Board of Airline Representatives NZ
6 Leonard Isitt Drive, Auckland Airport
Auckland 2022

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Consultation: Cost recovery under the Airports (Cost Recovery for Processing of International Travellers) Act 2014
Biosecurity System Policy
Ministry for Primary Industries
PO Box 2526
Wellington 6140
By email: BSP@mpi.govt.nz

Re: Consultation: Cost recovery under the Airports (Cost Recovery for Processing of International Travellers) Act 2014

Introduction

Thank you for the opportunity to be consulted on recovering costs for border processing at new and restarting international airports under the Airports (Cost Recovery for Processing of International Travellers) Act 2014 (the Airports Act)

The Board of Airline Representatives of New Zealand (BARNZ) represents some 25 member airlines who fly to from and within New Zealand. We also represent businesses reliant on air connectivity such as ground handlers, catering companies and waste management businesses who partner with airlines to deliver air connectivity. We appreciate the important role that Ministry of Primary Industries (MPI) Biosecurity and Customs teams have in ensuring the highest levels of security at our borders for the benefit of all New Zealanders. This work is important, and BARNZ members are supportive of this service delivery in an efficient and cost-effective manner.

BARNZ notes that certain of its member airlines may submit in their own names to this process. Air New Zealand will submit its own view and preferred option.

Where we have been able to, specific feedback on the individual consultation questions is provided. In other cases, airports are most appropriately placed to respond, and we note where this is so. Before providing feedback on the individual

questions, we make the following general comments. In large part they inform our responses to the individual questions.

Consultation process

While we are grateful for the opportunity to be consulted, we are concerned about (1) the short timeframe for this and (2) indications that the outcomes of the consultation have been pre-determined. That is, regulations for cost recovery from new or restarting airports, in one form or another as currently proposed under the Airports Act, will be introduced at speed.

It is noted that paragraph 64 of the relevant Cabinet paper refers to the "*relatively short* [time frame for consultation] *to meet the timeframe for having the proposed regulations in force in January 2025*[1]". In one sentence the regulations are characterised as proposed but reference is also made for to an identified timeframe in which to have them in-force. From this it is impossible not to conclude that Government, in seeking to fulfil a self-set and very short-term Action Plan (see paragraph 2 of the Cabinet paper), has predetermined it needs to introduce the regulations, and will progress at speed, via an already identified timeframe, with their introduction, regardless of the outcomes of consultation.

While it is accepted that consultation is not a joint decision-making exercise, this approach is highly problematic. BARNZ reserves the right to further consider what action may be necessary on its part in response.

The 3-week consultation timeframe, driven as it is by an apparent predetermined outcome and a move at speed on the introduction of regulations, does not allow for in-depth consideration of all relevant issues by BARNZ and its members.

Acknowledging these concerns, we have provided the level of feedback we are able to within the constrained time available – and with some level of justifiable scepticism regarding the degree to which this feedback will be impartially considered by Government noting the indications of predetermination referred to above.

Achievement of Crown's fiscal objectives and risks to the Crown

We disagree with the position expressed in the consultation documentation, and the relevant Cabinet paper, that border agency establishment, operating and site

[1] https://www.mpi.govt.nz/dmsdocument/64641-Release-of-Discussion-Document-Cost-Recovery-Regulations-for-the-Airports-Cost-Recovery-for-Processing-of-International-Travellers-Act-2014-Cabinet-paper

specific costs at new and restarting international airports cannot be recovered in their entirety under the Border Processing Levies (BPLs).

We are aware that submissions from the New Zealand Airports Association (NZ Airports) contain substantive and well-founded arguments to this effect. Rather than repeating these in our submissions we advise that BARNZ supports and endorse the NZ Airports position on this point.

With reference to the contents of the NZ Airports submission, it is clear that the Crown's fiscal objectives in respect of new and restarting airports, as set out on page 15 of the consultation document, can be appropriately achieved using BPLs, and not via the proposed levies under the Airports Act.

There is no legal or policy justification for the imposition of additional charges on airports; all costs in question can be meet appropriately via the BPLs. We highlight that this position on our part is subject to an understanding of scenario based consequential impacts on the BPLs if all costs at new and restarting airports were to be meet via the national and network based approach they reflect. At the time of writing this information was not available to us. Such information would have greatly assisted in informing our submission.

Concerns about cross-subsidisation and equity and the application of cost recovery principles

There should be no concern about potential cross-subsidisation between existing and new or restarting international airports via the application of the BPLs for full cost recovery purposes at new or restarting international airports.

Cross-subsidisation is already inherent across all existing international airports under a regime where the BPLs are the same for each passenger, no matter what airport is used and regardless of airport specific passenger volume and related cost efficiency considerations.

At individual existing international airports where agencies may incur additional costs arising from new or additional air services, including new off-schedule services, these are funded at a national network level by the BPLs.

Also, the BPLs, which feature a standardised charge, do not distinguish between the different risk profiles of individual passengers and airlines, or across existing international airports. These varying risk profiles require differing levels of intervention at various times at individual passengers, with associated cost variances, i.e. in the existing regime lower risk passengers subsidise interventions in respect of higher risk passengers.

We also note that a level of national and network based cross-subsidisation, to acceptable degrees, also occurs across the wider aviation system in areas such as the provision of aviation security and air navigation services.

Taking a network wide approach, as the BPLs regime anticipates and supports, there is no justification, be it on equity or other grounds, for passengers at new or restarting airports to be treated differently. The BPL regime already applies a nationally consistent network pricing model that, by its very nature, will always contain elements of cross-subsidisation across and within airports.

We also note that for biosecurity and border security risk management purposes, the passenger, not the airport or the airline, is the risk exacerbator. Hence full charges for the management of that risk should be focused on the passenger, via the BPLs as is currently the case at all existing international airports, versus additional charges on new or restarting airports

Regional economic and growth impacts

The Government's proposed approach is anti-competitive and creates significant financial barriers to route development and regional economic development and growth

Airports, be it collectively via NZ Airports or at an individual level, and who are the target of the proposed charges, are best placed to speak to these matters in depth. However, we would note that any additional costs incurred by passengers, through the proposed charges flowing through the system to them (any such flow through would be dependent on how airports may choose to treat the proposed charges) cannot but impact on the potential viability of airline operations to and from new and restarting airports as potential travellers weigh up the costs involved in deciding whether to travel.

BARNZ completely understands the need to review the level of cost recovery in the biosecurity and border control system and to ensure the system operates efficiently in order to serve New Zealand's economic interests. We also acknowledge that the consultation material includes an option for partially recovering costs for new and restating regional airports through the existing BPLs.

However, there should also be an option to recover all costs via the BPLs, to place regional airports in line with existing international airports, consistent with the national network wide approach referred to above. As outlined previously it is our view that the legislation does allow for this approach, and it is the best way forward in support of regional economic growth in a manner that does not create unnecessary financial barriers.

We highlight that we fully support the Government's objectives to double exports and develop our regions. New international services into regional airports are tangible, direct ways to deliver higher regional incomes, greater prosperity and millions of dollars of GST for the Crown.

Finally, we note that the relevant Cabinet paper (at paragraph 57) refers to the potential business and connectivity benefits to rural communities through the provision of flights international airports at regional airport. To this we would add wider regional communities, not just rural ones, as beneficiaries. It is incomprehensible to us why, having identified such potential benefits, Government then proposes to move at speed to introduce costs onto regional airports that will act as barrier to the realisation of these benefits.

Conclusion

BARNZ appreciates that New Zealand has a user-pays aviation and biosecurity and border control system. We are not arguing that this be changed in this submission – rather that the user pays model is applied in a manner that supports regional economic growth and which, as outlined previously, we consider is legally possible under current settings.

As detailed in our response to the specific consultation questions, the Airports Act , from which the current proposals stem, is a historic aberration and creates a regulatory barrier to fully collaborative Government and industry approaches in support of economic growth – particularly in regional New Zealand.

Yours sincerely

Cath O'Brien
Executive Director
Board of Airline Representatives New Zealand

Responses to individual questions

Question 1: Do you have any feedback on how costs have been classified?

The classification of establishment and operational costs appears clear. The explanation of site-specific costs provided at the online workshop on 21 August 2024 provided useful clarity on these matters.

Question 2: What are your views on the problem definition? To what extent does it adequately and accurately describe the problem and potential issues?

For the reasons previously given we do not agree with the problem definition. The Crown's objectives in respect of new and restarting airports, as set out on page 15 of the consultation document, can be appropriately achieved using Border Processing Levies (BPLs) and not the proposed levies under the Airports Act.

However, as we note in our introductory comments, we highlight that this position on our part is subject to an understanding of scenario based consequential impacts on the BPLs if all costs at new and restarting airports were to be meet via the national and network based approach they reflect. At the time of writing this information was not available to us. Such information would have greatly assisted in informing our submission.

Question 3: Do you have any feedback about what the cost recovery period should be?

Considering our response to question 2 above this question is not applicable. However, if Government was to choose to proceed with its current proposals and given that international traveller trends are currently in flux, we support a shorter cost recovery period rather than one which falls over three years .

Question 4: What is the most equitable way to ensure that the Crown is not left with stranded assets and that airlines do not cross subsidise other operators should capital assets be deployed?

Via a national network and system wide charging model as provided for under the existing BPLs regime – with the caveat around an understanding of consequential impacts on the BPLs as noted in our response to question 2 above. As previously outlined a level of cross subsidisation already occurs across all existing international airports and the wider aviation system and this occurring at new and re-starting airports, to an acceptable level, would not be inappropriate.

Question 5: Do you agree that it would be impractical for airports to be liable for all establishment and operating costs? Please outline your reasons.

Airports are most appropriately placed to answer this specific question.

Question 6: For airlines: how difficult would it be to adjust your ticketing systems to allow for exemptions to BPLs for travellers to exemptions to BPLs for travellers to new or restarting airports?

We do not consider exemptions to BPLs for travellers to new or restarting airports as necessary for the reasons previously outlined; the network BPL regime can be used for all cost recovery purposes at new or restarting airports.

Given the BPL is already applied to international tickets, the real complexity arises from airlines having to apply different forms of a similar levy to different routes. If a full separate cost recovery option is implemented, BARNZ assumes that passengers flying these routes will not also be liable to pay the existing BPL?

BARNZ also notes that airline tickets are sold up to 12 months in advance. If a levy is introduced in any shorter timeframe than 12 months, requiring that levy to be a ticketed (pass through) levy would mean that there would be a portion of ticket already sold but not levied.

In general, application of new levies or specific exemptions to passenger tickets is complex, and ultimately not preferred.

Question 7: What (if any) problems would you face if regulations were not put in place (e.g. would there be less certainty for your business decisions)?

From an airline perspective the network priced BPL regime which, for the reasons previously outlined, is the most appropriate (with the caveats expressed in response to question 2) and is that which will provide the most certainty and would be the least problematic.

Question 8: What would the impact on your business be if the costs of establishing or re- establishing international flights were estimated and paid up-front, and later a portion reimbursed if it was over-recovered?

Airports, who are the target of the currently proposed charges, are most appropriately placed to respond to this question in detail.

However, we would note our introductory comment that any additional costs incurred by passengers, through the proposed charges flowing through the system to them (subject to how airports may decide to treat the costs in question) cannot

but impact on the potential viability of airline operations to and from new and restarting airports as potential travellers weigh up the costs involved in deciding whether to travel.

Question 9: How would this approach affect your decision to establish or re-establish international flights?

Please see our response to question 8 above.

Question 10: What are your views on Option 3A and Option 3B? How might they provide a suitable solution for cost recovery?

For the reasons previously outlined we do not consider options 3A or 3B as either necessary or appropriate for cost recovery. The network priced BPL regime, for the reasons previously outlined, is the most suitable – subject to the caveat expressed in our response to question 2.

Question 11: Option 3B represents a trade-off: it recovers a smaller proportion of operating costs from airports (and a greater proportion from travellers in general) in return for administrative simplicity. Which sub option do you prefer, and why?

If 3A or 3B were the only options available, then 3B would be the preference due to the administrative simplicity involved and the greater levels of system wide equity achieved via a greater proportion of costs recovered from travellers, who are the risk exacerbators for biosecurity and border risks, via the BPLs. However, for the reasons previously outlined, the network BPL regime is that appropriate for full cost recovery purposes at new or restarting airports – again subject to the previously expressed caveats.

Question 12: What other factors might we have missed in developing this trade-off?

Please see our response to question 10 above.

Question 13: In the following assessment, we treated all these criteria equally – that is, we have not weighed any as being more important than others. Are there any of the criteria that you think are particularly important? Are there any that you feel are less relevant? Please outline your reasons.

We have no specific comments in respect of this question other than to note that the criteria based on the policy intent of the Airports Act are no longer valid or

meaningful in the current wider policy and legislative environment. Please see our response to question 29 below for further detail.

Question 14: Is our assessment of the options' conformance with the purpose of the Airports Act correct? Please outline your reasons.

Please see our introductory comments and our responses to other questions highlighting that the policy intent of the Airports Act is no longer valid or meaningful.

Question 15: How could Option 3A and 3B be improved to provide greater certainty?

Please see our answer to question 10 above.

Question 16: How else might transparency be supported in cost recovery regulations under the Airports Act?

Please see our response to question 29 below. The Airports Act is well past its use-by-date. Rather than a focus on how regulations set under the Act might be most appropriately set for transparency and other purposes, the Act itself should be the subject of review as to its relevance and the desirability of its repeal.

Question 17: How else might justifiability be supported in cost recovery regulations under the Airports Act?

Please see our response to question 16 above.

Question 18: Option 3A would see an airport pay for establishment and site-specific operating costs. What impact would this have on your operations?

Airports, who are the target of the currently proposed charges, are most appropriately placed to respond to this question in detail. However, we would again note our previous comment that any additional costs incurred by passengers, through the proposed charges flowing through the system to them (subject to how airports may decide to treat the costs in question) cannot but impact on the potential viability of airline operations to and from new and restarting airports as potential travellers weigh up the costs involved in deciding whether to travel.

Question 19: Do you consider administrative efficiency, or allocative efficiency as more important in this situation? How has this affected any preference you may have between Option 3A and 3B?

An approach of administrative efficiency, as is already embodied in the nationally consistent BPL network pricing model, is considered more important. It acknowledges the elements of acceptable cross-subsidisation that are inherent in the existing BPL regime and the wider aviation system, as commented on previously. It is also the approach that will prevent the need for the unnecessary targeting of regional airports, as per the current proposals, and that will support opportunities for regional economic growth

Question 20: Each cost recovery option has been assessed against the equity criterion. Are there other, more equitable ways to recover costs?

The full application of the current BPL regime, as we argue for previously, is that which will be the most fair, and aligned with the preexisting nationally consistent network pricing model the BPL represents. The targeting of regional airports for additional costs, as per the current proposals, cannot but have a negative impact on the levels of potential social connectivity and economic opportunity for members of regional and rural communities – in effect subjecting them to an unfair "post-code" lottery.

Furthermore, and as we have previously noted, for biosecurity and border security risk management purposes, the passenger, not the airport or the airline, is the risk exacerbator. Hence, to ensure appropriate equity and fairness, in line with Office of the Auditor-General and Treasury guidelines, full charges for the management of that risk should be focused on the passenger, via the BPLs as is currently the case at all existing international airports, versus additional charges on new or restarting airports.

In support of this position we observe that the Treasury guidance, produced in 2017, after the introduction of the Airports Act, specifically notes that Government considered that it was fairer for border risk management services to be funded by travellers[2]. The current proposals, which target airports as a source of funding, fly directly in the face of that guidance, create significant equity and fairness concerns and are a potential distortion by Government of acceptable and established practice. This situation further highlights how the Airports Act, and the current proposals stemming from it, do not reflect the evolving wider policy and legislative

[2] The Treasury, Guidelines for Setting Charges in the Public Sector: April 2017, p. 36. https://www.treasury.govt.nz/sites/default/files/2017-04/settingcharges-apr17.pdf

environments. The Airports Act is a historic aberration and no longer has a place in New Zealand legislation.

Question 21: Do you agree that Option 3A is more equitable than Option 3B? Please outline your reasons.

Please see our answer to question 20 above. Both options have the potential to result in inequities for members of regional and rural communities. The extent of these will be dependent on the impact of the proposed charges on airports and their decision making on whether to start or restart international flights. As per previous responses airports, who are the target of the currently proposed charges, are most appropriately placed to respond on these matters in detail,

Question 22: What is your preferred option? Please explain why.

We do not support any of the proposed options for the reasons previously outlined – the existing BPLs regime provides the appropriate mechanism to recover all relevant costs – subject to the information caveat expressed in our response to question 2 above.

Question 23: Can you suggest any other options that are not presented in this document? If so, please provide details about your option, and how it would better meet the criteria.

Please see our answer to question 22 above – and that to question 13 where we note that the criteria based on the policy intent of the Airports Act are no longer valid or meaningful in the wider policy and legislative environment.

Question 24: Would any option cause you significant concern? If so, please explain why and provide any data on the impacts (if possible).

All options presented, by virtue of their failure to consider using the existing BPL regime to recover all relevant costs, are of concern to us. This is for the reasons outlined in our previous responses and introductory comments.

Question 25: What are the likely financial impacts cost recovery would have on your business?

Airports, who are the direct target of the proposed charges, are best placed to respond to this question.

Question 26: How would cost recovery under the Airports Act impact your business decisions?

Airports, who are the direct target of the proposed charges, are best placed to respond to this question in detail.

Question 27: What alternative ways might regulations be implemented that would, in your view, better support airports in processing international flights?

Airports, who are the direct target of the proposed charges flowing from the intended regulations, are best placed to respond to this question. However, we would again note that, for the reasons outlined in our previous responses and introductory comments, the implementation of any regulations is neither necessary nor appropriate.

Question 28: Are there any other aspects of implementation that you would like MPI to consider when developing regulations?

Please see our response to question 27 above.

Question 29: Do you have any suggestions for the monitoring and/or review of the Airports Act or the preferred option/s presented in this document?

As we have noted above, the Airports Act is a historic aberration and no longer has a place in New Zealand legislation.

It is well past its use-by-date. It was passed in 2014, at a time when the Crown fully funded customs and biosecurity services. It is accepted that at that time it made sense to consider and legislate on how to cover costs for services at new and restarting airports.

However the policy environment has now evolved significantly whereby costs are covered by the BPLs regime at a nationally consistent level to distribute these evenly and equitably across the network. If that nationalised levy model does not carry over, it will effectively rule out any new international services to regional airports, and reduce competition, with resulting negative impacts on consumer choices and regional economic growth opportunities.

This being the case a review of the Act should be conducted as to its relevance and the desirability of its repeal. Suffice to say we consider it is no longer relevant and should be repealed to reflect the manner in which the wider policy and legislative environment has changed since its development and introduction. It's presence in on New Zealand's legislative books creates a regulatory barrier to fully collaborative Government and industry approaches in support of economic growth – particularly in regional New Zealand.