Regulatory Impact Statement: Overview of required information

Regulatory Impact Statement

Title of Proposal

Carrier Infringement Regulations 2012

Agency Disclosure Statement

The Department of Labour (the Department) prepared this Regulatory Impact Statement (RIS). The RIS concerns proposals for the fees for a carrier infringement regime. The infringement regime is provided for in the Immigration Act 2009 (the 2009 Act). Before the regime can be implemented, regulations need to be promulgated to set the level of infringement fees and introduce infringement and reminder notices. The obligations that airlines and other aircraft must comply with (in order not to commit an infringement offence) are already in effect. Carriers should already have systems and processes in place to ensure optimal compliance.

This RIS does not attempt to provide a rationale for having a carrier infringement regime in legislation. A RIS to that effect was provided in 2008 when policy proposals for a carrier infringement regime in the then Immigration Bill were submitted to Cabinet. Instead, the analysis in this RIS concerns the impacts on airlines of setting the infringement fees at various levels. These impacts are compared to the costs and benefits of the status quo for airlines and New Zealand.

The various options for the infringement fees were assessed against a ranking of the seriousness of each of the infringement offences, and the desired deterrent effect. Insufficient information exists to determine the impact of the infringement fees on increasing compliance. However, the Department will monitor compliance rates once the infringement regime is implemented and conduct a review process of the regime's impact. It is proposed that the Department reports back to the Minister of Immigration on this review by July 2014.

The policy options are likely to impose additional costs on businesses, but these are considered to be marginal. In the majority of cases, the preferred option should impose only minor costs on airlines. In many cases, airlines could reduce the impacts of the infringement fees by increasing their compliance through making minor systems changes with marginal cost.

Michael Papesch, Chair, Regulatory Impact Statement Review Panel, Policy and Research Group, Department of Labour

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23 February 2012

Status quo and problem definition

Key features of the current situation

Aircraft volumes and compliance with their immigration-related obligations

1. Twenty commercial airlines currently operate into New Zealand, with varying volumes of passengers, numbers of flights and routes of travel. In the period October 2010 – September 2011, the total number of people arriving at the New Zealand border on commercial carriers was 4,650,410.[1] Forecasts suggest arrivals will increase as more low cost international airlines begin flying to New Zealand, as New Zealand plays more of a role as a travel hub for the wider Pacific rim region, and as more regional airports increase capacity to receive international flights.

2. Carriers other than commercial airlines also fly into New Zealand, such as private planes, chartered craft and air force craft bringing visiting military staff. Approximately 34,000 people each year in the last two years arrived by air into New Zealand other than on an airline.

3. The Immigration Act 2009 (the 2009 Act) and the Immigration (Carriers' Information Obligations) Regulations 2010 (the 2010 regulations) impose obligations on carriers. A carrier is the owner or charterer (or their agent) of any air or sea craft ('the carrier of a craft'), or the person in charge of any craft ('the person in charge'), which brings passengers or crew to New Zealand. In 2010, Cabinet agreed most carrier obligations would only apply to aircraft [CAB Min (10) 28/1A].[2]

4. The obligations are a means of mitigating risk to New Zealand's border security and the integrity of the immigration system from people arriving at the border who are not admissible. The obligations came into force in November 2010. Many of the obligations were carried over from the Immigration Act 1987 (the 1987 Act). In summary, the obligations in the 2009 Act concern:

   - checking a passenger or crew member has the valid travel documentation to enter New Zealand (for example, a valid and acceptable passport and visa)
   - obtaining and providing Advance Passenger Processing (APP) information
   - waiting for an APP boarding directive, and complying with the directive, including checking any conditions put on the person (such as showing evidence of an outward ticket), and
   - providing Passenger Name Record (PNR) data and ensuring access to this information.

5. The APP system validates at check-in a passenger's entitlement to travel to New Zealand. APP provides the airline with a real-time boarding directive confirming whether or not to allow the passenger to board, or to only do so if the passenger meets certain conditions. The PNR system provides information on a passenger's identity and travel movements, and is used for advanced risk profiling. It is important that APP and PNR data is provided correctly for each passenger or crew member, so that persons who are not admissible to New Zealand (or where there are significant concerns about their admissibility) are denied boarding, or are intercepted upon arrival at the border. High quality data will greatly support moves to facilitate passenger experience through prior border clearance – for instance, for Trans-Tasman travel. [3]

6. Carriers do not always comply with their immigration-related obligations, and inadmissible people do arrive at the border who should not have been allowed to travel here (and sometimes they are able to enter the country, undetected). Since February 2011, the Department has been moving

[1] This timeframe is given as it corresponds to the date of the data set used to calculate the estimated rate of offending over a year. The figure does not include those who arrive by private aircraft or non-commercial charters.

[2] This was predominantly because maritime craft do not have the systems to comply with certain obligations.

[3] More information on APP and PNR is given in Appendix One.

airlines onto a new computer portal system that is able to systematically detect breaches of obligations, particularly those related to the provision of APP and compliance with the APP directive.[4] Using figures from the portal and previous reporting from the border[5], the Department estimates that in the period September 2010 – October 2011, at least 1,583 offences were committed. These figures do not include offences:

- related to the failure to provide PNR data, or access to it, or the failure to wait for a boarding directive for a passenger, as these offences are not currently recorded
- committed by carriers other than airlines, but records suggest high levels of compliance, or
- not recorded yet because airlines are still being brought onto the portal – for instance, the portal is detecting a greater number of APP offences than have been previously recorded through border referrals.

7. Reasons for non-compliance vary widely. Some offences are due to human error, while others would be difficult to commit accidentally (including the most serious, failing to check travel documentation or ignoring a directive not to let the person board). The increasing trend towards electronic documents can make it challenging to ensure passengers meet certain conditions. Other offences may be committed by airlines giving priority to expediting check-in and boarding over their compliance with immigration obligations. Systems outages and failures are another reason for non-compliance. In this vein, the New Zealand Customs Service is currently leading inter-agency work (that the Department is involved in) to standardise systems for the provision of and access to PNR. Standardisation should greatly increase carriers' ability to comply with their PNR-related obligations.

The provisions for an infringement regime in the 2009 Act and the associated RIS

8. New Zealand uses a range of measures to enforce carriers' compliance with their immigration-related obligations and to deter non-compliance. These measures include training and education, and warning notices. Non-compliance, however, has continued despite the Department providing carriers with training or support to make compliance easier, or issuing multiple warning notices. The 2009 Act also provides for prosecution, which in some cases can be a more appropriate response (decided on a case-by-case basis).

9. In 2006, when considering policy proposals for the then Immigration Bill, Cabinet agreed that the legislation (now the 2009 Act) would provide for an infringement regime for carriers. Breaches of certain carrier obligations would constitute infringement offences of strict liability, and a carrier committing an infringement offence could be liable for an infringement fee. The carrier would be liable for each passenger or crew person to whom the offence relates; where the offence is, for example, failure to provide APP information, this could be for one person, or it could be for the entire planeload. Conversely, where a carrier fails to provide APP data for a person and does not check they hold the required travel documentation, then the carrier is liable to be issued two infringement notices as it has committed two separate offences. How these cases will be dealt with is outlined in paragraph 73.

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[4] The Department is moving all airlines flying into New Zealand onto the portal as it will be used to administer an infringement notice process when the infringement regime is implemented in mid-2012. At the time that the portal statistics used were recorded, four airlines were on the portal: [**INFORMATION WITHHELD UNDER SECTION 9(2)(b)(ii) OF THE OFFICIAL INFORMATION ACT 1982**].

[5] Previous records of non-compliance are based on reports of people who were referred at the border ('border referrals') to Immigration New Zealand by Customs, because there were questions about their eligibility to enter New Zealand. Where the airline was found at fault of letting the person travel to New Zealand, a record was made and the airline sent a warning notice, or in some cases, prosecution proceedings were undertaken. Border referrals are now fed into the portal to ensure detected non-compliance is recorded.

10. Where the carrier is an owner, charterer or agent in New Zealand, they will usually be held liable for the infringement offence (all airlines currently flying into New Zealand have an owner, charterer or agent in New Zealand). A person in charge of a craft will only be held liable if the carrier has no owner, charterer or agent in New Zealand (for example, if a pilot is flying a private airplane).[6] Additionally, the only infringement offence for non-commercial aircraft in the 2009 Act concerns the failure to check for the prescribed travel documentation, since non-commercial craft do not have access to APP and PNR systems.

11. The 2009 Act states immigration officers *may* issue an infringement notice. In addition, the 2009 Act provides a reasonable excuse defence for most infringement offences.

12. The RIS that accompanied the Cabinet paper of policy proposals for the 2009 Act stated an infringement regime would provide a more proportionate, flexible, prompt and internationally acceptable incentive to ensure that carriers comply with their obligations and had adequate knowledge of New Zealand's immigration requirements. The incentive to comply would therefore limit carriers' liability for the cost of returning people turned around at the border. The RIS also noted the government would benefit from a more appropriate system for enforcing carrier obligations, one which provided real incentives to comply and better upheld New Zealand's sovereign right to choose who travels to and enters the country. The RIS can be found at http://www.dol.govt.nz/PDFs/ris-third-parties.pdf.

13. All infringement fees will be paid into the Crown Consolidated Account (the Department will not receive any financial benefit).

Description of the status quo

Costs of obligations

14. Carriers, particularly airlines, bear the costs of complying with their obligations, including having systems, processes and training in place to optimise their compliance levels. Airlines seeking to improve compliance will also incur administrative costs in investigating breaches brought to their attention. However, all of these obligations have been in place since 1987 (if not before), and many are also required by other jurisdictions that carriers fly to. In addition, no new obligations are proposed to be imposed through the proposed regulations.

Costs of non-compliance

15. The arrival of a person at the border who is not admissible to New Zealand imposes fiscal costs on New Zealand. When their arrival (and potential entry) is due to carrier non-compliance, a 'market failure' is evident that creates negative consequences for New Zealand. Particular incidents of non-compliance can carry significant risk to New Zealand in terms of potential negative outcomes.

16. However, the costs and impacts of the outcomes of carrier non-compliance are difficult to quantify, as they can vary greatly depending on the particular circumstances, they may not be immediately apparent and they may be intangible. The figures in Table One provide a sample of costs that may be directly imposed on New Zealand from the arrival and potential entry of an inadmissible person.[7] Impacts are also stated for carriers (particularly airlines), which would not face these costs if they complied with their obligations. These figures partially represent the baseline scenario.

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[6] In other words, if the carrier is liable for an infringement offence, the person in charge cannot also be liable.

[7] The more serious offences (for instance, the airline had failed to check the person had a visa, or had ignored a Do Not Board directive) are usually picked up at the border and the person denied entry (unless they apply for asylum, in which case they may be granted a visa). Offences related to failure to check for an outward ticket are less likely to be detected as often only a small subset of people are checked for an outward ticket on arrival.

Table One: sample of costs and impacts imposed by carrier non-compliance with immigration-related obligations[8]

Outcomes (may occur together)	Who affected	Cost/impact
Inadmissible person refused entry and 'turned around' at the border	New Zealand	In the period October 2010 – September 2011, 709 people were refused entry to New Zealand. The average cost to New Zealand from a 'turnaround' is $600 per person (2007/08 figures). Cost includes: supervision from immigration officer or New Zealand Police; cost of day/night stay in Immigration New Zealand room or in police detention; provision of food.
	Carrier	If the person arrived in New Zealand because the carrier breached its carrier obligations, then the carrier is required under the 2009 Act to bear the cost of returning the person to where s/he boarded the plane. This requirement does not usually impose a significant cost for the carrier, unless the person cannot be flown out the same day and accommodation or detention is required (carriers may be required to pay for this); or another passenger must be 'bumped' off a flight; or the country of embarkation refuses to allow the person to be returned (for example, if the person does not have the right of re-entry).

17. Table Two provides additional costs and impacts imposed when inadmissible people arrive at the border, and particularly if they are granted entry. These figures can only be indicative as they could not be quantified with any certainty due to data constraints. Data constraints also create difficulties in calculating the likelihood, when one of the negative outcomes listed below occurs, that a carrier would have been at fault (that is, that it was non-compliant with its immigration-related obligations), or whether the outcome would have occurred despite the carrier's compliance. But non-compliance can result in the outcomes listed in Table Two.

18. Determining whether a carrier was culpable in retrospect is also challenging if a negative outcome occurs months or years after the person arrived in New Zealand. This is a key reason why infringement fees should be set based on the seriousness of an offence, not on the outcome of an offence.

Table Two: additional costs of inadmissible persons

Outcomes (may occur together)	Who affected	Cost/impact
Person with suspected terrorist history arrives at border and potentially enters the country (and may claim asylum)	New Zealand	Quantified from previous high profile cases– the legal costs to the Department alone from one such case was $917,258. Intangible effects such as loss of confidence in public safety and security, and reputational risk to New Zealand (particularly with our Five Country Conference (FCC) partners, Australia, Canada, United Kingdom and United States), are difficult to quantify. The impacts would increase exponentially if any terrorist acts were committed on New Zealand soil. Could lead to imposition of very stringent border controls with resulting resource costs on government border agencies. Potential costs of asylum claim and appeal.
	Carriers	Intangible effects, such as loss of confidence in aviation security, are difficult to quantify. Could lead to imposition of very stringent border controls with resulting costs (time and money) on carriers (and hence travellers)

[8] Monetary figures are taken from a range of Department generated costings and data sets that in some cases reflect input from other government departments (for example, cost of benefits, accommodation, health care and education).

Outcomes (may occur together)	Who affected	Cost/impact
Person lodges refugee and protection claim (genuine or non bona fide)	New Zealand, as a signatory to relevant international conventions and covenants	There was an average of 245 claims per year in the last five full financial years 2006/07 – 2010/11. Over the period 2006/07 – 2010/11, an average of 36 people per year made claims at the border. Recent statistics show around 70 percent of all asylum claimants appeal a failed claim. A significant level of cost can be also incurred from providing accommodation, benefits and health and education services, while the claim or appeal is determined; detention (where required); and the involvement of the police, courts and other aspects of the legal system. High profile refugee claims and appeals have incurred significant legal costs on the Crown.
Person is not a bona fide visitor, may have been identified as not admissible, but travelled and gained entry to New Zealand and overstays or works illegally or uses publicly-funded health and education services they are not eligible for (or all or any of the above)	New Zealand	Difficult to quantify the cost and impact on the Crown from overstayers but potentially includes use of publicly-funded services the person is not eligible for, such as hospital care or school education. Also includes the cost in time and resources of compliance officers from Immigration New Zealand or the Police searching for people and the subsequently effecting deportations (additional costs accrue if the person chooses to appeal). Quantifying the cost and impact on the labour market from illegal workers is equally complex. The impact could include the effect of depressing wages and employment conditions for New Zealand workers, employers favouring cheap labour over capital investment (hence potentially affecting productivity, and the displacement of New Zealanders). Costs in time and resources are also incurred from compliance staff searching for illegal workers, dealing with employers and effecting deportation. The cost of removing a person with a temporary visa or no visa in 2007/08 varied from $3,100 (where the person remained in the community) to $7,100 (where the person had to be put in custody).
Person who is considered a public safety risk due to known serious and infectious health condition (such as TB), or due to past criminal history.	New Zealand	Potential costs could be incurred from: • quarantine and treatment at publicly-funded health services for person and anyone they infect • outcomes of any criminal activity on society and on the Crown (for example, police, courts, and corrections).
People trafficker or smuggler able to covertly bring people to New Zealand	New Zealand	Impact and cost could include many of those aspects listed above. In addition, there is potential to damage New Zealand's international reputation.

19. New Zealand potentially faces reputational risk with its Five Country Conference (FCC) partners if it is perceived as inadequately enforcing compliance and is out of sync with border security operations overseas, because it does not have an infringement regime like them (refer Appendix Two). This perception could affect the FCC partners' desire to collaborate with New Zealand on border security.

Benefits of the status quo

20. There are no direct benefits to New Zealand from the status quo, except the (opportunity) cost saving of not implementing an alternative method of enforcing compliance.

21. Carriers 'benefit' from not currently facing infringement penalties for non-compliance, except if the carrier is prosecuted (they may also face turnaround or deportation costs). The 2009 Act provides a maximum fine of $50,000 on conviction for the carrier of a craft, or $25,000 for a person in

charge, for offences that could otherwise be liable for an infringement notice (where an infringement notice is issued, prosecution is then not possible).

Problem definition

22. As noted above, carriers' immigration-related obligations came into effect in November 2010, though all were carried over from the 1987 Act. The 2009 Act provided for a carrier infringement regime as an immediate means of enforcing carriers' compliance. Carrier non-compliance, under the status quo, can incur significant costs on New Zealand each year.

23. Until the regulations are promulgated, the infringement regime provided in the 2009 Act cannot be brought into effect. Without the infringement regime, New Zealand does not have an immediate and proportionate means of deterring actions that undermine its border security, the integrity of the immigration system and incur fiscal costs on the taxpayer (in many cases prosecution is disproportionate, but also will be delayed in its effect).

Objectives

24. To bring the infringement regime into effect, regulations must be promulgated for the following:

- the infringement fees that apply to specific infringement offences
- the infringement notice sent out to a carrier alleged to have committed an infringement offence, and
- the reminder notice when an infringement fee is not paid within the stipulated timeframe.

25. This RIS concerns the setting of the level of infringement fees in regulations.[9] The infringement fee for each infringement offence must align with the Ministry of Justice's Policy Guidelines for Infringement Regimes. Each fee must therefore be set at a level that:

a) signals the seriousness attributed to the offence and hence is proportionate to the offence

b) is consistent with other fees for offences of similar degrees of seriousness, and

c) encourages carriers to comply with their obligations, through providing a deterrent effect.

26. In addition, in order to be fair and proportionate in approach, the Department considers the infringement fee for each infringement offence should:

d) account for any complexity in complying with the obligations, and

e) impose reasonable costs on business, compared to the cost and impact of the problem (that is, the impact and cost to New Zealand and carriers of non-compliance).

27. These five criteria are used to assess the options provided here for the level of the infringement fees. The options also fit within the constraints outlined below.

28. The desired outcome from the proposed infringement fee levels is for carriers to increase compliance with their immigration obligations by penalising and deterring non-compliance. Increased compliance will help safeguard New Zealand's border security and the integrity of the immigration system, as well as preventing potential costs being imposed on the Crown (potential costs shown in Table One).

29. Carriers, particularly airlines that comply with their obligations will likely incur an additional, but low level of costs from the infringement regime, from training and administration (discussed more fully

[9] The proposed infringement fees and notices, if agreed by Cabinet, will form the basis of drafting instructions for the regulations required to implement the infringement fee regime.

below). Those airlines that currently under-invest in ensuring compliance will face not only these additional costs, but also higher costs from incurring infringement fees.

Constraints

Decisions made

30. The 2009 Act provides that in the case of a carrier of a craft, the maximum that an infringement fee payable in respect to an infringement offence may be set at is $5,000. In the case of a person in charge of a craft, the maximum it may be set at is $2,500.

2006 Cabinet decisions

31. In 2006, when considering policy proposals for the then Immigration Bill, Cabinet agreed to the levels for infringement fees shown in Table Three below [CAB Min (06) 20/14].

Table Three: 2006 Cabinet decisions

	"Failure to check" type offence	***"Failure to comply" type offence***
Carrier	$5,000 where the security of the border was compromised OR $1,000 where the security of the border was not compromised	$5,000
Person in charge of a craft	$2,500 where the security of the border was compromised OR $1,000 where the security of the border was not compromised	$2,500

32. The wording of the decision suggests the outcome of the offence should determine the level of infringement fees. But regardless of the outcome (which may not always be immediately apparent), all infringement offences potentially compromise border security, albeit to varying degrees. The border is compromised as New Zealand's sovereign right to determine who should cross its borders has been undermined. Therefore, the Cabinet decision in effect could result in the fee level for each infringement offence being set at a flat rate of $5,000 for the carrier of a craft, $2,500 for a person in charge.

Policy guidelines

33. The Ministry of Justice's Policy Guidelines for Infringement Regimes require that infringement fees be set at a level that is proportionate to the offence, and consistent with 'like' offences. The Guidelines also recommend that, in general, infringement fees are set at $1,000, "unless in the particular circumstances of the case a high level of deterrence is required". Setting the fee higher than $1,000 then signals that the offence is considered the most significant and non-compliance will not be tolerated.

Operational policy approach

34. The 2009 Act provides that an immigration officer *may* issue an infringement notice. The compliance cost of the proposed infringement fees has been assessed assuming that infringement notices will be issued on a case-by-case approach.

35. The airlines stated a preference for a threshold-based model for a particular high volume infringement offence (failure to provide APP data). Under a threshold model, an airline that exceeds a compliance target over a set period (say one calendar month) is not issued any infringement notices in the following period for that particular carrier obligation.

36. The Department's in-depth analysis, however, showed a threshold model would undermine incentives to comply. Reasonably serious cases of offending would need to be 'waived' if the airline came under the threshold. The threshold model would fetter the powers of the immigration officer in the 2009 Act. It would also present administrative issues that would add complexity to the infringement regime. While Australia currently uses a threshold system for the APP obligation,

Australia's reliance on APP data for border and immigration risk management differs in degree to New Zealand's, due to difference in our visa policies. The United States had a threshold system but only as a temporary measure to encourage airlines to increase compliance.

37. Due to the concerns outlined above, the Department's view is that a threshold system would have few advantages for New Zealand. The Department did attempt to determine if an infringement fee for the APP obligation would be set differently using a threshold model, than it would if decisions to issue an infringement notice were made on a case-by-case basis. To do so proved challenging because:

    - of a lack of guidance on the issue - no other infringement regime in New Zealand for commercial entities was found to operate a threshold model
    - it was unclear if the fee for the offence should be set high to provide an added deterrent effect, because only those airlines who fail to reach the threshold would be liable for an infringement fee. Setting the fee higher, however, appears to be contrary to the Ministry of Justice's Policy Guidelines that infringement fees are set at a level that is proportionate to the seriousness of the offence, and consistent with 'like' offences; but conversely,
    - it was unclear if the fee for the APP-related offence should be set lower than might otherwise seem appropriate, because airlines would not have the threshold to act as a 'buffer' for even a few acts of non-compliance. But to do so again seemed contrary to the Ministry of Justice's Policy Guidelines regarding proportionality and consistency. A lower fee could also undermine the deterrent effect intended from having an infringement fee.

38. The Department also considered other operating models for the infringement regime that, on consideration, appeared to offer few advantages for a carrier infringement regime. Percentage based models (where only a percentage of offences would be liable for an infringement fee) were considered to undermine the objective of an infringement regime to maximise compliance. They would also pose administrative and legal issues in determining which offences would be exempted. Warning-based models (along the lines of a 'three strikes and you're out' scenario) were considered inappropriate since carriers are well aware of their existing obligations. The high volume of breaches by some airlines for certain obligations would also mean warnings would become superfluous very, very quickly.

Regulatory impact analysis

Options for infringement fee levels

39. Four options were analysed. This section outlines those options, while the following section provides a summarised analysis of each option against the five criteria.

Option 1 - three tier system

40. Option 1 classified the offences into three tiers. Table Four shows how the offences were differentiated into each tier (graded A-C), the rationale for this and the estimated likelihood of these offences occurring (based on a percentage of all recorded offences in the period October 2010 - September 2011).[10]

[10] Estimations of how likely an offence in each tier is to occur are based on the same calculations referred to in paragraph 6.

Table Four: three tier level for infringement fees

Tier	Rationale	Likelihood
A	The passenger or crew member presents **a significant risk** to the border because: • they have been specifically identified as inadmissible to New Zealand and not to be allowed to board; or • the failure to check if a person has a valid and acceptable passport or Certificate of Identity, or has a visa if required to travel to a country, breaches fundamental international travel and security requirements; and • if they do not have a valid and acceptable passport or visa, their identity cannot be verified and their eligibility to enter New Zealand is unknown.	<0.5%
B	The passenger or crew member presents an **unknown and variable degree of risk** because: • information has not been provided about them, or incorrect data was entered, or a decision is pending on whether to allow the person to board or not (that is, the carrier has not received a boarding directive); or • the passenger or crew member potentially presents some risk and this has been attributed to them as a unique individual; or • the passenger or crew member potentially presents some risk but this has not been attributed to them as a unique individual, but rather on the basis of certain characteristics they share with other passengers (for example, purpose of stay); and/or • failure to provide the information undermines standard risk profiling measures and investigation of potential infringement offences.	80%
C	The obligation to check for an outward ticket is applied to many passengers requiring a visa to travel to New Zealand, and to all those passengers who do not need a visa to travel to New Zealand (visa waiver). The former group will have had to present evidence of an outward ticket or sufficient funds as part of their visa application; the latter group generally presents a lower risk to border security. Therefore the seriousness of the offence is at the lower end of the scale.	>19%

41. APP-related offences are ranked as Tier B. On one hand, APP is a very important tool for border security and immigration risk management, and the offence could be placed in Tier A to reflect how important it is that correct APP data needs to be provided. But, on the other hand, doing so would be disproportionate, given that in most cases APP, if provided, would have given a directive to allow the passengers to travel (because only a minority of people are denied entry).

42. Conversely, APP-related offences could be set across both Tier A and B, and when an offence was committed a decision would be made which Tier it fell into, depending on the actual outcome. This approach, however, would add administrative and legal complexity, and potentially lead to inconsistency in approach, especially given the volume of offences. It could also create a perverse incentive for carriers to 'second guess' the outcome. In addition, the outcome of an offence is not always immediately apparent.

43. Table Five presents the proposed fee levels. The proposed fees for a person in charge are half those for a carrier of a craft (that is, the owner, charterer or agent). This approach mirrors that in the 2009 Act for fines on conviction (section 356) and the 2006 Cabinet decision on fees. As noted earlier, non-commercial carriers are only obliged to check for a visa and travel document, since they do not have access to APP and PNR systems. Therefore, the pilots of private planes would only likely be liable for an infringement fee shown in the final row of Table Five.

Table Five: proposed fee levels

Infringement offence as provided in the Immigration Act 2009	Nature of the offence	Tier	Fee for carrier	Fee for person in charge of a craft
Section 349(1)(a)	Failure to comply with the obligation to provide Advance Passenger Processing (APP) data[11]	B	$1,000	$500
Section 349(1)(b)	Failure to wait for a boarding directive	B	$1,000	$500
Section 349(1)(c)	Failure to comply with a directive not to allow the passenger to board	A	$5,000	$2,500
Section 349(1)(c)	Failure to ensure person complies with certain conditions, except where the condition is to show evidence of an outward ticket	B	$1,000	$500
Section 349(1)(c)	Failure to ensure person complies with the condition to have an evidence of an outward ticket	C	$500	$250
Section 349(1)(d)	Failure to provide Passenger Name Record (PNR) data for a person[8]	B	$1,000	$500
Section 349(1)(e)	Failure to ensure access to PNR data for a person	B	$1,000	$500
Section 349(2)(a)	Failure to ensure the person has the prescribed travel documentation (passport or Certificate of Identity, visa)	A	$5,000	$2,500

44. It is recognised that the proposed fees could give a perverse incentive for a carrier to fail to provide APP data if they suspect a person would be denied boarding, because the fee for failing to provide APP data is lower than the fee for failing to comply with a directive to not allow a person to board. Officials consider this risk to be low, as a fee of $1,000 is not insignificant and carriers could face prosecution if found to be intentionally failing to comply with their obligations.

Option 2 – three-tier system with lower fees

45. Option 2 is based on the fee levels recommended by airlines in their submissions on the proposed infringement fees and operational model. Option 2 uses the same three tier system shown in Table Two, but attributes lower fees to many of the offences when compared to Option 1. It also considers the fee for failing to wait for a boarding directive should not be a Tier A offence, but a Tier B offence instead.

46. Under Option 2, the most serious offences attract a fee of $3,000 for a carrier of a craft, or $1,500 for a person in charge. Failing to wait for a boarding directive attracts a fee of $1,000 for a carrier of a craft, $500 for a person in charge. A nominal fee of $100 for a carrier of a craft or $50 for a person in charge would be set for the two offences related to PNR data and for the offence of failing to check a passenger has an outward ticket.

Option 3. Status quo

47. No fees would be set in regulations, and the infringement regime could not be implemented. The 2006 Cabinet decision would need to be rescinded. Parliament's intent in bringing in an infringement regime would be thwarted. Prosecution would be the only enforcement measure provided in legislation that could be used to penalise and deter non-compliance, but would generally be disproportionate to the offence.

[11] The APP system enables validation at check-in of a passenger's entitlement to travel to New Zealand. APP provides the airline with a real-time boarding directive confirming whether or not to allow the passenger to board, or to only do so if the passenger meets certain conditions. The PNR system provides information on a passenger's identity and travel movements, and is used for proactive risk profiling to prevent people from travelling to New Zealand or to prepare for intervention ahead of arrival. PNR is also used to investigate alleged breaches of carrier obligations. More information on APP and PNR data is provided in Appendix One.

Option 4. Flat fee of $5,000 for all offences

48. The Cabinet's 2006 decision on infringement fee levels requires all 'failure to comply" offences to incur the highest level of fee ($5,000 for a carrier of a craft, $2,500 for a person in charge). 'Failure to check' offences incur a $5,000 fee if the security of the border is compromised from an infringement offence which, as noted earlier, would always be the case. In essence, the effect of the wording of the Cabinet decision is to set the infringement fee at a flat rate for all offences of $5,000 for a carrier of a craft or $2,500 for a person in charge.

Could a sliding scale of fees be an option?

49. The Department considered a sliding scale similar to the health and safety infringement regime, where fee levels are calculated on a case-by-case basis according to certain factors (such as harm, or ease of compliance). The Department concluded it would be hard to quantify the harm a particular offence had created when this is not immediately apparent or quantifiable. Additionally, given the volume of offences for some airlines, a sliding scale could be administratively burdensome and complex.

Analysis of the options

50. Each of the four options was analysed against the five criteria for setting the infringement fees in regulations. Table Six provides a summary of the findings.

Table Six: options considered against five criteria for infringement fees

<table>
<tr><th>Criteria for each infringement fee</th><th>Option 1</th><th>Option 2</th><th>Option 3</th><th>Option 4</th></tr>
<tr><td rowspan="2">Signals the seriousness of each offence and the potential harm it could cause</td><td>Yes – offences at the more significant end of the scale attract the highest fee allowed in legislation. Offences of lesser seriousness attract lower fees.</td><td>Mostly. More serious offences attract a higher fee and less serious offences a lower fee. However, the higher fee is not set at the maximum allowed in the 2009 Act, which undermines the ability to signal the seriousness of the offence.

A very low fee is set for failure to check an outward ticket or for provision and access to PNR data – this essentially undermines these obligations being infringement offences.</td><td rowspan="2">N/A</td><td rowspan="2">No – all offences appear to be the most serious as all are set at the maximum allowed in legislation. Setting the fee at the maximum level in the 2009 Act of $5,000 would be disproportionate to the risk presented by a passenger not having an outward ticket.</td></tr>
<tr><td colspan="2">Particular instances of some offences vary in seriousness, and so such offences have been ranked as Tier B in recognition of this variance. Refer to paragraphs 40 and 41 for more discussion.</td></tr>
<tr><td rowspan="2">Proportionate to the offence</td><td>Yes for Tier A and C offences. The maximum fee signals the seriousness of Tier A offences</td><td>No - $3,000 is not as proportionate to the seriousness of the most significant offences as the maximum fee would be.</td><td rowspan="2">No</td><td rowspan="2">Setting the level of the fee at the maximum allowed in legislation for 'failure to comply' offences would appear disproportionate and unfair, when the majority of them are not of the highest</td></tr>
<tr><td colspan="2">Because particular instances of some offences will vary in seriousness, it is difficult to set a fee</td></tr>
</table>

Criteria for each infringement fee	Option 1	Option 2	Option 3	Option 4
	that will be proportionate to each and every instance of the offence. Such offences have been ranked as Tier B in recognition of this variance. Refer to paragraphs 40 and 41 for more discussion.			degree of seriousness.
Encourages compliance through deterrent effect	Yes	Yes, though to a lesser degree than for options 1 or 4.	No, as the infringement regime cannot be implemented if the fees are not prescribed in regulations	Yes – very high incentive to comply
Each fee is consistent with fees for offences of similar degrees of seriousness	Yes	For some offences, except for those related to PNR for which a very low fee is set	N/A	No – all offences attract the same fee, regardless of the seriousness of the offence
Accounts for complexity in compliance	Yes – obligations which impose the most administration on airlines are set lower	Yes – obligations which impose the most administration on airlines are set lower	N/A	No – all fees set at the same level
The impact on carriers is reasonable compared to the impact of the problem[12]	Yes Total cost incurred across all airlines for estimated number of offences is estimated at $1,461,610 Cost per arrival is estimated at $0.31	Yes Total cost incurred across all airlines for estimated number of offences is estimated at $1,323,443 Cost per arrival is estimated at $0.28	No Total cost incurred across all airlines would be $0 No cost per arrival	No Total cost incurred across all airlines for estimated number of offences is estimated at $7,915,000 Cost per arrival is estimated at $1.70

Assessing the deterrent effect

51. A deterrent effect will be created by establishing an infringement fee regime and issuing infringement notices. Setting fees at the maximum allowed in legislation signals those offences that are considered the most serious.

52. The Department found no way of effectively calculating how incremental changes in the fee level would either increase or decrease deterrence. It was assumed that any gradations would need to be significantly different to have notable effects (for instance, doubling or halving an infringement fee). However, significantly altering the level of the fee to such a degree would raise issues of whether the fee was proportionate to the seriousness of the offence.

Assessing the impacts of the options on aircraft

53. The Department extrapolated the number and type of offences that would have been committed by all airlines in the year October 2010 – September 2011.[13] It calculated these figures by using both records of offences detected through the portal in the period March – September 2011, and offences recorded at the border through manual referrals to Immigration New Zealand for airlines not on the portal yet. The extrapolation provides an estimate of 1,583 offences during the period. Less than one percent of these offences would be those considered most significant (failure to

[12] The calculation of cost per arrival is described in paragraph 53. The costs assume no improvement in airline compliance levels.

check that the person had the required travel documentation, and the failure to comply with a directive that the person should not board).

54. The approximate cost for airlines per arrival was assessed for each option, by calculating the total fees incurred under each option (according to the fee levels the option sets for each offence), and then dividing this total by the number of arrivals for the period October 2010-September 2011 (4,650,410 people).

55. The estimated cost per arrival assumed a baseline where rates of offending remained constant. However, the following caveats and points must be borne in mind, as the cost will likely be much lower:

- The costs assume an infringement notice is issued in every instance. In reality, carriers may have a reasonable excuse, or other forms of enforcement would be more appropriate, such as training or warning letters (in some circumstances, however, prosecution would be more appropriate, but also more costly).
- it would be unusual for rates of non-compliance to remain steady, given an infringement regime would provide incentives for carriers to increase compliance.
- some offences could be rectified with relatively simple systems changes or training, notably for the failure to provide APP data[14] and checking for an outward ticket; or by advising passengers to be aware of immigration requirements for travel to New Zealand; or by decreasing human error. Assuming these changes decreased offending by 25 percent for offences related to APP and outward ticket checks, the cost on the airlines from non-compliance would be as shown in Table Seven.

Table Seven: potential cost per passenger to airlines from infringement fees if compliance improved

Cost per passenger	Option 1	Option 2	Option 3	Option 4
If compliance does not increase (refer bottom row of Table Five)	$0.31	$0.28	$0	$1.70
If 25% decrease in non-compliance	$0.23	$0.21	$0	$1.27

- where a carrier commits multiple offences for one passenger or one planeload, each and every offence is liable for an infringement fee.
- airlines with already high compliance rates would face lower costs per arrival.

56. The cost per arrival is considered reasonable. Airlines receive an estimated average of $500 from fares per passenger flying one way to or from New Zealand (this figure accounts for the large percentage of trans-Tasman travel).

Impacts on private and non-commercial aircraft

57. It is unknown what level of costs could be imposed on carriers that are not airlines, and on persons in charge where the craft has no owner, charterer or agent in New Zealand. In the years 2010 and 2011, approximately 34,000 people are estimated to have arrived by an aircraft that was not an airline. These carriers would include private jets and planes, chartered aircraft and military

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[13] Offences relating to failure to wait for a boarding directive are highly infrequent and are not included here. Offences relating to PNR data are not currently recorded (as noted earlier) and are also not included here.

[14] For the particular airline, the offending related to multiple cases where one family member's passport was swiped through the passport reader for each family member, rather than each family member's passport being swiped individually.

aircraft.[15] Their operating costs, the costs of them to comply with carrier obligations and their financial benefit (if any) from bringing people to New Zealand will vary widely.

58. Additionally, under the 2009 Act, the only obligation that applies to non-commercial craft (such as a private craft) is that of checking a person has the required travel documentation to enter New Zealand. Records show compliance with this obligation appears to be very high.

Additional but marginal costs and impacts of the infringement regime

59. Airlines will face impacts from administering the infringement process. These impacts would include processing of notices, system changes and training. These costs should be marginal – the main impact would be the 'hassle' (that is, minor opportunity costs in time and resources). Legal costs may be incurred in challenging infringement notices but the portal has been designed to provide opportunity for airlines to 'show cause' for an alleged offence, and for there to be a dialogue between the Department and an airline before an infringement notice is issued.

60. Airlines should already have processes and systems in place to increase compliance (for example, staff training) and to investigate offences that are detected to ensure they learn from their mistakes. One airline stated it had cost $15,000 to put in a system to alert check-in staff when a passport had been read twice or multiple times (to prevent airlines using one passport to check in more than one person).

[**INFORMATION WITHHELD UNDER SECTION 9(2)(b)(ii) OF THE OFFICIAL INFORMATION ACT 1982**].

61. The Department has incurred costs from setting up a portal and unit to administer the infringement regime. The Infringement Unit and portal are operated from baselines. The Department will receive no direct financial benefit from infringement fees as they will be paid directly into the Crown Consolidated Account.

62. The unit, which was set up in September 2011, is staffed with three full-time immigration officers and a manager. The staff and resources required are expected to decrease as compliance rates increase as intended. Immigration officers will develop working relationships with airlines that will enable them to determine the most optimal enforcement tool to use to increase compliance (which may not be infringement notices in some circumstances).

63. It is the Department's assessment that a three-tiered system will not impose any additional administrative costs in comparison to having a single fee for all offences. Immigration officers will not have to determine what level of fee to apply when a carrier or person in charge commits an offence and is found liable for an infringement notice, because each offence will have a fee prescribed in regulations.

Preferred option

64. The Department's preferred option is Option 1 because the option best meets the criteria. The proposed fees are proportionate and consistent. They are set at a level that provides sufficient deterrent effect and they signal which offences are considered the most serious. The proposed fees take into account that some obligations are more or less difficult than others to comply with. The proposed fees impose a reasonable cost on carriers, one that will diminish as carriers improve

[15] New Zealand is highly unlikely to issue an infringement notice to a military carrier.

[16] [**INFORMATION WITHHELD UNDER SECTION 9(2)(b)(ii) OF THE OFFICIAL INFORMATION ACT 1982**].

their compliance with their obligations that are already in force. Further, the proposed fees align with the Ministry of Justice's guidelines, as do the criteria they were analysed against. The proposed fees do not exceed $1,000 except for the most serious offences.

65. The estimated cost to airlines per annum from Option One shown in Table Six is $1,461, 610 – but this is subject to the extensive caveats listed in paragraph 54. This estimated cost should be balanced against the potential tangible and intangible costs incurred on New Zealand from the arrival and potential entry of inadmissible people (as listed in paragraphs 15 to 17 and Tables One and Two).

66. It is proposed that the fee for the offence of failing to check that a passenger holds evidence of an outward ticket is deferred until July 2014. The deferral will allow further analysis on how the Department can assist airlines to comply with this obligation, given the increased use of electronic booking and the challenges this presents in checking for an outward ticket.

Consultation

Stakeholders consulted and key feedback

Airlines

67. The Department has consulted the Board of Airlines Representatives New Zealand (BARNZ) on behalf of its member airlines, and also non-BARNZ affiliated airlines. They were consulted on the proposed fees and the operational policy, by way of two consultation documents and several meetings. The main comments on the fee levels provided through submissions are summarised below in Table Eight, with a response from the Department to each point. Responses on operational matters are only included where directly relevant to the fee levels.

Table Eight: summary of airline comments at consultation, and response

Points raised	Departmental response
None of the offences should attract the maximum fee provided in the 2009 Act for carriers ($5,000) from the outset of the infringement regime. They were unaware of the 2006 Cabinet decision but considered that the current proposals had given too much credence to the decision in 2006 to set some fees at $5,000. Setting the fee at the maximum from the outset suggests 'revenue-gathering' and a 'big stick approach'. The maximum fee does not acknowledge airlines' attempts to comply or the issues airlines face with compliance. The maximum fee should instead be set at $3,000.	The maximum fee signals which offences are considered the most serious and provides an appropriate deterrent effect. It is appropriate to set a fee at the maximum level where the offence is of a significant nature; other regimes in New Zealand do this. The 2006 Cabinet decision was not determinative in setting the proposed fees, but rather was instructive. There are no intentions to set the fee at the maximum in order to increase revenue to the Crown. The Department receives no financial benefit from the fees. It is not difficult to comply with the obligations to: • check a person has a valid and acceptable visa and passport • not board a person who New Zealand has directed should not board the plane. A fee of $3,000 does not adequately signal how serious the most significant offences are.
Offences that are committed intentionally should be fined at a higher level than those which were accidents (and for which no fee might be appropriate).	The infringement offences are strict liability in nature, and intention cannot be taken into account when setting the fees.
When the outcome of the offence is not serious, a lower fee, or no fee, should be imposed.	The infringement regime is a risk mitigation tool. Basing the level or application of fees on outcomes would undermine this. Further, outcomes are not always immediately apparent (for example, costs could be incurred on New Zealand at a later date if an airline brings someone to New Zealand who was not eligible to

Points raised	Departmental response
	travel here but crosses the border – refer Table One and Two)
The fee for PNR related offences should be set at $0 because PNR offences often relate to systems issue. There should not be PNR-related infringement offences in the 2009 Act. Non-compliant airlines should instead be prosecuted. PNR related offences should be removed from the 2009 Act once the 'push' system (as described in Appendix One) becomes the required system for PNR provision for all airlines.	Provision of, and access to, PNR data is likely to become standardised soon (through the 'push' system), mitigating systems issues. The 2009 Act provides a reasonable excuse defence for PNR-related offences. It is not desirable in principle to set a fee at zero. The carrier infringement regime project is not reviewing whether breaches of certain obligations should be infringement offences. It will still be necessary to have PNR related infringement offences once 'push' is the standard system for cases where airlines fail to use the 'push' system.
There should be no fee, or a very low fee ($100 proposed for an airline), for a failure to check a passenger has evidence of an outward ticket, because it is too logistically difficult to check, and the person is likely to present no risk. There should be no infringement offence for failure to check for evidence of an outward ticket.	The proposed fee has been set at the lowest level of all proposed fees, to account for the lower level of seriousness of the offence. Cabinet agreement will be sought for the fee for this offence to not come into force until 1 July 2014 so that, in the interim, the Department can consider how to assist airlines to comply. Some airlines have set up systems to make checking easier. Some passengers who require an outward ticket do present a risk, most notably of overstaying and/or working illegally to pay for their passage home. The outward ticket requirement is one means of mitigating this risk. Failing to check for an outward ticket is an offence under the 2009 Act and is not open for discussion.
The proposed fees fail to consider the operating environment for airlines, in regard to outward tickets, and the obligation to provide APP information. New Zealand should provide a threshold system for the offence related to the non-provision of APP data, as Australia has. The proposed fee for this offence should be set on the basis of having a threshold system.	For a response on outward tickets, refer to the row above. For a response on the threshold model, refer to paragraphs 36 and 37.
The infringement notice should include fields for port of uplift and date of offence	The 2009 Act requires that the infringement notice give sufficient detail to fairly inform the person of the time, place and nature of the offence (refer section 362). This detail would include the port of uplift and date of offence where appropriate. The port of uplift and date of the offence can be contentious when passengers are checked through for multiple legs of travel, and due to time zone differences.

Government departments

68. The Department consulted the following agencies and received advice, as shown in Table Nine. The Department's response is also given.

Table Nine: summary of advice received from other government agencies, and how this is reflected in the fees

Agency	Advice	Departmental response
Ministry of Justice	The proposed fees and notices should align with the *Policy Guidelines for Infringement Regimes*	The proposals align with the *Policy Guidelines*
	It is appropriate to set a fee at the maximum level where the offence is of a significant nature; other regimes in New Zealand have done this. The maximum fee signals which offences are considered the most egregious and provides an appropriate deterrent effect.	The Department sought the Ministry's advice in response to the airlines' views on the maximum fee (refer Table Eight)
	Airlines had suggested the fee for one offence could be set at zero. The Ministry questioned whether it would be appropriate to set a fee at zero, as if there is no penalty there may be questions as to why the behaviour is even an offence, and therefore what message is being given about the behaviour.	The Department had already come to the same conclusion as the Ministry but sought the Ministry's advice for confirmation. None of the proposals has a fee set at zero.
	Advice on how other infringement fees have been set; suggestion to study other legislation that enables infringement regimes and the associated policies.	The Department investigated other regimes and compared the proposed infringement fees with fees set for offences under other legislation e.g. offences related to failure to comply with safety-related obligations or failure to check documentation under the Civil Aviation Act 1990 and the Land Transport (Offences and Penalties) Regulations 1999. The Department considers the proposed fees are consistent with 'like' offences under this other legislation (which were in the range of $1,500 - $12,000).
Ministry of Economic Development	If carriers are compliant with their existing obligations, then they face only minimal compliance costs from the infringement regime due to any systems changes, training and so forth needed to administer infringement notices	The Department came to the same conclusion.
The Treasury	If the infringement regime is not completely successful in reducing non-compliance, there will be a cost to carriers and individual operators in the form of fines. When analysing the options, the Department needs to fully consider all of the potential impacts and costs, including the cost of the fines. We suggest that current non-compliance rates provide a reasonable upper-bound estimate for these likely costs.	Carriers' obligations already exist and no new obligations are being proposed in the regulations; therefore there is no new compliance cost from the proposals. It is granted 100% compliance is extremely difficult, but carriers should be striving for the highest compliance rate possible. The Department will continue its efforts to support airlines to become compliant, through training and advice.
Civil Aviation Authority, Ministry of Transport, New Zealand Customs Service	Technical advice on how their infringement regimes were developed and operated. Information given on fee levels (but not how they were set).	Advice was very informative but was more pertinent to implementing the regime than setting the fees.
Departments of Internal Affairs and of the Prime Minister and Cabinet; Maritime New Zealand, Ministry of Foreign Affairs and Trade, Office of the Privacy Commissioner.	No comment or no substantive feedback received in response to draft proposals.	

Agency	Advice	Departmental response
Agencies in Australia, Canada, the United Kingdom and United States who developed and operate infringement regimes	How their infringement regimes are operated and what they seek to achieve. **[INFORMATION WITHHELD UNDER SECTION 6(b)(i) OF THE OFFICIAL INFORMATION ACT 1982]**	The information was useful for operational purposes but not always applicable to the New Zealand context in terms of legislation or border operational policies. The US, Canada and UK apply the same fee to commercial carriers, non-commercial and persons in charge. Australia applies a different rate. Little information was given on how the fees were set. Option 3, to not set infringement fees in regulations, would make New Zealand appear out of sync with these other countries, which all have an infringement regime. This could create reputational risks for New Zealand in seeming to not be committed to improving carriers' compliance with immigration- and security- related obligations.

Conclusions and recommendations

69. The proposed infringement fees will encourage carriers, particularly airlines, to comply with their immigration-related obligations that are already in force. The proposed fees are proportionate and consistent to the level of seriousness of each infringement offence, and comply with Ministry of Justice guidelines. The impact on carriers will be minimal, and will reduce further if they abide by their obligations and make some process changes that are considered to impose only a low level of costs.

70. The benefits accrued to New Zealand from having an infringement regime outweigh the cost to New Zealand and carriers.

Implementation

Implementing the proposed option(s)

Infringement fees and notices

71. The proposals will form the basis of drafting instructions for regulations for infringement fees, and the infringement and reminder notices. The carrier infringement regime is currently scheduled to be implemented on 1 July 2012, taking into account airlines' concerns to have an adequate lead-in time and to avoid the peak season of air travel (October – February). If the proposed carrier infringement fees are agreed by Cabinet in February 2012, the schedule for the regulations project going forward is:

Stage/process	Timeframe
Drafting instructions issued to Parliamentary Counsel Office (PCO)	February/March 2012
Draft regulations considered by Cabinet Legislative Committee (LEG)	April/May 2012
Cabinet agreement sought for the draft regulations	May 2012
Gazetted (28 day rule)	June 2012

Stage/process	Timeframe
Regulations in force[17]	1 July 2012

72. Once the changes to Regulations have been gazetted, the Department will publicise the changes. This will involve informing airlines and updating the Immigration New Zealand internet web pages for carriers.

73. The Department plans to implement the infringement regime using an operational policy model where each offence is considered on a case-by-case basis, as the 2009 Act provides that an immigration officer *may* issue an infringement notice where they have reasonable grounds to believe a carrier has committed an infringement offence. Immigration officers will consider the circumstances of the offence, and respond in a fair, proportionate, consistent and equitable manner. Other enforcement tools, such as education, training or prosecution, may be chosen instead of an infringement notice.

74. Where a carrier commits simultaneous offences for the same passenger or flight, infringement notices could be issued in respect of each and every offence. Consideration will be given to the compliance cost on the carrier if multiple notices are issued.

Monitoring

75. Infringement offences and the operation of the infringement regime will be monitored as part of regular monthly reporting to airlines on their performance. This reporting will be regularly reviewed to assess if the levels of the infringement fees have resulted in increased compliance by carriers, and are providing an adequate deterrent effect. The Department will implement internal processes to ensure a consistent and fair approach is upheld and these will be reviewed regularly. The Department will review and report back to the Minister of Immigration on the operation of the infringement regime, and its effect on compliance rates, by July 2014.

[17] Except for the infringement fee for the failure to check a passenger has evidence of an outward ticket, which is proposed would come into force on 1 July 2014.

Appendix One

Advance Passenger Processing (APP)

76. The APP system enables validation of a passenger's entitlement to travel to New Zealand to be completed at check-in. The carrier or their agent checks the passenger's travel documentation at check-in and then must enter this information accurately into the APP system.

77. APP then provides the airline with a real-time boarding directive confirming whether or not to allow the passenger to board, or to only do so if the passenger meets certain conditions; for example, for those foreign nationals who are not required to have a visa to travel to New Zealand (under a 'visa waiver' policy for visitors), a condition is imposed that they must show evidence of an outward ticket.

78. The APP system is linked to various databases, including the New Zealand immigration database (known as AMS). Immigration New Zealand can place risk alerts in AMS against individuals who are known to present a specific and significant risk to New Zealand's border security and the integrity of the immigration system (or where there are significant concerns about the person). To prevent such individuals from travelling to New Zealand, the alert will trigger the APP system to give a directive that the passenger should not be allowed to board.

79. APP also links to a regional database for lost and stolen passports. When passengers or crew check in with a passport that has been reported as lost or stolen, APP will direct that that person should not be allowed to board and that the airline must ring Immigration New Zealand's 24 hour Immigration Border Operations Centre immediately.

Passenger Name Record (PNR)

80. The PNR system provides information on a passenger's identity and travel movements. PNR is used for proactive risk profiling to prevent inadmissible people from travelling to New Zealand, and to prepare for intervention ahead of arrival. It is also used to investigate alleged breaches of carrier obligations.

81. Currently airlines provide PNR information through a model known as 'pull', whereby government departments extract the prescribed information from airlines' databases. The 'pull' model creates problems because airlines' computer programmes and systems are not standardised, may be incompatible with New Zealand border agencies' systems and are subject to privacy and security constraints. Further, system failures on both sides are not uncommon. Border agencies are considering requiring airlines instead to move to a standardised 'push' model, through which airlines would send ('push') the prescribed information to New Zealand border agencies. The 'push' model should make compliance with PNR obligations easier for airlines.

Appendix Two

Infringement fee levels in other Five Country Conference countries

82. The table below shows the infringement fee levels in the other Five Country Conference partner countries. The United States, United Kingdom and Canada impose the same fee to commercial carriers, non-commercial and persons in charge. Australia does not require craft other than commercial airlines to provide Advance Passenger Processing (APP) data and so private craft are not liable for infringement fees related to APP.

83. It is important to note that the number and nature of their carrier obligations varies to those in New Zealand legislation, reflecting the differences in immigration and border security processes between countries.

[INFORMATION WITHHELD UNDER SECTION 6(b)(i) OF THE OFFICIAL INFORMATION ACT 1982]

Factor / offence	Failure to check person had valid required travel documentation (passport, visa)	Failure to comply with obligation to provide Passenger Name Record data and access to it	Failure to check and provide Advance Passenger Processing (APP) data	Failure to comply with APP directive, including check for outward ticket
Australia	AUS$5,000 for a body corporate, $3,000 for a natural person	AUS$6,600	AUS$1,100 (body corporate only)	Not an infringement offence
UK	UK£2,000	No infringement fee **[INFORMATION WITHHELD UNDER SECTION 6(b)(i) OF THE OFFICIAL INFORMATION ACT 1982**]	No infringement fee **[INFORMATION WITHHELD UNDER SECTION 6(b)(i) OF THE OFFICIAL INFORMATION ACT 1982**]	Not an infringement offence
Canada	CAN$3,200	CAN$3,000	CAN$3,000	Not an infringement offence
USA	US$3,300	No infringement fee but provision of PNR is required to fly into the USA	US$5,000	Not an infringement offence