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Paper prepared by: Hon Meka Whaitiri, Minister of Customs

Date considered by Cabinet: 20 March 2023

Name of paper: New Zealand Traveller Declaration: Regulations to Exempt Persons from Requirements to Provide Customs with Arrival Information

Cabinet reference: DEV-23-MIN-0021 and CAB-23-MIN-0087

Purpose of the paper: This paper seeks decisions on people travelling to New Zealand that should be exempt from requirements to provide the New Zealand Customs Service (Customs) with arrival information as part of the operation of the New Zealand Traveller Declaration (NZTD).

Redactions: Parts of the Cabinet paper have been redacted under sections 9(2)(h) and 6(a) of the Official Information Act 1982.

Parts of the Regulatory Impact Statement have been redacted under sections 9(2)(h) and 6(a) of the Official Information Act 1982.

Parts of the Cabinet Minute have been redacted as they are outside the scope of the proactive release. Any redactions appear in the text as black boxes, with an explanation of why the redaction was made.



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Cabinet Economic Development 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.

New Zealand Traveller Declaration: Regulations to Exempt Persons from Requirements to Provide Customs with Arrival Information

Portfolio Customs

On 15 March 2023, the Cabinet Economic Development Committee:

Background

- 1 **noted** that in June 2022, the Cabinet Social Wellbeing Committee (SWC) agreed that requirements to complete and submit the Customs part of the New Zealand Traveller Declaration (NZTD) will apply to all travellers arriving in New Zealand unless exempt by regulations [SWC-22-MIN-0127];
- 2 **noted** that in June 2022, SWC also agreed to make new regulations and where appropriate amend existing regulations for the following proposals to:
 - 2.1 exempt:
 - 2.1.1 a traveller who arrives in New Zealand after having been rescued at sea;
 - 2.1.2 a traveller who arrives in New Zealand wholly for the purpose of seeking temporary relief from stress of weather;
 - 2.1.3 a traveller who arrives in New Zealand under a medical evacuation;
 - 2.2 prescribe the offences that will be made through the Bill as infringement offences in regulations to:
 - 2.2.1 establish an infringement penalty of \$400 for a traveller who has failed to make a NZTD (being the level of existing infringement offences) using the existing regulation-making power;
 - 2.2.2 establish an infringement penalty of \$400 for a traveller who has made an erroneous NZTD using the existing regulation-making power;
 - 2.3 amend the goods entry mechanism in regulation 26 of the Customs and Excise Regulations 1996 to link to the new declaration requirement;
 - 2.4 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;

[SWC-22-MIN-0127]

Additional regulations to exempt people from requirements

- 3 **agreed** to make regulations, in addition to the regulations referred to in paragraph two, and where appropriate amend existing regulations to exempt the following classes of travellers from the requirement to provide arrival information:

Maritime border

- 3.1 crew on commercial cargo vessels that do not permanently disembark, including crew staying with the vessel that take shore leave;
- 3.2 passengers and crew on sovereign immunity vessels that receive diplomatic clearance by the Ministry of Foreign Affairs and Trade, that do not permanently disembark;

Air border

- 3.3 passengers who are transiting through New Zealand and stay in the transit area of an airport;

Transitional provisions and other matters

- 4 **noted** that:

- 4.1 the Minister of Customs has agreed to phase the implementation of NZTD requirements for cruise ships and New Zealand military vessels until 31 October 2023 and will seek this change via the House process for the Bill;
- 4.2 requirements for all other air and maritime travellers will be implemented from 21 June 2023 when the Bill is scheduled to come into force;

- 5 **noted** that the NZTD system will enable travellers to voluntarily complete their digital declaration no earlier than 24 hours prior to:

- 5.1 for air travellers, their scheduled time of departure from the first or only leg of their journey;
- 5.2 for maritime travellers, their scheduled time of departure from the last foreign port before arriving in New Zealand;

- 6 **noted** that for go-live, NZTD questions will be available on both the mobile and web app in English and te reo Māori, and responses must be in English;

Next Steps

- 7 **agreed** that officials undertake engagement with industry groups immediately following final decisions by Cabinet to inform the operational and service design of the NZTD at the maritime border;
- 8 **invited** the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in the submission under DEV-23-SUB-0021;
- 9 **authorised** the Minister of Customs to approve minor, technical, and transitional amendments to the regulations identified during the drafting process;

- 10 **noted** that the Minister of Customs intends to seek agreement from the Cabinet Legislation Committee in May 2023 for the package of regulations made through the Bill to be submitted to the Executive Council;
- 11 **noted** that, subject to Cabinet agreement, the Minister of Customs intends for the regulations to be enacted by 21 June 2023 to align with the enactment of the Customs and Excise (Arrival Information) Amendment Bill;
- 12 **noted** that the Minister of Customs will report back to the Cabinet Economic Development Committee prior to launch to cover the NZTD system operational readiness, insights from the NZTD system pilots, and the communications strategy to support the fully operational NZTD going live.

Jenny Vickers
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon Michael Wood
Hon Dr Ayesha Verrall
Hon Stuart Nash
Hon Damien O'Connor
Hon David Parker
Hon Priyanca Radhakrishnan
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Meka Whaitiri
Hon Rino Tirikatene
Hon Dr Deborah Russell
Jo Luxton MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

PROACTIVELY RELEASED



Cabinet

Minute of Decision

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Report of the Cabinet Economic Development Committee: Period Ended 17 March 2023

On 20 March 2023, Cabinet made the following decisions on the work of the Cabinet Economic Development Committee for the period ended 17 March 2023:

Out of scope	[Redacted]	[Redacted]
Out of scope	[Redacted]	[Redacted]
Out of scope	[Redacted]	[Redacted]
Out of scope	[Redacted]	[Redacted]
Out of scope	[Redacted]	[Redacted]
Out of scope	[Redacted]	[Redacted]
Out of scope	[Redacted]	[Redacted]
Out of scope	[Redacted]	[Redacted]

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DEV-23-MIN-0021 **New Zealand Traveller Declaration: Regulations to Exempt Persons from Requirements to Provide Customs with Arrival Information** CONFIRMED
Portfolio: Customs

Out of scope [redacted] [redacted] [redacted]
[redacted]
[redacted]

Out of scope [redacted] [redacted]
[redacted]
[redacted]

Rachel Hayward
Secretary of the Cabinet

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In Confidence

Office of the Minister of Customs

Cabinet Economic Development Committee

New Zealand Traveller Declaration: Regulations to exempt persons from requirements to provide Customs with arrival information**Proposal**

- 1 This paper seeks decisions on people travelling to New Zealand that should be exempt from requirements to provide the New Zealand Customs Service (Customs) with arrival information as part of the operation of the New Zealand Traveller Declaration (NZTD).
- 2 Regulations are required to make an exemption from requirements to provide Customs with arrival information. The power to make regulations will be provided through the Customs and Excise (Arrival Information) Amendment Bill (the Bill), currently before Select Committee.

Relation to government priorities

- 3 The NZTD supports the Government's priorities of accelerating economic recovery, facilitating the Government's decisions on border health requirements in response to COVID-19 and continuing to keep New Zealand borders open and safe. The NZTD also supports the Government's recovery and rebuild priorities, building the capability to respond as appropriate to future health or biosecurity events [CAB-21-MIN-0305].
- 4 The NZTD is integral to achieving the accountabilities of the Border Executive Board (BEB),¹ including ensuring that any Government response to resurgent or new risks continues to work well at the border. This is laying the foundation to continue to build New Zealand's safer, smarter and more agile border. It will also support the Government Digital Strategy for Aotearoa and initiatives to provide accessible digital public services.
- 5 The NZTD will continue to contribute to a stable economic base for New Zealand, ensuring the border is well equipped to enable, for example: access to people and skills; protecting New Zealand from harmful pests and diseases; social cohesion through connection; economic recovery through tourism; and the maintenance of exporters' access to develop international markets and maintain international competitiveness.

¹ The board members of the BEB are the chief executives of the New Zealand Customs Service (Customs), Ministry for Primary Industries (MPI), Ministry of Health, Ministry of Foreign Affairs and Trade, Ministry of Business, Innovation and Employment (MBIE), 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.

Executive Summary

- 6 The NZTD is a digital declaration which enables travellers to New Zealand to comply with border management information requirements. It is an integral part of modernising our border experience and provides the platform to enable smart border processing for increasing numbers of travellers and enhanced responses to future border risks of all types.
- 7 The Bill will support the digitising of the paper arrival card. The Bill will require every person arriving in New Zealand to provide Customs with arrival information (which will be collected through the NZTD²) and includes a power to make regulations to:
- 7.1 exempt people from the requirement to provide arrival information; and
 - 7.2 set the time by which arrival information must be provided to Customs.
- 8 Cabinet has previously made decisions regarding regulations that will be made through the Bill, including to exempt people from requirements to provide Customs with arrival information in limited emergency circumstances such as being rescued at sea [SWC-22-MIN-0127].
- 9 I seek Cabinet agreement to make additional regulations to exempt people from the requirement to provide Customs with arrival information where it is not practical or necessary. Proposed exemptions would predominantly apply at the maritime border where there may be particular practical barriers to complete a declaration. An exemption is also proposed for transit passengers arriving in New Zealand at the air border which would continue current practice with the paper arrival card for air travellers.
- 10 Subject to Cabinet agreement, I will prepare a package of regulations (combining all Cabinet decisions to make new regulations through the Bill) to be considered by the Cabinet Legislation Committee in May 2023. The regulations would be enacted by 21 June 2023 to align with the enactment of the Bill.
- 11 The NZTD has not been operational at the maritime border to date. I have agreed to phase the implementation of NZTD requirements for certain classes of maritime travellers to allow time to develop appropriate processes and ensure that the NZTD is implemented effectively. I have agreed for officials to seek the following changes via the House process for the Bill:
- 11.1 requirements for cruise ships and New Zealand military vessels will be implemented from 31 October 2023; and
 - 11.2 requirements for all other air and maritime travellers will be implemented from 21 June 2023 when the Bill is scheduled to come into force.

² Other border agencies will be able to have information collected through the NZTD but will have their own legislative basis and purpose for collecting the information.

- 12 Cruise ship companies noted during consultation that implementing requirements would be complex but achievable and that new operations and processes would need to be developed, particularly for crew. The phased approach to implementation and further engagement with industry to inform the service design will help ensure that the NZTD is implemented successfully in time for the November 2023 to February 2024 cruise season.

Background

- 13 Currently, people arriving in New Zealand must complete the New Zealand Passenger Arrival Card (the arrival card). The arrival card is a joint agency form that includes questions relating to customs, immigration, and biosecurity border requirements. The NZTD will enable people arriving in New Zealand to comply with arrival information requirements digitally and in advance, with the intention being to replace the physical arrival cards or forms.
- 14 The proposed exemptions relate to requirements for people arriving in New Zealand to provide Customs with arrival information (to be collected via the NZTD). Customs also collects other types of information ahead of time to support border risk management, such as the Advance Notice of Arrival and Inward Report (which the Master of a vessel is required to provide)³. Customs would continue to collect this wider information from vessels even where an exemption from arrival information requirements is made in regulations.
- 15 In July 2022, Cabinet agreed that requirements to complete the Customs' sections of the NZTD would apply to all travellers unless exempt through regulations, as there may be some circumstances where it is not practical or necessary for persons to complete the NZTD [SWC-22-MIN-0127]. Policy analysis on the application of the NZTD to the maritime border had not been completed at that time, but the paper noted that it would apply to maritime 'as appropriate'.
- 16 Customs has previously focused its efforts on collecting arrival cards from passengers and crew who are permanently disembarking. Based on Cabinet's decision that all people arriving in New Zealand will be required to provide Customs with arrival information, a greater number of people arriving in New Zealand will be required to complete the NZTD compared to those that currently complete the paper arrival card (eg cruise ship passengers who get off and go back onto ship)⁴.

I am progressing legislation to support the operation of the NZTD

- 17 The Bill was introduced into the House on 26 October 2022. The Bill provides for clearer arrival information obligations to help with customs-related border management matters, such as collection of revenue and detection of restricted or prohibited goods. The Bill also aims to improve the collection of

³ This provides names and passport numbers of travellers and information about the vessel or aircraft.

⁴ Currently, over 300,000 people arriving in New Zealand at the maritime border annually do not complete a paper arrival card.

arrival information by introducing new offences to enforce the system⁵. While a digital arrival card can be implemented using existing legislation, changes are desirable to improve the enforcement and functionality of the NZTD system.

Cabinet has previously agreed for regulations to be made

- 18 In July 2022, Cabinet agreed to make new regulations to exempt the following travellers from completing the NZTD [SWC-22-MIN-0127]:
- 18.1 a traveller who arrives in New Zealand after having been rescued at sea;
 - 18.2 a traveller who arrives in New Zealand wholly for the purpose of seeking temporary relief from stress of weather; and
 - 18.3 a traveller who arrives in New Zealand under a medical evacuation.
- 19 Cabinet has also agreed to:
- 19.1 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;
 - 19.2 amend the goods entry mechanism in regulation 26 of the Customs and Excise Regulations 1996 to link to the new declaration requirement; and
 - 19.3 prescribe the new offences that will be made through the Bill as infringement offences in regulations.
- 20 Subject to Cabinet agreement, I will prepare a package of regulations which will combine all Cabinet decisions to make new regulations through the Bill.

I seek Cabinet agreement to additional exemptions and for regulations to be drafted

- 21 I seek Cabinet agreement to exempt additional classes of persons from the requirement to provide arrival information to Customs where it is not practical or necessary. The proposed exemptions fall into two categories:
- 21.1 persons arriving in New Zealand at the maritime border; and
 - 21.2 persons arriving in New Zealand at the air border.
- 22 Cabinet has agreed that requirements to provide Customs with arrival information will apply to all arrivals unless there are justified grounds for an exemption. This recognises the policy rationale that all people entering New

⁵ The Bill will establish strict liability offences relating to: failure to make a Customs declaration; and making an erroneous declaration (the erroneous declaration would be limited to a material particular).

Zealand present some level of border risk, regardless of where they come from or the mode of arrival.

Maritime border exemptions

- 23 The maritime border presents different challenges to the air border. There are more places maritime vessels can arrive, a more diverse range of vessels, and a greater number of commercial operators. Introducing the NZTD at the maritime border will improve information accuracy, enable the use of automated risk assessment tools, and allow for information to be collected from a wider range of passengers and crew than current practice with the paper arrival card.
- 24 I seek Cabinet agreement to exempt the following classes of maritime travellers from requirements to provide Customs with arrival information:
- 24.1 crew on commercial cargo vessels that do not permanently disembark, including crew staying with the vessel that take shore leave; and
- 24.2 passengers and crew on sovereign immunity vessels that receive diplomatic clearance by the Ministry of Foreign Affairs and Trade (MFAT), that do not permanently disembark.
- 25 All other maritime travellers, such as cruise ship and super yacht passengers and crew, would be subject to requirements to provide Customs with arrival information.

Crew on commercial cargo vessels⁶

- 26 Crew on commercial cargo vessels face particular operational challenges. Reflecting on recent experience with COVID-19 requirements, many people on commercial cargo vessels did not have their own devices and access to Wi-Fi was extremely limited. Access to internet and technology at sea was significantly limited in comparison to cruise ships or small craft such as super yachts. Crew will likely face similar practical and operational barriers in complying with NZTD requirements and the digital arrival card.
- 27 Commercial cargo crew are likely to face language and cultural barriers (with the majority from China, India and the Philippines) which will make completing the NZTD difficult. They are also likely to have limited financial means which may make compliance and enforcement more difficult if people are unable to pay a fine⁷.
- 28 There are also supply chain considerations in imposing requirements on commercial cargo vessels which may be overly onerous or not operationally feasible, which may cause disruption at ports for processing and cause delays for the arrival of goods into New Zealand or exports. Port company

⁶ Passengers are not included within the scope of this exemption due to the very small volumes which are expected to be operationally feasible to manage.

⁷ This may also create further administrative burden for Customs staff if fines that are unable to be paid need to be processed with the Ministry of Justice.

representatives noted during consultation that an exemption for commercial cargo crew would be appropriate due to potential operational and supply chain implications.

- 29 New Zealand also has obligations under the Maritime Labour Convention (MLC)⁸ to ensure that seafarers have the ability to take shore leave to benefit their health and wellbeing. There is a risk that NZTD requirements may result in operators declining crew access to shore leave if they consider it is too onerous. New Zealand could be investigated by the International Labour Organisation under the MLC in the event that shore leave is declined.
- 30 I propose to exempt commercial cargo crew who do not permanently disembark the vessel (including taking shore leave) from requirements to provide Customs with arrival information. This recognises the complex operating environment for commercial cargo vessels and supply chain considerations, as well as New Zealand's obligations under the MLC. There are other operational measures available to Customs to manage potential border risk posed by these traveller classes (eg Customs would still receive information about the vessel via the Advance Notice of Arrival).
- 31 This proposed exemption would apply to crew on commercial cargo vessels that have a role in the importing and exporting of goods to and from New Zealand where there are supply chain implications. Where a different vessel type is used for a commercial purpose (eg a super yacht performing as a charter boat) it would not be classified as a commercial vessel for the purpose of the proposed exemption.

Passengers and crew on sovereign immunity vessels

- 32 State vessels, such as Antarctic Treaty and foreign military ships, require diplomatic clearance to arrive in New Zealand. s 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED] s (6)(a)
[REDACTED]
[REDACTED]
- 33 There is limited ability for Customs officers to board a vessel in these circumstances, therefore compliance and enforcement would not be feasible. People on board sovereign immunity vessels would only be subject to New Zealand's jurisdiction at the point that they permanently disembark.
- 34 I propose to exempt travellers on sovereign immunity vessels who do not permanently disembark from requirements to provide Customs with arrival information, as sovereign immunity would still apply while a person remains on the vessel. This includes people on Antarctic Treaty, foreign military, and other State vessels that receive diplomatic clearance by MFAT.

⁸ The MLC is an international treaty that sets out minimum standards to address the health, safety and welfare of seafarers. The MLC came into force in New Zealand in March 2017.

- 35 An overview of the proposed arrival information requirements for different classes of maritime vessels and travellers is attached as Appendix 1.

Air border exemptions

- 36 I seek Cabinet agreement to exempt air passengers who are transiting through New Zealand and stay in the transit area of an airport. There are limited benefits to border risk management of applying requirements to air transit passengers who would remain in a secure area, and there would potentially be a high cost in Customs' resources and traveller compliance. This exemption would extend existing practice with the paper arrival card where transit passengers are not required to submit a declaration.
- 37 Officials also considered whether air crew (eg pilots, flight attendants) should be exempt from requirements due to the frequency and nature of travel. There is evidence that air crew smuggle prohibited goods into New Zealand, and there is no clear justification to exempt air crew from requirements to provide Customs with arrival information. The Chief Executive of the New Zealand Customs Service has the ability to prescribe different processes for air crew to submit arrival information in a specified manner to assist implementation (similar to existing practice where air crew submit a different paper arrival card to arriving passengers).

The NZTD will enable travellers to start completing a declaration ahead of time

- 38 Currently, travellers typically begin completing the paper arrival card while on their last flight into New Zealand or when permanently disembarking a maritime vessel. The NZTD system will enable travellers to voluntarily complete their digital declaration before arrival in New Zealand. This will enable border agencies to provide targeted, educational information to travellers to help them comply with border requirements and provide a more seamless experience for travellers on arrival. It will also enable border agencies to carry out earlier risk assessment of travellers (eg for intelligence purposes).
- 39 Cabinet has agreed that a declaration must 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 [SWC-22-MIN-0127]. This timeframe will be specified in the regulations made through the Bill.
- 40 I note that the NZTD system will enable travellers to voluntarily complete their digital declaration no earlier than 24 hours prior to:
- 40.1 for air travellers, their scheduled time of departure from the first or only leg of their journey; and
 - 40.2 for maritime travellers, their scheduled time of departure from the last foreign port before arriving in New Zealand.
- 41 This timeframe strikes an appropriate balance of providing sufficient time to travellers while mitigating potential border risk (if a declaration is started too

far in advance, there is a risk of providing inaccurate or misleading information). Regulations do not need to be made to set this voluntary timeframe.

Implementation

- 42 Customs will continue to lead the development and deployment of the NZTD in collaboration with other border agencies including the Ministry of Business, Innovation and Employment (MBIE), the Ministry of Health, and the Ministry for Primary Industries (MPI). A Steering Committee with representatives from these agencies is in place to govern the programme and ensure successful delivery of its outputs, objectives and outcomes.
- 43 It is anticipated that the Select Committee considering the Bill will report back to the House by 27 April 2023, with the final House stages in May for the Bill to come into force on 21 June 2023. The digital declaration is proposed to go live on 21 June 2023. A paper format of the digital declaration will also be available.
- 44 Border agencies will pilot the new system on some travellers before the go-live date. This will provide feedback and user experience to inform the system before going live for all travellers. A number of pilots are planned for air travellers arriving into New Zealand at Auckland, Wellington, Christchurch and Queenstown airports. NZTD pilots for maritime travellers are also intended to take place to identify potential issues and make necessary improvements.
- 45 I will report back to Cabinet prior to launch covering the NZTD system operational readiness, insights from the NZTD system pilots and the communications strategy to support the fully operational NZTD going live [DEV-22-MIN-0301].
- 46 I have agreed to phase the implementation of NZTD requirements for certain classes of maritime travellers to allow time to develop appropriate processes and ensure the NZTD is implemented effectively. I have agreed for officials to seek this change via the House process for the Bill. Requirements for cruise ships and New Zealand military vessels will be implemented from 31 October 2023. Requirements for all other air and maritime travellers will be implemented from 21 June 2023 when the Bill is scheduled to come into force.
- 47 A high-level implementation timeline is outlined in the table below:

Milestone	Date
Parliamentary Counsel Office draft regulations	Late March 2023
Select Committee report back to House on Bill	By 27 April 2023
The Bill is available for Second Reading	9 May 2023
Regulations considered by Cabinet Legislation Committee and submitted to Executive Council	May 2023
Regulations notified in the NZ Gazette (28-day rule)	By 24 May 2023

Commencement of the Customs and Excise (Arrival Information) Amendment Bill	21 June 2023
Requirements for cruise ships and New Zealand military vessels implemented	31 October 2023

- 48 The NZTD will complement the New Zealand Electronic Travel Authority (NZeTA) to ensure a secure and modern border via the use of digital platforms to better assess and manage risk. The NZTD will include a feature reminding and linking users to the NZeTA system.

Financial Implications

- 49 No additional funding is sought through the proposals in this paper. Cabinet has previously agreed to funding for the implementation of NZTD [CAB-22-MIN-0104]. Cabinet also agreed that the first full introductory year (2023/24) of NZTD operations would be met by the Crown, with the ongoing operating costs of NZTD met by fee paying travellers from 1 July 2024 [DEV-22-MIN-0301].

Legislative Implications

- 50 The Bill is currently being considered by Select Committee. A legislative bid to enact the necessary requirements of the NZTD has been submitted for the 2023 legislation programme. It is anticipated that the Select Committee considering the Bill will report back to the House by 27 April 2023, with final house stages in May and come into force on 21 June 2023.
- 51 The proposal seeks agreement to draft new regulations. These regulations are being made before the commencement of the regulation-making power, in accordance with section 43 of the Legislation Act 2019, which allows the exercise of a power conferred by legislation before that legislation comes into force or takes effect. This allows the regulations to be made and come into force at the same time as the Bill comes into force.
- 52 I seek Cabinet agreement to delegate to me the authority to make decisions on technical, administrative, and other changes that are necessary for the proposals contained in this paper. I intend to return to the Cabinet Legislation Committee in May 2023 to seek approval of the package of regulations that will be made through the Bill.

Impact Analysis

Regulatory Impact Statement

- 53 A Regulatory Impact Statement (RIS) has been completed and is attached to this paper.
- 54 The New Zealand Customs Service Regulatory Impact Assessment Panel has reviewed the RIS prepared by Customs, the “New Zealand Travel Declaration (NZTD) – Regulations to exempt persons from requirements to provide arrival information”.

- 55 The Panel consider that the information and analysis summarised in the RIS meets the quality assurance criteria. The Panel did note that consultation has been limited to maritime industry groups who will have a direct role in operationalising the NZTD. The public and other stakeholders have had opportunity to comment on the Bill, currently before Select Committee. The Bill proposes clearer arrival information obligations and support for the digitisation of the paper arrival card. Any relevant submissions were considered as part of the policy development for this RIS.

Climate Implications of Policy Assessment

- 56 There are no specific climate implications.

Population Implications

- 57 Some population groups and visitors may face barriers using an electronic NZTD system, including people from non-English speaking countries, Māori, Pacific peoples, disabled people, seniors and those from low-socio-economic backgrounds who have limited access to technology. This may lead to indirect discrimination on one or more of the grounds of prohibited discrimination.
- 58 Customs has taken into account accessibility issues for people such as the digitally excluded, the disabled community or persons with English as a second language, and others who may rely on in-person help. A contact centre service line has also been established within the existing MBIE Contact Centre, to help travellers trouble-shoot any technical issues or to understand the requirements on them. For go-live, NZTD questions will be available on both the mobile and web app in English and te reo Māori, and responses must be in English.
- 59 The Accessibility, Usability and Inclusion Strategy being developed by the NZTD Programme is intended to mitigate potential accessibility risk and support groups to access and use the digital declaration. The digital declaration will be accessible, easy to use and inclusive of its diverse traveller abilities by:
- 59.1 allowing someone to complete the NZTD on behalf of somebody, such as whānau/family;
 - 59.2 complying with the New Zealand Government Web Accessibility Standard;
 - 59.3 providing assistance to travellers who face barriers on-arrival, such as completing the declaration or using their mobile device; including ensuring Wi-Fi is available at airports; and
 - 59.4 in future, translating the NZTD into an agreed range of languages.

Human Rights

60 s 9(2)(h) [Redacted text block]

61 s 9(2)(h) [Redacted text block]

Te Tiriti o Waitangi obligations

62 Article 2 of the Treaty of Waitangi requires the Crown to actively protect Māori interests, preserving Māori the right to tino rangatiratanga (self-determination). Article 3 of the Treaty requires the Crown ensure equality for Māori. The NZTD engages issues of Māori data management, and digital access equity.

63 A partnership engagement plan has been developed for the NZTD to guide Customs’ longer-term strategic engagement with Māori. Border agencies are cognisant of ensuring Māori data is treated appropriately. The ‘digital divide’ for Māori is higher than for many other groups in New Zealand and steps to ensure equitable access to, and outcomes of, the NZTD are being considered and further developed.

Consultation

64 The paper was prepared by Customs in consultation with the Ministries of Health, MBIE, MFAT, Justice, and Transport, MPI, Ministry for Ethnic Communities, Ministry for Pacific Peoples, Office for Seniors, Whaikaha - Ministry of Disabled People, and the Department of Internal Affairs, the Treasury, Te Arawhiti, Statistics New Zealand, Crown Law Office, the New Zealand Defence Force, the Department of Prime Minister and Cabinet and Te Puni Kōkiri. The Office of the Privacy Commissioner was also consulted.

65 There was broad support from agencies for the phased implementation for maritime travellers, given the greater complexity and time required to develop new processes. Border agencies noted that exemptions relate to requirements to provide customs arrival information only, and further work is required between agencies to determine how different requirements (eg biosecurity, immigration) will be applied for various traveller classes at the maritime border. This work is ongoing between agencies.

66 MBIE noted their support for the proposed exemption for air transit passengers and anticipate that the tourism industry will be supportive of this

proposal. Statistics New Zealand advise that the proposed exemptions will not impact significantly on the volume and quality of data that the NZTD collects, and agencies will work together as part of the implementation process to respond to data issues as they emerge.

- 67 Officials also undertook targeted consultation with maritime industry groups in early February 2023, including cruise ship companies (Royal Caribbean, Carnival, and Norwegian Cruise Lines), shipping agents, and port companies (Port of Tauranga, Port of Auckland, and Port Chalmers). Industry groups signalled their support of the proposed exemptions, noting that an exemption for crew on commercial cargo vessels would be appropriate due to operational and supply chain implications.

I seek Cabinet agreement for officials to engage with industry to inform the design of the NZTD for maritime travellers

- 68 The successful implementation of NZTD at the maritime border will require understanding industry requirements to ensure that operators are able to help travellers to meet the new requirements under the Bill. Subject to Cabinet agreement, officials will engage with industry groups immediately following final decisions by Cabinet to inform the operational and service design for the NZTD at the maritime border. Further details of the proposed engagement are attached as Appendix 2.

Communications

- 69 I will communicate the changes to phase the implementation of requirements for certain classes of maritime travellers during the House stages for the Bill. There are no other communications issues associated with this paper. Communications about the development of the system are managed through the NZTD Programme and in line with the Border Executive Board 2022 Border Sector Strategy.

Proactive Release

- 70 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 July 2022, Cabinet agreed that requirements to complete and submit the Customs part of the NZTD will apply to all travellers arriving in New Zealand unless exempt by regulations [SWC-22-MIN-0127];
- 2 **note** that in July 2022, Cabinet agreed to make new regulations and where appropriate amend existing regulations for the following proposals to [SWC-22-MIN-0127]:
 - 2.1 exempt:
 - 2.1.1 a traveller who arrives in New Zealand after having been rescued at sea;
 - 2.1.2 a traveller who arrives in New Zealand wholly for the purpose of seeking temporary relief from stress of weather;
 - 2.1.3 a traveller who arrives in New Zealand under a medical evacuation;
 - 2.2 prescribe the offences that will be made through the Bill as infringement offences in regulations to:
 - 2.2.1 establish an infringement penalty of \$400 for a traveller who has failed to make a NZTD (being the level of existing infringement offences) using the existing regulation-making power;
 - 2.2.2 establish an infringement penalty of \$400 for a traveller who has made an erroneous NZTD using the existing regulation-making power;
 - 2.3 amend the goods entry mechanism in regulation 26 of the Customs and Excise Regulations 1996 to link to the new declaration requirement;
 - 2.4 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;

Additional regulations to exempt people from requirements

- 3 **agree** to make regulations, in addition to the regulations agreed in recommendation 2, and where appropriate amend existing regulations to exempt the following classes of travellers from the requirement to provide arrival information:

Maritime border

- 3.1 crew on commercial cargo vessels that do not permanently disembark, including crew staying with the vessel that take shore leave;
- 3.2 passengers and crew on sovereign immunity vessels that receive diplomatic clearance by the Ministry of Foreign Affairs and Trade, that do not permanently disembark;

Air border

- 3.3 passengers who are transiting through New Zealand and stay in the transit area of an airport;

Transitional provisions and other matters

- 4 **note** that the Minister of Customs has agreed to phase the implementation of NZTD requirements for cruise ships and New Zealand military vessels until 31 October 2023 and will seek this change via the House process for the Bill. Requirements for all other air and maritime travellers will be implemented from 21 June 2023 when the Bill is scheduled to come into force;
- 5 **note** that the NZTD system will enable travellers to voluntarily complete their digital declaration no earlier than 24 hours prior to:
 - 5.1 for air travellers, their scheduled time of departure from the first or only leg of their journey;
 - 5.2 for maritime travellers, their scheduled time of departure from the last foreign port before arriving in New Zealand;
- 6 **note** that for go-live, NZTD questions will be available on both the mobile and web app in English and te reo Māori, and responses must be in English;

Next Steps

- 7 **agree** for officials to undertake engagement with industry groups immediately following final decisions by Cabinet to inform the operational and service design of the NZTD at the maritime border;
- 8 **invite** the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in recommendations 2 and 3 above;
- 9 **authorise** the Minister of Customs to approve minor, technical and transitional amendments to the regulations identified during the drafting process;
- 10 **note** that the Minister of Customs intends to seek agreement from the Cabinet Legislation Committee in May 2023 for the package of regulations made through the Bill to be submitted to the Executive Council;

- 11 **note** that, subject to Cabinet agreement, the Minister of Customs intends for the regulations to be enacted by 21 June 2023 to align with the enactment of the Customs and Excise (Arrival Information) Amendment Bill;
- 12 **note** that the Minister of Customs will report back to Cabinet prior to launch covering the NZTD system operational readiness, insights from the NZTD system pilots and the communications strategy to support the fully operational NZTD going live.

Authorised for lodgement

Hon Meka Whaitiri

Minister of Customs

PROACTIVELY RELEASED

Appendix 1: Application of arrival information requirements for maritime

Vessel type	Sub-type	Traveller	Exemption
Cruise	Passenger vessel	All crew and all passengers (regardless of whether they are staying with vessel or not, including those that are not permanently disembarking)	No exemption
Commercial Cargo	Container, Bulk carrier, Livestock carrier, Timber carrier, Other carriers, Tanker, Roll-on Roll off	Crew staying with vessel (including shore leave)	Exemption
		Crew permanently disembarking	No exemption
		Passengers	No exemption
New Zealand coastal cargo vessel	As above, but left 12-mile limit to navigate NZ, did not visit foreign port	All	Exemption
Commercial Fishing	Foreign fishing vessel arriving in NZ	All	No exemption
	New Zealand and foreign fishing vessel that left 12-mile limit, but did not visit foreign port	All	Exemption
	New Zealand fishing vessel that visited foreign port	All	No exemption
Small craft⁹	Super yachts, pleasure craft /recreational vessels etc	All passengers and crew	No exemption
Specialist	New Zealand Defence Force	All	No exemption
	Sovereign immunity (Antarctic Treaty, foreign military etc)	Passengers and crew staying with the vessel	Exemption
		Passengers and crew permanently disembarking	No exemption
	Other specialist: cable layers, tender vessels, research vessels, dredge etc	All passengers and crew	No exemption

Note that passengers and crew on vessels that have already been processed at the first port of arrival in New Zealand, and subsequently leave the 12 nautical mile territorial sea limit but do not visit a foreign port, are not required to provide Customs with arrival information again on return to New Zealand.

⁹ Where a small craft is used for a commercial purpose (eg a super yacht performing as a charter boat) it would still be classified as a small craft for the purpose of the exemption.

Appendix 2: Proposed engagement with industry to inform service design

- 1 Customs proposes to engage with industry groups, in partnership with border agencies, to inform the operational and service design of the NZTD. This engagement would be broader than the targeted consultation officials have had with industry groups to date, and would seek detailed feedback on operational and technical matters to inform implementation.
- 2 The approach would be to meet virtually with industry groups immediately following final decisions by Cabinet (in some cases in-person meetings may be appropriate). This will enable stakeholders to provide input into the operational and service design and allow follow up time to receive feedback.
- 3 A high-level description of the proposed engagement is outlined in the table below.

What	When	Who
<p>Explore operational impacts for key maritime stakeholders to inform the service and operational design of the NZTD (based on Cabinet policy decisions)</p> <p>Gain an accurate understand of the operating environment for different stakeholders (eg Wi-Fi capability on ships and at ports)</p> <p>Enable industry groups to understand operational changes and processes they may need to implement to assist travellers to meet NZTD requirements.</p>	<p>Immediately following final decisions by Cabinet.</p>	<p>Cruise companies (eg Carnival, Royal Caribbean, Norwegian Cruise Line, Princess Cruises)</p> <p>Cargo shipping agents (eg Thompson Port Agency, McKay Shipping)</p> <p>Port companies (eg Port of Tauranga, Port of Auckland, Port Chalmers), including international ports</p> <p>Small craft representatives (eg Yachting New Zealand, NZ Marine Industry Association, NZ Cruise Association)</p> <p>Maritime Unions (eg Maritime Union of New Zealand, Rail & Maritime Transport Union)</p> <p>Shipping agents that specialise in specialist craft and super yachts</p> <p>Fishing companies and representatives (eg Sealord, Talley’s Group, Moana NZ, and shipping agents.</p>

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Regulatory Impact Statement: New Zealand Travel Declaration – Regulations to exempt persons from requirements to provide arrival information

Coversheet

Purpose of Document	
Decision sought:	This RIS informs final Cabinet decisions on who to exempt from requirements to provide Customs with arrival information. Regulations are required to make an exemption. This regulation-making power would be made through the Customs and Excise (Arrival Information) Amendment Bill, currently before Select Committee.
Advising agencies:	New Zealand Customs Service (Customs)
Proposing Ministers:	Minister of Customs
Date finalised:	8 March 2023
Problem Definition	
<p>The policy problem is to identify situations where it is not practical or necessary for people to provide Customs with arrival information, and an exemption is justified. Any exemption would be in addition to those already agreed by Cabinet.</p> <p>The aim is to ensure requirements to provide Customs with arrival information do not impose unnecessary costs that outweigh the benefits to border risk management for certain classes of travellers arriving in New Zealand.</p>	
Executive Summary	
<p>The Customs and Excise (Arrival Information) Amendment Bill (the Bill), currently before Select Committee will provide clearer arrival information obligations and support the digitisation of the paper arrival card.</p> <p>The New Zealand Traveller Declaration (NZTD) is a tool which will enable people travelling to New Zealand to comply with arrival information requirements digitally in advance of arrival.</p> <p>Cabinet has agreed that requirements to complete the Customs sections¹ of the NZTD will apply to all people arriving in New Zealand, except where:</p> <ul style="list-style-type: none"> a traveller who arrives in New Zealand after having been rescued at sea; a traveller who arrives in New Zealand wholly for the purpose of seeking temporary relief from stress of weather; and 	

¹ The NZTD is a joint-agency tool that enables border agencies to collect arrival information based on their own legislation. A declaration includes customs, immigration, and biosecurity border requirements.

- a traveller who arrives in New Zealand under a medical evacuation.

This approach recognises the policy rationale that all people arriving in New Zealand present some level of border risk, regardless of where they come from or the mode of arrival. The arrival information provided through the NZTD on those people can assist in assessing risk.

This RIS considers further circumstances where it is not justified for Customs to collect arrival information, as the costs or practicalities of collecting the arrival information outweigh the benefits. Our preferred options are that the following classes of travellers should also be exempt:

- **maritime crew on commercial cargo vessels** that do not permanently disembark, including crew that take shore leave (note this does not include commercial fishing vessels or cruise ships)
- **maritime passengers and crew on sovereign immunity vessels** that receive diplomatic clearance by the Ministry of Foreign Affairs and Trade (MFAT) that do not permanently disembark
- **air passengers who are transiting through New Zealand** and stay in the transit area of an airport.

Customs, in partnership with border agencies, undertook targeted consultation with maritime industry groups on the proposed exemption options. Industry groups signalled their overall support, noting an exemption for crew on commercial cargo vessels would be appropriate due to operational and supply chain implications.

The regulations which set out the exemptions will need to be in place before the Bill comes into force and the NZTD goes live (on 21 June 2023). Other border agencies will assess and make any changes to their own legislation to operationalise the NZTD, including exemptions.

Limitations and Constraints on Analysis

The timeframe for developing this analysis has been constrained by the commencement date of the Bill to come into force on 21 June 2023, and the need for regulations to be made and notified in the New Zealand Gazette before this date.

Consultation has been limited to maritime industry groups who will have a direct role in operationalising the NZTD. Customs, in partnership with the Ministry for Primary Industries (MPI), undertook targeted consultation on proposed exemption options agreed by the Minister of Customs in December 2022. Wider consultation was not feasible due to time and resource constraints.

Responsible Manager (completed by relevant manager)

Paula Strickson
Acting Manager Border Management and Protection
New Zealand Customs Service

8 March 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:	New Zealand Customs Service
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Panel Assessment & Comment:

The New Zealand Customs Service RIA Panel has reviewed the RIS prepared by Customs, the “New Zealand Travel Declaration – Regulations to exempt persons from requirements to provide arrival information”.

The Panel consider that the information and analysis summarised in the RIS meets the quality assurance criteria. The Panel did note that consultation has been limited to maritime industry groups who will have a direct role in operationalising the NZTD. The public and other stakeholders have had opportunity to comment on the Customs and Excise (Arrival Information) Amendment Bill (the Bill), currently before Select Committee. The Bill proposes clearer arrival information obligations and support for the digitisation of the paper arrival card. Any relevant submissions were considered as part of the policy development for this RIS.

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Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

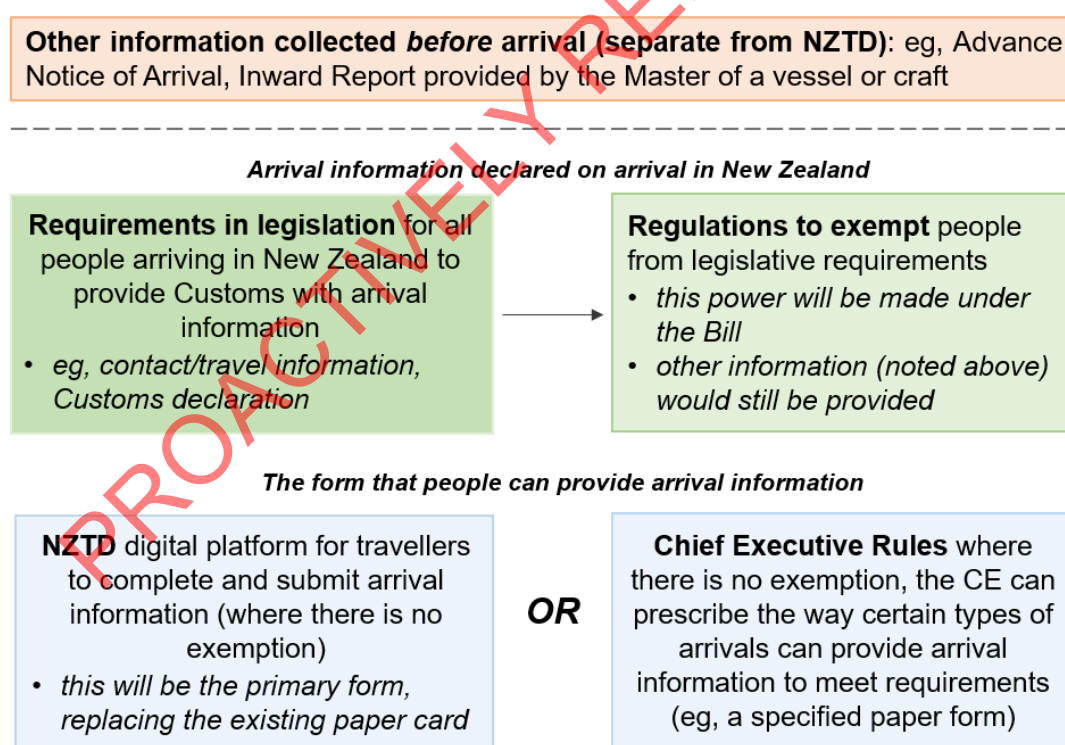
1. People arriving in New Zealand must complete the New Zealand Passenger Arrival Card (the paper arrival card). The arrival card is a joint agency form that includes questions relating to customs, immigration, and biosecurity border requirements. Obligations to provide Customs with arrival information are set out in the Customs and Excise Act 2018.
2. Customs also collects other types of information ahead of a traveller arriving in New Zealand to support border and risk management. This includes the Advance Notice of Arrival and Inward Report (which the Master of a vessel is required to provide), which provide names and passport numbers of travellers or information about the vessel or aircraft. In the context of this RIS, references to arrival information solely relate to the obligation in legislation for travellers to New Zealand to provide information required on the Customs' sections of the arrival card (ie where an exemption is proposed, these wider information measures would still be in place).
3. Currently there are a number of ways arrival information is provided and a declaration can be made. In some circumstances no arrival information is currently provided:
 - air passengers provide the required information through the paper arrival card
 - air transit passengers are not required to provide arrival information
 - air crew provide the required information through a simplified version of the paper arrival card (but still covers the biosecurity and Customs declarations)
 - maritime crew and passengers who permanently disembark provide arrival information – but there are different types of arrival cards depending on the vessel, or if it is a crew member or passenger
 - maritime crew and passengers who do not permanently disembark the vessel (including cruise ship passengers) do not currently provide arrival information.

Development of status quo

4. The NZTD, which Cabinet has agreed to implement, is a digital tool which enables border agencies to collect the required arrival information directly from people arriving in New Zealand. The NZTD will be a single platform for all travellers (air and maritime) to voluntarily complete their digital declaration in advance of arrival, with the intention being to replace the paper arrival cards and forms.
5. The NZTD will enable border agencies to provide targeted, educational information to travellers to help them comply with arrival information requirements and provide a seamless experience for travellers. It will also enable additional health-related (or other border risk) questions or requirements to be added in the future for managing any threats.
6. Work is ongoing to implement the NZTD on 21 June 2023 for all travellers (except for cruise ship passengers and crew, and New Zealand military vessels for whom the NZTD will be implemented on 31 October 2023).

7. In July 2022, Cabinet agreed that requirements to complete the Customs sections of the NZTD will apply to all people arriving in New Zealand [SWC-22-MIN-0127], except where:
 - a traveller who arrives in New Zealand after having been rescued at sea;
 - a traveller who arrives in New Zealand wholly for the purpose of seeking temporary relief from stress of weather; and
 - a traveller who arrives in New Zealand under a medical evacuation.
8. A timeline of Cabinet’s previous decisions relating to the NZTD is attached as Appendix 1 for reference.
9. The Bill, currently before Select Committee, will provide clearer arrival information obligations to assist Customs-related border management matters. The changes in the Bill will support the digitisation of the paper arrival card. The Bill is expected to commence on 21 June 2023 to align with the NZTD go-live date. Among other things, the Bill includes a power to make regulations to exempt persons from the requirement for people arriving in New Zealand to provide Customs with arrival information.
10. An overview of how information processes will operate is outlined diagram 1 below:

Diagram 1: Obligations in legislation to provide information and how this is collected



What is the policy problem and objective?

11. Following Cabinet’s decision in July 2022, we have undertaken further analysis and engaged with key industry stakeholders on whether any additional exemptions are justified. Through this process we have identified additional situations where it is not practical or necessary for people to provide Customs with arrival information. In some situations, or for some traveller classes, the requirement to provide arrival information will impose unnecessary costs that outweigh the benefits to border risk management of collecting that arrival information.

12. Therefore, the objective is to ensure the Customs arrival information requirements (sought through the NZTD) do not impose unnecessary costs that outweigh the benefits to border risk management of collecting that arrival information for classes of travellers at the border.

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Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

13. There are some situations where it will not be practical or necessary for Customs to collect arrival information from air or maritime travellers. We have used the following criteria to consider options where an exemption is justified:
 - **benefits in managing border risk** – depending on vessel, traveller class, nature of travel and the customs' risks presented
 - **operational feasibility and cost** – on passengers, crew, commercial operators, and border agencies
 - **supply chain security** – impacts on vessels which provide goods that are critical to New Zealand's supply chain and the need to avoid potential delays at ports
 - **international obligations** – New Zealand's obligations and commitments under international law and protocols, such as the Maritime Labour Convention (MLC).²

What scope will options be considered within?

14. The options discussed below will be considered within Cabinet's previous decision that requirements to provide Customs with arrival information will apply to all arrivals into New Zealand unless exempt under certain emergency situations (outlined in paragraph 7).
15. The options are limited to the requirements for travellers to New Zealand to provide Customs with arrival information through the NZTD. Other border agencies will assess and make any changes to their own legislation to operationalise the NZTD, including exemptions.
16. Further, the Chief Executive of Customs can make rules governing a number of Customs' procedures and processes.³ This can include prescribing the way certain classes of arrivals can provide Customs with the required arrival information, which may not be through the NZTD. Eg air crew currently have a separate form prescribed to complete when they arrive at the border (compared to the paper arrival card for passengers) and we intend for this to remain the way air crew fulfil their arrival information obligations at this stage.

Options considered for maritime travellers

17. The options we have considered for maritime travellers are outlined below. Further analysis based on vessel and arrival classes are set out in Appendix 2. The counterfactual option is based on the future state and NZTD decisions made by Cabinet to date (rather than status quo practice with the paper arrival card).

² The MLC is an international treaty that sets out minimum standards to address the health, safety and welfare of seafarers. The MLC came into force in New Zealand in March 2017.

³ Empowered under section 421 of the Customs and Excise Act 2018.

Option One – Counterfactual (all maritime travellers)

18. This option assumes requirements to provide Customs with arrival information will apply to all maritime passengers and crew (excluding emergency circumstances where Cabinet has already agreed an exemption is justified).

Option Two – Exempt crew on commercial cargo vessels who do not permanently disembark

19. This option proposes to exempt crew on commercial cargo vessels who do not permanently disembark. This would include crew who take shore leave.⁴ Crew make up the majority of travellers on commercial cargo vessels (some vessels may also include very small numbers of passengers). Passengers are not included within the scope of this option due to the very small volumes which are expected to be operationally feasible to manage. For the purpose of this option, commercial cargo vessels include ships such as container, livestock carrier, timber carrier and oil tankers which have a key role in the New Zealand supply chain.
20. Commercial cargo vessels arrive in New Zealand year-round with approximately 190 arriving every month. Commercial cargo vessels are estimated to comprise of 24,000 crew arrivals per year.
21. Internet access at sea is a significant barrier for commercial cargo vessels. Reflecting on recent experience with COVID-19 requirements – many people on board did not have their own devices on the ship and access to Wi-Fi was extremely limited. Instead, because of these barriers, the decision was made that the Master of the vessel would provide a list of crew members (similar to the Advance Notice of Arrival). Commercial cargo vessels would likely face similar practical and operational barriers in complying with NZTD requirements and the digital arrival card.
22. Commercial cargo crew are also likely to face language and cultural barriers (with the majority from China, India and the Philippines) which will make providing arrival information difficult. Many are also likely to have limited financial means which makes compliance and enforcement more challenging if individuals are not able to pay a fine. This may create further administrative burden for Customs staff if unpaid fines need to be processed with the Ministry of Justice.
23. New Zealand has obligations under the MLC to ensure seafarers have the ability to take shore leave to benefit their health and wellbeing. While commercial cargo crew are most likely to stay on the ship while in New Zealand, they will need to have access to shore leave for mental health and fatigue considerations (eg to go into town to buy food or essential items). There is a risk the NZTD requirements will create an additional barrier for commercial cargo crew who are staying on the vessel to access shore leave. New Zealand could be investigated by the International Labour Organisation under the MLC in the event shore leave is declined.
24. Industry groups noted in consultation that an exemption for crew on commercial cargo vessels would be appropriate due to operational and supply chain implications, and there would be limited operational implications or changes required for ports under this option.

⁴ Shore leave is defined separately from other 'day tripper' passengers (ie cruise passengers). Shore leave applies to commercial crew who are entitled to access shore leave under the Maritime Labour Convention.

Option Three – Exempt passengers and crew on sovereign immunity vessels who do not permanently disembark

25. This option proposes to exempt passengers and crew on sovereign immunity vessels that receive diplomatic clearance by MFAT (ie Antarctic Treaty or foreign military ships) who do not permanently disembark. s 9(2)(h)

How do the options compare?

Key:

- ++ much better than doing nothing / the counterfactual
- + better than doing nothing / the counterfactual
- 0 about the same as doing nothing / the counterfactual
- worse than doing nothing / the counterfactual
- much worse than doing nothing / the counterfactual

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	Option One – Counterfactual (all maritime travellers)	Option Two – Exempt commercial cargo vessels	Option Three – Exempt sovereign immunity vessels
Benefits in managing border risk	0 This option would provide the most benefit in terms of managing border risk, as it captures everyone.	0 Commercial cargo vessels have a small number of passengers / crew. There are other mechanisms available to manage this border risk. Eg Customs would receive information from vessels via the Advance Notice of Arrival and Inward Report (information the Master of the craft is required to provide).	0 Sovereign vessels have a small number of passengers / crew. There are other mechanisms available to manage this border risk. Eg sovereign vessels receive separate diplomatic clearance by MFAT in line with our international obligations.
Operational feasibility and cost	- This would be the highest cost option requiring new processes and systems at seaports and on-board vessels (eg Wi-Fi capability and device kiosks), if all travellers were required to provide Customs with arrival information	+ Based on the learnings with COVID-19 requirements, many travellers on commercial cargo vessels faced particular operational challenges providing information, including: <ul style="list-style-type: none"> limited internet access at sea or did not have their own devices on the ship language and cultural barriers which may make completing the NZTD more difficult. 	+ Sovereign immunity vessels require diplomatic clearance to arrive in New Zealand. Once diplomatic clearance is granted by MFAT, those vessels are not subject to New Zealand's jurisdiction. Thus, compliance and enforcement would not be practicable for this group until they permanently disembark.
Supply chain security	- This may cause undue delays in port processing times and potentially disrupt supply chains.	+ Imposing requirements on commercial cargo vessels may be overly onerous or cause delays in port processing and the import and export of goods to and from New Zealand.	0 Not applicable.
International obligations	- Would impact on multiple international obligations if all travellers were required to provide Customs with arrival information.	+ New Zealand has obligations under the MLC to ensure seafarers have the ability to take shore leave to benefit their health and wellbeing. While commercial cargo crew are most likely to stay on the ship while in New Zealand, they will need to have access to shore leave for mental health and fatigue considerations. There is a risk that NZTD requirements may result in operators declining crew access to shore leave if they consider it is too onerous. New Zealand could be investigated by the International Labour Organisation under the MLC in the event that shore leave is declined	+ There are international obligations and protocols to consider s (6)(a) [REDACTED] There is limited ability for Customs to go on board sovereign immunity vessels in these circumstances, therefore, compliance and enforcement would not be practicable until they permanently disembark.

	Option One – Counterfactual (all maritime travellers)	Option Two – Exempt commercial cargo vessels	Option Three – Exempt sovereign immunity vessels
Overall assessment	-	+	+
	Although this option would provide the most benefit for managing border risk, it would have significant operational impacts for processing and compliance.	This option maintains Customs’ ability to manage border risk while not imposing unnecessary or impractical operational costs. Further, this option maintains our international obligations and ensures supply chain security by minimising disruption at ports for processing commercial cargo vessels.	This option maintains Customs’ ability to manage border risk while not undermining existing practices and international protocols.

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

26. Option two and three have identified two classes of maritime travellers where an exemption is justified as it would not be practical or necessary for people arriving in New Zealand to provide Customs with arrival information.
27. Although Customs would collect a smaller range of arrival information from these travellers (through the NZTD), there are other operational measures available to Customs to collect some information from these traveller classes.⁵ We consider the preferred options would not significantly negatively impact Customs' ability to manage border risk, while maintaining our international obligations and ensuring supply chain security through minimising disruption at ports for processing commercial cargo vessels.
28. For these reasons, option two and three are identified as the preferred options.

What are the marginal costs and benefits of the preferred options?

29. There are no additional monetary costs of the preferred options compared to the counterfactual (ie requirements to provide arrival information would apply to all people arriving in New Zealand). Customs would collect arrival information from a slightly smaller cohort of travellers through the proposed exempt groups.
30. The key benefits from the preferred options are that:
 - the increase in risk is low and Customs is able to adequately manage the risk through other means
 - requirements would be feasible to enforce
 - there would be minimal disruption at ports and impacts on supply chains
 - New Zealand would maintain its obligations under international treaties and protocols.
31. These costs and benefits have been informed through conversations with operational staff and port company representatives. Given the range and scale of ports across New Zealand, and the different sizes and capabilities of operators, it is difficult to monetise these costs.
32. Cabinet has already agreed to fund the development of the NZTD system. The Crown set aside the COVID-19 Traveller Health Declaration System Tagged Operating Contingency to cover NZTD ongoing operations, including operating funding to allow for the deployment of the fully operational NZTD in the maritime space.
33. Cabinet also agreed the first full introductory year (2023/24) of NZTD operations would be met by the Crown, with the ongoing operating costs of NZTD met by fee paying travellers from 1 July 2024 [DEV-22-MIN-0301].

⁵ For example, Customs would receive information from commercial vessels via the Advance Notice of Arrival and Inward Report that the Master of the craft is required to provide.

What options are being considered for air travellers?

Option One – Counterfactual (all air travellers)

34. This option assumes requirements to provide Customs with arrival information will apply to all air passengers and crew (excluding emergency circumstances where Cabinet has already agreed an exemption is justified).

Option Two – Exempt air transit passengers

35. If someone passes through New Zealand on their way to another country and does not plan to enter New Zealand, they are considered a transit passenger. A transit passenger can only travel through Auckland International Airport where they must stay in the secure transit area of the airport or on board the aircraft.
36. This option replicates the existing exemption provision in regulations for the paper arrival card. The only exemption grounds for air travellers is for those in transit (ie they are not required to obtain entry permission into New Zealand). This approach was taken when the NZTD first launched in March 2022.
37. It is not justified to collect this information from transit passengers given the lower level of risk as they are contained in a secure area of the airport
38. There is support for this option from industry as this mirrors the existing practice with the paper arrival card. This means passengers are already familiar with their obligations and no new processes will need to be established.

How do the options compare?

Key:

- ++ much better than doing nothing / the counterfactual
- + better than doing nothing / the counterfactual
- 0 about the same as doing nothing / the counterfactual
- worse than doing nothing / the counterfactual
- much worse than doing nothing / the counterfactual

	Option One – Counterfactual (all travellers)	Option Two – Exempt transit passengers
Benefits in managing border risk	0	0 This option is unlikely to create further border risk as transit passengers remain in a secure area of the airport while waiting for their connecting flight.
Operational feasibility and cost	- This option would require establishing operational practices to collect and process transit passengers, without the transit passenger passing through the primary line.	+ This option would not require a shift in existing operational processes and procedures.
Supply chain security	0 Not applicable	0 Not applicable

	Option One – Counterfactual (all travellers)	Option Two – Exempt transit passengers
International obligations	0 Not applicable	0 Not applicable
Overall assessment	- There is minimal benefit in requiring transit passengers to complete arrival information. If progressed, additional operational processes and systems would need to be implemented.	+ Transit passengers do not pose a high border risk. This option replicates the existing exemption in place for the paper arrival card.

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

- 39. Option two will best meet the policy objective and deliver the highest net benefits compared with the counterfactual.
- 40. The air border presents limited operational challenges in comparison with the maritime border. Passengers either permanently disembark the aircraft or remain in the secure transit area of the airport where they present a low risk. Processes at the air border, especially around managing risk and processing travellers, are well-embedded and standardised. Everyone disembarks the plane at the airport and proceeds through border security checks unless they are transiting to another country. This enables border staff to effectively manage risk and efficiently process arrivals.
- 41. There are no benefits gained from requiring transit air passengers to provide Customs with arrival information that would outweigh the costs of doing so. Option two replicates the existing the exemption in place for the paper arrival card at the air border. The Ministry of Business, Innovation and Employment (MBIE) noted their support for option two in agency consultation and anticipate the tourism industry, especially aviation stakeholders, will also be supportive of this option.

What are the marginal costs and benefits of the option?

- 42. There are no marginal costs or benefits of the preferred option (option two) as this option replicates existing practice with the paper arrival card. The costs and benefits are expected to remain the same and we do not anticipate additional impacts on air transit passengers or operational staff.

Section 3: Delivering an option

How will the new arrangements be implemented?

43. Regulations will need to be made to provide for these proposed exemptions. After the regulations are drafted, authorisation will be sought from Cabinet for the regulations to be submitted to the Executive Council. The regulations are then notified in the New Zealand Gazette 28-days before coming into effect.
44. The regulations will need to be in place before the Bill comes into force and the NZTD goes live on 21 June 2023.
45. Customs will be engaging with maritime industry groups from late March to early June 2023 to inform the operational and service design of the NZTD. This will also provide an opportunity to communicate the exemptions agreed by Cabinet to industry and enable operators to prepare for implementation.
46. Customs will continue to lead the development and deployment of the NZTD in collaboration with other border agencies including MBIE, MPI and the Ministry of Health. A Steering Committee with representatives from these agencies is in place to govern and ensure successful delivery of the NZTD outputs, objectives and outcomes.
47. Prior to implementation, the NZTD Programme will undertake pilots of the NZTD with different classes of air and maritime travellers and vessels. This will allow for initial feedback from travellers and industry groups to improve the operation of the NZTD ahead of go-live.

How will the new arrangements be monitored, evaluated, and reviewed?

48. Following implementation, the NZTD exemption settings will be monitored and reviewed as part of the wider NZTD review process. This will ensure the grounds for exemptions are appropriate and fit-for-purpose. There will be an ongoing programme of improvement and development for the NZTD which will require reviewing the amended legislation for the NZTD.
49. Customs currently reports on its performance against its output measures and standards in its Annual Report. *Traveller Declaration System Development* is one of six appropriations included in the Annual Report for performance and monitoring. In 2021/22, two performance measures relating to the key outputs of Tranche 1 (piloting and delivery of the initial technology solution) were measured. For 2022/23 these have been replaced by performance measures relating to the delivery of the system for processing arriving air and maritime travellers' digital declarations.
50. Customs will aim to report appropriate performance measures on the ongoing operation of the NZTD following go-live and as the NZTD is established into business-as-usual operations within Customs. Output performance measures relating to the uptake and operation of the digital system are proposed for 2023/24 and will be reported in the Customs Annual Report 2024.

Appendix 1 – Timeline of previous decisions

1. In September 2021, Cabinet agreed to fund the development of the NZTD (previously referred to as the traveller health declaration system) to operationalise the medium risk pathway⁶ into New Zealand [CAB-MIN-0305 refers].
2. The NZTD is being implemented in three tranches.⁷ The policy and administrative settings for Tranche 1 of the NZTD were agreed by Cabinet in November 2021 [CBC-21-MIN-0178 refers].
3. Funding and development of the remaining functionality and enhancements for Tranche 2 and Tranche 3 of the NZTD were agreed in March 2022 [SWC-22-MIN-0050 refers].
4. In March 2022, the NZTD was first implemented for all air travellers. The NZTD proved to be a useful tool to enable and support safely re-opening our border and managing COVID-19 related risks. The NZTD, at that stage, did not include the questions on the arrival card, so this requirement still had to be met through the paper arrival card.
5. In July 2022, Cabinet agreed to the policy, legal, and privacy decisions to implement Tranche 3 of the NZTD (the enduring framework post-COVID-19 legislation) [SWC-22-MIN-0127]. This included decisions that requirements to complete and submit the Customs sections of the NZTD will apply to all people arriving in New Zealand unless exempt by regulations, and to make new regulations to exempt people from requirements in certain emergency situations.
6. The operation of the NZTD was paused from 20 October 2022 as a result of Cabinet decisions to remove requirements for air travellers to provide information for contact tracing purposes [CAB-22-MIN-0443].
7. In December 2022, Cabinet agreed to provide funding in the 2023/24 year for costs associated with the operation of the NZTD, development of port infrastructure and additional airport support to industry partners and travellers [DEV-22-MIN-0301].

⁶ The medium risk pathway was one of the three potential pathways outlined in the *Reconnecting New Zealanders* work, and was proposed as a way for New Zealand residents and citizens to enter New Zealand without having to enter through a Managed Isolation and Quarantine facility.

⁷ Tranche 1 – establishment of a digital system to enable air travellers to share health information in advance of travel to support the opening up of the border; Tranche 2 – system improvements such as integration with other systems; Tranche 3 – scaling capacity to support pre-COVID air and maritime passenger volumes and adding other declarations.

Appendix 2 – Further analysis of exemptions for maritime traveller classes

	Traveller Class	Considerations	Overall assessment
Commercial (cargo)	Crew staying with vessel, including taking shore leave	<ul style="list-style-type: none"> • May have prior knowledge and familiarity with port security and processes • Greater digital barriers, technology is significantly limited (experience with COVID-19 requirements) • Greater cultural and language barriers (majority from China, India and the Philippines) • Supply chain considerations and potential for creating delays in port processing • Potential issues with compliance and enforceability • NZ would also need to facilitate crew welfare obligations under the MLC 	<p>Exemption</p> <p>Given the complex operating environment for these vessels and lessons learned from COVID-19 (ie the ability for commercial operators to comply with requirements), an exemption may be considered for commercial cargo crew who do not permanently disembark the vessel including those who take shore leave.</p> <p>NZTD requirements would not be operationally feasible in practice and there would be issues with enforcement and compliance. Considering the low volumes of commercial cargo crew, other tools could be used to manage potential border risk in these circumstances.</p>
	Crew permanently disembarking Passengers	<ul style="list-style-type: none"> • As above, with potentially higher risk as would have opportunity to bring off larger items of luggage if permanently disembarking • There are very low volumes of crew permanently disembarking the vessel and passengers • Expected to be operationally feasible to manage potential risk with lower volumes 	<p>No exemption</p>
Commercial (fishing)	Crew staying with vessel Crew permanently disembarking Passengers	<ul style="list-style-type: none"> • Currently all crew and any passengers are processed by Customs when arriving in New Zealand and are treated as if they are permanently disembarking. Therefore, all travellers on commercial fishing vessels are viewed as arriving/immigrating into New Zealand • Commercial fishing vessels do not face the same limited infrastructure or access to internet compared with commercial cargo vessels. Therefore, compliance with the requirements is expected to be feasible and would align with existing practice. 	<p>No exemption</p> <p>An exemption is not justified for crew and passengers on commercial fishing vessels. Customs already processes all travellers on fishing vessels upon arrival at a New Zealand port and compliance with the arrival information requirements is expected to be feasible.</p>

	Traveller Class	Considerations	Overall assessment
Cruise ships	Passenger staying with vessel (including day trippers who get off and go back onto ship) Passenger permanently disembarking	<ul style="list-style-type: none"> • Currently 'unknown' risk – potential to smuggle illicit goods into NZ when visiting multiple ports especially bringing off larger items of luggage when permanently disembarking • Currently limited engagement with border staff unless permanently disembarking • May require additional processes at seaports to manage large volumes of arrivals (risk of potential disruption and delays) • Commercial operators may need time to update practices and processes (such as Wi-Fi on board) 	<p>No exemption</p> <p>An exemption is not justified for cruise ship passengers and crew in light of the potential Customs risk posed, and the ability for cruise ship operators to provide access to internet and communicate requirements to passengers (noting some operators will need to build capability over time).</p> <p>There are operational challenges to facilitate large volumes of arrivals. There will be a phased approach for NZTD requirements for cruise arrivals to be implemented from 31 October 2023 to allow time to develop appropriate processes.</p>
	Crew staying with vessel Crew permanently disembarking	<ul style="list-style-type: none"> • May pose higher risk than passengers as more familiar with port security and processes (making multiple trips per year). Crew permanently disembarking may bring off larger items of luggage • Modest crew volumes. Expected to have better access to Wi-Fi (not paying cost) and devices on ship, mostly English speaking 	
	Super yacht passengers	<ul style="list-style-type: none"> • Currently no visibility of who enters NZ or if/when they depart • May present risk of smuggling drugs • Potential for weapons or luxury items to be on board vessel • Expected to have adequate access to internet/digital devices and will not encounter barriers 	
Small craft	Small craft passengers	<ul style="list-style-type: none"> • High risk for maritime drug smuggling (based on current Customs intelligence) • May have varying levels of technology and access to internet • Customs officers have the ability to board vessels to assist processing and avoid potential digital barriers 	<p>No exemption</p> <p>Given recreational vessels present a high risk for maritime drug smuggling, and there are lower volumes of travellers, there are no justified grounds for an exemption.</p>
	Crew on shore leave Crew permanently disembarking	<ul style="list-style-type: none"> • As above, but have potential to bring off larger items of luggage • Existing processes can manage volumes • The MLC would not apply to recreational crew in most instances • Crew permanently disembarking can bring off larger items of luggage 	

	Traveller Class	Considerations	Overall assessment
Specialist	Passengers and crew on science and research vessels	<ul style="list-style-type: none"> • Not likely to present a significant border risk • More likely to have access to internet and devices than commercial vessels such as bulk cargo carriers 	<p>No exemption</p> <p>An exemption is not justified for passengers and crew on science and research vessels (such as cable laying or exploration) as they likely have capability to meet requirements.</p>
	New Zealand Defence Force (NZDF) vessels	<ul style="list-style-type: none"> • Not likely to present a significant customs or immigration risk • Existing MOU in place between agencies to facilitate declaration • NZDF advise there is no impetus to change the arrival requirements and personnel should be subject to the same treatment as NZ citizens • Likely to have established processes and systems to complete requirements 	<p>No exemption</p> <p>NZDF personnel should not be exempt from requirements due to existing arrangements with Customs to process travellers and the intention for NZDF personnel to be subject to the same requirements as citizens.</p>
	Sovereign immunity vessels	<ul style="list-style-type: none"> • Unknown border risk – but have low volumes leaving vessel • Vessels would be cleared by MFAT in line with diplomatic obligations, people who do not disembark the vessel would have sovereign immunity • Limited ability for Customs to get on board vessel, compliance and enforcement would not be practicable • Potential internet access and technology barriers (eg vessel arriving in New Zealand from Antarctica) 	<p>Exemption for people not permanently disembarking</p> <p>Sovereign immunity would still apply while a person remains on the vessel. An exemption is justified for people on sovereign immunity vessels who do not disembark.</p>

Note that passengers and crew on vessels that have already been processed at the first port of arrival in New Zealand, and subsequently leave the 12 nautical mile territorial sea limit but do not visit a foreign port, are not required to provide Customs with arrival information again on return to New Zealand.