



Regulatory Impact Statement

Use of border control powers for national security purposes

Coversheet

Decision sought	Analysis produced to inform Cabinet decisions.
Agency responsible	<i>New Zealand Customs Service</i>
Proposing Minister	<i>Minister of Customs</i>
Date finalised	<i>8 July 2025</i>

The regulatory proposal

The proposal is that the Customs and Excise Act 2018 (CEA) be amended to:

- include in the Act's purpose statement the concepts of border security and national security in order to clarify and strengthen border controls at a system level
- link to the CEA serious offences from domestic legislation (such as the Crimes Act 1961) that have a border nexus to better enable the use of border control powers for border security purposes, and to generate evidence and intelligence to support domestic security and enforcement agencies to carry out their national security functions.

Summary: Problem definition and options

What is the policy problem?

Taumarū: Protecting Aotearoa New Zealand as a free, open and democratic society - the Review of the Intelligence and Security Act 2017¹ (the "ISA Review") recommended to "amend the Customs and Excise Act 2018 to enable the New Zealand Customs Service to collect and share information pertaining to the functions of the Government Communications Security Bureau or the New Zealand Security Intelligence Service to facilitate cooperation under the Intelligence and Security Act 2017."

Cabinet is expected to agree² to accept this recommendation, and transfer responsibility for delivery to the New Zealand Customs Service (Customs). Ministers will note that "Customs is currently undertaking work on a Border Security Bill which will likely have overlap between this recommendation and potential new powers to collect and share information in the Transnational Organised Crime context".

¹ Ministry of Justice 2023.

² Cabinet decision expected in July 2025

This RIA analyses options to respond to the recommendation from the ISA. It also analyses those options in the wider national security context, in particular in relation to combating the threat at the border from transnational, serious and organised crime (TSOC) groups.

The problems identified with the CEA which underpin the ISA review and which also negatively impact on combating the threat from TSOC groups are:

- the CEA's purpose statement does not connect the scheme of border controls in the Act with the objective of supporting border security and national security. This limits the application of border control powers in managing national security risks
- the offences currently specified in the CEA, and the offences from other legislation that are linked to the CEA, do not cover the full range of national security risks that Customs is expected to manage.

The effect is to limit the ability of Customs to use border control powers as effectively as possible to counter national security risks and to generate evidence and intelligence to support domestic security and enforcement agencies to carry out their national security functions.

What is the policy objective?

The objective is fit for purpose legislation to support improved national security through more effective border control.

- New Zealand's national security is improved through deterring threat actors such as TSOC groups, terrorists and violent extremists, and foreign interference and espionage actors from operating across our border, and increasing the probability that they are identified, investigated and disrupted by agencies across New Zealand's national security system.
- New Zealand's reputation as a relatively corruption-free nation and secure trade partner is maintained or improved.

A goal for border security is that threat actors intent on committing serious harm to NZ or its interests are identified. This is a small group of persons among the vast flow of low risk or legitimate travellers, and those engaged in international trade.

The assumption is that well calibrated and directed border control legislation supports actions to deter, detect, investigate and prosecute threats to national security that have a border nexus. Threat actors are more likely to actively target New Zealand if its border controls are seen as vulnerable (either in absolute terms or in comparison to other countries); and that negative perceptions on the part of our trading partners of New Zealand's border security means that they will have less confidence in our trusted trader status.

Success in the operationalisation of the legislation is indicated by the extent to which intelligence and evidence obtained through the use of border control powers assists in the identification, investigation and disruption of threat actors.

Border control powers have implications for personal rights and freedoms. There is a trade-off between exercising powers to detect threats and what is reasonable in terms of the suspension or diminution in personal rights and freedoms at the border. Success therefore would also be indicated by travellers, groups with an interest in civil liberty matters, and

society in general, being satisfied that the way border control powers are specified in legislation and applied in practice place reasonable limits on rights and freedoms that are justified in a free and democratic society (Section 5 Bill of Rights Act 1990).

Options

There are no feasible non-regulatory options. Customs' functions and the use of border control powers for investigative and enforcement purposes must be specified in legislation.

All options include amending the purpose statement to the CEA (Section 3) to include the concept of providing border security as a function of Customs and linking that function to supporting national security in order to improve the application of border control powers at a system level.

The scope of options is limited by the scheme of the CEA (in particular the need to link the use of border control powers such as to search persons and e-devices with the detection of specified offences). As a consequence, all options include adding or linking existing offences from domestic legislation to the CEA so that border control powers can be applied to a wider set of national and border security risks than currently. The proposed offences are:

Crimes Act 1961

- section 78 espionage
- section 78A wrongful communication of official information
- section 78AA wrongful communication of classified information
- section 78AAA and 78AAB foreign interference (contained in the Crimes (Countering Foreign Interference) Amendment Bill)
- section 98A participation in organised criminal group
- sections 243-245 money laundering (and applying the definition of money laundering in section 5 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009)

Terrorism Suppression Act 2002

- all offences

Three options were developed for evaluation against each other and the status quo.

- Option 1 – add to the list of offences in the CEA that enable a Customs officer to copy documents linked to that offending and pass to another agency if located in a search carried out for a customs purpose
- Option 2 – link additional offences to the CEA to allow Customs to use its powers to gather evidence that relate to the way that threat actors operate across borders
- Option 3 - Add additional offences to the Act as Customs offences.

The preferred option - Option two - Features of the option

This option would enable Customs to use border control powers across a wider range of offending than currently provided for in the CEA. It would permit Customs to use border control powers when there is reasonable cause to suspect a person is involved in the specified offences, however Customs would not be responsible for investigating the offence. Documents located through the exercise of border control powers would be able to be copied and disclosed to another agency with responsibility for investigating the matter. For information to be collected and shared with another agency a Customs officer would have to meet a legal threshold of reasonable cause to suspect linked to an offence at each of up to three separate points: first to commence certain types of search (of a person or an e-device

for example), second in linking material viewed in a search with offending in order to copy it, and third when deciding to pass the material copied to another agency.

In Option 2 evidence is obtained by use of warrantless border control powers to detect specified offending that is the responsibility of another domestic agency to investigate further. This compares to Option 1 where the evidence is obtained incidentally to the use of powers to detect Customs offending.

Option 3 would integrate the border into more of a core national security function through giving Customs a wider role in investigating offending. This option is not assessed as improving national security outcomes over Option 2 to an extent that would justify the higher costs and impacts.

What consultation has been undertaken?

No public consultation has taken place over the options considered in this RIS. The groups that represent the public interest in law enforcement matters would be consulted at the Select Committee stage of a Bill.

The options are informed by the public consultation associated with the development of the National Security Strategy and the National Security Intelligence Priorities, the review of the Intelligence and Security Act, and the 2024 National Risks Public Survey on National Security Threats. The consensus from that public engagement is that effective border security is important for protecting New Zealand from threats. That public consultation did not, however, go into the detail of how border controls should be formulated and directed to support that consensus and expectations for border security.

Consultation was undertaken with the Department of Prime Minister and Cabinet, the Ministry of Justice, the Ministry of Business Innovation and Employment (New Zealand Immigration Service), the New Zealand Security Intelligence Service, the Government Communications Security Bureau, New Zealand Police, the Ministry for Primary Industries, and the Ministry of Defence.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes

Summary: Minister's preferred option in the Cabinet paper

Costs and impacts

The monetised costs fall on government and are estimated to be small with a high level of certainty. These are the one-off costs of making legislation and updating operational policies and procedures. There will be minor ongoing costs to maintain policies and procedures and provide training.

The preferred option is considered straightforward to integrate within "business as usual" border risk management processes incorporating the use of border control powers. A very small number of interactions with travellers are expected to meet the legal threshold of suspicion of involvement in the specified offences. As a consequence, costs will be able to be met within existing baselines.

There may be consequential cost implications on agencies like Police and the NZSIS and for the justice sector in areas such as investigation, prosecution and incarceration costs

depending on the extent to which threat actors are identified. The magnitude cannot be estimated with any certainty.

The impacts will fall on threat actors involved in serious offending through increasing the probability of being detected and disrupted. The make-up of this group cannot be determined but is assumed to be a very small proportion of persons crossing the border.

There will be impacts on a group of travellers who, because of the circumstances of an interaction with a Customs officer, may be the subject of a search and which may lead to information being copied or recorded from documents in their possession because they are considered to meet the legal thresholds connected to the new offence types. That information may be disclosed to another agency to assist it carry out a national security function subject to the limitations on information disclosure in the CEA and in overarching legislation such as the Privacy Act. These persons may ultimately be assessed as low risk and to have no connection with a national security risk.

Just how many would be in this group is uncertain due the large number of contributing variables. Customs estimates that based the seriousness of the offences, and from experience in the way that border risk assessment is operationalised, that a small group would be impacted – estimated to be no more than 200 persons per year and conceivably considerably less, possibly as few as 40-50.

This group would be impacted to the extent that during the border interaction a Customs officer may consider whether the thresholds have been met to apply powers to search and then to copy documents. There would then be a separate decision as to whether to pass any material copied to another agency for investigation subject to the requirements of the Privacy Act. The number of these interactions that finally end up at the point where information is copied and shared with another agency cannot be predicted or estimated but can be expected to be a small sub-set of that initial group.

Benefits

The scale of benefits cannot be accurately quantified and have to be qualitatively assessed against the costs and impacts.

The preferred option would give effect to the recommendation from the ISA review in that it defines the role of Customs in collecting and sharing information relating to the functions of the security agencies. Clarifying Customs' role in national security will facilitate co-operation between Customs and the security agencies. Enabling border control powers to be used over a wider range of relevant offending to generate evidence and intelligence will better support domestic security and enforcement agencies to carry out their national security functions.

The benefits would come from:

- deterrence - insofar that in the perception of threat actors, it increases New Zealand's border security and the possibility of detection
- improving the quality of intelligence and evidence to support investigations of national security concern across the national security system
- maintaining or improving perceptions on the part of our trading partners of the state of New Zealand's border security which means continuing confidence in our trusted trader status and reputation as a relatively corruption-free nation.

The scale of the actual costs and harms currently imposed on society by TSOC groups (and the potential costs and harms to society from terrorism, violent extremism, foreign interference and espionage) are high and so even a marginal increase in the probability of the national security system deterring or detecting such threat actors will be beneficial if it can be achieved at low cost.

An assumption is that border security would be strengthened if border control powers that are currently focused by the CEA on the commodities being moved illegally across our borders are also able to be focused on how threat actors are organised and operate across international borders. This would be achieved through the CEA being recalibrated to enable Customs' powers to be used to detect those involved in activities such as logistics, financing, and making connections for threats such as drug smuggling, terrorism, foreign interference and espionage. It is difficult to assess how much this would affect overall national security levels as it cannot be said with certainty who or what is being missed at the border currently but noting for example the fact of ongoing large-scale TSOC activity at our borders which is successfully supplying domestic drug markets.

Balance of benefits and costs

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

There is confidence that the proposal will achieve net benefits principally from improving the quality of intelligence and evidence to support the generation of investigative leads across the national security system that target the leaders and facilitators of national security threats.

To weigh up against the potential for benefit realisation, the preferred option has low implementation and ongoing costs and is straightforward to integrate within "business as usual" border risk management processes. It is considered with high certainty that the proposal has no risk of producing unintended outcomes that for example might bring about a worsening of border security - either actual or perceived.

Implementation

Changes to the CEA are required for implementation. These are expected to be completed by mid-2026.

Customs will make changes to operational procedures and practice and update training material for Customs officers.

No implementation risks are anticipated. Customs will work with agencies such as Police and NZSIS to ensure that information and intelligence is shared and disclosed in accordance with legislative requirements.

Data on bag searches and searches of persons and e-devices is disclosed in Customs' Annual Report, and this will enable monitoring for any unusual or unexpected increase in the use of border control powers.

Limitations and Constraints on Analysis

There is a lack of data that would give more certainty to the link between the effect of strengthening border control legislation in the manner proposed and the beneficial outcomes and noting that that benefits realisation must be largely qualitatively assessed.

The lack of public consultation is a limitation on understanding whether the wider public would accept the preferred option and its likely impacts as placing reasonable limits on rights and freedoms that are justified in a free and democratic society

Despite these limitations the analysis is considered adequate to support Cabinet making an informed decision.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

S9(2)(a)

**Group Manager Policy and
Strategy
10 July 2025**

Quality Assurance Statement

Reviewing Agency: Customs/Ministry of Justice

QA rating: Partially meets

Panel Comment: The joint New Zealand Customs Service/ Ministry of Justice Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement and considers the information and analysis summarised in the RIS partially meets the Quality Assurance criteria due to the lack of public consultation on the proposal. The lack of public consultation is fully acknowledged in the RIS. Taking this into account and the nature of the proposal, the Panel considers Ministers have enough information of sufficient quality, to make an informed decision.

Section 1: Diagnosing the policy problem

Background and Context

The border and national security

1. The National Security and Intelligence Priorities (NSIP) cover a range of threats to New Zealand's national security. The NSIPs establish clear expectations and guidance on where agencies' intelligence resources should be prioritised to best support decision-making on national security. The NSIP of maritime and border security supports Outcome 1 of the National Security Strategy - that New Zealand is protected from malicious threats.
2. Border security plays a key role across the threat-specific national strategies that sit under the overarching National Security Strategy and in particular in the Transnational Organised Crime Strategy, the Countering Terrorism and Violent Extremism Strategy, the Countering Foreign Interference and Espionage Strategy and the Maritime Security Strategy. Customs is a member of the National Security Board which is the government's principal strategic national security decision-making group.
3. With respect to the legislation that governs border controls, the assumption is that well calibrated and directed border control legislation will assist in deterring, detecting, investigating and prosecuting the socially and economically damaging NSIP-related threats and activities that have a border nexus.
4. Threat actors are more likely to actively target New Zealand if its border controls are seen as relatively weak (either in absolute terms or in comparison to other countries). Negative perceptions of the state of New Zealand's border controls on the part of our trading partners means that they would have less confidence in our trusted trader status and reputation as a relatively corruption-free nation. This might mean higher intervention rates with persons and cargo originating from New Zealand at overseas borders, and higher costs of undertaking international trade.
5. Customs has a role in delivering border security over a range of national security threats including the smuggling of illicit drugs and firearms, people smuggling and human trafficking, terrorism and violent extremism, money laundering, foreign interference and espionage. These threats manifest in many different ways in a border context including in passenger flows through airports and seaports, in trade, international mail, in the maritime domain, and over the digital border.
6. The 2024 *National Risks Public Survey on National Security Threats* (Department of the Prime Minister and Cabinet) has a purpose of understanding public perceptions of national security threats. The survey results indicate a general awareness and concern with the threats to New Zealand and which have a border nexus. There is an underlying theme that border controls should be as well calibrated as possible to counter these external threats.
7. The threats from transnational, serious and organised crime (TSOC) groups are an ongoing presenting border security risk for New Zealand. In 2023/24 Customs seized 4,800 kg of methamphetamine bound for NZ and detected \$10.9 million in undeclared cash at the

border. Combatting and disrupting the activities of TSOC groups is a high priority national security objective.

8. While other high priority border security threats such as terrorism, violent extremism and foreign interference and espionage are rarer presenting events than TSOC, such actors have the potential to cause great harm to New Zealand's safety and interests. *New Zealand's Security Threat Environment 2024* (NZ Security Intelligence Service) notes that the National Terrorism Threat Level is set at low meaning that "a terrorist attack in New Zealand is considered a realistic possibility". Open-source research suggests that individuals in New Zealand have been victims of forced repatriation by a foreign state. This is when foreign state actors deceptively enter New Zealand to coercively force or convince individuals to return to their homeland to face prosecution for crimes they are accused of committing – circumventing or exploiting official bilateral channels. This should be considered within the context of relevant and related vulnerabilities. For example, the methods used by TSOC groups to smuggle drugs and other prohibited items into New Zealand (and through New Zealand to other countries) are exploitable by other threat actors, and that TSOC groups are known to co-operate with other threat actors if there is profit for them.
9. Customs provides support to the NZSIS by providing proactive notification of events or incidents of national security interest at the border, which may include information they have collected during routine and targeted interactions with travellers and goods³.
10. The border provides a point of control for assessing terrorism risk to New Zealand. Customs established a specialist counter-terrorism capability in 2002 to contribute to New Zealand's compliance with United Nations Security Council Resolution 1373 in respect of border security. Initially the focus of this capability was to:
 - assistance to detect in-bound terrorist threats (both passenger and trade-related)
 - assist security agencies in monitoring the international travel and trade conducted by domestically based persons of interest
 - respond to interdictions of persons placed on international watch lists and "no fly" lists by overseas security and border authorities.
11. The capability was expanded in 2015 to assist New Zealand to comply with United Nations Security Council Resolution 2178, to identify and prevent New Zealand residents and citizens from travelling to join certain designated terrorist groups to engage in foreign conflicts.

The system of border controls and national security objectives

12. Border controls can be viewed as the laws and processes through which threats to border security are identified and mitigated.
13. Customs' functions and powers derive principally from the Customs and Excise Act 2018 (CEA). While Customs' border control functions were originally focused on the collection of Crown revenue, the nature of border control has expanded in response to the global threat environment to encompass a wide range of border control functions within a broad

³ Taumaruru, paragraph 3.61

border security context. Customs now has responsibility for enforcing about 60 different statutes at the border.

14. The CEA has been amended several times since 2002 to provide a more targeted response to national security threats as part of successive governments' response to events, for example the September 11, 2001, terror attacks in the US, and foreign terrorist fighters traveling to join the Syrian conflict. NZ governments have also strengthened border controls in response to United Nations Resolutions requiring member states to strengthen national security and border controls to deal with increased security risks world-wide.
15. Examples of border security-related amendments made to the CEA include:
 - the secure exports scheme
 - prohibitions on NZ citizens traveling to join designated foreign conflicts
 - linking certain Terrorism Suppression Act 2002 offences to the border
 - clarifying and enabling the disclosure to national security agencies of information collected by Customs in carrying out its functions, including obtained from the use of border control powers.
16. It was noted by the Ministry of Justice in its Bill of Rights compliance assessment of the Customs and Excise Bill 2018, that the border is a special case in legal and constitutional terms, where a nation exercises certain sovereign rights, and where there is an expectation of the loss or diminution of rights such as privacy and the freedom from unreasonable detention or search.
17. Customs officers can exercise powers at the border in ways that do not apply in a domestic policing scenario (for example, Customs officers do not need a warrant to exercise powers in some circumstances). To balance border control objectives with protecting individual rights and freedoms, Customs' powers are limited in the CEA by means such as:
 - legal thresholds (eg to search an e-device, or to copy documents)
 - being time bound (eg detentions of persons)
 - restricted to certain places (eg Customs Controlled Areas)
 - defined circumstances (eg when craft, goods and travellers are "under the control of Customs")
 - limited to performing a Customs' function (eg powers such as to search a craft)
 - detecting specified offences (eg the power to search an e-device).
18. Border control legislation must be clear in the link between function or purpose on the one hand and the exercise of a power and the outcome on the other as the balancing factors to the loss or diminution of individual rights and freedoms. Customs' powers (such as to search a craft) can only be exercised to carry out a function specified in the CEA. More "personally intrusive" powers (such as to search an e-device) are further limited to the purpose of detecting offences specified in the CEA or linked to the CEA from other legislation, in particular controlled drugs (Misuse of Drugs Act 1975) and objectionable publications (Films Videos and Publications Classification Act 1993).
19. The scope (or reach) of border control powers is principally governed by the offences to which border control powers can be applied. The application of border control powers is

governed by the protections placed in the CEA on such matters as legal thresholds to exercise powers.

20. The CEA (section 301) requires Customs to take all reasonable steps to protect information that it collects from being unlawfully disclosed beyond Customs. That section also places restrictions on using, holding or storing personal information. Protections under the Privacy Act 2020 also apply to personal information collected, used, held, stored or disclosed by Customs.
21. Section 316 CEA provides that information lawfully collected by Customs, including that obtained through the exercise of border control powers, can be shared with other agencies for national security purposes under Agreements made between Ministers. Under the Intelligence and Security Act 2017, the New Zealand Security Intelligence Service can directly access information held by Customs to assist it carry out its functions under an Agreement made at ministerial level. Agreements are specifically designed to cover the disclosure of, or access to large data sets on an ongoing basis.
22. Information from routine and targeted border interactions with individuals and entities is disclosed to other agencies on a case-by-case basis to assist them carry out their functions, including for national security purposes. Disclosure at this level is usually carried out under the maintenance of the law exception to the Information Privacy Principles contained in the Privacy Act 2020.

Risk management and use of border control powers when processing travellers

23. Where the balance between the use of border control powers for the gathering of evidence and intelligence and the protection of personal freedoms and individual rights is most acute is in traveller processing, and in particular in the search of persons and e-devices, and the power to copy documents and information that is located in a search.
24. Effective border control can be characterised as consisting of a balance or trade-off among:
 - identifying low risk travellers as early as possible and facilitating them across borders in order to contribute to economic growth and the free movement of people for tourism and other purposes
 - applying an effective and proportionate risk mitigation response to travellers assessed as potentially presenting a risk
 - the reasonable and proportionate application of border control powers where there are grounds to suspect offending has or will occur.
25. Customs' border clearance processes are multi-layered and use risk management principles to separate and facilitate low risk travellers from at-risk travellers continuously throughout, but with the objective of doing so at the earliest possible point to facilitate low risk travel and to target resources to risk mitigation.
26. Appendix I shows how Customs' risk management processes work to separate and facilitate low risk travellers from at-risk travellers, and the point in the end-to-end process where more intrusive or coercive levels of intervention (and therefore use of powers) are used to mitigate potential risk.

The problem of identifying threat actors at the border

27. Threat actors such as TSOC and terrorist groups compartmentalise and separate the cross-border activities that support acts such as importing large quantities of illicit drugs or planning and executing a terrorist attack. The connections between domestic-based organised crime and overseas based organised crime groups are cemented by associates and intermediaries travelling to carry out functions such as logistics, recruitment, financing and money laundering, and making introductions (building trust). “Lone wolf” violent extremists may travel internationally to further cement their indoctrination or radicalisation. The NZSIS reported in its 2024 New Zealand Security Threat Environment that espionage actors have come to New Zealand to collect sensitive information, such as New Zealand political, foreign policy and government information, and to identify potential sources. There are cases in open-source reporting where foreign states engage in high-harm foreign interference activity such as forced repatriation and extrajudicial killings by sending threat actors into the target country to undertake this activity.
28. These threat actors have a good understanding of border controls and so, for example, the leaders and facilitators within organised crime groups involved in large-scale illicit drug smuggling, do not cross international borders “with the drugs on or with them”.
29. Nations’ security and border control agencies are aware that such threat actors are crossing international borders, the difficulty lies in identifying who they are and establishing a connection with others involved to give investigative opportunities. The balancing or trade-off factors are the degree of social license to use border control powers to gather intelligence and evidence to support national security objectives, and economic objectives to facilitate the flows of legitimate trade and travellers.
30. The investigation and dismantling of TSOC groups, or identifying potential terrorists or foreign interference and espionage actors, can require a lengthy process of investigation and enquiry to enable connections and associations to be identified, and evidence to be uncovered. These connections and associations may not be confirmed from a single interaction with any one agency - it can require the gathering of intelligence over long timeframes and involve the piecing together of information gathered from multiple interactions with agencies, and from other sources. The expectation of government is that agencies will work together to share information and intelligence to identify threat actors.

Identifying potential threat actors through border risk management processes

31. Because of its legislatively mandated collection of large datasets relating to trade and travel across the border, and its intelligence capabilities, Customs contributes to national security by using its risk assessment processes to identify threat actors that may be engaged or involved in activities that relate to a national security risk, where those entities and individuals are not currently known or “on the radar” of an agency with the power to investigate or prosecute the relevant national security matter.

32. The ISA review termed this process “target discovery”⁴ - “a proactive, exploratory effort to generate and investigate leads”. The concept is linked with accessing large data sets – “with the objective of making linkages and discovering anomalies or unknowns that are of national security interest”⁵.

33. Threat actors may be identified through any of the processes that operate at the border, but typically the S6(c)

[REDACTED]

34. S6(c)

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

35. S6(c)

[REDACTED]

36. S 6(c)

[REDACTED]

37. As a result of these processes 4,661 travellers were identified for an interaction on arrival in New Zealand. Those interactions can begin in the primary line process through an officer asking questions and/or inspecting travel documentation and which can result in the traveller then being deemed low risk and not needing to be referred on to secondary

⁴ Taumaruru, paragraphs 7.59-7.62

⁵ Ibid.

processing. Referrals to Immigration New Zealand are made in the case of foreign nationals where potential immigration risk is identified.

38. S6(c)

[REDACTED]

39. Intelligence reports are routinely disclosed to domestic partner agencies with the objective of contributing to a shared view of border-related risk. Intelligence reports are shared with overseas partner agencies, particularly within the Border Five group.

40. Risk assessments that identify a potential person of interest are disclosed to domestic partner agencies, and overseas agencies on a case-by-case basis. Data records do not go to a level that can easily extract and categorise the nature of the risk which gave rise to the assessment. S6(c)

[REDACTED]

The problem/opportunity

Making effective use of border control powers for national security purposes

41. Taumaruru: Protecting Aotearoa New Zealand as a free, open and democratic society - the Review of the Intelligence and Security Act 2017 (the "ISA Review") recommended to "amend the Customs and Excise Act 2018 to enable the New Zealand Customs Service to collect and share information pertaining to the functions of the Government Communications Security Bureau or the New Zealand Security Intelligence Service to facilitate cooperation under the Intelligence and Security Act 2017."

42. The problem definition for this RIS, and the options analysed, encompass responding to the underlying issues that led to the recommendation from the ISA Review (related to Customs' role in supporting security agencies to carry out their functions) and also to the use of border control powers within the wider border and national security contexts, in particular in relation to combating the threat from transnational, serious and organised crime (TSOC) groups.

43. The issue is a potential mismatch between Customs' strategic intent, objectives and expected role at the border in the national security context, and what the CEA specifies as its functions and consequently how it governs the management of border controls. At the operational level the issue relates to how border controls should operate within New Zealand's national security system given the nature of the threats that New Zealand faces.

44. The opportunity is to support border security by ensuring the legislation enables Customs to use its border control powers as effectively as possible to counter national security risks and to generate evidence and intelligence to support domestic security and enforcement agencies to carry out their national security functions.

The problem is linked to aspects of the legislation governing border controls:

At the system level the CEA lacks clarity in respect of specifying and supporting Customs' role in the national security system

45. The CEA's purpose statement (section 3) reflects Customs long-standing function to levy and collect customs duties. The use of the term "border control" in the CEA's purpose statement implies a link with revenue collection in the context of how the purpose statement is expressed. The linking of border control and risk management in the purpose statement is to reflect the balancing of facilitation and protection objectives in exercising border controls.
46. The terms "national security" and "border security" have been incorporated into some sections of the CEA as it has been amended (section 53 for example). However, neither term forms part of the purpose statement and so delivering border security or contributing to national security are not included as purposes of the CEA, or stated in the CEA to be functions of Customs.
47. According to the Legislation Design and Advisory Committee (LDAC), the functions of a purpose statement of an Act include describing the legal means or effect of the legislation and identifying the aim of the law and bridging the gap between policy and law by giving **a clear expression of the end purpose or objective to be achieved. It can assist with clearly specifying an objective standard against which the reasonableness of any action (eg in exercising a power) can be judged.**
48. The CEA's current purpose statement does not connect the scheme of border controls in the Act with the objective of supporting border security and national security. This limits the application of border control powers in managing the full range of national security risks facing New Zealand.
49. There is a body of legal advice, court decisions and policy reviews (that are reflected in operational procedures and practice) that delineates points where the functions of Customs end (and therefore also the legal reach of border control powers). For example, s191 CEA states that a Customs officer may search a craft for the purpose of carrying out any function under the CEA. Since border security and national security are not specified functions under the CEA, Customs can face circumstances where there is a potential national security threat where this power cannot be applied. This is counterintuitive to the objectives, strategic intent and Customs' expected role at the border.
50. The operationalisation of information collection and disclosure for national security purposes within the scheme of the CEA is similarly impacted. Customs is empowered by the CEA to share information it holds with other agencies for the purpose of "protection of national security". However, the information collected under the CEA must be collected for a Customs purpose. As supporting national security through border security is not a specified Customs function, Customs therefore has no legislative basis to collect information at the border that might relate to "the protection of national security" except insofar as Customs offences already represent a threat to national security. This means the scope of Customs' information collection powers is narrower than the national security related threats facing New Zealand.

51. The advice from frontline staff is that the use of border control powers in a national security context is complex and difficult to navigate without considerable experience. This can contribute to a risk adverse approach to the use of border control powers in cases where risks related to national security are identified. This results in less potential to collect information and facilitate co-operation with agencies to support their national security functions.
52. Amending Section 3 of the CEA to include providing border security as a function of Customs and linking that function to supporting national security would give a clear expression of the objectives for the CEA and better support Customs' strategic intent, objectives and expected role at the border in the national security context at a system level. It would also make more certain the application of border controls across national security risks at an operational level.
53. In the situation where Customs officers are managing a wider range of risk on behalf of New Zealand, more clearly linking national security to Customs' border security role would inform Customs officers in their approach to risk assessment (provides a "line of sight to the NSIPs in deciding risk tolerance and priorities) and in informing decisions on whether thresholds to use border control powers and to disclose information to other agencies are being met. This aspect goes to the LDAC advice that a purpose statement can set an "objective standard against which the reasonableness of any action (eg in exercising a power) can be judged".

The reach of border control powers does not extend to some types of offending that has a border nexus

54. The offences currently specified in the CEA, and the offences from other legislation that are linked to the CEA, do not cover the full range of national security risks that Customs is expected to manage.
55. Powers to search persons or e-devices, and some powers to copy documents, are limited to detecting offences specified in the CEA or linked to the CEA from other legislation, in particular controlled drugs (Misuse of Drugs Act) and objectionable publications (Films Videos and Publications Classification Act).
56. The CEA does not prevent Customs disclosing a concern about the risk a traveller poses for other than "customs offending" to a domestic agency, but it does place limits on how border control powers can be used to collect evidence and intelligence that would assist a domestic agency to further assess the risk and act under its own legislation (including establishing that the person is in fact of no risk). Where a Customs officer has suspicion that the person may be involved in non-customs offending, sharing of information with other agencies is possible under the Privacy Act – and can include the person's identity and travel information as that is collected for a customs purpose (border management). However, documentary information viewed in a search undertaken for a customs purpose cannot be copied or recorded (and therefore disclosed) if the legal threshold for the information being linked to a customs offence is not established.

57. The CEA does enable information considered relevant to non-customs offending to be copied and disclosed to another agency for a limited group of offences (section 242 CEA). These offences are quite specific and do not cover the full range of national security risks. The other alternative available enabled by the CEA is to detain the person for the attendance of an agency that has the authority to take the matter further. This is not a practical or efficient option in situations where there is only suspicion of involvement in offending.
58. This results in missed opportunities to collect information that would be useful in advancing any investigation of the person and the link to the identified risk factors post-border. Equally the collection and on-disclosure of information may assist domestic agencies to more quickly and efficiently conclude that the person represents no risk.
59. The powers contained in the CEA to search persons or e-devices, and to copy documents located in those searches are formulated around an assumption (which is reflected in the offences) that a person has with them (or contained within an accompanying item such as a document or an e-device) evidential material in the form of dutiable or prohibited or restricted goods, or documents which directly relate to such goods like an invoice or an airway bill. This approach reflects the historical function of Customs – levying and collecting Customs duties - and therefore Customs’ powers are constructed around detecting the evasion of revenue through practices such as smuggling and false accounting. In the CEA those powers have been adapted over considerable time for the detection of offending involving prohibited or restricted goods in the broadest sense across a wide range of border threats. Insofar as persons attempt to smuggle prohibited or restricted goods “in traditional ways” those powers are effective.
60. TSOC and terrorist groups compartmentalise and separate the cross-border activities that support acts such as importing large quantities of illicit drugs or planning and executing a terrorist attack. Foreign interference and espionage actors also obscure their true reasons for travelling to New Zealand. The connections between domestic-based serious organised crime and transnational organised crime groups are cemented by associates and intermediaries travelling to carry out functions such as logistics, recruitment, financing, money laundering and making introductions (building trust). Some threat actors are therefore more likely to be linked to offences in areas such as terrorism financing and money laundering than they are in the smuggling of prohibited goods. Foreign interference actors can use TSOC groups to achieve their goals. For example, a current Canadian investigation alleges that a foreign state used organised criminals to undertake an assassination on its behalf.
61. So-called “mules and catchers” who cannot easily disguise a close association with illicit drugs at border crossing, may be more likely to be identified in comparison to leaders and facilitators by border controls that are calibrated toward a link with goods. Such persons can be considered by TSOC groups as “expendable” because they are easily replaced and can be kept at distance so that they do not know enough to implicate the organisers. Prosecuting and imprisoning such persons may not disrupt or incapacitate the supply chain of a sophisticated and well organised criminal enterprise on an enduring basis. Ideally border controls should also be calibrated to identify and target the type of offending that the leaders and facilitators are involved in, and which would potentially

lead to enforcement operations having a more lasting impact on the viability of a criminal, terrorist, foreign interference or espionage network.

62. Domestic legislation, such as the Crimes Act 1961 and the Terrorism Suppression Act 2002, contains serious offences (imprisonment of two years or more) in the domestic setting that enable targeting of a wide range of harmful activities of threat actors involved in national security risks. Offences cover functions such as logistics, recruitment, financing and money laundering. General offences such as those against membership of an organised crime group, participation in a terrorist group, and improper conduct for or on behalf of a foreign power enable initial investigations and evidence gathering and which leads to more specific offences being charged. Similar offences, or links to these offences, are not included in the CEA despite the border nexus.
63. Border security could be improved if the CEA enabled border control powers to be more focused on how threat actors such as TSOC and terrorist groups, and foreign interference/espionage operate across international borders and to target the types of offending that the leaders and facilitators are involved in. This can be achieved by adding to the offences in the CEA or linked to the CEA from domestic legislation and which target such activities in a domestic setting.

Summary of the problems.

64. The problems identified with the CEA in a national security context are:
 - it lacks clarity in respect of specifying and supporting Customs' role in border security and the national security system and which has implications for the application of border control powers to mitigate national security threats
 - the offences currently specified in the CEA, and the offences from other legislation that are linked to the CEA, do not cover the full range of national security risks that Customs is expected to manage.
65. The effect is a lower level of overall border security for New Zealand through not enabling Customs' powers to be used as effectively as they could be to detect the threat actors involved in activities such as logistics, financing, and making connections for threats such as drug smuggling, terrorism, foreign interference and espionage.

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66. Addressing these two problems would give effect to the recommendation from the ISA review in that they relate to the role of Customs in **collecting and sharing** information relating to the functions of the security agencies.
67. Clarifying Customs' role in national security will facilitate co-operation between Customs and security agencies. Enabling border control powers to be used over a wider range of relevant offending to generate evidence and intelligence will better support domestic security and enforcement agencies to carry out their national security functions.

Benefits and Assumptions

68. The benefits would come from:

- deterrence - insofar that in the perception of threat actors, it increases New Zealand's border security and the possibility of detection
- improving the quality of intelligence and evidence to support national security investigations across the national security system
- maintaining or improving perceptions on the part of our trading partners of the state of New Zealand's border security which means continuing confidence in our trusted trader status and reputation as a relatively corruption-free nation.

69. An assumption is that border security would be strengthened if border control powers that are currently focused by the CEA on the commodities being moved illegally across our borders are also able to be better used to detect the threat actors involved in activities such as logistics, financing, and making connections for threats such as drug smuggling, terrorism, foreign interference and espionage. It is difficult to assess how much this would affect overall national security levels as it cannot be said with certainty who or what is being missed at the border currently but noting for example the fact of ongoing large-scale TSOC activity at our borders which is successfully supplying domestic drug markets.

70. The scale of the actual costs and harms currently imposed on society by TSOC groups (and the potential costs and harms to society from terrorists, violent extremists, and foreign interference and espionage actors) are high and so even a marginal increase in the probability of the national security system deterring or detecting such threat actors will be beneficial if it can be achieved at low cost and the impacts on personal freedoms are considered reasonable.

Objectives and success factors

71. The objective is fit for purpose legislation to support improved national security through more effective border control.

72. The intended outcome is that New Zealand's national security is improved through increasing the probability that threat actors such as transnational organised crime figures, terrorists, violent extremists and foreign interference and espionage actors and their networks and support systems will be identified, investigated and disrupted by agencies across the national security system.

73. Success in the operationalisation of the legislative framework will be measured by the extent to which intelligence and evidence obtained through the use of border control powers assists in the identification, investigation and identification and disruption of threat actors in operations carried out by agencies.

74. Successful operationalisation will also be measured by the extent to which intelligence and evidence obtained through the use of border control powers enables improved risk

management and targeting at the border, so that facilitation of low-risk travel and trade improves while more effectively targeting risk.

75. Use of border control powers has implications for personal rights and freedoms. There is a trade-off between exercising powers to detect threats and what is reasonable in terms of the suspension or diminution in personal rights and freedoms at the border. Success therefore would also be indicated by travellers, groups with an interest in civil liberty matters, and society in general, being satisfied that the way that border control powers are specified in legislation and applied in practice place reasonable limits on rights and freedoms that are justified in a free and democratic society (Section 5 Bill of Rights Act 1990).
76. New Zealand has a reputation as a safe and secure trade partner, a large part of which comes from being perceived as relatively corruption-free. The Global Corruption Index (GCI) covers 196 countries and territories and measures the state of corruption and white-collar crimes around the world. According to the 2024 GCI, New Zealand is the fourth least-corrupt country (score of 83). Australia, for example, is equal 10th (score of 77). That perception translates into lower barriers and costs for New Zealand trade at overseas borders (lower cargo inspection rates and faster border clearance times). A measure of success from the perception of having a secure border is improving or at the very least maintaining New Zealand's ranking and score on the GCI.

Consultation

77. No public consultation has taken place over the options considered in this RIS. The groups that present the public interest in law enforcement matters would be consulted at the Select Committee stage of a Bill.
78. The options are informed by the public consultation associated with the development of the National Security strategy and the NSIPs, the review of the Intelligence and Security Act and the 2024 National Risks Public Survey on National Security Threats. The consensus from that public engagement is that effective border security is important for protecting New Zealand from threats. That public consultation and engagement did not, however, go into the detail of how border controls should be formulated and directed to support that consensus and expectations for a level of border security.
79. The options analysed in this RIA have been consulted with the Department of Prime Minister and Cabinet, the Ministry of Justice, the Ministry of Business Innovation and Employment (New Zealand Immigration Service), the New Zealand Security Intelligence Service, the Government Communications Security Bureau, New Zealand Police, the Ministry for Primary Industries, and the Ministry of Defence.

Section 2: Assessing options to address the policy problem

Criteria used to compare options to the status quo

80. Criteria used to evaluate impacts on border security and national security outcomes:
 - effectiveness in combatting how threat actors operate across borders

- proportionate to the importance of meeting the principal objective and clearly target harmful activities (and do not capture legitimate activity)
- act as a deterrent
- improved quality of intelligence and the efficiency of risk targeting

81. The options are also evaluated for:

- Transparency and perceived reasonableness of impacts on personal rights and freedoms
- administrative costs and ease of implementation – including implications for the machinery of government
- how they might impact on the perceptions of our border security on the part of our trading partners.

Scope and design of options

82. There are no feasible non-regulatory options. Customs' functions and the use of powers must be specified in legislation due to the limitations on personal freedoms involved in the exercise of border control powers.
83. The scope of options was informed by the legislation governing border control powers in the Border 5⁶ countries. The institutional arrangements for managing border security in these countries was also considered. Each countries' border management agency is configured differently and its role and degree of integration into the national security system varies. The best comparison for New Zealand's border control legislation is with that of Australia.
84. All options include amending Section 3 CEA – the purpose statement to the CEA - to include the concept of providing border security as a function of Customs and linking that function to supporting national security in order to improve the application of border control powers at a system level.
85. The options are differentiated by escalating levels of border control brought about by the way that border control powers can be applied to identifying and mitigating national security risks. The options all revolve around including or linking new offences to the CEA in various ways and therefore to varying effects on how border control powers may be applied to collect evidence and intelligence.
86. The *Legislative Guidelines* issued by the Legislation Design and Advisory Committee guided the selection of offences from domestic legislation in particular the LDAC view that "criminal offences should only be used if they are necessary to achieve a significant policy objective , in particular the avoidance of harm to society or particular classes of people"

⁶ The Border 5 comprises the border agencies of the USA, Canada, Australia, the UK and New Zealand.

87. The criteria for identifying potential offences were:

- **existing offences from domestic legislation** that have a clear link to national security and the NSIPs and which also have a **clear border nexus**.
- Are **serious offences** (two years or more imprisonment applies on conviction in a domestic setting).
- Incorporating the offences in the CEA would not be administratively difficult or costly as the offences would **integrate with and improve business as usual processes based on border risk management principles**.

88. The offences that were selected against the above criteria and which as a consequence are a central feature of each option are:

Crimes Act 1961

- section 78 espionage
- section 78A wrongful communication of official information
- section 78AA wrongful communication of classified information
- section 78AAA and 78AAB foreign interference (contained in the Crimes (Countering Foreign Interference) Amendment Bill)
- section 98A participation in organised criminal group
- sections 243-245 money laundering (and applying the definition of money laundering in section 5 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009)

Terrorism Suppression Act 2002

- all offences

89. By taking offences from the domestic setting that target the hallmarks of national security threat actors and applying them to the border, there is alignment with legislative best-practice guidelines and better support for the wider national security system's response to threats.

Features of the options

Option One – add to the list of offences in the CEA to enable a Customs officer to copy documents linked to that offending and pass to another agency if located in a search carried out for a customs purpose

90. Section 242 of the CEA enables information considered relevant to a limited group of specified non-customs offences to be copied and disclosed to another agency with responsibility for investigating the matter subject to a Customs officer meeting the legal threshold of reasonable grounds to suspect that the documents are evidence of that offending.

91. Section 242 applies when a Customs officer is conducting a search for Customs' purposes and views material that may be evidence of the specified list of non-customs

offences. Section 242 does not enable a Customs officer to initiate a search for the purpose of detecting such offending.

92. This option comprises the following features:

- amending Section 3 CEA – so that the purpose statement to the CEA includes the concept of providing border security a function of Customs and linking that to national security
- amending Section 242 CEA to add the offences listed at paragraph 88.

Option Two – link additional offences to the CEA to allow Customs to use its powers to gather evidence that relate to the way that threat actors operate across borders

93. This option differs from option one in that it would enable Customs to use border control powers across a wider range of offending than currently provided for in the CEA. It would permit Customs to use border control powers when there is reasonable cause to suspect a person is involved in the specified offences, however Customs would not be responsible for investigating the offence. Documents located through the exercise of border control powers would be able to be copied and disclosed to another agency with responsibility for investigating the matter subject to a Customs officer meeting the legal threshold of reasonable grounds to suspect that the documents are evidence of offending.

94. In this option evidence is obtained by use of warrantless border control powers to detect specified offending that is the responsibility of another domestic agency to investigate further. This compares to option one where the evidence is obtained incidentally to the use of powers to detect Customs offending.

95. Under this option for information to be collected and shared with another agency a Customs officer would have to meet a legal threshold of reasonable cause to suspect linked to specified serious offending at each of up to three separate points: first to commence a search, second in linking material viewed in a search with offending in order to copy it, and third when deciding to pass the material copied to another agency.

96. This option comprises the following features:

- amending Section 3 – so that the purpose statement to the CEA includes the concept of providing border security a function of Customs and linking that to national security
- amendments that would allow the powers specified in sections 191, 210, 211, 214, and 228 of the CEA to be applied to the detection of offences listed at paragraph 88 above
- amending Section 242 CEA to add the offences listed at paragraph 88 above.

Option 3 - Add additional offences to the Act as Customs offences and which would therefore automatically engage Customs' powers

97. This option differs from option two by making the offences listed at paragraph 88 Customs offences within the CEA. This would enable Customs to apply its powers to collect evidence in order for Customs to investigate the offences in its own right. The evidence

collected could be disclosed to another agency such as Police on a case-by-case basis through application of the maintenance of the law exception to the Information Privacy Principles contained in the Privacy Act 2020.

98. This option comprises the following features:

- amending Section 3 – so that the purpose statement to the CEA includes the concept of providing border security a function of Customs and linking that to national security
- Amendments to the offence provisions in the CEA to add equivalent offences specified in paragraph 88. This would in consequence allow the powers specified in sections 191, 210, 211, 214, and 228 of the CEA – to be applied to the detection of those offences. The offences would be specified as Customs offences, meaning that Customs can investigate them.

99. In respect of the sharing or disclosure to another agency of evidence and intelligence, this option would operate under the status quo whereby the decision to make a disclosure would be made on a case by case basis taking into account the requirements of the Privacy Act. This is consistent with other existing Customs' offending and would automatically apply information management and compliance controls in the CEA and in other applicable legislation such as the Privacy Act to Customs collecting, storing, using and disposing information that it has collected for an investigative or intelligence purpose.

Comparison of options to the status quo and counterfactuals

Criteria	Status quo	Option One – Do minimum	Option Two – link additional offences to the CEA	Option 3 - add additional offences to the CEA as Customs offences
Effective in combatting how threat actors operate across borders	The offences specified in the CEA do not cover the full range of national security risks that Customs is expected to manage.	+ Expected to marginally improve the quality of intelligence and evidence to support the generation of investigate leads across the national security system and to improve border risk targeting.	++ Would allow the wider use of Customs powers to detect offences that relate to how threat actors operate across international borders. Expected to improve the quality of intelligence and evidence to support the generation of investigate leads across the national security system.	++ Compared to option two this option enables Customs' investigative resources to be used to potentially greater effect on national security threats but would require substantial updating of operational policies and procedures. Training would need to be adjusted. There would be an increase in ongoing costs to set up and maintain investigative capability.
Proportionate - are targeted at harmful activities, and do not capture legitimate activity	Use of border control powers limited to detection of specified offending.	+ Marginally improves on the status quo. It does not change the reach of border control powers but does enable limited action to be taken when evidence of defined "non-border" offending is located.	++ Extends the application of border control powers to detecting specified serious offending already included as offences in domestic legislation.	++ No additional impact over option two.

Acts as a deterrent	New Zealand's border controls may be seen by threat actors as vulnerable (either in absolute terms or in comparison to other countries).	+ Marginal improvement in the level of deterrence.	++ Should be perceived by threat actors as increasing the risk of being detected.	++ Any increase in the deterrence effect of this option over option two would come from threat actors viewing the ability of Customs to investigate offending as increasing the risk of being detected in comparison to where Customs might instead pass evidence to a domestic agency for evaluation and follow-up.
Improved quality of intelligence and efficiency of risk targeting	n/a	+ Marginal improvement possible.	++ Is expected to support better quality investigative outcomes and intelligence product and which are more targeted towards the leaders and facilitators of national security threats and lead to more lasting disruption of activities.	++ No perceived additional benefits over option two.
Transparency and perceived reasonableness of impacts on personal rights and freedoms	Legal thresholds specified in the CEA for the use of powers. Subject to over-arching legislation such as the Privacy Act.	0 Further action by a domestic agency based on information collected and passed by Customs under this option is subject to processes in domestic law (eg to obtain a search or surveillance warrant).	0 The proposed linked offences would operate within the existing legal thresholds contained in the CEA for the use of powers. No change to how over-arching legislation such as the Privacy Act	** This extends Customs' investigative functions and may raise social licence and machinery of government issues such as whether oversight of the use of border control powers should be stronger (eg like that provided by the Police

			apply to the use of border control powers. For information to be collected and shared with another agency a Customs officer would have to meet a legal threshold of reasonable cause to suspect linked to specified serious offending at each of up to three separate points: first to commence a search, second in linking material viewed in a search with offending in order to copy it, and third when deciding to pass the material copied to another agency. As with option one the evidence and intelligence collected may be developed and investigated by a domestic agency. Its use would then be subject to processes in domestic law (eg to obtain a search or surveillance warrant).	Complaints Authority or the Inspector General of Intelligence and Security.
Impact on the perceptions of our border security on the	New Zealand's border controls may be seen by other countries as	0 Unlikely to materially change perceptions of New Zealand's border security.	+ Would likely be viewed as strengthening New Zealand's border controls.	++ In comparison to option two, this option goes further towards alignment with the role and

part of our trading partners	vulnerable or weak in comparison to their own.		More closely aligns the legislative basis for border controls in national security context with Australia in particular. More closely aligns the use of border controls to detect national security related offending with B5 partners more generally.	functions of the US and UK border agencies in their respective national security systems whereby these agencies can in their own right investigate similar offences.
Administration and implementation costs	n/a	* Costs of making legislation would be incurred. There would be costs in updating operational procedures and providing training. These impacts are expected to be relatively minor and able to be incorporated seamlessly into business as usual processes and with costs managed within baselines.	* Costs of making legislation would be incurred comparable to option one. The complexity of the tasks and therefore the costs of updating operational procedures and providing training would be higher than option one. Nevertheless, these impacts are also expected to be relatively minor and able to be incorporated seamlessly into business as usual processes and with costs managed within baselines.	** This option would integrate the border into core national security systems more by giving Customs the ability to enforce new offences. This has potential impacts that would increase implementation costs and complexity in relation to options one and two.
Overall assessment	-	+ *	++	++ **

		Marginal improvement to border security achieved at a low administrative and implementation cost. Low risk of negatively impacting personal rights and freedoms compared to the status quo.	* More targeted at addressing gaps in border security than option one with only marginally increased administrative and implementation costs. Low risk of negatively impacting personal rights and freedoms compared to the status quo.	Not assessed as providing a significant improvement in border security in the New Zealand context over option two, although trading partners and threat actors might perceive it as a stronger response and deterrent. In comparison to the marginal benefits over option two, this option has higher initial and ongoing costs, has greater potential to raise personal rights and freedoms issues, and has machinery of government implications.
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key for qualitative judgements:

- ++ much better than the status quo
- + better than the status quo
- 0 about the same as the status quo
- * Implementation and administration costs are minor and manageable
- ** High implementation and administration costs and/or wider implications for machinery of government.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

100. Option two is preferred.

101. Options one and two have low implementation and ongoing costs, are straightforward to integrate within “business as usual” border risk management processes, can operate within the existing legal thresholds contained in the CEA for the use of border control powers, and do not affect how over-arching legislation such as the Search and Surveillance Act and the Privacy Act apply to the use of border control powers.

102. In comparison to option one, option two better targets the identified gaps in border security and therefore is expected to materially improve the quality of intelligence and evidence to support national security investigations, including the generation of investigate leads across the national security system, in particular in relation to targeting the leaders and facilitators of serious national security threats. Option two has only marginally increased administrative and implementation costs over option one.

103. Option three would integrate the border into a more of a core national security function through giving Customs a wider role in investigating offending. This has potential machinery of government implications that would increase implementation costs and complexity in relation to options one and two. This option is not assessed as having a high probability of improving national security outcomes over option two that would justify the greater costs and impacts.

Is the Minister’s preferred option in the Cabinet paper the same as the agency’s preferred option in the RIS

104. Yes

Benefits, costs and Impacts of the preferred option – option two

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Customs	One-off costs of making legislation and updating operational policies and procedures	Low	High certainty
	Ongoing costs to maintain policies and procedures and provide training	Low	High certainty (able to be met from within baseline)
	Ongoing costs of passenger risk	Low-medium (driven by assessment of presenting risk)	High certainty Costs are able to be met from

	assessment and mitigation		within baseline and some is recovered by passenger cost recovery fees.
Threat Actors	Ongoing - increases the probability of being detected	High – legal defence costs and a potential for imprisonment	High certainty
Enforcement and security agencies	Ongoing - increasing the chances of detecting offending at the border may have implications for the workload of agencies like Police and the New Zealand Security Intelligence Service	Low to medium – investigations are resource intensive but may be made more efficient through better use of border control powers to generate supporting evidence and intelligence	Medium certainty – will be driven by presenting risks and there is limited information to confidently forecast impacts
Justice system	Ongoing - could result in more prosecutions and which can lead to increased prosecution costs and increased costs of imprisonments	Low. Number of additional persons expected to be prosecuted is low, but noting there is limited information to confidently forecast impacts	Medium certainty – there is limited information to confidently forecast impacts, but few additional prosecutions are expected
Non-monetised costs	<i>Ongoing</i>	<i>Low to medium</i>	<i>Medium to high</i>
Additional benefits of the preferred option compared to taking no action			
General public	Ongoing - increases possibility of detecting and disrupting threat actors and deters involvement in offending. Reduces the potential for social harm An increase in the deterrence value of border controls may also reduce the overall level of activity by threat actors aimed at New Zealand (possibly encouraged and supported by an initial	High – costs and negative impacts of offending on society are well understood	High

	increase in successful prosecutions)		
Wider government	Ongoing - continuing confidence in our trusted trader status and reputation as a relatively corruption-free nation	High – positive impacts on the costs of doing trade and rate of intervention at overseas borders are well understood	High – border intervention rates are monitored, and the Global Corruption Index is published annually
New Zealand Police and Security agencies	Ongoing - improving the quality of intelligence and evidence to support the generation of investigative leads across the national security system	High - improving the ability to target the leaders and facilitators of national security risks is designed to have a more enduring impact on disrupting those threats. This could conceivably moderate or even reduce costs for the wider national security and justice systems compared to a base scenario where lower level functionaries such as drug mules and catchers are more likely to be identified by the way border controls are currently configured	Medium to High
Total monetised benefits	n/a	n/a	n/a
Non-monetised benefits	Ongoing	High	High

105. The costs and benefits cannot be monetised with any certainty. As indicated in the analysis above, the main costs of the preferred option fall on threat actors involved in serious offending through increasing the probability of being detected and prosecuted. There will be a high cost impact on these threat actors (the offences provide for a possible term of imprisonment,) noting that the make-up of this group is uncertain and is assumed to be a very small proportion of persons crossing the border.

106. The preferred option is expected with a high degree of certainty to not materially affect Customs' day-to-day operational costs. This is for two reasons: first, because of the small number of interactions with travellers that are expected to meet the legal threshold of suspicion of involvement in the specified offences; and second the proposal is assessed as straightforward to integrate within "business as usual" border risk management

processes incorporating the use of border control powers. As a consequence, costs will be able to be met within existing baselines.

107. The benefits would accrue from a mix of:

- deterrence - insofar that in the perception of threat actors, it increases New Zealand's border security and the possibility of detection
- improving the quality of intelligence and evidence to support national security investigations, including the generation of investigative leads across the national security system
- maintaining or improving perceptions on the part of our trading partners of the state of New Zealand's border security which means continuing confidence in our trusted trader status and reputation as a relatively corruption-free nation.

108. The scale of benefits cannot be accurately quantified and have to be qualitatively assessed against the costs and impacts. The counterfactual is that the amount of actual costs and harms currently imposed on society by TSOC groups (and the potential costs and harms to society from terrorists, violent extremists and foreign interference/espionage actors) are high and so even a marginal increase in the probability of the national security system deterring or detecting such threat actors will be beneficial.

109. It is impossible to estimate with certainty the outcomes from the interplay of the various factors above. The identified wider impacts are a mix of risks and opportunities with low to medium effects on the overall benefit cost assessment. The analysis is also uncertain because supporting evidence of the likelihood of materialisation is absent or anecdotal. There is confidence that the proposal will achieve net benefits.

Impacts on Travellers

110. The impacts would be to the personal liberties and freedoms of travellers crossing New Zealand's borders who have border control powers applied to them. The impacts will be on the group of travellers who, because of the circumstances of an interaction with a Customs officer, reach the threshold specified for suspicion of involvement in the new offence types that would lead to a search and which then may lead to information being copied or recorded from documents in their possession. That information may be disclosed to another agency to assist it carry out a national security function (subject to the limitations on information disclosure in the CEA and in overarching legislation such as the Privacy Act). These travellers may ultimately be assessed as low risk and to have no connection with a national security risk.

111. Just how big this group of travellers would be is uncertain due the large number of contributing variables.

112. To be impacted a traveller would first have to be assessed as having risk factors that require an intervention at the border. Incorporating the new offence types within border risk management processes is unlikely to change the proportion of travellers assessed for interaction from the status quo. S6(c)

S6(c)

113. The impacts will arise where a Customs officer forms a suspicion that relates specifically to the new offences and where the totality of the interaction also informs the threshold in relation to copying information from documents. It is possible that in some interactions despite the suspicions held about a traveller's possible involvement in offending, no information considered relevant is located in any search.
114. It is also difficult to state the precise nature of what might constitute relevant information in relation to offending and therefore what personal information might be collected and potentially shared - that will depend on the circumstances and judgements made at the time of the border interaction. It can be assumed that information such as recent contact information from an e-device (which may on further investigation reveal connections and associations which uncover a wider criminal network) and the serial numbers of e-devices (which would better enable a domestic agency to be in a position to seek a warrant if on further investigation it was considered necessary) may be considered relevant. E-devices unauthorised to contain New Zealanders' sensitive/personal information and official New Zealand government information would be relevant to foreign interference and espionage cases.
115. Taking the above considerations into account, Customs estimates that a small group of travellers would be impacted – estimated with reasonable confidence to be no more than 200 persons per year and conceivably considerably less, possibly as few as 40-50. This estimate is based on:
- the seriousness of the offences;
 - considerations necessary to reach the legal thresholds applying in the CEA to search persons and e-devices and to copy documents; and
 - experience from the way that border risk assessment and mitigation is currently operationalised.
116. This group would be impacted to the extent that during the border interaction a Customs officer may consider whether the thresholds have been met to apply powers to search and then to copy documents. There would then be a separate decision as to whether to pass any material copied to another agency for investigation taking into account the requirements of the Privacy Act. The number of these interactions that finally end up at the point where information is copied and shared with another agency cannot be predicted or estimated, but can be expected to be a small sub-set of that initial group. It is possible that the circumstances of the interaction result in other actions being taken, for example, in the case of a foreign national a referral to Immigration New Zealand for consideration of visa status.
117. Some of these travellers are already interacted with under the "status quo" and the impact of the proposal in that circumstance is to potentially increase the scope of information that may be recorded from the border interaction (insofar as as any information is considered at the time to be evidence of any of the added offences) and then disclosed to another agency.

118. Any personal or other sensitive information collected would be subject to existing processes and protections in place for compliance with the CEA and the Privacy and Official Information Acts. For example in relation to compliance with the Information Privacy Principles specified in the Privacy Act:

- IPP 5 (storage and security) – Customs adheres to government specified security procedures
- IPP 6 (access) and IPP 7 (correction) – Customs maintains processes to receive and consider access and correction requests
- IPP 11 (disclosure) – Customs' procedures require that the grounds for disclosure of personal information to another agency are assessed on a case-by-case basis, based on one of the exceptions under the Privacy Act and that decision making is well documented.

119. Data on bag searches and searches of persons and e-devices is disclosed in Customs' Annual Report, and this will enable monitoring for any unusual or unexpected increase in the use of border control powers.

Section 3: Delivering an option

How will the proposal be implemented?

120. Changes to the CEA are required for implementation. This is expected to be completed by mid-2026.
121. Customs will be required to make necessary changes to operational procedures and practice and update training material for Customs officers.
122. The proposal is considered to be straightforward to integrate within "business as usual" border risk management processes.
123. The offences relating to foreign interference and espionage are new and complex, containing several elements all of which must be present to constitute an offence. This potentially creates risks of Customs officers being unsure about when to apply border control powers, or alternatively applying border control powers too broadly. S6(c)

Guidance and support for front line Customs officers will need to be developed.

124. Foreign interference and espionage offences will be included within the responsibilities of Customs' Counter Terrorism Team (CTT). The CTT team is part of Customs' intelligence function and provides 24/7 on-call support to Customs' frontline staff and partner agencies in responding to any assessment of terrorism-related risk at the border. The CTT will take responsibility for:

- preparing and sharing risk assessments and intelligence reporting on risks related to espionage and foreign interference
- developing and maintaining risk profiles and monitoring of border alerts

- providing training to frontline staff on assessing espionage and foreign interference risk
- liaising with security agencies and the Police where necessary
- coordinating operational activity where espionage and foreign interference risk presents at the border in support of Police and security agencies.

How will the proposal be monitored, evaluated, and reviewed?

125. Success in the operationalisation of the legislation will be measured by the extent to which intelligence and evidence obtained through the use of border control powers assists in the identification, investigation and disruption of threat actors. This is monitored through feedback received by Customs directly from other agencies and through the National Security Board on the quality and impact of Customs' contribution to the overall intelligence picture in the context of the NSIPs.
126. Successful operationalisation will also be measured by the extent to which intelligence and evidence obtained through the use of border control powers enables improved risk management and targeting at the border, so that facilitation of low-risk travel and trade improves while more effectively targeting risk. This aspect is monitored through reporting in Customs' Annual report on traveller processing performance (facilitation measures) and rates of intervention with travellers for risk assessment and mitigation (compliance measures).
127. Data on bag searches and searches of persons and e-devices is disclosed in Customs' Annual Report, and this will enable monitoring for any unusual or unexpected increase in the use of border control powers.
128. The CEA is subject to Customs' ongoing regulatory stewardship function as the agency responsible for administration of the CEA. It will be difficult to attribute with any certainty any observed changes in the border risk profile to specific regulatory amendments, noting that the behavioural changes of threat actors are driven by a multiplicity of factors.