

The Agreement on Enhancing Cooperation in Preventing and Combating Crime Q & A

What will the PCC agreement allow?

Under the agreement, and as permitted by each country's law, law enforcement and border authorities in both countries can share personal information to prevent, detect and investigate crimes with a penalty of one year or more imprisonment.

The agreement will allow authorities to check if fingerprints related to a specific case are also held by their overseas counterparts. If there is a match, they may then share information about the person the fingerprints belong to. If there isn't a match, no information will be shared.

The agreement includes privacy and data security protection measures.

Will it allow for the sharing of DNA data?

The agreement does provide for the sharing of DNA data, however there are currently no plans to implement this part of the agreement because of legal and technological constraints.

How will the agreement operate and what kinds of personal information will be exchanged?

Authorities involved in a specific case will send a fingerprint to their counterparts in the other country.

Queries will be made on what's known as a "match/no match" basis. That is, the receiving country will initially provide a "yes" or "no" answer whether they have matching fingerprints in their database.

If there is a match, the requesting country can then ask for personal information related to the fingerprint, such as names, alibis, last known address, names of associates, previous convictions, etc.

In all cases, New Zealand authorities will ensure the enquiry meets criteria contained in domestic legislation (such as confirming the appropriateness of the agency or body making the request) before any information can be released.

How will New Zealand benefit from the agreement?

The Government is committed to protecting New Zealanders from crime, illegal migration and terrorism.

Increasingly, criminal and terrorist activity spans international borders. New Zealand cannot rely on its geographical isolation for protection from such threats.

This agreement recognises that information and data sharing are an essential component in the fight against crime and terrorism. Such sharing, as permitted by New Zealand law, enables law enforcement and border agencies to perform their functions, regardless of where the crime was committed or where the criminal is currently located.

This agreement complements New Zealand's All of Government Response to Organised Crime, a range of measures to better target international and domestic organised crime networks. The latest measures, which Cabinet considered in June 2013, included a recommendation to implement this agreement.

New Zealand is one of 36 countries to sign such agreements with the United States, as part of the US's visa waiver programme. The programme allows eligible travellers from member countries visa-free access to the US for tourism purposes.

Do NZ and US authorities already share criminal information?

The agreement builds on a long history of cooperation between New Zealand and the US on issues of law enforcement and security. This cooperation has been vital to enhancing our security and protecting New Zealanders from transnational crime, which can range from child sexual abuse online to people trafficking to drug smuggling.

How will New Zealanders' privacy be protected under this agreement?

Information can only be shared as permitted by New Zealand law.

The two-staged information sharing process means that no personal information will be shared with the other country under this agreement unless a finger print match is confirmed.

The agreement also includes privacy and data security protection measures.

For example, the agreement requires parties to take technical and organisational measures to prevent destruction, loss, unauthorised disclosure, alteration, access or unauthorised processing.

What agencies are involved?

New Zealand agencies: New Zealand Police, Immigration New Zealand, New Zealand Customs.

United States agencies: Department of Homeland Security and agencies such as the Federal Bureau of Investigations (FBI).

How can New Zealand and the US use information provided under the agreement?

The agreement allows both countries to use personal data provided under the agreement for:

- Criminal investigations
- Preventing serious threats to public security
- Non-criminal judicial or administrative proceedings directly related to criminal investigations (for example, civil forfeiture cases to recover money or property believed to have been obtained through criminal activity)
- Border security, visa, entry permission, refugee and protected person decision making
- Any other purpose only with the prior consent of the Party which transmitted the data.

Data shared under the agreement cannot be provided to any third party state, international body or private entity without the consent of the country that provided the data.

What is the process for bringing the agreement into force?

The agreement has the status of an international treaty.

In New Zealand, the Executive (Cabinet) has the power to enter into treaties on behalf of the Government.

Some significant treaties, such as this one, are presented to Parliament for select committee consideration. The Foreign Affairs, Defence and Trade Committee considered the agreement and reported back to Parliament on 31 January.

The Government will next introduce legislation to implement the agreement. Once the legislation is passed, New Zealand and the US can take final steps to bring the agreement into force, such as exchanging diplomatic notes and confirming operational arrangements.

Further information at <http://www.mfat.govt.nz/Treaties-and-International-Law/03-Treaty-making-process/>

What did the select committee recommend?

The committee's report made one recommendation: that once the information sharing process is developed, the responsible minister should report to Parliament on a six-monthly basis about the number of requests and individuals affected.

Has the Government accepted this recommendation?

The Government response accepted the committee's recommendation with some modifications and clarifications.

A yearly report stating the number of times New Zealand authorities and their US counterparts share information under the agreement will be included within the New Zealand Police's Annual Report, which is tabled in the House.

This is the most efficient and effective way to inform interested parties, including Parliament and the public, about how the often the agreement is being used.

This additional transparency will complement the privacy and data security protection measures the agreement already features.

When will the agreement come into force?

No specific date is proposed at this stage, as it is dependent on how long the process outlined above takes.

How much will the agreement cost to implement and run?

It is expected that the financial and operational costs of processing requests will be managed within existing baselines of New Zealand Police and Immigration New Zealand.

What does this mean for members of the public?

The treaty will not have any impact on law abiding citizens who are going about their normal business. In any cases where enforcement, border and immigration authorities are trying to prevent, detect and investigate crime with a penalty of more than one year imprisonment, then New Zealand can ask for information from the US for this purpose and vice versa.

New Zealand travellers will continue to enjoy the benefits of visa-free access to the United States (129,740 NZ residents travelled to the United States in the year to July 2013).

What law changes are required to implement the agreement?

Legislation is required to incorporate the treaty obligations into domestic law. To implement our obligations when the agreement enters into force, the Policing Act will be amended. These amendments are contained in the Organised Crime and Anti-Corruption Legislation Bill, which will be introduced to Parliament later this year.