



## Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021

Cindy Kiro, Governor-General

### Order in Council

At Wellington this 26th day of October 2021

Present:

The Right Hon Jacinda Ardern presiding in Council

This order is made under section 140AA of the Biosecurity Act 1993—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Biosecurity made after consultation in accordance with section 140AA(4) of that Act.

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## Order

### 1 Title

This order is the Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021.

### 2 Commencement

This order comes into force on 25 November 2021.

### 3 Principal order

This order amends the Biosecurity (Border Processing Levy) Order 2015.

### 4 Clause 3 amended (Interpretation)

(1) In clause 3, definition of **levy period**, replace paragraph (b) with:

- (b) a period (whether decided under clause 5 or clause 8A)—
  - (i) beginning—
    - (A) with the start of the day that immediately follows the close of the special levy period or the close of a levy period under this paragraph; or
    - (B) at a later date selected by the Director-General; and
  - (ii) ending with a day, selected by the Director-General, that is not more than 36 months after the period begins

(2) In clause 3, definition of **special levy period**, replace “30 June 2022” with “30 November 2021”.

### 5 Clause 5 amended (Levy rates for periods other than special levy period)

In clause 5(6), after “unanticipated circumstances”, insert “, and clause 8A, which provides that new rates of levy may be set and a new levy period may be commenced before the current levy period has ended because of unanticipated circumstances”.

### 6 Clause 6 amended (Levy rate for travellers other than cruise ship travellers)

In clause 6(3), replace “\$8.80” with “\$17.77”.

### 7 Clause 7 amended (Levy rate for cruise ship travellers)

In clause 7(3), replace “\$17.90” with “\$11.11”.

### 8 New clause 8A inserted (Setting new levy rates and commencing new levy period before current levy period has ended)

After clause 8, insert:

**8A Setting new levy rates and commencing new levy period before current levy period has ended**

- (1) This clause applies if the Director-General is satisfied that it is appropriate to set a new rate of levy and commence a new levy period before the current levy period has ended because of circumstances that were not anticipated by the Director-General when—
  - (a) setting the rate of levy and deciding the duration of the current levy period under clause 5(2); or
  - (b) last resetting the rate of levy for the current levy period under clause 8(2).
- (2) The Director-General may set a new rate for both of the rates of levy payable under this order whether or not the requirements in subclause (1) are met in both cases.
- (3) The Director-General must, as soon as is reasonably practicable,—
  - (a) decide the date at the end of which the current levy period will end; and
  - (b) decide the duration of the new levy period; and
  - (c) set a new rate of levy for 1 or both rates of levy for the new levy period in accordance with clause 6 or 7 (as the case may be); and
  - (d) by notice in the *Gazette*, notify—
    - (i) the end date for the current levy period; and
    - (ii) the duration of the new levy period; and
    - (iii) the rates of levy that will apply in the new levy period (whether changed under this clause or not).
- (4) A rate of levy set under this clause is exclusive of goods and services tax.
- (5) A levy period decided and a rate of levy set under this clause are to be treated as if they were decided or set under clause 5.

Michael Webster,  
Clerk of the Executive Council.

**Explanatory note**

*This note is not part of the order, but is intended to indicate its general effect.*

This order, which comes into force on 25 November 2021, amends the Biosecurity (Border Processing Levy) Order 2015 (the **principal order**).

*Clause 4* amends the definition of levy period to give flexibility to the Director-General of the Ministry for Primary Industries to set the start and end dates of a levy period (subject to a maximum of 36 months for each levy period). *Clause 4* also

amends the definition of special levy period to change the end date of the special levy period that is currently running. The special levy period will now end on 30 November 2021.

*Clauses 6 and 7* amend the maximum levy rates in clauses 6 and 7 of the principal order. The bringing to close of the current special levy period and the changes to the maximum levy rates will allow the Director-General to set new levy rates for the new levy period beginning on 1 December 2021.

*Clause 8* inserts *new clause 8A* into the principal order. This will allow the Director-General to, in the future, bring a current levy period to a close, begin a new levy period, and set new levy rates to apply in the new levy period. The Director-General will be able to do so in the same circumstances that apply under clause 8 of the principal order, which permits the resetting of a levy rate in a current levy period. The circumstances must have arisen after a levy rate was last set or reset and not have been anticipated by the Director-General at that time. However, under *new clause 8A*, the Director-General may set a new rate for both of the levy rates payable under the principal order whether or not the requirements in that clause are met in both cases. This is intended to give greater flexibility, for example, to reflect rapid changes in passenger numbers as a consequence of the effects of COVID-19.

### Cost recovery impact assessment

The Ministry for Primary Industries produced a cost recovery impact assessment on 7 September 2021 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this cost recovery impact assessment can be found at—

- <https://www.mpi.govt.nz/legal/regulatory-impact-statements/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 28 October 2021.

This order is administered by the Ministry for Primary Industries.