



Implementing the Border Clearance Levy Consultation Document

MPI Discussion Paper No: 2015/22

Prepared for public release by the New Zealand Customs Service and Ministry for Primary Industries.

ISBN No: 978-0-908334-54-4 (online)

ISSN No: 2253-3907 (online)

15 June 2015

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1 Introduction and overview

Each year the New Zealand Customs Service (Customs) and the Ministry for Primary Industries (MPI) process more than 5 million travellers arriving in New Zealand, and Customs also processes around the same number that depart. About 95 percent of people cleared at the border are passengers and crew from commercial passenger flights, with a further four percent passengers and crew from foreign-going passenger ships. The remaining one percent are from commercial non-passenger craft (e.g. cargo ships), private aircraft and yachts, and the military.

New Zealand's success in growing trade and tourism has led to increased demand for the services delivered by MPI and Customs at the border. Arriving air passenger volumes have grown 19 percent in the last five years (from 4.4 million in 2009 to 5.2 million in 2014) and 49 percent in the last ten years. Arriving cruise ship passengers have risen approximately 80 percent in the last five years (from 136,000 to 247,000). The total number of traveller movements across the border (i.e. both arriving and departing passengers and crew) is expected to increase to about 13.3 million by 2018 from around 11.6 million in 2014. This growth is expected to continue at around 3.5 percent per annum.

The risk profile of passengers is also changing. While around 45 percent of arriving passengers are New Zealanders, our trade and travel links with other countries are increasing and as we enter into more free trade agreements, and target more tourism marketing into emerging economies, the flow of people (and goods) coming across our borders will continue to become more diverse. Higher risk passengers require higher levels of intervention (e.g. x-ray screening, detector dog screening, physical inspections), which increases the cost per passenger of clearance.

If insufficient resources are applied to manage risks, the frequency of biosecurity incursions and harm from prohibited goods or persons will increase. The social and economic cost of such events are very high - for example:

- the current Queensland Fruit Fly response is expected to cost approximately \$17 million
- the outbreak of Foot and Mouth Disease in the United Kingdom in 2001 cost £7.7 billion; MPI estimates the cost to the New Zealand economy of a Foot and Mouth Disease outbreak would be up to \$16 billion¹
- Didymo cost \$10 million between 2004-07, with significant ongoing management costs.

The Government has decided to implement a Border Clearance Levy (Levy) from 1 January 2016 to fully recover the costs that Customs and MPI incur in providing these services to

¹ The potential harm avoided by interceptions of some major classes of illicit drugs in 2013/14 has been quantified using the New Zealand Drug Harm Index at a little over \$107.4 million, an increase from just over \$57 million in 2012/13.

travellers. All travellers will be required to pay the Levy on arrival and departure from New Zealand (unless made exempt).

The Levy will:

- ensure that travellers who generate the costs of border clearance services make a fairer financial contribution to the costs of these services
- allow the resourcing of border clearance services to respond to varying volumes of work generated by travellers
- support the provision of effective border risk management services on a sustainable basis, with minimal inconvenience to travellers.

2 Statutory framework

The Customs and Excise Act 1996 and the Biosecurity Act 1993 have been amended to introduce levies to fund the direct and indirect costs of activities carried out by MPI and Customs which relate to the processing of people arriving in and departing from New Zealand. Every traveller who arrives or departs from New Zealand on or after 1 January 2016 must pay the Levy. However, there will be transitional arrangements as described in *Section 8: How will the Levy be administered?*

Relevant sections of the legislation are included as Appendix 4 in this consultation document.

In order for the Levy to have effect, the Governor-General must make levy orders under the Customs and Excise and Biosecurity Acts that prescribe key implementation details, such as:

- the rate of levy or the basis on which the rate is to be calculated
- how the actual rate of the levy is to be set (if the rate is not set in the levy order itself)
- when and how the levy is to be paid
- how the rate of levy, and any variation of the rate, is to be notified
- exemptions from the requirement to pay
- who is to be responsible for collecting the levy
- requiring that returns be made to the Director-General of MPI and Comptroller of Customs to enable amounts of levy payable to be calculated and verified
- provision for circumstances in which a levy paid may be refunded.

Before recommending the levy orders, the responsible Ministers must consult with persons who the Ministers believe are representative of interests likely to be affected substantially by the order.

3 Purpose of consultation document

This consultation document seeks input from interested parties on how the Levy will be implemented and on the proposed design. The details of the Levy will be given effect through levy orders, which will be made in November 2015.

The Border Clearance Levy will be payable by all travellers, including:

- passengers and crew travelling on commercial airlines
- passengers and crew travelling on cruise ships
- crew on commercial non-passenger aircraft and ships
- persons on privately owned aircraft, yachts or other craft.

Some limited exemptions are proposed, and these are discussed in *Section 6: Who will be subject to the Levy?*

Because Levy rates will be influenced by a number of factors (including exemptions), the rates have been presented as ranges. They are (excluding GST):

\$15.20 - \$15.90 for arriving travellers (with the exception of cruise ship travellers)

\$19.00 - \$19.70 per arriving cruise ship traveller and

\$2.60 - \$3.10 per departing traveller.

Further details on how these rates have been calculated are included in Appendices 1 and 2.

The vast majority (99 percent) of travellers who enter and depart New Zealand do so via commercial passenger airlines and passenger cruise ships. We propose that the Levy for these travellers be collected by international air and maritime transport operators, under an approach similar to that used by the Civil Aviation Authority (CAA) to collect current departure levies.

Under this approach, CAA will collect the Levy from airlines on behalf of Customs and MPI. Customs will collect the Levy from cruise operators on behalf of both agencies.

The remaining one percent of travellers (e.g. those entering and departing on private craft) would be charged the non-cruise rates, by more direct means, as and when entry or departure occurs.

Customs and MPI will actively monitor revenue and expenditure to ensure that they can continue to deliver efficient and effective services to users. This will be publicly reported through memorandum accounts. Memorandum account activity and assumptions that underpin the forecasting are listed in Appendix 2.

A full review of the Levy will be undertaken in three years to ensure that the policy is achieving the objectives. This will include examining any unanticipated impacts on travellers and transport operators and considering potential improvements to the design of the Levy.

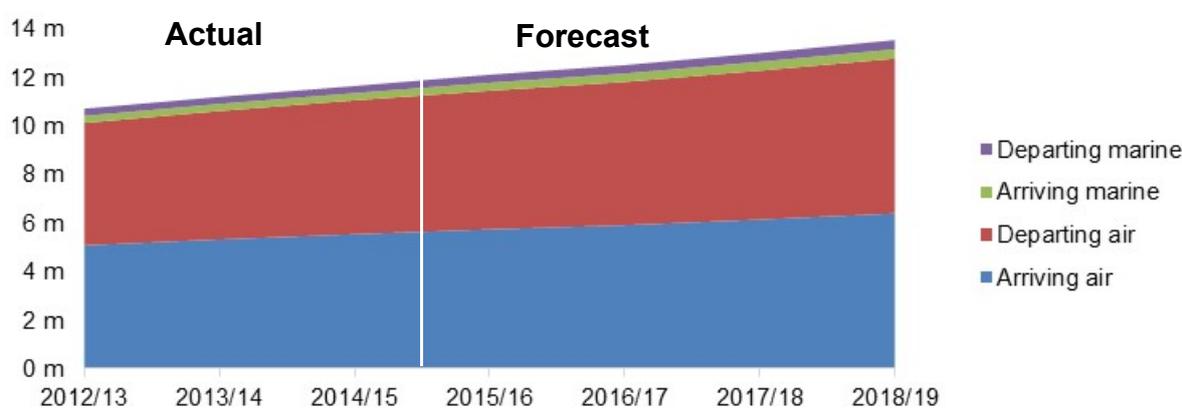
You are invited to comment on this proposed approach to implementation. Opportunities to engage with Customs and MPI officials on the design of policy will be notified to key stakeholders and on the Customs and MPI websites.

The deadline for submissions is **5.00pm, Tuesday 28 July 2015**. Details about how to make a submission are provided in *Section 10: How to have your say* in this consultation document.

4 Current funding arrangements and traveller volumes

In 2014/15, more than 11.6 million travellers will be cleared at the border by Customs and MPI biosecurity personnel at a current cost of about \$103 million per annum².

Graph 1: Forecast passenger and crew growth 2012/23-2018/19



The demand for these services is increasing. For example, arriving cruise passengers have increased by approximately 80 percent (from 136,000 to 247,000) in the past five years.

Increasing demand and increasing levels of risk (as discussed above) will continue to place increasing pressure on the ability of border control agencies to deliver effective border clearance services.

While Customs and MPI have jointly worked on a number of fronts to minimise operating costs (e.g. automating clearance processes, educating passengers) these, and any future efficiency gains, will be insufficient to maintain the quality of border clearance services to acceptable levels.

In particular, the current funding framework has the following characteristics:

- the costs of border clearance services are generated by individuals entering and departing New Zealand, yet are funded by general taxation
- funding streams for border clearance are not easily scalable (funding levels do not automatically follow workloads)
- the combination of increased workloads and limited funds available from general taxation will ultimately impact on the quality of border clearance services, elevating border control risks and creating delays in processing passengers.

²A breakdown of traveller movements by transport mode is provided in Appendix 1

5 Objectives of the Levy

The Government has decided to introduce a Levy to meet the border clearance costs of travellers, to reflect the principle that those generating costs should pay their share.

The Levy will provide a resource stream that correlates more directly to passenger volumes, and allow border agencies to manage biosecurity, customs and immigration risks on a sustainable basis, and allow agencies to maintain current levels of service.

The proposal has also been informed by the *Government Statement on Regulation*.³

6 Who will be subject to the Levy?

The Levy will be payable by all travellers, including:

- passengers and crew travelling on commercial airlines
- passengers and crew travelling on cruise ships
- crew on commercial non-passenger aircraft and ships (such as fishing vessels)
- persons on privately owned aircraft, yachts and other craft.

6.1 TRAVELLERS EXEMPTED FROM THE LEVY

Under some circumstances it may be justifiable to exempt certain classes of travellers from the Levy. Proposed exemptions from the Levy are as follows:

- Any passenger travelling on any aircraft or ship being used specifically for the military, diplomatic, or ceremonial purposes of any Government (this includes non-commercial flights to Antarctica)
- Any air passenger or crew member in transit through New Zealand who does not leave the transit/arrival/departure areas of the airport
- Children under two years of age would be exempted because they are usually not ticketed, seated, or risk screened separately from their parents.

These proposed exemptions have been selected to maintain consistency with those set in relation to the New Zealand Civil Aviation Authority's International Passenger Security Charge which funds the activities delivered by the New Zealand Aviation Security Service.⁴

Consideration could also be given as to whether the Levy should apply to those entering or departing New Zealand on humanitarian grounds (e.g. international assistance related to the Canterbury earthquake or ships entering New Zealand waters because of stress or weather).

1. Should any other classes of traveller be exempted from the Levy? If so, who and why?

³ <http://www.treasury.govt.nz/economy/regulation/statement>

⁴ See: Regulation 20(2) of the Civil Aviation Charges Regulations (No 2) 1991

7 How much will the Levy be?

7.1 PROPOSED LEVY RATES

Because Levy rates will be influenced by a number of factors (including exemptions), the rates are presented as ranges, as follows (excluding GST):

\$15.20 - \$15.90 for arriving travellers (with the exception of cruise ship travellers)

\$19.00 - \$19.70 per arriving cruise ship traveller and

\$2.60 - \$3.10 per departing traveller

We are consulting on a range of rates for the Levy because the final figures will be influenced by decisions to be taken on potential classes of traveller to exclude and whether to differentiate rates for different modes of travel for arrivals.

7.2 DIFFERENTIATION OF CHARGES BY ARRIVAL AND DEPARTURE

The costs of processing arriving and departing passengers is significantly different because:

- There is no biosecurity screening on departing travellers and
- The level of Customs resources applied to manage arrival processes is much greater than departures (estimated at 72 percent of Customs total passenger processing costs).

7.3 DIFFERENTIATION OF CHARGES BY LOCATION AND/OR BY TRANSPORT MODE

Costs are driven, to some extent, by traveller choices. Entering or departing New Zealand from remote locations can add additional costs that would otherwise not be incurred by Customs or MPI. However, there does not appear to be a substantial variance, and we do not propose to differentiate the fee by location.

The costs do differ depending on the mode of travel used to arrive or depart from New Zealand. MPI estimates that the cost per traveller on cruise ships (both passenger and crew) is higher by around \$4.00. This reflects the additional activities that MPI must undertake in relation to cruise ships. At each port a cruise ship arrives at, biosecurity inspectors must risk assess travellers. This incurs more expense than the single risk screening that is conducted for air travellers.

2. Should the Levy be differentiated by transport mode or location to reflect the differences in the costs of clearing travellers?

7.4 ACTIVITIES FUNDED BY THE LEVY

The Levy collected from travellers will be used to fund border activities to protect New Zealand. Activities include:

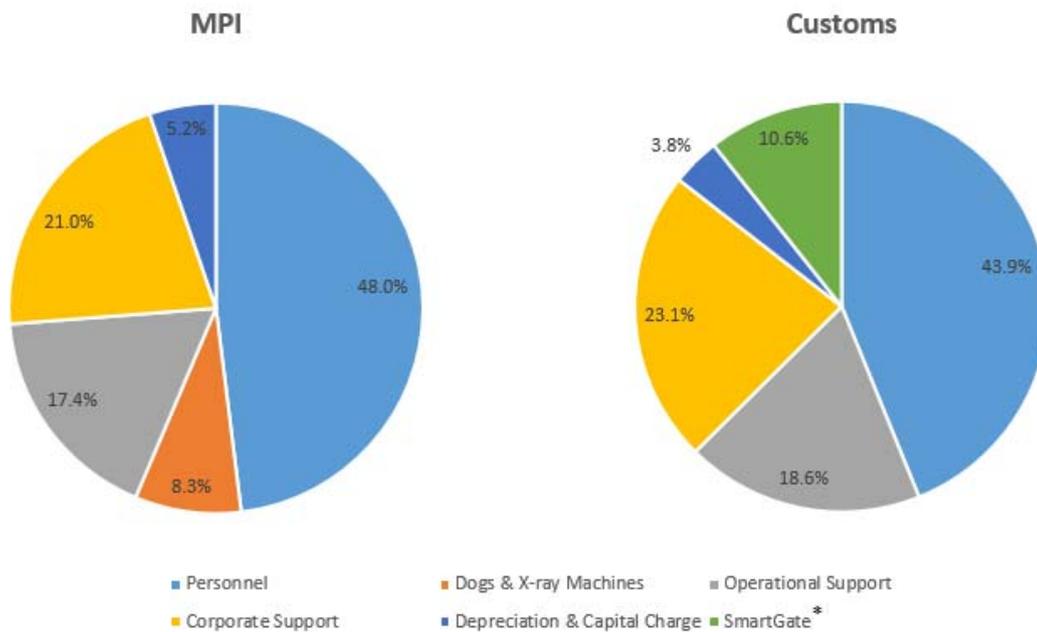
- the collection and use of information and intelligence for screening and risk assessment of travellers prior to arrival or departure from New Zealand

- questioning and searching of travellers at designated places of first arrival before giving clearance to leave the area⁵
- surveillance and investigations leading to enforcement of applicable law (e.g. relating to biosecurity breaches or carriage of prohibited substances).

Further information on the activities undertaken by Customs and MPI that will be funded by the Levy is contained in Appendix 3.

7.5 LEVY COST COMPONENTS

The cost breakdown for agencies to deliver the above activities are shown in the graphs below. This breakdown informed the Levy rates proposed in 6.1.



* Depreciation and capital charge is included.

8 How will the Levy be administered?

8.1 TRANSITIONAL ARRANGEMENTS

All passengers and crew will be liable to pay the Levy from 1 January 2016.

However, transport operators will not be in a position to collect the Levy in the price of tickets purchased before the levy orders take effect. Provision will therefore be made to charge the Levy only on those passengers whose tickets were purchased on or after 1 January 2016.

⁵ This includes Customs undertaking primary processing functions related to immigration that are delegated by Immigration New Zealand.

All crew will be liable to pay the Levy from 1 January 2016.

3. How practical is it for operators to differentiate between passengers who have purchased tickets prior to 1 January 2016?

8.2 PREFERRED BORDER CLEARANCE LEVY COLLECTION MECHANISMS

The recommended Levy collection mechanisms are as follows:

8.2.1 Commercial air travellers

The preferred approach for commercial air travellers is to use existing arrangements managed by the CAA for the collection of its current safety and security levies. The costs of the Levy would be incorporated into the price of the ticket.

This would be done by airlines submitting a return of estimated traveller volumes, with payment, to CAA at the beginning of every month, with a reconciliation at the end of each month using actual traveller volumes.

While airlines will be required to report on arrivals, as well as departures, this option presents the most efficient and effective option. We will work with airlines to determine what additional costs are incurred in collection.

8.2.2 Cruise ships

The preferred approach for cruise ship travellers is for Customs to collect the Levy from cruise ship operators, in a similar manner to the CAA model.

Under this payment model, operators would notify Customs of the number of travellers arriving and departing New Zealand's territorial waters, and pay on this basis.

It would include all travellers, irrespective of whether they disembark the ship. As it is possible for any passenger or member of crew to leave the ship while in port, all cruise ship travellers present customs and biosecurity risks that must be managed.

8.2.3 Other transport modes

For remaining travellers (e.g. those on commercial non-passenger ships such as fishing vessels, or private yachts), the Levy would be payable upon arrival and departure from territorial waters. For comparison, the Passenger Movement Charge in Australia is applied on a manual basis where necessary.

4. Should the rate payable by travellers on other transport modes be differentiated from those proposed for air and cruise ship travellers?
5. For the air and cruise industry: Do you agree with the proposed approach for collection of the Levy? Do you have any suggestions on how this might be improved?
6. Are the costs of collection likely to be a concern to the air and cruise industry?
7. How might systems be put in place to ensure collection of the Levy from those not arriving through the commercial air operators or on cruise ships?

9 Financial accountability and service performance

9.1 FINANCIAL ACCOUNTABILITY

MPI and Customs propose to report on levels of cost and cost recovery, and identify any under or over-recovery for particular services, via memorandum accounts. Any material and sustained under- or over-recovery will trigger a fees review, and a public consultation process as part of this. Each year government agencies are required to publish annual reports on service and financial performance. They are made available to the public via agency websites. These reports are subject to independent audit prior to publication, and are also tabled in Parliament and subject to Select Committee scrutiny.

The memorandum account for biosecurity operates on a one-year basis, so will be reviewed annually. Customs' memorandum account will be managed on a three year basis and will be reviewed accordingly.

MPI is currently undertaking a first principles review of its cost recovery systems and this will look at the frequency of levy and fee reviews, and whether the timeframe for carrying forward deficits and surpluses in biosecurity memorandum accounts should be brought into line with other cost recovery systems (e.g. 2-3 years).

9.2 SERVICE PERFORMANCE

Like all Government agencies Customs and MPI are subject to regular, comprehensive independent reviews of performance. These reviews include those conducted by the State Services Commission, as part of its state sector "Performance Improvement Framework"⁶, as well as those conducted the Office of the Auditor General.

This framework is intended to ensure that government agencies are continuously improving their services to the Ministers and the public. The scope of these reviews includes an examination of their financial transparency, how effectively and efficiently agencies are conducting their core business, as well as their performance as responsible regulators. The reports resulting from these reviews are publicly available.

In addition to this, Customs and MPI are required to report annually against performance targets. For Customs, relevant performance targets include the following:

Measure	Performance target
The value of harm avoided through Customs drug seizures	\$100-\$200 million per annum
Losses incurred by importers of illegal goods(e.g. drugs, proceeds of crime) through intervention by Customs	Equal to or more than \$10 million per annum
Percentage of travellers who rate their experience of immigration processing as good or very good	Equal to or more than 85% of those surveyed
Percentage of air passengers satisfied or very satisfied that Customs processes passengers quickly and conveniently	Equal to or more than 77% of those surveyed

⁶ <https://www.ssc.govt.nz/pif>

Percentage of arriving air passengers who exit Customs primary processing points within 45 minutes of arrival	Equal to or more than 90%
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For MPI, the relevant performance target is:

Measure	Performance target
Percentage of air passengers that comply with biosecurity requirements by the time they leave the airport	98.5%

MPI will continue to develop further appropriate service performance levels to reflect the introduction of the Levy for all three modes of arrival.

For both Customs and MPI, annual reporting against these measures is also a matter of public record.

8. Are there any other financial or performance metrics that might be useful for monitoring the efficiency of border clearance services?

9.3 POST-IMPLEMENTATION REVIEW OF THE BORDER CLEARANCE LEVY

Customs and MPI will also undertake a more detailed review of the impacts and performance of the Levy within three years of implementation. The review will consider the following:

- Whether there has been any undue impact on travellers, and on those transport operators responsible for collecting the Levy
- Whether costs could (or should) be more closely aligned with costs associated with certain transport modes and/or with clearance activities at certain locations
- Further steps that could be taken to improve the efficiency and effectiveness of Levy collection mechanisms.

9. Are there any other matters that could be addressed as part of a post-implementation review?

10 How to have your say

Customs and MPI will be holding meetings with interested stakeholders including public meetings in Auckland, Wellington and Christchurch. Please email levyconsultation@mpi.govt.nz if you wish to attend these meetings, or to seek an alternative opportunity to discuss the proposals.

The deadline for making a final submission on this consultation document is **5pm on Tuesday 28 July 2015**.

Comments can be provided by e-mail to levyconsultation@mpi.govt.nz, or by post to:

Ministry for Primary Industries
PO BOX 2526
Wellington 6140

Please include the term ‘Submission on the Border Clearance Levy’ clearly in the e-mail subject field or on the front of the envelope.

All received submissions will be acknowledged.

Your submission should include:

1. Your name and address for correspondence
2. The date of your submission
3. The specific aspects of the proposal that you support or oppose
4. The reasons for your support or opposition
5. The recommendations you wish to be considered.

10.1 SUBMISSIONS ARE PUBLIC INFORMATION

Submissions provided to Customs and MPI on this proposal will be subject to the provisions of the *Official Information Act 1982*. This Act requires information to be made available on request unless there is good reason, pursuant to the Act, to withhold the information.

If you do not wish any material in your submission to be released, or if you are submitting as an individual and do not wish your identity to be disclosed, please specify the material that you wish to be withheld and the grounds (as set out in the Act) for withholding it.

The decision whether to release information under the terms of the Act rests with the Comptroller of Customs and the Director-General of MPI. Any decision to withhold information is subject to appeal to the Office of the Ombudsmen.

11 Consultation questions

1. Should any other classes of traveller be exempted from the Levy? If so, who and why?
2. Should the Levy be differentiated by transport mode or location to reflect the differences in the costs of clearing travellers?
3. How practical is it for operators to differentiate between passengers who have purchased tickets prior to 1 January 2016?
4. Should the rate payable by travellers on other transport modes be differentiated from those proposed for air and cruise ship travellers?
5. For the air and cruise industry: Do you agree with the proposed approach for collection of the Levy? Do you have any suggestions on how this might be improved?
6. Are the costs of collection likely to be a concern to the air and cruise industry?
7. How might systems be put in place to ensure collection of the Levy from those not arriving through the commercial air operators or on cruise ships?
8. Are there any other financial or performance metrics that might be useful for monitoring the efficiency of border clearance services?
9. Are there any other matters that could be addressed as part of a post-implementation review?

Appendix 1: Breakdown of traveller movements by transport mode

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Air Passengers and Crew							
Arriving Passengers*	4,863,844	5,115,448	5,256,160	5,454,250	5,622,708	5,852,023	6,098,430
Departing Passengers*	4,833,600	5,087,481	5,243,878	5,434,000	5,622,208	5,851,919	6,098,212
Arriving Airline Crew	218,321	211,084	220,000	220,000	220,000	220,000	220,000
Departing Airline Crew	193,767	190,617	195,000	195,000	195,000	195,000	195,000
Non Commercial Air Passengers -Arrivals	2,684	2,748	2,830	2,830	2,830	2,830	2,830
Non Commercial Air Passengers -Departures	2,774	3,117	2,830	2,830	2,830	2,830	2,830
Total Air	10,114,990	10,610,495	10,920,698	11,308,910	11,665,576	12,124,602	12,617,302
Marine (Cruise ship, Commercial Vessels, Military Vessels, Small Craft) Passengers and Crew							
Cruise ship Arriving Passengers	161,741	153,022	155,500	186,234	201,000	217,000	235,000
Cruise ship Departing Passengers	162,623	153,520	155,579	187,000	202,092	218,339	235,166
Cruise ship Arriving Crew	72,412	77,416	78,000	80,000	80,000	80,000	80,000
Cruise ship Departing crew	75,382	69,638	70,000	73,000	73,000	73,000	73,000
Crew Arriving On Commercial Vessels	50,812	55,063	57,000	58,000	60,000	60,000	60,000
Crew Departing On Commercial Vessels	50,519	56,386	57,000	58,000	60,000	60,000	60,000
Passengers Arriving On Commercial Vessels	2,674	330	2,000	2,000	2,000	2,000	2,000
Passengers Departing On Commercial Vessels	3,078	3,757	3,000	3,000	3,000	3,000	3,000
Crew Arriving On Military Vessels	1,701	1,744	1,750	1,750	1,750	1,750	1,750
Crew Departing On Military Vessels	1,244	869	1,000	1,000	1,000	1,000	1,000
Passengers Arriving On Military Vessels	6	7	0	0	0	0	0
Passengers Departing On Military Vessels	0	68	0	0	0	0	0
Person arriving on other vessels	293	683	300	300	300	300	300
Persons departing on other vessels	133	527	200	200	200	200	200
Person Immigrated from Small Craft	2,206	2,451	2,500	2,500	2,500	2,500	2,500
Persons Emigrated from Small Craft	2,111	2,413	2,500	2,500	2,500	2,500	2,500
Total Marine	586,935	577,894	586,329	655,484	689,342	721,589	756,416
Total Travellers	10,701,925	11,188,389	11,507,027	11,964,394	12,354,918	12,846,191	13,373,718

* Commercial air passengers aged under two are excluded on the basis of the proposal that they will be exempt from the Levy.

Source: Customs base data, adjusted for the proposed exemptions; forecast tourist volumes from the Ministry of Business, Innovation and Employment.

Appendix 2: Calculation of proposed levy rates and projected memorandum accounts

The rates below are calculated by dividing costs (based on the 2014/15 year) by the number(s) of traveller movements to arrive at the per traveller rate(s).

Charge component	Estimated volumes of travellers	Planned costs		Base year for cost calculation	Rate (GST excl.) Revenue/volume	
		Low	High		Low	High
Biosecurity*						
<i>Cruise</i>	233,500	\$2.8 m		2014/15 only	\$12.20	
<i>Air and other</i>	5,542 m	\$46.6 m		2014/15 only	\$8.40	
Customs*						
Arrivals	6.335m	\$43.1 m	\$46.1 m	Averaged over 3.5 years	\$6.80	\$7.50
Departures	6.299m	\$16.7 m	\$17.9 m	Averaged over 3.5 years	\$2.60	\$3.10

*The calculation for biosecurity components uses forecast 2014/15 traveller volumes (in line with the one year time horizon for the memorandum account). Customs arrival and departures volumes are forecast volumes averaged over 3.5 years. Volumes also exclude children aged under two.

Indicative Customs and MPI border clearance forecast cost and cost recovery

		2015/16 Estimated (\$m)	2016/17 Forecast (\$m)	2017/18 Forecast (\$m)	2018/19 Forecast (\$m)
Expenses					
Biosecurity*		51.951	53.631	55.553	57.577
Customs		57.449	59.263	60.448	61.657
	Total	109.400	112.894	116.001	119.234
Revenue					
Biosecurity	Crown**	38.589	13.260		
	Third party	12.863	39.780	55.141	57.406
	Total - MPI	51.452	53.040	55.141	57.406
Customs	Crown**	42.775	14.724		
	Third party	14.258	44.172	61.237	63.752
	Total - Customs	57.033	58.896	61.237	63.752
	Total	108.485	111.936	116.378	121.158
Over-recovery/(Under-recovery)		(0.915)	(0.958)	0.377	1.924
Cumulative balance		(0.915)	(1.873)	(1.496)	0.428

The assumptions for the memorandum account table are as follows:

***Expenditure**

Expenditure is based on 2014/15 costs, plus an expected 2% per annum for cost pressures and projected increases in traveller volumes.

****Levy Revenue**

Most tickets are purchased weeks or months in advance of travel. If cost recovery is implemented on 1 January 2016, we estimate that approximately 25 percent of the annualised amount will be generated in Levy revenue in 2015/16, and approximately 75 percent in 2016/17.

Traveller Volumes

Traveller volumes have been taken from Customs base data, adjusted for the proposed exemptions, and projected using forecast tourist volumes from the Ministry of Business, Innovation and Employment. This has resulted in the following forecast of traveller volume increases by transport mode.

	2015/16	2016/17	2017/18	2018/19
Air		3.0%	3.9%	4.1%
Cruise		5.5%	5.7%	6.1%
Other		3.1%	0.0%	0.0%
Total		3.1%	4.0%	4.1%

Review Period

It is assumed that the Levy rate will be first reviewed after the end of the 2017/18 financial year, after the first complete year of cost recovery. The review will cover the levels and methods of cost recovery as well as any shortfall in cost recovery for any of the preceding 3 financial years, or make allowance for any over-recovery of costs.

For the avoidance of doubt, the surplus forecast for 2018/19 in the table above is indicative only, and an adjustment would be made to respond to any material under or over-recovery as part of the post-2017/18 review.

Appendix 3: Activities funded by the Levy

Stage of the process	Customs	MPI
Pre-border	<ul style="list-style-type: none"> • Identification of persons of interest from advanced information • Planning processes for significant operations/events • Intelligence/information sharing with other agencies and administrations to inform risk identification and operational activity • Forecasting and supporting analysis • Provision of co-ordination functions (including for ad hoc arrivals) 	<ul style="list-style-type: none"> • Screening for targeted interventions - identifying travellers of biosecurity interest • Coordination of resourcing and tasking of border activities • En route biosecurity clearance - where possible • Management of craft applications for arrival at non approved Places Of First Arrival
At border	<ul style="list-style-type: none"> • Primary line processing (manual and via SmartGate): validation of identity, completion of immigration processes, identification of persons of interest • Secondary activities and processes i.e. interaction with persons of interest, questioning and search activities • En-route and alongside processing of cruise passengers • On-site support to secondary and verification activities and processes i.e. more involved questioning and intervention with persons of interest, assistance around examination of electronic devices • Customer service functions 	<ul style="list-style-type: none"> • Assessment of arrival documentation against biosecurity requirements • Verification of compliance to biosecurity requirements of travellers • Application of intervention tools e.g. communications, searches, detector dogs, x-ray • Collection of information relating to pathway and effectiveness of interventions
Post-border activities	<ul style="list-style-type: none"> • Investigative activity (including surveillance and monitoring of persons of interest once they move beyond the border process) • Processing of the reporting that is completed (i.e. activity and information reports), including review and management of entities/alerts/profiles • Post seizure analysis (including the supporting frontline briefing processes) • Debriefing processes for significant operations/events • Information sharing with other agencies/administrations • Storage and disposal of seized goods • More involved analysis and intelligence processes i.e. strategic assessments, analysis and refinement of profiles and alerts. 	<ul style="list-style-type: none"> • Review and management of high risk travellers • Verification of the process for the disposal of risk goods seized from travellers • Investigation into noncompliance • Compliance monitoring and analysis to measure performance of pathways

Appendix 4: Relevant legislation provisions

BIOSECURITY ACT 1993

140AA Levies for recovering border processing costs

- (1) In this section, **traveller** means any person who arrives in New Zealand from any place outside New Zealand.
- (2) Every traveller who arrives in New Zealand on or after 1 January 2016 is liable, while there is a levy order in force under **subsection (3)**, to pay a levy to the Director-General in relation to the costs incurred by the Ministry in, or for the purpose of, exercising its powers or performing its functions under this Act in relation to travellers and the goods in their possession or under their control (including as part of their personal effects or baggage).
- (3) The Governor-General may, by Order in Council, on the recommendation of the responsible Minister, make a levy order prescribing—
 - (a) the rate of levy or the basis on which the rate is to be calculated or ascertained; and
 - (b) insofar as the order does not set an actual rate, how the actual rate of the levy is to be set; and
 - (c) when and how the levy is to be paid; and
 - (d) how the rate of levy, and any variation of the rate, is to be notified.
- (4) The responsible Minister must, before recommending that a levy order be made under this section, consult with persons who the Minister believes are representative of interests likely to be affected substantially by the order.
- (5) A levy order must not be made in respect of the costs that are otherwise recovered or otherwise to be recovered under this Act or the Airports (Cost Recovery for Processing of International Travellers) Act 2014.
- (6) A levy order made under this section—
 - (a) is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012; and
 - (b) must be presented to the House of Representatives under section 41 of that Act.
- (7) To avoid doubt, this section does not limit section 135 or 137.

140AB Contents of border processing levy order

A levy order under **section 140AA** may—

- (a) prescribe different rates of levy, on any differential basis, for different persons or different classes of persons:
- (b) prescribe a maximum rate or maximum rates of levy:
- (c) exempt certain persons or classes of persons from the requirement to pay the levy:
- (d) prescribe persons responsible for collecting the levy from those primarily responsible for paying it:
- (e) allow persons collecting the levy to recover the costs of collecting the levy and, if so, prescribe the basis on which those costs are to be calculated or ascertained:

- (f) require that returns be made to the Director-General or some other person or body to enable amounts of levy payable to be calculated, determined, or verified:
- (g) provide, subject to such conditions as may be prescribed, for extensions of time for the payment of levy:
- (h) provide for the payment of additional or increased levy in the event of late payment or non-payment:
- (i) provide for circumstances in which levy paid may be refunded:
- (j) require that levy funds payable be held on trust in separate accounts.

CUSTOMS AND EXCISE ACT 1996

288B Levies for recovering border processing costs

- (1) In this section, **traveller** means any person who arrives in New Zealand from, or departs New Zealand for, any place outside New Zealand.
- (2) Every traveller who on or after 1 January 2016 arrives in or departs New Zealand is liable, while there is a levy order in force under **subsection (3)**, to pay a levy to the chief executive in relation to the costs incurred by the Customs in, or for the purpose of, exercising its powers or performing its functions, under this Act or any other Act, in relation to travellers and their accompanying baggage (or other goods in their possession or under their control).
- (3) The Governor-General may, by Order in Council, on the recommendation of the Minister, make a levy order prescribing—
 - (a) the rate of levy or the basis on which the rate is to be calculated or ascertained; and
 - (b) insofar as the order does not set an actual rate, how the actual rate of the levy is to be set; and
 - (c) when and how the levy is to be paid; and
 - (d) how the rate of the levy, and any variation of the rate, is to be notified.
- (4) The Minister must, before recommending that a levy order be made under this section, consult with such persons, representative groups, government departments, and Crown agencies as he or she considers reasonable and appropriate in the circumstances.
- (5) A levy order must not be made in respect of the costs that are otherwise recovered or otherwise to be recovered under this Act or the Airports (Cost Recovery for Processing of International Travellers) Act 2014.
- (6) A levy order made under this section—
 - (a) is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012; and
 - (b) must be presented to the House of Representatives under section 41 of that Act.

288C Contents of border processing levy order

- (1) A levy order under **section 288B** may—
 - (a) prescribe different rates of levy, on any differential basis, for different persons or different classes of persons:

- (b) prescribe a maximum rate or maximum rates of levy:
 - (c) exempt certain persons or classes of persons from the requirement to pay the levy:
 - (d) prescribe persons responsible for collecting the levy from those primarily responsible for paying it:
 - (e) allow persons collecting the levy to recover the costs of collecting the levy and, if so, prescribe the basis on which those costs are to be calculated or ascertained:
 - (f) require that returns be made to the chief executive or some other person or body to enable the amounts of levy payable to be calculated, determined, or verified:
 - (g) provide, subject to such conditions as may be prescribed, for extensions of time for the payment of the levy:
 - (h) provide for the payment of additional or increased levy in the event of late payment or non-payment:
 - (i) provide for circumstances in which levy paid may be refunded:
 - (j) require that levy funds payable be held on trust in separate accounts.
- (2) Every order must,—
- (a) for the purpose of determining whether an order is being complied with, require any of the following persons to keep statements, accounts, or records of specified classes or descriptions:
 - (i) the chief executive:
 - (ii) persons responsible for collecting the levy:
 - (iii) persons responsible for paying the levy; and
 - (b) provide for those statements, accounts, or records to be retained for a specified period; and
 - (c) provide for the remuneration of auditors under **section 288G(2)**.

Compare: 1993 No 95 ss 140, 141A

288D Trust accounts for levy money payable to chief executive

- (1) If a levy order provides that the levy funds payable are to be held on trust in separate accounts, each person responsible for collecting the levy must—
 - (a) keep a bank account at a registered bank; and
 - (b) ensure that the account is so named as to identify that it is a trust account kept by the person responsible for collecting the levy for the purposes of the order; and
 - (c) take all practicable steps to ensure that—
 - (i) the account is used only for holding amounts required to be deposited under this section; and
 - (ii) the balance in the account on any day is not less than the amount outstanding on that day to the chief executive.
- (2) A person responsible for collecting a levy must deposit in a trust account an amount equal to the levy calculated in accordance with the levy order on the day or days specified in, or calculated in accordance with, that order.
- (3) If the amount held in the trust account—

- (a) is more than the amount of levy money that is outstanding to the chief executive, the amount outstanding is deemed to be held on trust for the chief executive:
 - (b) is the same as or less than the amount that is outstanding, all the money in the account is deemed to be held on trust for the chief executive.
- (4) Money deemed by **subsection (3)** to be held on trust is not available for the payment of, and is not liable to be attached or taken in execution at the instance of, any creditor of the person responsible for collecting the levy (other than the chief executive).
- (5) A person who ceases to be a person responsible for collecting a levy must continue to maintain the trust account until all the levy money payable to the chief executive, in respect of the period during which that person was responsible for collecting the levy, has been paid.
- (6) Nothing in **subsection (5)** limits or affects any obligation or liability under this Act of any person who has become responsible for collecting the levy.
- (7) In this section,—

levy order means an order under **section 288B**

registered bank has the meaning given to it in section 2(1) of the Reserve Bank of New Zealand Act 1989

trust account means the account referred to in **subsection (1)**.

Compare: 1993 No 95 s 140A

288E Effect of levy order

If a levy order is made under **section 288B**, the following provisions apply:

- (a) every person responsible for paying or collecting the levy must do so; and
- (b) the chief executive may recover the levy in any court of competent jurisdiction as a debt due from any person responsible for paying or collecting it.

Compare: 1993 No 95 s 141

288F Compliance audits

- (1) While an order under **section 288B** is in force, the Minister may, at the request of the chief executive, appoint 1 or more auditors to conduct an audit of the affairs of any person responsible for collecting the levy.
- (2) The purpose of an audit under this section is to ascertain—
- (a) the extent to which persons responsible for paying or collecting the levy concerned are doing or have done so:
 - (b) the extent to which appropriate amounts of the levy concerned are being or have been paid over to the chief executive:
 - (c) the extent to which statements, accounts, and records are being or have been kept or properly kept.

Compare: 1993 No 95 ss 141B(1), (2), 141C

288G Auditors

- (1) A person is not qualified to be an auditor for the purpose of **section 288F** if—
- (a) the person is not a qualified auditor within the meaning of section 35 of the Financial Reporting Act 2013:

- (b) the person is an officer or employee of—
 - (i) the chief executive:
 - (ii) any person responsible for collecting the levy concerned:
 - (iii) any person responsible for paying the levy concerned.
- (2) Every person appointed as an auditor is entitled to remuneration paid by the chief executive as provided for in the relevant levy order.
- (3) For the purposes of conducting an audit, an auditor may—
 - (a) require any specified person to produce, and the person must produce, for inspection within a reasonable period specified by the auditor any statements, accounts, and records—
 - (i) that are required to be kept under **section 288C(2)**; and
 - (ii) that are in that person’s possession or under that person’s control:
 - (b) take copies of, or extracts from, those statements, accounts, and records.
- (4) The persons referred to in **subsection (3)(a)** are—
 - (a) the chief executive:
 - (b) any person responsible for collecting the levy: 15
 - (c) any employee or officer of a person in **paragraph (a) or (b)**.
- (5) Every direction under **subsection (3)** must contain—
 - (a) a reference to this section; and
 - (b) the full name of the auditor; and
 - (c) a statement of the powers conferred on the auditor by that subsection. 20
- (6) An auditor must not disclose to any person other than the Minister (or a person authorised in that behalf by the Minister) any information obtained by the auditor under **subsection (3)**, except in respect of—
 - (a) a prosecution under this Act:
 - (b) an action for the recovery of any amount due under this Act.
- (7) To avoid doubt, the Official Information Act 1982 applies in respect of any information held by a Minister that was obtained pursuant to **subsection (6)**.

Compare: 1993 No 95 ss 141B(3)–(5), 141D

288H Offences in relation to levy orders

- (1) A person commits an offence against this Act who fails to keep or maintain statements, accounts, or records that are required to be kept or maintained under an order made under section 288B.
- (2) A person commits an offence against this Act who fails to make a return that the person is required to make by an order made under **section 288B**.
- (3) A person commits an offence against this Act who makes a return that the person is required to make by an order made under **section 288B** knowing that the return or declaration is false or misleading in a material particular.
- (4) A person commits an offence against this Act who fails to comply with a requirement imposed under **section 288G(3)(a)**.

- (5) Every person who commits an offence against **subsection (1)** 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 \$15,000.
- (6) Every person who commits an offence against **subsection (2) or (4)** is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$1,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$3,000.
- (7) Every person who commits an offence against **subsection (3)** is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$10,000: 15
 - (b) in the case of a body corporate, to a fine not exceeding \$30,000.

Compare: 1993 No 95 ss 154N(15), (16), 154O(7)

288I Section 288H strict liability offences

- (1) This section applies to the offences in **section 288H(1), (2), and (4)**.
- (2) The offences are strict liability offences and the prosecution is not required to prove that a defendant intended to commit the offence.
- (3) The defendant will have a defence if the defendant proves that—
 - (a) the action or event to which the prosecution relates was due to—
 - (i) the act or omission of another person; or
 - (ii) an accident; or
 - (iii) some other cause or circumstance outside the defendant's control; and
 - (b) the defendant took all reasonable precautions, and exercised due diligence, to avoid the commission of the offence.
- (4) The defence in **subsection (3)** is only available if the defendant gives a written notice to the prosecutor at least 15 working days before the hearing date, or within such other time as the court allows, that—
 - (a) states the defendant's intention to rely on the defence; and
 - (b) includes facts that support the defence.

Compare: 1993 No 95 s 154N