

Questioning persons about goods and debt

Guidelines

Contents

Introduction.....	2
The power to detain.....	3
Obligations and offences	3
Customs and Excise Act 2018.....	3
New Zealand Bill of Rights Act 1990.....	5
Oranga Tamariki Act 1989.....	5

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Questioning persons about goods and debt

Introduction

The Customs and Excise Act 2018 (CEA 2018) empowers Customs officers to question persons about any dutiable, prohibited, uncustomed, or forfeited goods they have or have had in their possession, and whether any debt is due to the Crown. Use these guidelines to understand the exercise of questioning powers under [section 205](#) of the CEA 2018.

Section 205 is a commonly used and broad questioning power, and the scope of questioning includes anything that reasonably relates to the possibility that a person has or has had any dutiable, prohibited, uncustomed, or forfeited goods in his or her possession. This is additional to the obligation to answer questions under [section 26](#) of the CEA 2018.

The following table explains the statutory power to question persons about goods and debt – [section 205](#) of the CEA 2018.

Legislation – Customs and Excise Act 2018	A Customs officer may question any person who...	Notes
Section 205 : Questioning persons about goods and debt	<ul style="list-style-type: none"> ➤ has, within the preceding 72 hours, arrived in New Zealand, or ➤ is departing New Zealand, or ➤ is within a Customs-controlled Area (CCA) licensed for the temporary holding of imported goods for examination by Customs, the disembarkation, embarkation or processing of persons arriving in or departing NZ, or the processing of craft arriving in or departing NZ or loading or unloading of goods onto or from craft arriving in or departing NZ, or ➤ is on board, or is embarking or disembarking, a craft that has arrived in or is departing New Zealand, or ➤ is within a duty-free store. 	<p>Questions must relate to any of the following:</p> <ul style="list-style-type: none"> ➤ whether the person has, or has had in their possession any dutiable, prohibited, uncustomed or forfeited (DPUF) goods ➤ the nature, origin, value, ownership, or intended destination of DPUF goods ➤ whether any debt is due to the Crown under the CEA 2018 and is payable by the person or any other entity that the person is associated with ➤ the nature and extent of that debt (if any). <p>Where a Customs officer questions a person under section 205 of the CEA 2018, and the person requests or enquires they should be informed that:</p> <ul style="list-style-type: none"> ➤ they are being questioned under section 205 of the CEA 2018; and ➤ they are compelled to answer the questions pursuant to section 383 of the CEA 2018.

Refusal to answer questions:

- If the person fails or refuses, without reasonable excuse, to answer a question or gives an incorrect answer, they can be informed that they may be committing an offence under section 383(1) of the CEA 2018.
- Section 383(3) of the CEA 2018 does apply. This means that it is not a reasonable excuse to fail or refuse to answer the question on the ground that to answer would or might incriminate or tend to incriminate that person.

The power to detain

[Section 206](#) of the CEA 2018 provides powers to detain in relation to [section 205](#) of the CEA 2018. Refer to Questioning and Detention for further information.

Obligations and offences

A person questioned under [section 205](#) of the CEA 2018 is compelled to answer that question. They may be committing an offence if they fail to answer pursuant to [section 383](#) of the CEA 2018.

Other statutory provisions within the CEA 2018, the Oranga Tamariki Act 1989 (OTA 1989), and New Zealand Bill of Rights Act 1990 (NZ BORA 1990) also require persons questioned under certain sections to answer those questions.

If a person is not obliged to answer a question asked under a statutory provision, then it is not an offence to fail or refuse to answer that question.

Customs and Excise Act 2018

The following table summarises obligations and offences in relation to [section 205](#) of the CEA 2018.

Legislation – Customs and Excise Act 2018	Summary	Notes
Section 26: Requirement to answer questions and produce documents	➤ The person is only required to answer questions about the craft, its journey, any goods or	➤ It is an offence to refuse to answer or knowingly give a false answer to any question under

persons that are on, or have been on, the craft.

[section 26\(2\)](#) ([section 27\(1\)](#) of the CEA 2018)

- Those required to answer questions are:
 - the owner of the craft
 - the person in charge of the craft
 - a member of the crew of the craft
 - a passenger on the craft

[Section 75:](#)
Entry of imported goods

- This section requires that all imported goods be entered in the prescribed form and manner. [Section 75\(4\)](#) requires a person entering imported goods to answer questions asked by a Customs officer with respect to those goods.

- It is an offence to fail or refuse, without reasonable excuse, to answer questions or to give an incorrect answer ([section 383](#) of the CEA 2018)

[Section 89:](#)
Entry of exported goods

- This section requires that all exported goods be entered in the prescribed form and manner.
- [Section 89\(3\)](#) requires a person entering exported goods to answer questions asked by a Customs officer with respect to those goods.

- It is an offence to fail or refuse, without reasonable excuse, to answer questions or to give an incorrect answer ([section 383](#) of the CEA 2018)

[Section 376:](#)
Threatening or resisting Customs officer

- It is an offence for a person to threaten, assault, by force, resist, intentionally obstruct or intimidate a Customs officer exercising their power to question.

- A person who commits an offence under this section is liable on conviction to -
 - (a) imprisonment for a term not exceeding 12 months; or
 - (b) a fine not exceeding \$15,000

[Section 383:](#)
Failure to answer questions

- It is an offence to fail or refuse, without reasonable excuse, to answer questions or to give an incorrect answer.
- [Section 383\(3\)](#) does apply to [section 205](#). This means that it is not a reasonable excuse to fail or refuse to answer the question on the ground that to answer would or might incriminate or tend to incriminate that person.

- A person who commits an offence under this section is liable on conviction, -
 - (a) in the case of an individual, to a fine not exceeding \$5,000
 - (b) in the case of a body corporate, to a fine not exceeding \$25,000.
- The person may be issued with an infringement notice for failing to answer questions, or for providing incorrect answers.

New Zealand Bill of Rights Act 1990

Every person that Customs officers interact with must be treated fairly and reasonably.

When questioning a person under [section 205](#) of the CEA 2018, they are required to answer those questions. When they are asked questions which do not have a statutory power compelling them to answer, then the NZ BORA 1990 provides for the refusal to answer those questions.

Legislation – NZ BORA 1990	Summary	Notes
Section 14 : Freedom of expression	Provides the right to freedom of expression, which includes the right to say nothing.	<ul style="list-style-type: none"> ➤ Section 14 of the NZ BORA 1990 does not mean that a person can refuse to answer a question which the CEA 2018 compels them to answer. ➤ A person may only refuse to answer a question if they are not being questioned under a statutory provision pursuant to which they are obliged to answer.

Oranga Tamariki Act 1989

The Oranga Tamariki Act 1989 (OTA 1989) prescribes a protective regime for children and young persons being questioned. A child or young person has the same rights as an adult under the NZ BORA 1990, and certain additional rights prescribed under the OTA 1989.

The OTA 1989 defines:

- a **child** as a person under the age of 14 years
- a **young person** as a person of or over the age of 14 years but under 18 years

Any Customs officer may question a child or young person as a matter of general questioning or by statutory provision in the CEA 2018. However, if during that questioning there are reasonable grounds to **suspect** that they have committed an offence then you must comply by explaining the rights pursuant to the OTA 1989.

Refer also to [NZCS 318 Children and Young Persons Checklist](#) when questioning a child or young person.

The following table summarises rights under the OTA 1989 that Customs officers must comply with when questioning a child or young person in relation to [section 205](#) of the CEA 2018.

Legislation – Oranga Tamariki Act 1989	Summary	Notes
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Section 215

Child or young person to be explained their rights before questioned by enforcement officer

The following are circumstances in which a child or young person must be explained of their rights:

- before questioning the child or young person whom there are reasonable grounds to suspect of having committed an offence
- before asking the child or young person questions intended to obtain an admission of an offence.
- when, during normal questioning, the officer forms the view that there are reasonable grounds to suspect the child or young person of having committed an offence
- when the child or young person requests rights to be explained to them
- In some instances further explanation must be given because one had been given more than an hour ago.

The following rights must be explained to a child or young person, in a manner and language appropriate to the age and level of understanding, that:

- they are not obliged to accompany an officer to any place for purposes of being questioned. If they consent to accompany, they may withdraw that consent at any time
- they are under no obligation to make or give statement and if they consent, they may withdraw that consent at any time
- any statement made or given may be used in evidence in any proceedings
- they are entitled to consult with and make or give any statement in the presence of a lawyer and a nominated person, in accordance with the OTA 1989.

Section 221:

Admissibility of statements made by children and young persons

Sets out requirements to be satisfied regarding the admissibility of any statements made by children and young persons as a result of questioning (sections [223](#), [224](#) and [225](#) provide exceptions to section [221](#)).

For any oral or written statement made or given to be admissible, then:

- before questioning, the officer must have explained in a manner and in language that is appropriate to the age and level of understanding all their rights under [section 215](#) of the OTA 1989
- before any statement is taken, the child or young person must have had the opportunity to consult with any lawyer and/or any nominated person
- the statement must have been taken in the presence of a lawyer and/or a nominated person.

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