Stage 2 Cost Recovery Impact Statement

Recovering the cost of border processing services

Agency Disclosure Statement

This Cost Recovery Impact Statement (CRIS) has been prepared by the New Zealand Customs Service (Customs). It analyses a proposal to amend the Customs and Excise (Border Processing Levy) Order 2015 (the Order) to increase the maximum levy rate (cap) for arriving cruise travellers to enable the Chief Executive of Customs (Chief Executive) to fully recover Customs' costs related to arriving cruise travellers.

The analysis in this CRIS is limited by:

- uncertainty in the forecasts of the number of travellers. The CRIS is based on the Border Executive Board's (BEB's) moderate scenario.
- uncertainty about the estimated impact on travel decisions of the proposal related to arriving cruise travellers. We estimate that the impact would be negligible.
- tight timeframes for the second round of consultation carried out with submitters on the updated traveller and cost forecasts and their implications for the proposed caps.

Despite these limitations, this CRIS contains sufficient analysis to inform Cabinet when considering Customs' proposals for amending the Order.

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4 September 2024

Executive summary

Status quo

1. Customs carries out activities to mitigate risks related to travellers crossing New Zealand's border while also facilitating travel. The Order provides for four levies to allow Customs to recover its costs[1] related to those services, for:
   - arriving cruise travellers
   - departing cruise travellers
   - arriving air and sea travellers other than cruise travellers
   - departing air and sea travellers other than cruise travellers.

2. The Order requires the Chief Executive of Customs (the Chief Executive), before a levy period starts, to set the duration of the levy period (usually 36 months) and rates using the formula in the Order.[2] The formula results in levy rates that fully recover estimated costs. The Order prescribes caps above which the Chief Executive cannot set rates.

3. The Chief Executive must now set rates for the levy period beginning on 1 December 2024. The formula in the Order results in rates that are below their respective caps for all levies other than for arriving cruise travellers.

4. For arriving cruise travellers, the result of the formula is $27.14, higher than the cap of $16.44. Unless the cap is increased, the Chief Executive would be required to set the rate at $16.44. This rate would under-recover costs and deficits would accumulate in the memorandum account for arriving cruise travellers.

Proposal to increase the cap for arriving cruise travellers

5. On 8 July 2024, Cabinet agreed to public consultation on border processing levies including a proposed increase to the cap for arriving cruise travellers [CAB-24-MIN-0248 refers]. Consultation took place for four weeks ending on 9 August 2024, with an additional week ending 28 August 2024 on an updated proposal. Eighteen submissions were received in the original consultation, and 17 submissions were received in the supplementary consultation, including from the cruise industry and seaports.

6. The cruise industry opposed increasing the cap for arriving cruise travellers, highlighting the cumulative impact of increases to government levies and other costs.

7. Customs' assessment is that it is more equitable to increase the cap than to leave it unchanged. Increasing the cap would enable the Chief Executive to recover costs from travellers whose border risks Customs is mitigating. If the cap is not increased, those costs would be funded by someone else: travellers in a subsequent period, or taxpayers.

8. Amending the Order to increase the cap would be consistent with the policy intent at the time the Order was established. The policy intent was to establish a mechanism for fully recovering Customs' costs related to travellers, while ensuring Cabinet scrutiny over any proposals to significantly increase rates.

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[1] These costs are known as "border processing costs" as described in Appendix 2.

[2] The formula is further described in Appendix 2.

Technical proposal – setting caps at five percent above estimated rates

9. Customs also consulted on a proposal to prescribe all the caps at five percent above the rates estimated to fully recover costs. This would involve reducing the current caps for the three levies other than arriving cruise travellers. This proposal would contribute to administrative efficiency because it ensures there would be increased transparency and Cabinet scrutiny over any significant future increase to rates.

Implementation

10. The proposals would be implemented by an amendment Order taking effect before 1 December 2024. The Chief Executive would then set levy rates using the formula in the Order. Table 1 sets out the rates the Chief Executive would set if the Order were amended, compared to if the Order is not changed.

Table 1 – Customs' levy rates if the Order is amended

	Rates from 1 December if the Order is not changed $ excl GST	Rates from 1 December if the Order is amended $ excl GST	Impact of amendment $ excl GST
Arriving cruise travellers	16.44	27.14	+10.70
Departing cruise travellers	0.68	0.68	-
Arriving air and sea travellers other than cruise travellers	13.04	13.04	-
Departing air and sea travellers other than cruise travellers	3.62	3.62	-

Status quo

The Order requires the Chief Executive to set rates that recover costs

11. The Customs and Excise Act 2018 provides for levies to recover Customs' costs related to travellers, and the Order provides the specific authority to collect the levies and sets out how they must be calculated. The Order establishes four separate levies for:

   a. arriving cruise travellers

   b. departing cruise travellers

   c. arriving air and sea travellers other than cruise travellers

   d. departing air and sea travellers other than cruise travellers.

12. The levies recover border processing costs from travellers. Customs provides services to protect New Zealand from risks and threats posed by travellers, including protection from prohibited goods and health risks, while also facilitating efficient movement across the border. Appendix 1 lists the activities funded by these levies.

13. The Chief Executive must set the duration (usually 36 months) and rates for each levy period. The Order sets out the formula the Chief Executive must use to calculate the rates. The formula uses the estimated number of travellers, estimated border processing costs, and the opening balance of the memorandum account. This formula results in levy rates estimated to fully recover Customs' costs related to travellers over the levy period. The formula includes an adjustment to eliminate any opening surplus (or deficit) in the memorandum account. The Order prescribes caps above which the Chief Executive cannot set levy rates.

What has happened since levy rates were last set

14. The current rates apply from 1 December 2021 to 30 November 2024. The Chief Executive must set rates for the period beginning 1 December 2024 based on estimates of the number of travellers, costs and the memorandum account balance.

Estimated number of travellers

15. Customs uses the "moderate scenario" published by the BEB[3] to estimate the number of travellers. Table 2 shows that the number of cruise travellers per year is expected to increase by 139 percent in the next levy period compared to the current levy period. This difference is largely because the COVID-19 pandemic affected travel during the current levy period.

Table 2 – Estimated levied travellers (annual average over the levy period)

Levy	Current levy period Millions per year	Next levy period Millions per year	Change
Cruise travellers	0.098	0.236	+139%
Air and sea travellers other than cruise travellers	3.678	6.888	+87%

16. Customs prepared the consultation document using the BEB's moderate scenario published in December 2023. Submitters were concerned the forecasts in the consultation document over-estimated the number of cruise travellers. We had noted this limitation in the consultation document.

17. BEB published an updated moderate scenario after Customs had prepared its consultation document. Customs consulted submitters for a period of a week providing them with updated forecasts and inviting them to update their submissions if they wished to. Table 3 shows that the updated forecast for cruise travellers is 22 percent lower than the forecast originally consulted on.

Table 3 – Estimated number of levied travellers in the next levy period

Levy	Forecast in consultation document Millions	Updated forecast Millions	Change
Arriving cruise travellers	0.781	0.608	-22%
Air and sea travellers other than cruise travellers	17.190	17.794	+4%

18. Submitters were comfortable with our estimates for air travellers.

[3] The Border Executive Board was established under the Public Service Act 2020 to deliver an integrated and effective border system and is hosted by the New Zealand Customs Service. The Board involves six agencies including the New Zealand Customs Service, Ministry of Business, Innovation and Employment, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry for Primary Industries and Ministry of Transport.

19. The forecasts are uncertain. BEB publishes optimistic and pessimistic scenarios alongside its moderate scenario. The Chief Executive would set rates based on the moderate scenario, but if the actual number of travellers turned out to reflect the pessimistic scenario deficits would accumulate in the memorandum account.

Estimated border processing costs

20. Customs estimates its costs related to travellers based on Customs' activities related to travellers, including:

    a. risk assessment of travellers before they cross the border

    b. processing travellers at the border

    c. investigations and related activities such as dealing with seized baggage.

21. Table 4 highlights that the two largest activities are risk assessment before travellers arrive at the border, and processing of travellers at the border. These activities are described further in Appendix 1.

Table 4 – Breakdown of 2024/25 budgeted costs by activity grouping

	Risk assessment $m	Processing $m	Investigations and other $m	Total $m
Arriving cruise travellers	0.467	3.859	0.757	5.083
Departing cruise travellers	0.001	0.543	0.018	0.561
Arriving air and sea travellers other than cruise travellers	27.529	31.323	2.719	61.571
Departing air and sea travellers other than cruise travellers	3.926	12.667	4.136	20.728

22. Customs' forecast costs for the levy period are based on its budget for 2024/25 adjusted in outyears by Reserve Bank of New Zealand forecasts of consumer price and wage inflation. Table 5 shows that forecasted annual average costs in the next levy period are higher than in the current levy period. The difference is due to:

    a. no cruise ships arrived in the first part of the current period, so there were almost no costs incurred in the first part of the current period

    b. new initiatives that Customs has implemented – the Maritime Initiative and the New Zealand Traveller Declaration (NZTD) (described from paragraph 23)

    c. wage and other cost pressures in an inflationary environment (the Consumers Price Index increased by 17.6 percent between July 2021 and July 2024).

Table 5 – Estimated costs (annual average over the levy period)

Levy	Forecast current levy period $m per year	Forecast next levy period $m per year	Change
Arriving cruise travellers	1.538	6.156	+300%
Departing cruise travellers	0.558	0.598	+7%
Arriving air and sea travellers other than cruise travellers	65.635	96.262	+47%
Departing air and sea travellers other than cruise travellers	17.857	24.719	+38%

The Maritime initiative helps mitigate risks including those posed by cruise ships

23. Trans-national organised crime (TNOC) groups are attempting to import large quantities of drugs and other illegal goods into New Zealand via seaports. They are becoming more sophisticated in evading detection, bypassing security controls and infiltrating the supply chains of legitimate traders. These illegal drugs are causing harm to New Zealand communities. Some drugs are then smuggled from New Zealand to other countries, damaging New Zealand's reputation as a low-risk trading partner.

24. TNOC groups are exploiting vulnerabilities, including vulnerabilities related to cruise ships and small marine craft such as:

    a. the vessel, passengers or crew involved with or utilised to undertake illicit behaviour

    b. port workers manipulating systems to enable and undertake illicit behaviour

    c. persons exploiting the controls over physical access to ports and vessels.

25. Examples of these vulnerabilities include cruise ships transiting New Zealand and cruise ships visiting smaller ports where Customs has less presence.

26. Customs has changed how it manages the maritime border and supply chain, seeking to deter criminal activity. As part of this approach, Customs has increased its presence at seaports to better:

    a. identify vulnerabilities with vessels and ports that can be exploited by criminals

    b. detect risks by being physically present as well as by remotely assessing data

    c. examine vessels with identified risks

    d. carry out investigations and targeted operations.

27. In Budget 2023, the Government reprioritised $20 million over two years (the 2023/24 and 2024/25 financial years) to establish the Maritime initiative. From the 2025/26 financial year, these costs are intended to be met through goods fees and border processing levies. Customs' activity-based costing model allocates a portion of the Maritime initiative to traveller services. The Maritime initiative costs related to arriving cruise travellers is an estimated $4.1 million per year (24 percent of total costs related to arriving cruise travellers).

NZTD improves our ability to assess and manage the risks posed by travellers

28. Customs has also implemented the NZTD, an electronic arrival declaration. The NZTD has created a more comprehensive and agile way of managing border risks:

    a. it integrates intelligence and risk assessment across border agencies

    b. it is responsive to new and emerging risks such as a pandemic or overseas foot and mouth outbreak

    c. it identifies risks and manages them offshore before travellers arrive

    d. it provides a more seamless travel experience for low-risk travellers.

29. The NZTD costs an estimated $3.90 per arriving cruise traveller in 2024/25. Cabinet agreed that travellers should fund the ongoing costs of the NZTD from 1 July 2024 [DEV-22-MIN-0301].

Customs is continuing to improve its operating efficiency

30. Customs regularly reviews its services to make efficiencies as well improving the effectiveness of services. Examples of initiatives that improve efficiency include:

    a. Self-processing through eGates provides a streamlined experience for air travellers while enabling Customs to process low-risk travellers at a lower cost and focus on travellers who present a higher risk. Customs is continuing to invest in improving the capability of and coverage of eGates, including a planned replacement of eGates with new versions with enhanced capabilities.

    b. Customs has an app that enables frontline officers to access information and complete passenger interactions on mobile devices, resulting in a faster, more flexible, and more consistent experience for passengers subject to additional interaction.

    c. Customs continues to invest in data analytics, enabling us to better identify non-obvious connections in data, target our interventions, and develop new lines of enquiry.

    d. Customs has recently gone through a reorganisation as part of the recent financial sustainability exercise set by Government, resulting in Customs making cost savings and reducing the number of staff.

Estimated opening memorandum account balances

31. In 2021, the Chief Executive set levy rates that were forecast to return the memorandum accounts for border processing levies to zero by November 2024. However, the actual number of travellers and costs have varied from the forecasts. As a result, deficits have accumulated in the memorandum accounts for arriving cruise travellers and departing air and sea travellers (other than cruise travellers), and surpluses have accumulated in the memorandum accounts for the other levies.

32. Table 8 shows the estimated opening memorandum account balances as at 1 December 2024. These balances affect the rates calculated using the formula in the Order, with an upward adjustment to reduce deficits, and a downward adjustment to return surpluses.

Table 6 – Estimated memorandum account balance under the current Order

	Arriving cruise travellers $m	Departing cruise travellers $m	Arriving travellers other than cruise $m	Departing travellers other than cruise $m
Estimated opening surplus (deficit) as at 1 December 2021	1.225	0.331	-	-
Estimated opening surplus (deficit) as at 1 December 2024	(0.608)	1.132	16.702	(0.605)

The Chief Executive must set rates for the next levy period using the formula in the Order, limited by the caps

33. Under the status quo (if the Order remained unchanged), the Order would oblige the Chief Executive to set rates for the next levy period using the formula in the Order, but those rates cannot be higher than the current caps in the Order.

34. Table 7 shows the rates the Chief Executive must set under the current Order. For arriving cruise travellers, the rate would be $16.44, equal to the cap, because the result of the formula is higher than the cap. For the other levies, the formula would result in rates being set below their respective caps.

Table 7 – Current levy rates and new levy rates required by the Order

Levy	Current levy rates $ excl GST	New rates required by Order $ excl GST	Change $ excl GST	Change
Arriving cruise travellers	11.48	16.44	+4.96	+43%
Departing cruise travellers	4.55	0.68	-3.87	-85%
Arriving air and sea travellers other than cruise travellers	16.59	13.04	-3.55	-21%
Departing air and sea travellers other than cruise travellers	4.52	3.62	-0.90	-20%

35. The combined (arrival plus departure) rates for cruise travellers would increase from $16.03 to $17.12. The Consumers Price Index increased by 17.6 percent between July 2021 and July 2024. To maintain the real value of the rates set in 2021, the rates would need to increase to $18.84. The combined rates that would be set under the current Order would be $1.73 less than the amount needed to maintain their real value.

Setting the arriving cruise rate at the cap would result in an accumulated deficit

36. The rate for arriving cruise travellers would under-recover costs resulting in deficits. The memorandum account would accumulate deficits, totalling an estimated $6.5 million by the end of the next levy period. This is large relative to costs; it exceeds the annual costs related to arriving cruise travellers.

37. The final row in Table 8 shows the estimated balance at the end of the next levy period.

Table 8 – Estimated memorandum account balance under the current Order

	Arriving cruise travellers $m	Departing cruise travellers $m	Arriving travellers other than cruise $m	Departing travellers other than cruise $m
Estimated opening surplus (deficit) as at 1 December 2024	(0.608)	1.132	16.702	(0.605)
Estimated cost for levy period	(15.904)	(1.545)	(248.676)	(63.858)
Estimated levy revenue	10.002	0.413	231.974	64.463
Estimated balance as at 30 June 2027	**(6.510)**	**-**	**-**	**-**

Problem definition

38. This CRIS addresses the problem that, under the current Order, Customs' services for arriving cruise travellers would operate in deficit.

Options

39. This CRIS considers options to address this problem:

Option 1: Do not amend the cap for arriving cruise travellers

Option 2: Amend the cap to at least $27.14, the level that would enable the Chief Executive to set a rate that fully recovers estimated costs.

Assessment criteria

40. The criteria this CRIS uses to assess options reflect cost recovery principles that are based on guidelines published by the New Zealand Treasury (2017) and the New Zealand Controller and Auditor-General (2021). The criteria are:

- **Equity:** Customs' cost recovery regime supports costs being recovered in a way that is equitable (fair). We will generally source funding for our services from those who use them.
- **Efficiency:** there are two components of efficiency:
  - administrative efficiency: Customs will deliver high service standards at a sustainable cost.
  - economic efficiency: the economic cost of any changes in travellers' behaviour as a result of imposing the levies at levels that over- or under-recover costs.
- **Justifiability:** Customs will only recover the costs of delivering the service. The costs recovered reasonably relate to the services Customs is charging the levies for.
- **Transparency:** Customs will provide information about funding decisions and allocation of costs to border processing services.

Assessment of Options for amending the cap for arriving cruise travellers

Equity

41. If the Order is not amended (Option 1), Customs would set the levy rate for arriving cruise travellers at the current cap. This levy rate would under-charge travellers for their costs, resulting in this service operating in deficit (assuming Customs continues its current level of service). As a result, costs of mitigating the border risks of these travellers would be funded by someone else: either taxpayers, or a subsequent cohort of travellers.

42. By contrast, if the Order was amended (Option 2), the Chief Executive could set the levy rate to fully recover costs. As a result, cruise travellers would fully fund Customs' costs that relate to their travel.

43. Amending the Order (Option 2) more closely meets the equity criterion than Option 1 (not amending the Order) because it is travellers who create the need for Customs to carry out activities to mitigate risks related to their travel.

Economic efficiency

44. Cruise travellers make the discretionary decision to arrive on a cruise ship and their arrival creates the need for Customs to provide a service.

45. If Customs under-recovers its costs from travellers, it would distort economic behaviour. We assess the economic impact of this distortion to be negligible (see paragraph 52).

Transparency and justifiability

46. The options are identical in relation to the principles of "transparency" and "justifiability". Customs has transparently described the costs and the costs are justifiable.

Summary of assessment of Options to amend the cap for arriving cruise travellers

47. This CRIS prefers Option 2 (amend the Order to increase the cap for arriving cruise travellers) over Option 1 (the status quo where the Order is not amended) because it is more equitable for current cruise travellers to fund Customs' costs related to those travellers, rather than expecting taxpayers or future cruise travellers to fund those costs.

48. Amending the Order to increase the cap would be consistent with the policy intent at the time the Order was established. The policy intent was to establish a mechanism for fully recovering Customs' costs related to travellers, while ensuring Cabinet scrutiny over any proposals to significantly increase rates.

49. This CRIS has not identified any reason to deviate from this policy intent. In particular, the proposal (Option 2) is assessed as having a negligible impact on cruise travel.

Impact of the options for amending the cap for arriving cruise travellers

Impact on arriving cruise travellers

50. Option 2 (amending the cap) would give the Chief Executive the ability to set a rate for arriving cruise travellers that is estimated to fully recover costs. Table 9 shows the levy rate that would be set under the status quo, and the levy rate that would be set if the cap was amended.

Table 9 – Rate for arriving cruise travellers under current and amended cap

	With current cap $ excl GST	With amended cap $ excl GST	Change $ excl GST
Levy rate from 1 December 2024	16.44	27.14	+10.70
Cap	16.44	At least 27.14	At least +10.70

51. The cruise industry submitted that fewer cruise travellers might visit New Zealand due to the cumulative impact of increases to government levies and other costs. The cumulative impact includes the $65 increase to the International Visitor Conservation and Tourism Levy, as well as increases to fuel costs, port charges and provisioning costs.

52. Amending the Order is estimated to have a very small impact on the number of cruise travellers – 340 fewer cruise travellers arriving per year – compared to if the Order was not amended. This is one tenth of one percent (0.1%) of the number of cruise travellers that are estimated to arrive annually. The estimated impact is small partly because the estimated levy rate change enabled by the Order amendment ($10.70) is small compared to the total cost of cruise travel.

53. This impact was calculated using the methodology and data described in the 2021 CRIS related to border processing levies.[4] The estimated impact on the number of travellers is subject to significant limitations:

    a. the price elasticity of demand was estimated more than a decade ago and there have been significant developments since, including the COVID-19 pandemic, potentially affecting people's sensitivity to the price of travel

    b. the total cost of travel was estimated three years ago. We adjusted the total cost for consumer price inflation but not for other cost changes.

54. These limitations do not alter our overall assessment that the impact on the number of travellers is negligible. We will update the basis for calculating these estimates for future reviews.

Impact on the Crown

55. If the Order is not amended (Option 1), Customs would be unable to set levy rates that recover its costs, resulting in a $6.5 million estimated accumulated deficit by the end of

[4] New Zealand Customs Service and Ministry for Primary Industries. 2021. Recovering the cost of border processing services. Available at: https://www.treasury.govt.nz/sites/default/files/2021-10/ria-customs-rcb-sep21.pdf

the next levy period. Customs would need to use taxpayers' funds to carry the accumulated deficit. Eventually, Cabinet would need to decide who would fund the accumulated deficit: either taxpayers, or travellers in a subsequent levy period.

Options not assessed to address the problem – reducing services for arriving cruise travellers

56. One option for addressing the forecast deficit is to reduce services for arriving cruise travellers. This CRIS has not assessed that option and has assumed that Customs will continue to deliver the level of services that the Government expects it to deliver in 2024/25.

57. If the cap for arriving cruise travellers remained at $16.44 and Customs needed to reduce services, we would explore options such as:

    a. requiring all cruise travellers to be processed at a port with an established Customs presence before disembarking at other ports. This would save the cost involved in Customs staff travelling to ports such as Milford or Akaroa.

    b. requiring travellers on large cruise ships to be processed at a major port (eg Auckland or Christchurch) before disembarking at other ports including ports with only a small Customs presence such as Opua.

    c. reducing Customs' capacity to process cruise travellers. This would save Customs cost, but it would take longer to process all the travellers on a cruise ship.

    d. requiring cruise ships to arrive only when Customs has the capacity available (eg limiting arrivals in Auckland to one cruise ship per day).

58. Customs has not quantified the savings that could be realised from these options, but they might not by themselves be sufficient to avoid services for arriving cruise travellers operating at a deficit if the cap remained at $16.44.

Technical proposal – setting all caps five percent above estimated rates

59. Customs consulted on a proposal to prescribe all the caps at five percent above the rates estimated to fully recover costs. This proposal would allow the Chief Executive to make minor increases to rates (if necessary and permitted by the Order) but it would require a Cabinet decision to enable any future proposed increased rates of more than five percent.

60. One benefit of Cabinet consideration is the scrutiny over Customs' efficiency. Various mechanisms already provide scrutiny, including the Estimates of Appropriation, Customs' Annual Report, and the report on the performance of the border processing levy. Cabinet consideration of caps provides for specific, focused, scrutiny if rate increases are needed.

61. On balance, we consider the benefits of scrutiny outweighs the cost of the Cabinet process because it provides assurance to Ministers and stakeholders.

Consultation

62. Public consultation related to border processing levies took place for four weeks ending on 9 August 2024. The consultation document was publicised via Customs adding an "important notice" on its website, Customs' newsletter, LinkedIn and emails to Customs' stakeholder reference group.

63. Eighteen submissions were received from the cruise industry, a seaport, the airline industry and airports. Customs considers that we consulted with, and received submissions from, the main representative groups with an interest in the proposal assessed by this CRIS.

64. Customs carried out supplementary consultation with submitters for a week ending 28 August 2024 on updated proposals following an update to the forecast number of travellers. Four of the original submitters provided feedback, and there were 13 submissions from organisations and individuals who had not made submissions in the original consultation. The feedback received in this supplementary consultation was consistent with the feedback received in the original consultation.

65. Their submissions related to the proposal in this CRIS are discussed in the relevant sections of this CRIS.

Agency consultation

66. The following agencies were consulted on this CRIS and their comments were incorporated: The Treasury, Ministry for Regulation, Ministry of Transport, Ministry of Business, Innovation and Employment (MBIE), and the Ministry for Primary Industries. The Department of Prime Minster and Cabinet was informed.

67. Agencies supported the CRIS and their feedback was incorporated. The Ministry of Transport and MBIE noted the cumulative impact of the fees and levies that border and transport sector agencies charge for services or programmes related to travellers, as a key issue to consider.

Implementation Plan

68. Customs already has levy collection systems in place and the industry has technology that interfaces with Customs' systems.

69. Implementing the preferred options (amending the cap for arriving cruise travellers, setting caps with five percent headroom) would involve:

- Customs communicating with its customers about Cabinet's decisions to amend the Order and the reasons for them
- amending the Order with effect before 1 December 2024 to:
  - prescribe caps at five percent above the rates estimated to fully recover costs
  - set out what would happen if a rate were not set before a levy period
- notifying the Order amendment in the New Zealand Gazette.

70. There are no material risks to implementing the proposed changes to caps.

71. The cruise industry submitted that they had already sold tickets for travel after 1 December 2024 without knowing what the new levy rate would be. The industry made suggestions to address this issue, including:

    a. the Crown refunding the difference for tickets already sold, as the Crown did in 2021 for airlines.

    b. Customs collecting levies at the rate that applies when the ticket is sold rather than when travel occurs. This approach is used in Australia and avoids the issue of selling tickets without knowing what the levy rate will be.

72. The cruise industry said it has already sold most of its tickets for travel one year ahead, and indicated the difference between the current \$11.48 rate and a \$27.14 rate for those tickets would equate to more than \$3 million. The submissions indicated that the cruise industry now has two options:

    a. charge customers who they have already sold tickets to an additional amount equivalent to the rate increase (contracts often provide for this)

    b. absorb the rate increase on their balance sheet (to the extent they had not already anticipated the rate increase when selling tickets).

73. Customs publishes annual performance reports setting out forecasts of travellers, costs and memorandum account balances. Those reports described the two new initiatives (the Maritime initiative and NZTD) and stated that they would be recovered from travellers.

74. Customs does not support the first of the suggestions in paragraph 71 because those refunds to the airline industry were addressing extraordinary circumstances surrounding COVID-19, and these circumstances no longer hold.

75. Customs considers it is not feasible to consider and implement the second suggestion before the next levy period starts on 1 December 2024 because it was not consulted on and would involve structural changes to the Order. We propose to engage with industry on implementing this suggestion for the subsequent levy period (starting on 1 July 2027).

76. We will also engage on other suggestions made by submitters, of:

    a. exempting from the levy travellers on cruise ships that depart from New Zealand and later arrive in New Zealand without going to another place or meeting another vessel

    b. industry input into BEB passenger scenarios.

Monitoring

77. Customs will actively monitor the memorandum accounts for the levies and continue to release annual performance reports detailing levy revenue, border processing costs, and any work done to improve the quality and efficiency of services.[5]

Review

78. Customs will review the levies before the Chief Executive sets rates for the period beginning 1 July 2027. Customs will consult stakeholders before setting those rates. If the proposed rates are above the caps, Cabinet approval would be needed to amend the Order to increase the caps.

79. Customs will engage with the industry over the next levy period to review options for how the levy is charged, including whether the levy rate charged should be the rate that applied when the ticket was sold. The intention would be to implement the outcome of that review before 1 July 2027.

[5] See: Border processing levies - New Zealand Customs Service for the latest and historical reports.

Appendix 1: Activities for which costs are recovered

Pre-border risk assessment and related activities

- liaising with other government agencies about protecting against border risks related to travellers
- patrolling the coastline
- gathering intelligence on incoming travellers
- modelling and analysis of information
- processing electronic data related to travellers
- identifying travellers of interest.

Pre-border advice and engagement

- providing advice to travellers
- liaising with industry, including planning and problem solving about processing travellers.

At-border processing travellers and their goods

- primary processing (manual and via eGate): validating identity, completing health-related and immigration processes, identifying travellers of interest, including questioning and using detector dogs, and ensuring compliance with requirements
- secondary processing: interacting with travellers of interest, including questioning, X-ray and search
- search passenger craft, including using detector dogs.

Investigations and compliance

- disrupting illegal activity before travellers of interest arrive in New Zealand
- monitoring travellers of interest after they have completed at-border processing
- carrying out investigations resulting in enforcement action
- dealing with goods seized from travellers.

Appendix 2: Legislative basis for the status quo

1. Since 1 January 2016, all travellers,[6] other than exempt travellers, have been required to pay levies to Customs. Section 413 of the Customs and Excise Act 2018 provides the legislative basis for charging the levies.

2. The Customs and Excise (Border Processing Levy) Order 2015 (the Order) provides the specific authority to collect the levies.[7]

Travellers who must pay the levies

3. The Order provides for four levy rates,[8] for:
   - travellers arriving other than on a cruise ship (non-cruise traveller arrival)[9]
   - travellers arriving on a cruise ship
   - travellers departing other than on a cruise ship (non-cruise traveller departure)
   - travellers departing on a cruise ship.

4. All travellers must pay these levies, other than two classes of exempt travellers.
   - levy-funded exempt travellers[10] – for example, children under the age of two years and travellers other than passengers.[11] The border processing costs of levy-funded exempt travellers are funded by the levy
   - non-levy funded exempt travellers[12] – for example, travellers on a non-passenger commercial craft. The costs of non-levy funded exempt travellers are funded by the Crown.

5. Appendix 4 sets out the details of these exemptions.

6. Customs collects the levies from airlines and cruise lines on behalf of the levied travellers on their craft. For levied travellers who arrive or depart on other craft such as yachts, Customs collects the levies from the person in charge of the craft, or an agent of the owner or operator of the craft.[13]

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[6] In section 143(1) of the Customs and Excise Act 2018, ‘traveller’ means, “any person who arrives in New Zealand from, or departs from New Zealand for, any place outside New Zealand.”

[7] The Customs and Excise (Border Processing Levy) Order 2015 incorporates amendments made on 1 October 2018 and 26 March 2021.

[8] Customs and Excise (Border Processing Levy) Order 2015, cls 4 and 5.

[9] ‘Non-cruise travellers’ means travellers other than cruise ship travellers. Most non-cruise travellers arrive on flights operated by commercial airlines, but some arrive on charter flights or private aircraft, or on private marine craft such as yachts. ‘Cruise ship’ means “A ship, boat, or other vessel operated by a cruise line for an international cruise as part of its international cruise business.” Customs and Excise (Border Processing Levy) Order 2015 cl 3.

[10] ‘Levy-funded exempt traveller’ is defined in Customs and Excise (Border Processing Levy) Order 2015, cl 3.

[11] ‘Passenger’ means, “a person carried on a craft during a flight or voyage, other than a person— (a) who is employed or engaged under a contract of service or a contract for services; and (b) who, under that contract, provides services on the craft during the flight or voyage wholly for the purposes of the business of the craft”. Customs and Excise (Border Processing Levy) Order 2015, cl 3.

[12] ‘Non-levy-funded exempt traveller’ is defined in Customs and Excise (Border Processing Levy) Order 2015.

[13] Customs and Excise (Border Processing Levy) Order 2015, cl 12.

Setting levy rates for a new levy period

7. The Order enables the Chief Executive to set the levy rate for each levy period. Customs must consult representative groups of stakeholders as appropriate before adjusting the levy rates.[14] In the Order, the formula to calculate each levy rate is:[15]

The estimated border processing costs[16] for the levy period, adjusted as described in paragraph 8 below
divided by
The estimated number of levied travellers in the levy period.

8. The estimated costs are adjusted to take account of:[17]
   - any estimated under- or over-recovery of costs for the previous levy period; and/or
   - any remaining under- or over-recovery of costs for the period before the previous levy period.

9. The Order specifies amounts that levy rates must not exceed (caps). If the formula in paragraph 7 would result in a rate that exceeds the cap, the rate would be set at the cap.

Resetting levy rates during a levy period

10. The Chief Executive may reset rates during a levy period following circumstances that:
    - occur after the existing levy rates were set
    - were not anticipated when setting those rates.[18]

11. The Chief Executive must consider the size of the likely over-recovery or under-recovery if the rates are not reset and the time remaining in the levy period, and must use the method described in paragraphs 7 to 9 (above) to reset the rates, and must notify them in the New Zealand Gazette.

[14] Customs and Excise Act 2018, s 413(4).

[15] Customs and Excise (Border Processing Levy) Order 2015, cls 6 to 9.

[16] 'Border processing costs' means "costs incurred by Customs in, or for the purpose of, carrying out its functions under the Customs and Excise Act 2018 or any other enactment, in relation to relevant travellers and their accompanying baggage (or other goods in their possession or under their control, but excluding costs referred to in section 413(5) of the Customs and Excise Act 2018." Customs and Excise (Border Processing Levy) Order 2015, cls 6(4), 7(4), 8(4) and 9(4).

[17] Customs and Excise (Border Processing Levy) Order 2015, cls 6 to 9.

[18] Customs and Excise (Border Processing Levy) Order 2015, cl 10.

Appendix 3: Summary of Submissions

SUBMITTERS

Customs released a consultation document and sought submissions by 9 August 2024. Eighteen submissions were received from the following types of organisation:

- five representing the cruise industry or their representative bodies
- one seaport: Timaru
- one providore (provides services to ships)
- one academic cruise industry expert
- New Zealand Airports Association
- two airports: Hamilton Airport and Auckland Airport
- Board of Airline Representatives NZ (BARNZ)
- two airlines: Air New Zealand and Qantas
- four submissions from individuals (other than the academic submission).

On 20 August 2024, Customs contacted these submitters and provided updated traveller and cost forecasts and consequential updates to the proposed caps and invited them to update their submission if they wished by 28 August 2024.

Seventeen submissions were received from this subsequent consultation. Four of the submissions were from among the 18 original submitters, and 13 were new submitters, many of whom are from Northland. The seventeen submissions were from:

- one shipping support service
- two seaports
- eight tourism operators
- four local economic development agencies
- one airport
- one individual.

The feedback in these updated and new submissions were consistent with the feedback in the eighteen original submissions.

Submissions about Customs' levy rates

The cruise industry and the seaport submitted that the increase in the levy rate increase proposed is untenable given the cumulative effect of increases in other government charges (such as the International Visitor Conservation and Tourism Levy, Aviation Security charges and Maritime New Zealand charges) and additional costs cruise lines are facing arising from inflation and other cost drivers such as port cost increases, and the cost of fuel and supplies.

The airline industry submitters were generally supportive of the proposed reductions in levy rates.

Submissions about traveller forecasts

All the cruise industry submissions challenged the traveller number forecasts used in the consultation document and suggested options to improve the forecasting. This was reiterated in the submissions received during the subsequent consultation with submitters.

The airline industry submitters thought the air traveller forecasts were roughly in line with their expectations.

Submissions about Customs' costs

Many submitters questioned the transparency of the costs presented, especially the significant cost increases for the Maritime initiative and NZTD. Some sought more detailed costings to be available.

Submissions about the implementation process for setting levies

All cruise industry submissions and the academic cruise industry expert submitted that the increased costs will be unable to be passed onto the traveller (given the tickets are already sold) so will have a direct effect on the profitability of cruise routes around New Zealand.

The cruise industry and others submitted that more notice should be provided before the levy rates are set (cruise seek 18 months; 12 months at an absolute minimum). Many submitted that such a large increase with the vast majority of tickets already being sold would have significant direct effects on the profitability of the cruise industry and have significant subsequent impacts on the businesses and organisations that provide services to the travellers and cruise lines.

Two of the cruise industry bodies suggested investigating different options for setting the levy, including a flat ship fee or setting fees directly charged based on activity. There was strong support for setting levies so the date the ticket is sold becomes the trigger for the levy rate to apply, meaning the effects of an increase would be more directly correlated with the time the traveller paid for their tickets.

Some individuals submitted that it would be more appropriate to retain some of surpluses and use them to enhance or improve operations.

Appendix 4: Border Processing Levy: Exemptions

Levy funded travellers

(a) a traveller under the age of 2 years:

(b) a traveller who arrives in, or departs, New Zealand on an international aircraft otherwise than as a passenger:

(c) a traveller who arrives in, or departs, New Zealand on a cruise ship otherwise than as a passenger:

(d) a traveller who—
- (i) arrives in New Zealand on an aircraft; and
- (ii) is not required to report to a Customs officer at an arrival hall because the traveller is in transit to a place outside New Zealand:

(e) a traveller who, having arrived in New Zealand as referred to in paragraph (d), departs New Zealand on an aircraft for the place outside New Zealand without having been required to enter a departure hall.

Non-levy funded travellers

(f) a traveller who arrives in, or departs, New Zealand on any of the following:
- (i) a craft being operated by the New Zealand Defence Force or the defence forces of any Government other than that of New Zealand:
- (ii) a craft being used wholly for diplomatic or ceremonial purposes of any Government:
- (iii) a craft being used wholly for the purposes of a mission being carried out or organised by any Government that is a humanitarian mission or a mission in response to an emergency or a crisis:
- (iv) a craft being used for the purposes of an official expedition of a Contracting Party[19]:
- (v) a non-passenger commercial craft:

(g) a traveller who arrives in New Zealand after having been rescued at sea:

(h) a traveller who arrives in New Zealand wholly for the purpose of seeking temporary relief from stress of weather:

(i) a traveller who, having arrived in New Zealand as referred to in paragraph (h), departs New Zealand as soon as is reasonably practicable:

(j) a traveller who departs New Zealand on a craft on a journey—
- (i) that is not intended to go beyond the exclusive economic zone; and
- (ii) that is not intended to include a meeting with any craft or persons entering the exclusive economic zone from a point outside New Zealand:

(k) a traveller who arrives in New Zealand on a craft—
- (i) that has returned to New Zealand after a journey that did not extend beyond the exclusive economic zone; and
- (ii) that did not meet during that journey with any other craft or persons entering the exclusive economic zone from a point outside New Zealand:

(l) a traveller who arrives in, or departs, New Zealand before 1 January 2017 on an international aircraft as a passenger being carried on a ticket that was purchased, and fully paid for, before 1 January 2016:

(m) a traveller who arrives in, or departs, New Zealand before 1 January 2017 on a cruise ship as a passenger on an international cruise and whose place on the cruise was purchased, and fully paid for, before 1 January 2016.

[19] **Contracting Party** has the meaning given by section 7(1) of the Antarctica (Environmental Protection) Act 1994; **official expedition**, in relation to a Contracting Party, has the meaning given by section 7(1) of the Antarctica (Environmental Protection) Act 1994.