intends to travel, where the travel booking was made, date of travel booking, whether the person has checked baggage, etc (see new s 38E(3)).

19. Section 38F(3) makes it clear that, as regards the employees of persons concerned in the movement of goods, persons or craft, Customs only has access to information held about that employee which is of a kind also generally held in relation to passengers. In this way, travel industry employees, as a class, are not open to more scrutiny of their personal information than members of the general public. This is an important limitation on the breadth of the information-accessing power.

20. The new ss 38H-L place further limits on the power of Customs to access information held by persons concerned in the movement of goods, persons and craft where that information relates to border-crossing persons. The detail of those sections is complex, but can be summarised as in the following paragraphs.

Accessing personal travel-related information in respect of "current travel"

21. Customs can search for information held by a travel industry operator in order to determine whether it includes information that relates to "current travel" and is relevant to a specified search criterion (or criteria) provided by Customs. "Current travel" is defined to mean travel that has occurred within the last 14 days measured from the date of the search or that will occur within the next 14 days after the search begins. Arrival/departure must be in/from New Zealand. (See new s 38H(3)).

22. Access to information about current travel is unrestricted, ie there is no warrant requirement nor is there need for reasonable grounds to suspect any offending has occurred or any breach of border security will be committed by any of the persons whose personal travel-related information is accessed. It is anticipated that this power will be used routinely in order to screen recent or imminent travellers in order to assess the border security risk that they pose to New Zealand or other countries with which New Zealand co-operates.

23. Where a Customs search reveals that a person will be travelling to New Zealand within the next 14 days, or has travelled to New Zealand during the last 14 days Customs will be entitled to access all information held by travel industry operators, in relation to that traveller, regardless of the age of that information (see new s 38I). In other words, once a person is within the "current travel" window, all personal information held by a travel industry operator in relation to that person can be accessed by Customs.

24. In my view, access to this breadth of personal information is reasonable and appropriate during the short period surrounding a person's international travel. As noted above, a person engaged in international travel has diminished expectations of privacy, related to the need for effective border security tasks,

such as immigration screening, customs assessment, criminal offending risk targeting and security risk assessment.

25. Moreover, if Customs access to information by current travellers were restricted to the particular travel that a traveller engaged in for the purposes of coming to or departing from New Zealand, Customs and other law enforcement authorities would not be in a position to make sensible border security risk assessments. It is only with the availability of a pattern of travel-related information that useful information-sifting can take place.

26. Further, if restrictions were placed on the information that could be accessed by reference to the age of that information, that may make it possible for persons to "hide" their personal travel-related information to do soby splitting up their travel into separately ticketed legs.

Accessing personal travel-related information in respect of travel other than "current travel"

27. In terms of the new Part 3A where Customs wishes to access information held by travel industry operators about a person who is not engaged in current travel, it can only do so either under a search and viewing warrant (see s 38J) or, in emergency situations, by accessing the information without such a warrant (see s 38K). In the latter case, however, Customs will have to destroy any information which it has collected through emergency access if it does not obtain validation of that access from a Judge by way of an application for a search and viewing warrant within 72 hours of the emergency accessing (see 38K(5)).

28. The detail of these two schemes follows:

28.1 Where:

28.1.1 the Chief Executive of Customs considers that there are reasonable grounds to suspect that there exists a border security risk or threat (defined in new s 38B(1)) or that a relevant offence (defined in new s 38J(6)) has been, is being, or will be committed; and

28.1.2 Customs wishes to search information held by travel industry operators to determine whether it includes information that is relevant to search criteria specified by Customs;

28.1.3 the Chief Executive may, by application in writing made on oath, apply to a District Court Judge for a search and viewing warrant (see new ss 38J(1) and 38J(2)). In contrast to, say, the Summary Proceedings Act 1957, s 198, where a warrant can be issued by a court registrar (or deputy registrar) or a Justice of the Peace, only a District Court judge can issue a search and viewing warrant under Part 3A.

28.2 The warrant can authorise the carrying out of a search within 14 days after the day on which the warrant is granted and allows the disclosure to Customs of any

information relevant to one or more of the search criteria specified by Customs, but of no other information. The application must give details of:

28.2.1 the reasonable grounds to suspect;

28.2.2 the information available to Customs that gives rise to those reasonable grounds to suspect;

28.2.3 the search criteria which Customs wishes to use; and

28.2.4 whether the search is to be of all, or of one or more specified parts of, the travel-related information held by persons concerned in the movement of goods, persons or craft (new s 38J(3)).

28.3 The Judge may only grant a warrant if satisfied that the "reasonable grounds to suspect" requirement is met and that the search criteria specified by Customs are reasonably related to the information available to Customs that gives rise to those reasonable grounds to suspect (see new s 38J(4)).

28.4 Access to non-current travel information without a warrant can be had in emergency situations under s 38K. The emergency power is closely circumscribed.

28.4.1 The "reasonable grounds to suspect" standard contained in s 38J(1) must be met.

28.4.2 The Chief Executive must consider that if an application for a warrant were to be made a District Court Judge would grant it.

28.4.3 The Chief Executive must consider that delaying a search until a warrant could be obtained would create a real risk that the countering of the risk or threat to border security, or the prevention, detection, investigation, prosecution or punishment of the relevant offence, would be frustrated (new s 38K(1)).

28.5 Where the Chief Executive does act without a warrant in an emergency situation, he or she must, within 72 hours, apply for a warrant in relation to the matter (new s 38K(3)). Where no application is made within the 72 hour period or the application is made but no warrant is granted, things that have been done by the Chief Executive must be treated as if they were done without the authority of s 38K and Customs must immediately destroy information disclosed to it. Where a "partial" warrant is granted [8] actions falling outside its scope are similarly treated.

29. In my view the access regime in relation to travel that is not current travel is a justified limit on the right to be secure against unreasonable search and seizure in terms of s 5 BORA. In particular, the following features are important:

29.1 The warrant requirement ensures that access can only occur where an independent judicial officer, a District Court Judge, is convinced that grounds exist for access to occur.

29.2 Access to non-current travel information without a warrant can only occur in emergency situations that are tightly circumscribed.

29.3 The requirement that Customs seek a warrant within 72 hours of having accessed information under the emergency procedure attempts to achieve a balance between legitimate needs of law enforcement and safeguards for private persons. The requirement should ensure that a decision to use the emergency procedure will be considered and not lightly taken. It provides an independent review mechanism. Moreover the prohibition on use of information obtained under the emergency procedure that is not subsequently validated through the warrant procedure should also ensure that Customs resort to the emergency procedure only in compelling cases, and provides some protection for travellers' rights.

30. A further protection contained in new Part 3A is that Customs must, at least every six months, review information disclosed to it under new ss 38G-K in order to determine whether retention of that information is necessary for the purposes of the Part; if not necessary then the information must be promptly disposed of (s 38L(1)).

Limitation on Liability

31. Proposed new s 38O provides that neither the Crown nor Custom officials are liable for anything done or omitted by a person in the exercise of a power conferred by Part 3A, unless the person has not acted in good faith or has acted without reasonable care. It could be argued that this proposed new section raises issues of consistency with s 27(3) BORA, which provides:

"(3) Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals."

For my part, I do not believe that there is any inconsistency.

32. Whether there is a perceived inconsistency with s 27(3) BORA depends upon the scope of s 27(3). There are two views:

32.1 It could be argued that s 27(3) goes to substantive liability and so impacts on Parliament's ability to determine that the Crown shall not be liable for conduct which, without the exclusion, could create liability.

32.2 It could be argued that s 27(3) is procedural in effect, and means simply that the procedure to be adopted in any proceedings against the Crown will be the same as that applicable in litigation between private parties.

33. In *Matthews v Ministry of Defence* [2003] 2 WLR 435 the House of Lords had to consider whether s 10 of the Crown Proceedings Act 1947 (UK), which exempted the Crown from liability in tort for injury suffered by members of the armed forces in certain circumstances, was compatible with Article 6(1) of the European Convention on Human Rights. [9] Their Lordships held that the Crown's exemption from liability in tort was a matter of substantive law, so that

the claimant had no "civil right" to which Article 6(1) might apply. Their Lordships treated the limitation on liability in s 10 as going to the substantive claim (i.e. it did not exist), rather than creating a procedural bar. Article 6(1) was, in principle, concerned with procedural fairness and the integrity of a State's judicial system, and not with the substantive content of its national law.

34. The analysis in Their Lordships' speeches is consistent with the view that the new s 38O does not infringe s 27(3). This conclusion is supported by the history of Crown liability in New Zealand and the many provisions which afford protection to officials acting in the course of their duties in good faith and, in some instances, without negligence.

Enhanced powers to question and detain

35. The Bill contains a number of clauses concerning new detention and questioning powers that raise issues in terms of ss 22 (arbitrary detention) and 23(4) (right to of persons detained under any enactment to refuse to make a statement) BORA. The provisions are first outlined and the BORA consistency issues then examined.

The new powers

36. Clause 7 of the Bill amends s 22 of the 1996 Act by adding a new subsection 3 under which a person who has (or is suspected of having) either (1) disembarked from a craft that has arrived in New Zealand and has not (or is suspected of having not) reported to Customs; or (2) attempted to depart from New Zealand from a place other than a Customs place, must answer any questions asked by a Customs officer and produce any documents within his or her possession or control that a Customs officer requests. The actual questioning and compelled production power is located in a new s 145A.

37. For the purposes of questioning a person under s 145A, a Customs officer may detain a person whom he or she wishes to question (see new s 148A(1)) for a period of up to 12 hours (new s 148A(2)). The purposes for which a person may be questioned under s 145A are specified (see new s 145A(3)). Detention for questioning must take place as soon as it is reasonably possible (new s 148A(3)) and must cease if the person has correctly answered the questions to the officer's satisfaction and the officer has no reasonable cause to suspect the commission of stipulated offences (new s 148A(4)). The period of detention may be extended for a further reasonable period if accident, stress of weather or some other difficulty of transport or a special circumstance makes it impossible for a Customs officer to question and make enquiries within the 12-hour period (new s 148A(6)).

38. The overall purpose of the amendments is to plug a perceived gap in the 1996 Act under which detention and compulsory questioning powers are not available in respect of persons who arrive at/depart from remote locations that are not designated customs places.

Consistency with s 22 BORA

39. In my view the detention powers provided for by new s 148A do not infringe s 22 BORA for the following reasons:

39.1 Detention is not mandatory.

39.2 The period of detention is limited (12-hours only, except in tightly defined special circumstances).

39.3 The purpose of detention is carefully spelt out in the legislation.

39.4 There will be cases in which these powers are reasonably necessary in order to ensure that the questioning power is effective and cannot be evaded by a person attempting to leave the presence of a Customs Official.

Consistency with s 23(4) BORA

40. Section 23(4) BORA will be triggered in those instances where a person:

40.1 has been detained for questioning under new s 148A; and

40.2 in terms of new s 22(3) is required to answer any questions put upon pain of penalty in the case of refusal.

However, in my view the combined effects of these new powers, while they constitute a prima facie infringement of s 23(4) BORA, are a justified limit in terms of s 5 BORA.

41. While compelling a detainee to answer questions is in direct conflict with the words of s 23(4) BORA, this Office has consistently adopted the position that the questioning of detained persons can be justified where either:

41.1 the answers to those questions cannot be used against the detainee in subsequent criminal proceedings; and/or

41.2 the detainee can refuse to answer questions put, if to answer them would tend to incriminate him or her.

In this regard, proposed new s 145A(5) is significant. It provides that it is a reasonable excuse for the purposes of the offence provision (existing s 185 of the 1996 Act) to fail to answer questions put by a Customs officer, if a person fails or refuses to answer on the basis that a person's answer would incriminate or tend to incriminate that person.

The 1987 Act: Ouster of Judicial Review

42. The proposed new ss 125AA-125AE of the 1987 Act are intended to implement the desire of the New Zealand Immigration Service ("NZIS") to move to a position of requiring airlines to acquire passenger information in

advance ("API") for onsending electronically to New Zealand immigration authorities prior to departure for New Zealand. The provision of API will enable immigration authorities to make immigration decisions well in advance of a passenger's arrival in New Zealand and will also allow the immigration authorities a longer time period in which to make enquiries in relation to those passengers in respect of whom they entertain suspicions or doubts about immigration status.

43. In principle I see no problem with a move to API, which I note is now becoming the standard for many immigration authorities worldwide (see the material noted at paragraph [14] above). The one matter of concern related to this new scheme is the content of the proposed s 125AB(6). This provision provides that a person (other than a New Zealand citizen or permanent resident or person holding a pre-cleared permit, or someone who claims to have such status) who NZIS has decided should not be permitted to board a craft for the purpose of travelling to New Zealand (or to board subject to conditions) may not challenge that decision by way of, inter alia, judicial review (see s 125AB(6)(b)). This provision raises issues of consistency with s 27(2) BORA which provides that every person whose rights, obligations or interests protected or recognised by law have been affected by a determination of any tribunal or public authority has the right to apply, in accordance with law, for a judicial review of that determination.

44. A number of issues arise:

44.1 Is the NZIS, when declining a person (other than a New Zealand citizen or permanent resident) the ability to board an aircraft, to be regarded as a "public authority" within the meaning of s 27(2) BORA?

44.2 Does a decline decision by NZIS in respect of such a person affect any relevant "interest protected or recognised by law"?

44.3 Even if there is a prima facie breach of s 27(2), could it be justified in terms of s 5 BORA?

45. As to the first issue, in light of the recent Court of Appeal decision in *Chisholm v Auckland City Council* (CA32/02 29 November 2002) it is not clear that an NZIS official making a "decline" decision is to be regarded as a "public authority" within the meaning of s 27(2) BORA. That is because the Court of Appeal in that case indicated that the phase "public authority" was intended to capture a decision-maker who is "adjudicative" in character. A "decline" decision is not adjudicative. Nonetheless, the applicability of Chisholm to s 27(2) is not certain, since in that case what was in issue was s 27(1) BORA (natural justice) rather than s 27(2). It is not certain whether the Courts would regard a "decline" decision as falling outside of s 27(2), although, in my view, the arguments in favour of that outcome would be strong.

46. As to the second issue, it is clear that non-citizens and non-permanent residents have no right to enter New Zealand and that the issuing of a visa or permit to enter New Zealand is a matter of discretion (see ss 8, 9, 9A and 10

of the 1987 Act). The issuance of a visa or permit to enter New Zealand is closely connected with the exercise of state sovereignty and the ability of the state to determine who shall and shall not come to it. Traditionally that sovereign power has been reviewed with diffidence by the Courts, as a matter particularly suited for executive determination. In turn, this implies that the granting of a visa or permit is a highly discretionary exercise, giving rise to low expectations on the part of an applicant. Whether the related decision (which may affect a visa holder or permit holder) not to approve boarding a craft also involves low expectations is more difficult to assess. Certainly the Act is clear that issuance of a visa does not have the effect of a permit (s 14A(2)) nor affect the exercise of immigration discretion generally (s 14A(3)).

47. Third, even if a decline decision under s 125AB falls within the language of s 27(2) BORA, it is possible to justifiably limit the right to judicial review in terms of s 5 BORA.

48. The reasons in favour of an ouster clause are (1) preventing the bringing of worthless challenges to decisions, especially through the availability of legal aid in support of such applications; (2) use of judicial review proceedings as a means of obtaining entry to New Zealand (eg need to be available in New Zealand to be cross-examined on evidence); (3) it would be consistent with aspects of the current Immigration Act (particularly s 10(3) which ousts judicial review of visa decline decisions).

49. On the other hand, many of these problems could be addressed more directly by provisions targeted at removing these evils, yet allowing for the possibility of judicial review. For example, the fear that lodging an application for judicial review might inevitably lead to an application for a visa or a permit to enter New Zealand in order to be able to give evidence at such a judicial review, thereby defeating the "decline" decision in practice, could be met by a provision which provides that the existence of review proceedings by a person against whom a decline decision has been made, cannot be a reason for granting a visa or permit to enter New Zealand. Moreover, any fears about waste of legal resources by fruitless litigation could be met by a ban on making legal aid available to persons seeking to exercise the right to judicial review. Finally, the current s 10(3) Immigration Act was added to that Act without having been vetted for BORA consistency.

50. In the circumstances, I consider that. while the matter is finely balanced, the new s 125AB(6)(b) can be considered a justified limit on s 27(2) BORA, particularly since it only operates in respect of persons who merely hold a visa (or come from a visa free country).

Terence Arnold
Solicitor-General

upon for any other purpose. The advice does no more than assess whether the Bill complies with the minimum guarantees contained in the New Zealand Bill of Rights Act. The release of this advice should not be taken to indicate that the Attorney-General agrees with all aspects of it, nor does its release constitute a general waiver of legal professional privilege in respect of this or any other matter. Whilst care has been taken to ensure that this document is an accurate reproduction of the advice provided to the Attorney-General, neither the Ministry of Justice nor the Crown Law Office accepts any liability for any errors or omissions.

Footnotes

1. See further paragraph [14] below.
2. I note that through new s 282A of the 1996 Act - see clause 24 of the Bill - Customs can share information acquired through new Part 3A with other law enforcement agencies such as the Police.
3. See US Federal Register Vol 67, No 122, 25 June 2002, pp 42710 - 42713 for the full text of this Interim Rule. I note that: (1) the Interim Rule is precisely that, interim not final. Whether it will stay in its current form after the period for comment on it has expired is uncertain; (2) the Interim Rule has not been tested for compliance with the Fourth Amendment to the US Constitution and hence it is hard to draw any firm conclusions about its human rights compatibility; (3) the scope of the Interim Rule is much more limited than that envisaged in Part 3A in that it applies only to airlines and does not apply to other travel industry services.
4. See US Federal Register, Vol 68, No 2, 3 January 2003, pp 292-302 for the full text of the Proposed Rule.
5. Border Security Legislation Amendment Bill 2002 schedules 6 and 7.
6. Customs Amendment Act 2001, s 61 inserting new ss 107 and 107.1 Customs Act.
7. Defined in new s 38A to mean an owner/operator of a craft involved in international travel for commercial purposes, a travel operator, an owner/occupier/operator of a Customs controlled area, an operator of a business that handles, packs, stores or transports goods internationally or any person involved in any other way in the carriage, handling or transportation of goods or persons for commercial purposes internationally.
8. i.e., where the warrant authorises only some of the things done by the Chief Executive.
9. Article 6(1) provides that in the determination of his or her civil rights everyone is entitled to a fair hearing by an independent and impartial tribunal established by law.