



RELEASED DOCUMENT

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Paper prepared by: Hon Meka Whaitiri, Minister of Customs

Date considered by Cabinet: 4 July 2022

Name of paper: Establishing a legislative framework for Customs' use of the New Zealand Traveller Declaration

Cabinet Reference: CAB-22-MIN-0251 and SWC-22-MIN-0127

Purpose of the paper: This paper sought the Cabinet Social Wellbeing Committee's agreement to provide for the chief executive of Customs to verify agencies' traveller data entry requirements and provide for the use of the New Zealand traveller Declaration by Customs at the air and maritime borders.

Redactions Some parts of these papers have been withheld under sections 6(a), 6(c), 9(2)(b)(ii), 9(2)(f)(iv) and 9(2)(h) of the Official Information Act 1982. Any redactions appear in the text as grey boxes, with an explanation of why the redaction was made.



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Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Establishing a Legislative Framework for Customs' Use of the New Zealand Traveller Declaration

Portfolio Customs

On 29 June 2022, the Cabinet Social Wellbeing Committee:

Background

- 1 **noted** that in March 2022, the Cabinet Social Wellbeing Committee:
 - 1.1 agreed that the addendum to the New Zealand Traveller Declaration – Single Stage Business Case has been satisfactorily completed and the implementation of the New Zealand Traveller Declaration can continue; and
 - 1.2 authorised joint Ministers (Minister of Finance, Minister for COVID-19 Response, Minister of Immigration, and Minister of Customs) to approve the draw-down of tagged contingency funding, phased to be spent in 2022/23;
[SWC-22-MIN-0050]
- 2 **noted** that there is already a comprehensive information disclosure and access regime in the Customs and Excise Act 2018 (including ministerial approval of interagency agreements following consultation with the Privacy Commissioner);

Amendments to the Customs and Excise Act 2018

- 3 **agreed** that the existing information and access regime in the Customs and Excise Act 2018 is used to disclose customs-related New Zealand Traveller Declaration information;
- 4 **agreed** that Customs and Excise Act 2018 be amended to:

Provide for Customs to verify agencies' traveller data entry requirements in the New Zealand Traveller Declaration

- 4.1 provide for the chief executive of the New Zealand Customs Service to verify whether the traveller data entry requirements set by agencies has been met, and to seek proof or require evidence that this has been done, where necessary to do so;
- 4.2 require that another enactment would state that for the purposes of the new provision in the Customs and Excise Act 2018, that a specific requirement or obligation was a traveller data entry requirement;

- 4.3 enable the chief executive of the New Zealand Customs Service, following the verification process, to take any actions permitted as a consequence of compliance or non-compliance by the enactment that set the requirement;
- 4.4 permit the use by Customs of any information stored in or held by the New Zealand Traveller Declaration system and provided by the arriving traveller in order to meet the traveller data entry requirement, for the purposes of verifying whether that requirement has been met;
- 4.5 require that future traveller data entry requirements are set out in the appropriate primary legislation administered by the agency responsible for that function;

Technical policy proposals

- 4.6 require travellers to complete and submit the customs part of the New Zealand Traveller Declaration that includes information (set out in chief executive rules) about the traveller, their travel, and the goods brought with them (Appendix Three, attached to the submission under SWC-22-SUB-0127, proposal 1);
- 4.7 if necessary, explicitly provide for automated decision-making by the New Zealand Traveller Declaration system using existing Customs and Excise Act 2018 provisions with any necessary modifications (Appendix 3, proposal 2);
- 4.8 establish a strict liability offence relating to failure to make a New Zealand Traveller Declaration to the New Zealand Customs Service with a maximum penalty for a traveller of \$5,000 (Appendix 3, proposal 3);
- 4.9 establish a strict liability offence relating to making an erroneous New Zealand Traveller Declaration in a material particular to the New Zealand Customs Service with a maximum penalty for a traveller of \$5,000 (Appendix 3, proposal 3);

New regulation-making power

- 4.10 establish a regulation-making power to set the point in the traveller's journey when they must submit the Customs part of the New Zealand Traveller Declaration (Appendix 3, proposal 4);
- 4.11 establish a regulation-making power that allows for exemptions from the requirement to complete the New Zealand Traveller Declaration to be prescribed (Appendix 3, proposal 5);

Specific regulations or changes to existing regulations to implement NZTD proposals

- 5 **agreed** to make new regulations and where appropriate amend existing regulations for the following proposals to:
 - 5.1 require the declaration to be made no later than the time the person is required to report to a Customs officer or to a Police Station on arrival in New Zealand (Appendix 3, proposal 1);
 - 5.2 exempt (Appendix 3, proposal 5)
 - 5.2.1 a traveller who arrives in New Zealand after having been rescued at sea;

- 5.2.2 a traveller who arrives in New Zealand wholly for the purpose of seeking temporary relief from stress of weather;
- 5.2.3 a traveller who arrives in New Zealand under a medical evacuation;
- 5.3 prescribe the offences set out in recommendations 4.8 and 4.9 as infringement offences in regulations (Appendix 3, proposal 3);
 - 5.3.1 establish an infringement penalty of \$400 for a traveller who has failed to make a New Zealand Traveller Declaration (being the level of existing infringement offences) using the existing regulation-making power;
 - 5.3.2 establish an infringement penalty of \$400 for a traveller who has made an erroneous New Zealand Traveller Declaration using the existing regulation-making power;
- 5.4 amend the goods entry mechanism in regulation 26 of the Customs and Excise Regulations 1996 to link to the new declaration requirement (Appendix 3, proposal 1);

Administrative matters

- 6 **noted** that the New Zealand Customs Service will use the chief executive's rules to:
 - 6.1 prescribe different processes for the submission of the customs-related parts of the New Zealand Traveller Declaration for different classes of travellers arriving at the air and maritime borders (Appendix 3, proposal 5);
 - 6.2 prescribe the form and any requirements for different cases on any differential basis consistent with the existing Customs and Excise Act 2018 (Appendix 3, proposal 6);

Financial implications

- 7 **noted** that the draw-down of the \$55.2 million tagged contingencies set aside for 2023/24 and outyears will be subject to s 9(2)(f)(iv) OIA

- 8 s 9(2)(f)(iv) OIA

Legislative implications

- 9 s 9(2)(f)(iv) OIA
- 10 **agreed in principle**, subject to paragraph 9, that the legislative amendments in the paper under SWC-22-SUB-0127 be included in a Customs and Excise Act 2018 Amendment Bill, except regulation changes in paragraph 5, which will be made using the regulation-making power;
- 11 **noted** that the Customs and Excise Act 2018 Amendment Bill holds a category four priority in the 2022 Legislation Programme (to be referred to a select committee in 2022);

- 12 **invited** the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above legislative amendments;
- 13 **authorised** the Minister of Customs to make technical, administrative, and other changes required to finalise draft legislation giving effect to the decisions in the paper under SWC-22-SUB-0127, in keeping with the overall policy aims, and in consultation with other Ministers as appropriate;
- 14 **noted** that the Minister of Customs will announce the decisions in the paper under SWC-22-SUB-0127;
- 15 **invited** the Minister of Customs to report to the Cabinet Legislation Committee:
- 15.1 by 29 September 2022 seeking agreement to the draft amendment bill;
- 15.2 in early 2023 seeking agreement to the regulation changes outlined in paragraph 5.

Rachel Clarke
Committee Secretary

Present:

Hon Grant Robertson
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Peeni Henare
Hon Kiri Allan
Hon Dr Ayesha Verrall
Hon Priyanca Radhakrishnan
Hon Aupito William Sio
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC

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Office of the Minister of Customs
Cabinet Social Wellbeing Committee

Establishing a legislative framework for Customs' use of the New Zealand Traveller Declaration

Proposal

- 1 This paper seeks Cabinet's agreement to:
 - 1.1 provide for the chief executive of the New Zealand Customs Service (Customs) to verify agencies' traveller data entry requirements in the New Zealand Traveller Declaration (NZTD);
 - 1.2 provide for the use of the NZTD by Customs at the air and maritime borders;
 - 1.3 instruct Parliamentary Counsel Office to draft amendments to the Customs and Excise Act 2018 to support a safer and smarter border.

Relation to government priorities

- 2 The NZTD supports the Government's priorities of accelerating our economic recovery in line with the Reconnecting New Zealanders programme by facilitating the Government's decisions on border health requirements in response to COVID-19, while building the capability to respond as appropriate to future health or biosecurity events [CAB-21-MIN-0305].
- 3 The NZTD is integral to achieving the accountabilities of the Border Executive Board (BEB), including ensuring the Government's response to COVID-19 continues to work well at the border, and continuing to build New Zealand's safer and smarter border.¹

Executive Summary

- 4 The current legislative authority for the NZTD is the COVID-19 related legislation, s 9(2)(f)(iv) OIA .² s 9(2)(f)(iv) OIA
- 5 Cabinet previously agreed to the establishment and funding of a traveller health declaration system as part of the Reconnecting New Zealanders work [CAB-21-MIN-0366], and the further development of that system, being the NZTD [CAB-22-MIN-0104]. Tranche one of the NZTD is now operational. Further development of the

¹ The board members of the BEB are the chief executives of the New Zealand Customs Service, Ministry for Primary Industries, Ministry of Health, Ministry of Foreign Affairs and Trade, Ministry of Business Innovation and Employment, and Ministry of Transport. The BEB is an interdepartmental executive board under the Public Service Act 2020 and is tasked with providing effective governance of the New Zealand border.

² Including the COVID-19 Public Health Response (Air Border) Order 2021.

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system includes integration with other systems operating at the border and the extension of the health declaration, as appropriate, to the maritime border (tranche two) and digitising the arrival card (tranche three). This supports the accountabilities of the BEB [CAB-22-MIN-0309] [correct number is 0039].

- 6 The NZTD system for tranches two and three, which builds on tranche one, comprises integrated component parts operated and managed by four agencies involved in processing arriving travellers: Customs, Ministry for Primary Industries (MPI) (for Biosecurity New Zealand), Ministry of Business, Innovation and Employment (MBIE) (for Immigration New Zealand) and the Ministry of Health (MoH). Each agency has its own legislation that provides the authority for their respective functions at the border, including the collection of health, customs, biosecurity, and immigration information from arriving travellers, as well as applications for entry permission and visas by foreign nationals.
- 7 Tranche three will move New Zealand further towards a safer and smarter border by enabling both an improved customer experience, underpinned by better facilitation and border risk management, and, in the event of future pandemics or other border closures, smoother border management and better information for travellers and carriers.
- 8 This paper sets out the key decisions required to provide legislative authority for the use of the NZTD by Customs. The key decisions seek approval to provide for:
- 8.1 the chief executive of Customs to verify agencies' traveller data entry requirements in the NZTD, where specified in other enactments;
- 8.2 Customs to require travellers to provide and complete the NZTD for the customs declaration, provide for automated decision-making by the NZTD system, allow for exemptions and different processes where necessary for specific travellers and pathways, provide for information to be collected and declarations to take effect at different points through the traveller's journey, and establish offence provisions for failing to make a declaration or making an erroneous declaration;
- 9 Officials from Customs, MPI, MBIE and MoH are working together to ensure their respective primary legislation authorises their agency's use of the NZTD. [REDACTED]
 s 9(2)(f)(iv) OIA [REDACTED]
 [REDACTED]
 [REDACTED] The details of these changes are set out in Appendix 2.
- 10 s 9(2)(f)(iv) OIA [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
- 11 The NZTD Programme will s 9(2)(f)(iv) OIA [REDACTED]
 [REDACTED]

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Background

- 12 The NZTD is an electronic declaration, which enables travellers to New Zealand to comply with border management information requirements and is intended to replace the paper arrival card. The NZTD is being implemented in phases, having already enabled health declarations as the first tranche:
 - 12.1 Tranche 1 – establishment of a digital system to collect COVID-19 health information and issue traveller passes for travellers to support the re-opening of the air border;
 - 12.2 Tranche 2 – extend the NZTD health declaration requirements to the maritime border (as appropriate), and the integration of the NZTD with other systems to support traveller processing;
 - 12.3 Tranche 3 – scaling capacity to support pre-COVID traveller volumes and introducing digital customs, immigration and biosecurity declarations, and immigration applications, alongside a health declaration as required.
- 13 Cabinet has previously agreed to:
 - 13.1 the Reconnecting New Zealanders programme shifting border settings to a risk-based approach to manage COVID-19 impacts [CAB-21-MIN-0305];
 - 13.2 the Traveller Health Declaration – Single Stage Business Case [CAB-21-MIN-0366];
 - 13.3 funding development for the NZTD system in 2021/2022 to enable implementation of tranche one [CBC-21-MIN-0090];
 - 13.4 policy and administrative settings for tranche one of the NZTD system implementation [CBC-21-MIN-0178];
 - 13.5 funding the development of the remaining functionality and enhancements for tranche two and tranche three of the NZTD System in 2022/2023 following approval of the addendum to the Traveller Health Declaration – Single Stage Business Case [CAB-22- MIN-0104].
- 14 The NZTD, developed in tranche one, has been available for air passengers since 25 March 2022. The NZTD enables travellers to submit traveller health information to receive a NZTD traveller pass.³ The current legislative basis for the NZTD system is via the COVID-19 Public Health Response Air Border) Order 2021 (Air Border Order).

³ In tranche one, a traveller's pass is issued by the NZTD system to the traveller when the health declaration requirements have been met; this is presented to the airline at check-in and to officials on arrival in New Zealand.

The NZTD system will comprise multiple component parts managed across agencies

- 15 When tranche three is completed, the NZTD system will include integrated component parts operated by four agencies involved in the processing of arriving travellers: Customs, MPI, MBIE, and MoH.
- 16 For the purposes of this paper, NZTD and NZTD system means:

| | |
|------------------------------------|--|
| NZTD – the traveller’s declaration | The information provided by a traveller to complete and submit the declaration to comply with Customs, MPI, MBIE and MoH requirements. Agencies use the declaration provided by travellers via the NZTD to determine that the traveller is entitled to enter New Zealand and, where necessary, undertake enforcement action. |
| NZTD system | The technology platform made up of component parts and processes to support the submission and completion of a traveller declaration and agencies’ use of the declaration to process travellers, and use the declaration information for a lawful purpose. |

NZTD provides the platform to enable smart border settings for increasing numbers of travellers and enhanced responses to future border risks of all types

- 17 The implementation of tranche one of the NZTD for air travellers was an important first step in supporting the sustainable re-opening of our border and managing COVID-19 related risk offshore. The health requirements in the NZTD are updated to reflect the Government response to advice on the changing health risks. However, to support larger traveller volumes in the future, the re-opening of the maritime border to travellers, and to respond to any future health events, the continued development of the NZTD system is critical.
- 18 Longer term, the NZTD will enable travellers to digitally complete their full travel declaration (customs, biosecurity, immigration, and health) in advance of departure, and update and confirm on arrival. This will replace the physical arrival card. Provision of information in advance will not be mandatory unless a legislated mandate requires it (e.g. in a pandemic situation).
- 19 Although not mandatory until arrival in New Zealand, the traveller’s arrival experience can be streamlined by the traveller providing information in advance of travel, as that would allow for system-generated responses, based on the information provided. For example, a traveller could provide information about compliance requirements (e.g. copies of prescriptions for medicine, or a link to the border cash reporting form) or begin their entry permission, visa application and character declaration in advance to reduce the need for a referral to an officer or to streamline their border processing on arrival.⁴ A communications and information campaign will be implemented to increase travellers’ awareness of the NZTD and the benefits of early completion.
- 20 Access to arrival information in an electronic format prior to arrival will allow more s 6(c) OIA and management of travellers prior to, and on arrival in, New

⁴ While the information can be provided in advance, an immigration application cannot be ‘made’, or begin to be assessed, until the traveller is onshore in New Zealand.

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Zealand. This will help avoid unnecessary referrals of travellers to officers s 6(c) OIA
[REDACTED] The NZTD will allow officers to record the outcomes of interactions with travellers during processing on arrival and avoid repeated questions to travellers.

Border agencies in other countries are moving in this direction

- 21 New Zealand's work programme to establish an electronic traveller declaration with the NZTD is similar to initiatives underway in Australia, Singapore, and Canada, although the implementation approach varies. s 6(a) OIA
[REDACTED]
[REDACTED] Singapore already had an Electronic Arrival Card, while Australia has a paper card. Completing the Singaporean electronic declaration is mandatory for all arriving travellers; there is no paper version available. s 6(a) OIA
[REDACTED] Canada's ArriveCAN app must be used by all travellers to Canada and provides a unified digital platform for managing traveller facilitation, border integrity and future health requirements.

Benefits for travellers and agencies, and improved risk assessment processes will be delivered through the full implementation of the NZTD

- 22 Officials advise me that benefits will continue to be delivered progressively particularly as tranche three is implemented and travellers become familiar with the NZTD. Appendix 1 sets out the benefits to be achieved.

An enduring legislative framework is necessary to support the next stages of Reconnecting New Zealanders and to deliver a safer, smarter border

- 23 The implementation of tranche one of the NZTD system relied on the Air Border Order made under the COVID-19 pandemic legislation. s 9(2)(f)(iv) OIA
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Officials' response to these issues are addressed in paragraphs 49 and 50.
- 24 The legislative framework for the NZTD, and agencies' use of it, will be set out in the:
- 24.1 Customs and Excise Act 2018 and related instruments;
 - 24.2 Immigration Act 2009 and related instruments;
 - 24.3 Biosecurity Act 1993 and related instruments;
 - 24.4 Health Act 1956 and related instruments.
- 25 My officials are working with their colleagues in MBIE, MPI and MoH to ensure their respective primary legislation authorises each agencies' use of the NZTD. MPI,

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MBIE and MoH have considered the implications for their respective legislation, which is set out in Appendix 2.

- 26 While the NZTD system is a cross-agency initiative that will support multiple agencies to deliver their functions, the proposed legislative changes in this paper only relate to the Customs and Excise Act 2018 and related instruments.

Provide for Customs to verify agencies' traveller data entry requirements delivered through the NZTD

- 27 Clause 60(2) of the Air Border Order requires the chief executive of Customs to issue a NZTD traveller pass to a person who makes a traveller declaration using the NZTD system. Before issuing the NZTD traveller pass, the chief executive is required to verify that the person has met the health requirements (set out in subpart 2 of Part 1 of the Air Border Order).
- 28 While government information requirements may change in response to future COVID-19 or other risk scenarios, we need to ensure that the chief executive of Customs can use the NZTD system to verify that traveller data entry requirements have been met.
- 29 Undertaking the verification process for other agencies requires that Customs has a clear authority to use that information for that purpose. A provision in the Customs and Excise Act 2018 will give authority for the lawful use and restricts use to the specific purpose of verifying border data entry requirements.
- 30 These provisions would also allow for agencies to conduct their own verification processes as required.
- 31 I propose to amend the Customs and Excise Act 2018 to:
- 31.1 empower the chief executive of Customs to verify whether traveller data entry requirements set by agencies have been met and to seek proof or require evidence that this has been done, where necessary to do so;
 - 31.2 require that another enactment would state that for the purposes of the new provision in the Customs and Excise Act 2018, that a specific requirement or obligation was a traveller data entry requirement;
 - 31.3 enable the chief executive, following the verification process, to take any actions permitted as a consequence of compliance or non-compliance by the enactment that set the requirement;
 - 31.4 permit the use by Customs of any information stored in or held by the NZTD system and provided by the arriving traveller in order to meet the traveller data entry requirement, for the purposes of verifying whether that requirement has been met;
 - 31.5 require that future traveller data entry requirements are set out in the appropriate primary legislation administered by the agency responsible for that function.

- 32 The traveller data entry requirements must be specified in the enactments that relate to the particular function for which the requirement relates. That enactment would need to specify:
- 32.1 that a specific information requirement was a traveller data entry requirement for the purposes of the Customs and Excise Act 2018;
 - 32.2 what actions are available in relation to compliance with that requirement;
 - 32.3 what consequences would occur if the traveller failed to meet that requirement;
 - 32.4 any mechanism required to enable the information to be verified (e.g. if the requirement would be activated and deactivated in response to certain scenarios).
- 33 This is similar to the approach taken in managing other risks (e.g. illegal items, prohibited and restricted goods, and prescription medicines) where compliance requirements set in other agencies' legislation are enforced by Customs at the border (e.g. through powers in the Customs and Excise Act 2018, such as seizure).

Information disclosure and access to Customs' NZTD information and the NZTD system

- 34 Arrival information is currently collected by multiple agencies, who may share it or disclose it under different statutory provisions (e.g. Customs and Excise Act 2018, Immigration Act 2009, Biosecurity Act 1993, and the Privacy Act 2020). The NZTD is a digital system hosted by Customs, which enables health and border agencies to collect information directly from travellers. This information is important for assessing risk and enabling compliant travellers to quickly cross the border.
- 35 At the same time, it is important that travellers' personal information is secure, and safeguards are in place for the information being collected electronically through the NZTD. I consider there should be both robust and appropriate checks and balances on the Government's ability to collect, use, and disclose this information given the volume of information, the sensitivity of some of the information, and the use of automated electronic systems to make decisions or initiate actions such as a referral to an officer.
- 36 My officials advise me that no traveller is interacted with solely on the outcomes of automated decision-making. If the information provided by the traveller leads to the identification of a potential risk, there will be a decision made by an officer to interact with the traveller at the border to manually determine if there is any action required. The majority of travellers will be processed through e-gates with any alerts directing them to a booth where they will be seen by an officer. If there is a compliance requirement to be checked then there is a human interaction.
- 37 The Customs and Excise Act 2018 provides a regime for the collection and disclosure of information, both the personal information of individual passengers and the commercial information of goods and shipments, amalgamating previously discrete capabilities into a cohesive system.

- 38 The NZTD system will bind all information collected to the individual traveller. The Customs-related information will be shared under the provisions of the Customs and Excise Act 2018 and the Privacy Act 2020 (including where identifying information has been removed).
- 39 Agencies will only have access to Customs' NZTD information that they have a lawful purpose to access under specific legislation provisions or the Privacy Act 2020. Currently, MBIE authorises the entire existing arrival card under its legislation so it can use any of the information on it for its immigration processes. For MPI and Customs, there is already a comprehensive information disclosure and access regime in the Customs and Excise Act 2018 and mirrored in the Biosecurity Act 1993, which covers information that would be collected by Customs through the NZTD that is relevant for biosecurity processes.
- 40 The Customs and Excise Act 2018 provides a regime for the development of agreements covering disclosure of and access to Customs information for other agencies. These agreements are signed by Ministers after consultation with the Office of the Privacy Commissioner. To provide transparency on the access to Customs information by other agencies, where appropriate and necessary, I propose that this mechanism is used for sharing of Customs' information collected through NZTD with other agencies.
- 41 Agencies will not automatically get access to all NZTD information collected by other agencies. Each statute, such as the Biosecurity Act 1993, sets out information sharing requirements for that area. In addition, the Privacy Act 2020 requirements may apply, such as Schedule 3 in this Act which provides for sharing of identity information for the purposes of verifying an individual (including provisions between border agencies).
- 42 Other statutes may need to be updated to provide for NZTD information access and sharing. Where an information request is received by Customs that includes information collected by other agencies, the request will be forwarded to the relevant agency to respond under their own agreements.
- 43 The information that different agencies have access to, if they establish a lawful reason to access more information from the NZTD, is likely to be broadened. This broader access to information may be needed to refine existing, and develop new risk management models to help detect border risk and to enable comprehensive improvements to the traveller journey through airports.
- 44 Moving to a digital platform with automated decision making will support less interactions with compliant travellers and assist agencies to focus their resources where risk is identified.

Technical policy proposals and administrative matters

- 45 The following technical policy proposals require changes to the Customs and Excise Act 2018 and establishment of regulations. The detailed proposals are included in the recommendations.
- 46 The analysis and the proposals on the following matters are set out in Appendix 3:

- 46.1 establish the requirement for a Customs declaration for people and goods;
 - 46.2 if necessary, explicitly provide for automated decision-making by the NZTD system (such as verifying digital certificates for health declaration purposes in tranche one. For tranche three, automated decision-making can signal where a traveller may be referred to an officer on arrival in New Zealand based on the information provided by the traveller, such as carrying food or firearms);
 - 46.3 establish strict liability offences and infringement offences relating to failure to make a Customs declaration or making an erroneous declaration in a material particular;
 - 46.4 allow for information to be provided and declarations to take effect at different times;
 - 46.5 allow for exemptions from completing an NZTD and different processes for completing an NZTD where appropriate.⁵
- 47 I propose to use the existing provisions for the chief executive of Customs to prescribe rules for:
- 47.1 different processes for the submission of the customs-related parts of the NZTD for different classes of travellers arriving at the air and maritime borders;
 - 47.2 matters of detail covering what information is required, the form, any prescribed forms, and any requirements for different cases on any differential basis.

Other policy matters relevant to the declaration and the system

- 48 My officials have considered a number of other matters that would enhance the traveller's experience and are intended to be part of the NZTD programme. The timeframes for delivery will be confirmed as the prioritisation of system features continues and enabling requirements are confirmed. These matters include:
- 48.1 enabling integration to third-party applications to facilitate completion of the NZTD by travellers s 9(2)(b)(ii) OIA
[REDACTED] This will require an agreement with application providers that meet Customs' technical and security standards and comply with the Privacy Act 2020 with respect to personal information collected and provided to the NZTD system;
 - 48.2 considering how identity verification could be streamlined across the various border checks (e.g. for customs, biosecurity, and immigration functions). This would remove the need for travellers to present their passport multiple times to enable an officer to retrieve their NZTD if required. Officials will undertake

⁵ Officials advise that different processes will be required at the maritime border to accommodate the diverse range of craft (e.g. cruise ships, recreational craft, commercial cargo and fishing vessels, military, etc) and available technology and port infrastructure and to manage the border risks in a proportionate manner.

further work to develop the traveller process, determine any requirement for changes for other agencies' legislation and the appropriate legislative vehicle.

Potential risks and impacts and mitigations

§ 9(2)(f)(iv) OIA [Redacted]
[Redacted]

49 § 9(2)(f)(iv) OIA [Redacted]
[Redacted]
[Redacted]
[Redacted]

50 § 9(2)(f)(iv) OIA [Redacted]
[Redacted]
[Redacted]

§ 9(2)(f)(iv) OIA [Redacted]

51 § 9(2)(f)(iv) OIA [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

52 § 9(2)(f)(iv) OIA [Redacted]
[Redacted]
[Redacted]

Implementation risks

53 There is a risk that high volumes of travellers will arrive who have not completed their NZTD, and this may result in slower border processing times that impact on all travellers. Mitigations will include a comprehensive communications campaign to increase awareness among travellers of the benefits of completing the NZTD prior to arrival, supported by efficient arrival processes for travellers who have completed the NZTD.

54 There is a risk that the NZTD programme cannot be fully implemented in the current timeframes if there are delays in the enabling legislation being enacted or new health settings required late in the design process. The main mitigation is the effective governance of the NZTD Programme that enables decisions on scope and timing to be made. The Border Executive Board has oversight of the NZTD Programme. The Joint Executive Board of chief executives, which includes Customs, MoH, and MBIE, establishes specific goals for programme delivery. This is further set out in paragraphs 62 to 64.

Equity and accessibility to technology

- 55 Equity and accessibility issues arise with the requirement to complete online forms for the Government's purposes as not all travellers will be able to use or have an electronic device, and some will have limited English literacy. The implementation of tranche one highlighted that some individuals have not been able to complete a traveller declaration through the NZTD and there are a number of reasons for this, including the need for travellers to respond rapidly to changing requirements. A range of measures (described in paragraph 91) are in place to support people to complete the declaration in tranche one and this experience will inform the implementation of tranche three when the paper arrival card will be replaced by an electronic declaration.
- 56 My officials advise that travellers will be able to ask another person (e.g. a friend, neighbour, family member, or travel agent) to complete the declaration for them prior to departure. The NZTD meets the New Zealand Government accessibility standard, which helps disabled people use the system.
- 57 The person named on the declaration will continue to be liable for the contents of the declaration. The information provided on NZTD will explain the traveller's obligation to provide accurate information and the consequences of not doing so.
- 58 In the event a traveller cannot obtain assistance to complete the declaration pre-travel or on arrival, or where there are other access issues (e.g. no device, no data on device, battery is flat), officials propose that assistance will be provided at key departure airports by Airport Liaison Officers (for any information required pre-departure, such as health information) and on arrival in New Zealand by Customs officers to assist the traveller to complete and submit the declaration.⁶ This is already occurring for travellers following the implementation of the NZTD in tranche one.

Privacy impacts

- 59 A privacy impact assessment (PIA) was completed for tranche one. During this PIA process, the Office of the Privacy Commissioner (OPC) and the Government Chief Privacy Officer (GCPO) were consulted. Their feedback was considered and taken into account for the final PIA. Officials will continue to work with the OPC and GCPO for the PIAs being prepared for tranches two and three. A PIA is also underway for the policy decisions sought in this paper.
- 60 Replacing the paper arrival card with the NZTD creates a new repository of personal information on travellers.⁷ The purpose of the NZTD remains fundamentally the same as the arrival card: to enable agencies to process arriving travellers, including use of the information to identify and respond to potential risks.
- 61 Potential privacy impacts relate to the inappropriate use and disclosure of the personal information. Unless authorised to the contrary in legislation, existing protections or exceptions under the Privacy Act should be maintained for NZTD information. An

⁶ Customs officers provide assistance as part of their broad duties under the purpose of the Customs and Excise Act 2018.

⁷ There is some commercial information related to business travel and goods for commercial purposes.

electronic repository more readily enables only the specific information to be disclosed rather than a copy of a physical card where all information is included.

Implementation of tranches two and three will be overseen by the Border Executive Board

- 62 The ongoing implementation of tranches two and three is being managed as an operational initiative led by Customs, in collaboration with other agencies and relevant sector stakeholders.
- 63 The day-to-day operation of the tranche one NZTD for health declaration requirements is managed by Customs, on behalf of MoH and MBIE.
- 64 The Border Executive Board receives regular updates from the NZTD Programme management as part of the Board's accountabilities for strategic border system improvements, including delivering joint initiatives to build a safer, smarter border.

Treaty of Waitangi/Tiriti o Waitangi

- 65 The development, design, and operation of the NZTD is nested within Customs' longer-term strategic kaupapa Māori journey. Border agencies are also cognisant of working to ensure Māori data is treated appropriately. In parallel, officials are undertaking a shorter-term project to understand how the principles of Māori data sovereignty might apply to how Customs collects, uses, and manages the personal information of travellers coming across the border including that collected through the NZTD.
- 66 A partnership engagement plan has been developed for NZTD, and is also intended to guide and inform Customs' longer-term strategic iwi/Māori engagement. These projects recognise that there are proposals in this paper that are likely to impact Māori interests and in particular respond to the Treaty principles of protection and participation.
- 67 Officials also know that the digital divide for Māori is much higher than for many other groups of people in New Zealand and measures to ensure equitable access to, and outcomes of, the NZTD are being considered and further developed.⁸

Financial Implications

- 68 Cabinet has previously agreed to funding and for the implementation of tranches two and three [CAB-22-MIN-0104].
- 69 Cabinet also noted that the draw-down of the \$55.2 million tagged contingencies set aside for 2023/24 and outyears, would be subject **s 9(2)(f)(iv) OIA**
 [REDACTED]
 [REDACTED]
 [REDACTED]
- 70 **s 9(2)(f)(iv) OIA**
 [REDACTED]
 [REDACTED]

⁸ Pacific peoples also experience the digital divide more than many other groups of people in New Zealand.

s 9(2)(f)(iv) OIA

Legislative Implications

- 71 The proposed Customs and Excise (Traveller Declaration) Amendment Bill received a priority 4 rating on this year's legislation programme, which means referral to select committee in 2022 and for the legislation to be passed in February/March 2023. The legislation needs to come into effect in March 2023 to allow for the implementation of tranches two and three.
- 72 s 9(2)(f)(iv) OIA
- 73 I seek authorisation to make technical, administrative, and other changes required to finalise draft legislation giving effect to the proposals in this paper, in keeping with the overall policy aims of the proposals, and in consultation with other Ministers as appropriate.
- 74 If an amendment to the Customs and Excise Act 2018 is made through a standalone bill, I will write to the Leader of the House to seek a truncated select committee process in order to bring the NZTD into effect in March 2023.
- 75 The changes proposed would bind the Crown.
- 76 I propose to seek Cabinet Legislation Committee agreement to make new regulations to provide for when the NZTD is required (Appendix 3, proposal 1), exemptions from the NZTD (Appendix 3, proposal 5), and an infringement offence for the proposed two new offences (Appendix 3, proposal 3) in the New Year to align with the enactment of the Customs and Excise Act 2018 Amendment Bill.

Impact Analysis

Regulatory Impact Statement

- 77 Two Regulatory Impact Statements have been completed and are attached to this paper.
- 78 The New Zealand Customs Service and Ministry for Primary Industries joint RIA Panel (the Panel) has reviewed the two Regulatory Impact Statements prepared by Customs, the "*New Zealand Traveller Declaration Tranche 3 Enforcement*" and the "*New Zealand Traveller Declaration Tranche 3 Information Sharing and Administration Settings*".
- 79 The Panel considers that the information and analysis summarised in the two Regulatory Impact Statements meets the quality assurance criteria. The Panel did note that no public consultation on the proposals has occurred as there were major constraints in timing during the advice and drafting process. Engagement is happening

with the public through the wider New Zealand Traveller Declaration programme communications work (including with Māori). The public will have an opportunity to comment on any amendments to the Customs and Excise Act 2018 to support the implementation of the New Zealand Traveller Declaration during Select Committee consideration.

- 80 In addition, a revised version of the Compliance and Enforcement of the Traveller Health Declaration System Regulatory Impact Statement for tranche one has been attached to reflect the fact that Customs will check and enforce requirements for the NZTD under a new power in the Customs and Excise Act 2018 rather than under Clause 60(2) of the COVID-19 Public Health Response (Air Border) Order 2021. This is to reflect the change in the development of the status quo since that Regulatory Impact Statement was written.

Climate Implications of Policy Assessment (CIPA)

- 81 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 82 Tranche one (health declarations) of the NZTD is now in force and requires electronic completion, with supplementary processes available while the electronic system is bedding in.
- 83 Some population groups that could face barriers using an electronic NZTD system include: people for whom English is not a first language, disabled people, Māori, Pacific peoples, and older people. These population groups have diverse needs and officials are engaging with representative groups to inform the development of support measures. There are measures in place to reduce these barriers to inform the design for tranche three, which replaces the paper arrival card, including:
- 83.1 the ability to have someone complete their NZTD on their behalf such as whānau/family or a travel agent;
 - 83.2 information in other languages and formats (e.g. braille, large print, audio)
 - 83.3 the NZTD meets the New Zealand Government accessibility standard;
 - 83.4 Airport Liaison Officers in major international airports to assist people making a declaration at departure;
 - 83.5 on arrival, officers will provide assistance to travellers who face barriers to review and confirm their declaration.
- 84 In relation to Customs-related NZTD information, while a person would be encouraged to complete their Customs information offshore, they can seek Customs officer assistance when they confirm their Customs declaration on arrival.

Human Rights

- 85 The policy proposals in this paper to amend the Customs and Excise Act 2018 to provide for the NZTD are unlikely to be inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. There are no proposals in this paper that would limit a person boarding a plane to New Zealand, therefore, it does not place any limitations on New Zealand citizens right to enter under s18(2) of the New Zealand Bill of Rights Act 1990 or other rights under that Act.
- 86 The requirements to provide information could impact on section 14 of the New Zealand Bill of Rights Act 1990, the right to freedom of expression. However, this is considered justified because information is necessary for Customs to undertake its purposes under the Customs and Excise Act 2018, for example, to enable the collection of duty. Any changes to the timing of providing information through the proposed regulation-making power could impact on this right and would need an assessment for consistency with the New Zealand Bill of Rights Act 1990.
- 87 Section 25(c) of the New Zealand Bill of Rights Act 1990 provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. There is justification for this right to not be met in proposing two strict liability offences. ~~s 6(c) OIA~~
~~s 6(c) OIA~~ A strict liability offence is proposed to ~~s 6(c) OIA~~ because of the nature of the offence (something is either done or not done), and it provides a low-cost and easy to administer way to encourage compliance (e.g. it allows for creation of low-level infringement offences). While strict liability offences means if the person meets the offence they may be pursued for the offence, enforcement officers may exercise discretion in considering the circumstances of the failure and there are processes in existing legislation that provide a defendant with an opportunity to appeal the offence.

Consultation

- 88 The paper was prepared by Customs in consultation with the Ministries of Health, Business, Innovation and Employment, Foreign Affairs and Trade, Justice, Pacific Peoples, and Transport, Ministry for Primary Industries, Ministry for Ethnic Communities, Office for Seniors, Office for Disability Issues, and the Department of Internal Affairs, the Treasury, Te Arawhiti, Stats NZ, and Crown Law Office. The Department of Prime Minister and Cabinet and Te Puni Kōkiri were informed.
- 89 The Office of the Privacy Commissioner (OPC) was also consulted noting that the Privacy Commissioner understands the NZTD will streamline data collection from travellers, but will also result in the aggregation of a large quantity of often sensitive personal information. From that perspective, the OPC will want to be assured that the personal information collected or otherwise processed via the NZTD is only that which the agencies need to perform their functions, is accessed appropriately, safely stored and used, and not retained for excessive periods of time. The privacy impact assessments for tranches two and three will ensure that data protection and safe use is built into this system.

Communications

- 90 I propose that announcements on the increased functionality and expansion of the NZTD will be phased over the indicative implementation timeframes, and in line with the Reconnecting New Zealand Programme, where appropriate. My officials will liaise with the key agencies at the border to update the communications strategy used for tranche one to ensure every traveller to New Zealand is aware of what will be required of them to support their eligibility to travel and what they can expect on their arrival.
- 91 The NZTD Programme continues to work through support measures and options as part of the service delivery and system design. The provision of information in alternate formats and languages has been considered and provided as part of tranche one to ensure disabled people, deaf people and those who do not speak English or speak English as second language have full access. The NZTD Programme will continue to make improvements as part of tranches two and three. The Programme will also continue to provide translated resources, including the Traveller Factsheet which is currently available for a range of languages including Te Reo Māori and Pacific languages. The NZTD Contact Centre also offers a translation service.
- 92 My officials, in liaison with officials in other border agencies, will use existing channels and forums to update and seek input from key sector organisations that operate at the border on the planned changes as the NZTD and implementation timeframes.

Proactive Release

- 93 I intend to proactively release this paper following Cabinet consideration and within the 30 business days, with redactions made as appropriate.

Recommendations

The Minister of Customs recommends that the Committee:

- 1 **note** that in April 2022 Cabinet agreed that the addendum to the New Zealand Traveller Declaration – Single Stage Business Case has been satisfactorily completed and the implementation of the New Zealand Traveller Declaration can continue and authorised joint Ministers (Minister of Finance, Minister for COVID-19 Response, Minister of Immigration, and Minister of Customs) to approve the draw-down of tagged contingency funding, phased to be spent in 2022/23;
- 2 **note** there is already a comprehensive information disclosure and access regime in the Customs and Excise Act 2018 (including ministerial approval of interagency agreements following consultation with the Privacy Commissioner);
- 3 **agree** that the existing information and access regime in the Customs and Excise Act 2018 is used to disclose customs-related New Zealand Traveller Declaration information;
- 4 **agree** that Customs and Excise Act 2018 be amended to:

Provide for Customs to verify agencies' traveller data entry requirements in the New Zealand Traveller Declaration

- 4.1 provide for the chief executive of the New Zealand Customs Service to verify whether the traveller data entry requirements set by agencies has been met, and to seek proof or require evidence that this has been done, where necessary to do so;
- 4.2 require that another enactment would state that for the purposes of the new provision in the Customs and Excise Act 2018, that a specific requirement or obligation was a traveller data entry requirement;
- 4.3 enable the chief executive of the New Zealand Customs Service, following the verification process, to take any actions permitted as a consequence of compliance or non-compliance by the enactment that set the requirement;
- 4.4 permit the use by Customs of any information stored in or held by the New Zealand Traveller Declaration system and provided by the arriving traveller in order to meet the traveller data entry requirement, for the purposes of verifying whether that requirement has been met;
- 4.5 require that future traveller data entry requirements are set out in the appropriate primary legislation administered by the agency responsible for that function;

Technical policy proposals

- 4.6 require travellers to complete and submit the customs part of the New Zealand Traveller Declaration that includes information (set out in chief executive rules) about the traveller, their travel, and the goods brought with them (Appendix 3, proposal 1);
- 4.7 if necessary, explicitly provide for automated decision-making by the New Zealand Traveller Declaration system using existing Customs and Excise Act 2018 provisions with any necessary modifications (Appendix 3, proposal 2);
- 4.8 establish a strict liability offence relating to failure to make a New Zealand Traveller Declaration to the New Zealand Customs Service with a maximum penalty for a traveller of \$5,000 (Appendix 3, proposal 3);
- 4.9 establish a strict liability offence relating to making an erroneous New Zealand Traveller Declaration in a material particular to the New Zealand Customs Service with a maximum penalty for a traveller of \$5,000 (Appendix 3, proposal 3);

New regulation-making power

- 4.10 establish a regulation-making power to set the point in the traveller's journey when they must submit the Customs part of the New Zealand Traveller Declaration (Appendix 3, proposal 4);

- 4.11 establish a regulation-making power that allows for exemptions from the requirement to complete the New Zealand Traveller Declaration to be prescribed (Appendix 3, proposal 5);

Specific regulations or changes to existing regulations to implement NZTD proposals

- 5 **agree** to make new regulations and where appropriate amend existing regulations for the following proposals to:
- 5.1 require the declaration to be made no later than the time the person is required to report to a Customs officer or to a Police Station on arrival in New Zealand (Appendix 3, proposal 1);
- 5.2 exempt (Appendix 3, proposal 5):
- 5.2.1 a traveller who arrives in New Zealand after having been rescued at sea;
- 5.2.2 a traveller who arrives in New Zealand wholly for the purpose of seeking temporary relief from stress of weather;
- 5.2.3 a traveller who arrives in New Zealand under a medical evacuation;
- 5.3 prescribe the offences set out in recommendations 4.8 and 4.9 as infringement offences in regulations (Appendix 3, proposal 3):
- 5.3.1 establish an infringement penalty of \$400 for a traveller who has failed to make a New Zealand Traveller Declaration (being the level of existing infringement offences) using the existing regulation-making power;
- 5.3.2 establish an infringement penalty of \$400 for a traveller who has made an erroneous New Zealand Traveller Declaration using the existing regulation-making power;
- 5.4 amend the goods entry mechanism in regulation 26 of the Customs and Excise Regulations 1996 to link to the new declaration requirement (Appendix 3, proposal 1);

Administrative matters

- 6 **note** that the New Zealand Customs Service will use the chief executive's rules to:
- 6.1 prescribe different processes for the submission of the customs-related parts of the New Zealand Traveller Declaration for different classes of travellers arriving at the air and maritime borders (Appendix 3, proposal 5);
- 6.2 prescribe the form and any requirements for different cases on any differential basis consistent with the existing Customs and Excise Act 2018 (Appendix 3, proposal 6);

Financial implications

7 **note** that the draw-down of the \$55.2 million tagged contingencies set aside for 2023/24 and outyears will be subject to ~~s 9(2)(f)(iv) OIA~~

8 ~~s 9(2)(f)(iv) OIA~~

Legislative implications

9 ~~s 9(2)(f)(iv) OIA~~

10 **agree** that subject to recommendation 9, the legislative amendments in this paper be included in a Customs and Excise Act 2018 Amendment Bill, except regulation changes in recommendation 5 which will be made using the regulation-making power;

11 **note** that the Customs and Excise Act 2018 Amendment Bill has a priority 4 in the 2022 legislative programme, which means to be referred to a select committee in 2022;

12 **authorise** the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above legislative amendments;

13 **authorise** the Minister of Customs to make technical, administrative, and other changes required to finalise draft legislation giving effect to the proposals in this paper, in keeping with the overall policy aims of the proposals, and in consultation with other Ministers as appropriate;

14 **note** that the Minister of Customs will announce decisions in this paper, as set out in paragraph 90;

15 **invite** the Minister of Customs to report to the Cabinet Legislation Committee by 29 September 2022;

16 **invite** the Minister of Customs to report to the Cabinet Legislation Committee in the New Year in relation to regulation changes in recommendations 5.

Authorised for lodgement

Hon Meka Whaitiri

Minister of Customs

Appendix 1: Benefits for travellers and agencies

The benefits listed below are based on the timeframe for delivery of the benefits. The category column refers to those listed in the body of the paper (paragraph 22).

| Benefit | Who benefits and why | Category |
|--|--|--|
| <p>Managing health risks offshore (delivered in tranche one), and require, for example, that travellers declare they are not subject to a public health direction in another country</p> <p>(Being delivered now in response to COVID-19 and adjusted for changing requirements)</p> | <p>Public health system benefits: by being able to respond to known and emerging health risks, and identifying the appropriate response prior to departure and assigning a pathway on arrival. Access to contact details and seat numbers supports a timely response for contact tracing or follow-up on any testing requirements that may be necessary.</p> <p>MoH: specific health questions can be implemented at short notice with minimal impact on airlines, travel agents as with the paper card.</p> | <p>Safer border</p> |
| <p>Enabling travellers to complete arrival information in advance, at their convenience and update or confirm and submit on arrival</p> <p>(Following implementation)</p> | <p>Travellers: particularly those who do not intend to purchase duty free or are unlikely to take food with them (e.g. regular international flyers) or want to complete all compliance requirements prior to departure</p> <p>Agencies: information collected via interviews with travellers on arrival is immediately available to other officers who engage with the traveller avoiding repetitive questions to travellers.</p> | <p>Smarter border</p> <p>Better traveller experience</p> |
| <p>Ability to identify travellers where further questioning is required by agencies on arrival</p> <p>(Future operational use following implementation)</p> | <p>Agencies: once the use of the NZTD system to collect information from arriving travellers has been operational for a few months, the Integrated Targeting and Operations Centre (ITOC)⁹ s 6(c) OIA [REDACTED]</p> <p>Travellers: information available earlier may remove the need for referral for further questions and provide a smoother border clearance process.</p> | <p>Safer border</p> <p>Smarter border</p> |
| <p>Helping travellers to fully comply with border requirements prior to departure</p> <p>(Future enhancement; beyond scope of current programme and funding)</p> | <p>Beyond the current programme, as part of a safer, smarter border, functionality in the NZTD could help travellers to fully comply with border requirements and minimise the need for interaction with border officials on arrival.</p> <p>For example, responses to certain questions (e.g. around goods or biosecurity) could provide further information ensuring that the traveller is aware of requirements and would</p> | <p>Better traveller experience</p> <p>Smarter border</p> |

⁹ ITOC is hosted in Customs, with staff from Customs, MBIE, MPI and, more recently, MoH.

| Benefit | Who benefits and why | Category |
|--|--|---|
| | <p>have the opportunity to comply with those prior to departure (e.g. attaching a permit for a restricted good, completing a border cash reporting form, and attaching copies of medicine prescriptions.)</p> <p>Agencies: this would further streamline processing of arriving travellers and reduce the number referred for secondary processing.</p> | |
| <p>Easier implementation of new or changed information requirements for travellers</p> | <p>Airlines, travel agents and border agencies: the NZTD removes the need to update, print and distribute amended arrival cards in response to new or temporary changes to information requirements. This removes administrative and logistical costs for all parties.</p> <p>Agencies: can quickly respond to new and emerging risks.</p> | <p>Smarter border</p> <p>Safer border</p> |
| <p>Enabling other declarations and entry decisions to be made offshore where authorised</p> <p>(Potential future use; beyond scope of current programme and funding)</p> | <p>As part of a safer, smarter border NZTD would enable future decisions by agencies to be implemented offshore.</p> <p>For example, MBIE, s 9(2)(f)(iv) OIA [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] At this point, Customs and MPI have not identified any requirements for offshore decisions.</p> <p>Airlines: would not incur cost of returning travellers who are denied entry on arrival.</p> | <p>Safer border</p> <p>Smarter border</p> |

PROTECTED INFORMATION RELEASED

Appendix 2: Agencies' summary of implications for their legislation

Ministry of Health (MoH)

- 1. s 9(2)(f)(iv) OIA [Redacted]
- 2. [Redacted]

- 2.1. s 9(2)(f)(iv) OIA [Redacted]
- 2.2. [Redacted]

Ministry of Business, Innovation and Employment (MBIE)

- 3. s 9(2)(f)(iv) OIA [Redacted]
- 4. [Redacted]

Ministry for Primary Industries (MPI)

- 5. s 9(2)(h) OIA [Redacted]

PROACTIVELY RELEASED

Appendix 3: Technical policy proposals for changes to the Customs and Excise Act 2018 and associated legislative mechanisms for the NZTD and administrative matters

| Proposal Number | Recommendation Number | Proposal and rationale for change | Proposed changes to the Customs and Excise Act 2018 and associated legislative mechanisms |
|-----------------|-----------------------|---|---|
| 1 | 4.6 5.1 5.4 | <p>Establish the requirement for a Customs declaration for people and goods</p> <p>Currently a range of provisions in the Customs and Excise Act 2018, when read together, provide the mandate for the paper arrival card information required by Customs to be collected from arriving travellers. The current focus in legislation is primarily to gather information about imported goods.</p> <p>A clear provision for the collection of information about the traveller and their goods will be more transparent. The information would be collected in the NZTD.</p> <p>A new declaration provision would require amendments to regulation 26 to ensure that travellers are still not required to enter their personal belongings as imported goods on arrival.</p> <p>There also needs to be transparency on when the declaration using the NZTD takes effect for Customs' purposes and for enforcement purposes.</p> | <p>Travellers to complete and submit the Customs part of the NZTD declaration that includes information about the traveller, their travel, and the goods brought with them in the NZTD.</p> <p>Regulations be made requiring the declaration to be made no later than the time the person is required to report to a Customs officer or to a Police station on arrival in New Zealand.</p> <p>Amend the goods entry mechanism in regulation 26 of the Customs and Excise Regulations 1996 to link to the new declaration requirement.</p> |
| 2 | 4.7 | <p>Provide for automated decision-making by the NZTD</p> <p>Automated decision-making systems need effective checks to ensure that the systems operate appropriately by highlighting potential concerns which are then considered by a border official.</p> <p>The NZTD system uses automated decision-making to assess the information provided against rules that have been set by agencies and provide the required response, such as referral to an officer. The information provided by a traveller in their NZTD would be assessed against those rules. The referral would be</p> | <p>If necessary, explicitly provide for automated decision-making by the NZTD system.</p> |

~~IN CONFIDENCE~~

| Proposal Number | Recommendation Number | Proposal and rationale for change | Proposed changes to the Customs and Excise Act 2018 and associated legislative mechanisms |
|-----------------|-----------------------|--|---|
| | | assessed by an officer to determine the appropriate action. This is a similar to the approach taken with health declaration rules for COVID-19 requirements. | |
| 3 | 4.8 4.9 5.3 | <p>Allow for two strict liability offences for failure to make Customs-related NZTD and making an erroneous declaration</p> <p>Historically there have been high levels of compliance with completion of arrival information. However, s 6(c) OIA [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].¹⁰ The COVID-19 Public Health Response (Air Border) Order 2021 (ABO) has an offence for failure to comply with the requirement for the NZTD, but this will not continue when the ABO is revoked.</p> <p>Offences are required for failure to complete and submit a NZTD and for making an erroneous declaration in a material particular.</p> | <p>Customs and Excise Act 2018 is amended to establish a strict liability offence relating to:</p> <ul style="list-style-type: none"> failure to make a Customs declaration making an erroneous declaration. The erroneous declaration would be limited to a material particular. <p>The maximum penalty should align with existing offence provisions relating to providing arrival information. An individual can be fined up to \$5,000.</p> <p>The existing regulation-making power is used to establish an infringement penalty of \$400 for an individual who has:</p> <ul style="list-style-type: none"> failed to make a declaration (being the level of existing infringement offences) made an erroneous declaration. |

¹⁰ Sections 366 and 368.

~~IN CONFIDENCE~~

~~IN CONFIDENCE~~

| Proposal Number | Recommendation Number | Proposal and rationale for change | Proposed changes to the Customs and Excise Act 2018 and associated legislative mechanisms |
|-----------------|-----------------------|---|--|
| | | | Taking reasonable steps is a defence against an offence for failing to make a Customs NZTD or making an erroneous declaration. |
| 4 | 4.10 | <p>Allow for information to be provided and declarations to take effect at different times</p> <p>The system will allow more flexibility for travellers to provide information pre-travel and during their journey, and to review and update prior to the declaration being submitted. Information provided prior to travel (e.g. on goods, biosecurity, or immigration matters) will be used to § 6(c) OIA</p> <p>or, in the future, to proactively assist travellers by providing information about other requirements on arrival (e.g. provide a link to the border cash reporting form if the traveller has indicated they intend to bring over \$10,000 into the country).</p> <p>The availability of declaration information for the § 6(c) OIA does not justify a mandate that all information must be provided prior to departure. For some questions, the answers can be provided pre-travel, but may only be confirmed on arrival (e.g. if duty free goods are purchased or if food is taken from the plane or vessel).</p> <p>From a traveller's experience perspective there needs to be clarity about when declarations are required or can be made. This is also important for enforcement purposes. The chief executive of Customs already has the authority to set out what information must be provided, in what form, and any declaration that must be provided for Customs' purposes. These rules for the NZTD will be finalised before tranche three comes into force.</p> <p>In the event of a future pandemic, some information may be required prior to check-in for travel to New Zealand (e.g. vaccination certificates or confirmation</p> | Establish a regulation-making power to set the point in the traveller's journey when they must submit the Customs' part of the NZTD. |

~~IN CONFIDENCE~~

~~IN CONFIDENCE~~

| Proposal Number | Recommendation Number | Proposal and rationale for change | Proposed changes to the Customs and Excise Act 2018 and associated legislative mechanisms |
|-----------------|-----------------------|---|---|
| | | <p>of managed isolation requirements) which may result in the traveller not being able to board their flight or vessel. The mandate for this will be under health legislation.</p> <p>Customs does not consider there is any need to prevent someone boarding for Customs-related purposes. However, it is important to future-proof Customs' use of the NZTD to respond to emerging risks and future border processing changes by allowing for regulations so that Customs may require specific information to be provided offshore and enforced on arrival in New Zealand.</p> | |
| 5 | 4.11 5.2 6.1 | <p>Allow for exemptions and different processes where necessary</p> <p>There are some circumstances where it may not be possible for an NZTD to be provided because of the urgency of the situation. There are other circumstances where providing all of the NZTD may not be beneficial or appropriate to the risk profile of the situation.</p> <p>Cabinet previously agreed that exemptions for the NZTD should be limited to humanitarian emergencies for tranche one. The term 'humanitarian emergencies' was found to be too broad, and was being used for other travellers, such as refugees, where there are administrative processes involved in these scenarios where a person could help the traveller to complete the NZTD. Unplanned events is a better term to provide for pressing situations, such as when a boat sinks or in an emergency medical evacuation, when it is not possible for an NZTD to be completed. This narrow scope for exemptions recognises that any traveller may present some level of risk (e.g. transit travellers may present health risks to other travellers on a plane).</p> <p>Good regulation-making requires that systems do not impose unnecessary requirements on people. Legislation needs to enable different processes for NZTD for different travellers (such as transit travellers, maritime commercial crew, foreign military, and Antarctic Treaty partners). For example, prior to COVID-19, commercial crews and passengers on maritime vessels (including</p> | <p>For exemptions from the requirement to complete NZTD to be set by regulation.</p> <p>For different processes for the NZTD to be set by the chief executive of Customs' rules, where appropriate for specific travellers and at the air and maritime borders.</p> <p>Regulations be made exempting a traveller who arrives in New Zealand:</p> <ul style="list-style-type: none"> • after having been rescued at sea • wholly for the purpose of seeking temporary relief from the stress of weather • under a medical evacuation. |

~~IN CONFIDENCE~~

~~IN CONFIDENCE~~

| Proposal Number | Recommendation Number | Proposal and rationale for change | Proposed changes to the Customs and Excise Act 2018 and associated legislative mechanisms |
|-----------------|-----------------------|--|---|
| | | <p>cruise ship passengers) did not have to complete arrival card as long as they were returning to and leaving with the vessel. Requiring a full NZTD from these travellers could be both difficult to achieve, and produce little useful risk assessment information. However, the NZTD provides the ability to present specific questions relevant to the different maritime crew and passengers and their potential risks, enabling an NZTD that is specific to the maritime border.</p> <p>This approach enables exemptions to be limited and ensure requirements are appropriate to the traveller's situation. The Customs and Excise Act 2018 already provides through regulation and rule-making for different approaches for different situations and groups, where this is provided for in the primary legislation.</p> | |
| 6 | 6.2 | <p>Existing provisions to make Customs Rules to provide for matters of detail</p> <p>It is important that the detail of what is required as part of NZTD is set out in a mechanism where the public can access it and where there is scrutiny on the need for information or requirements.</p> <p>The Customs and Excise Act 2018 already provides that the chief executive of Customs may make rules setting out what information is required, the form of any information (e.g. electronic or paper), prescribed forms, when a declaration is required and any different requirements for different cases on any differential basis.</p> | Prescribe the form and any requirements for different cases on any differential basis consistent with the existing Customs and Excise Act 2018. |

~~IN CONFIDENCE~~