



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce & Consumer Affairs
Title of Cabinet paper	Support for travel businesses to recover New Zealand consumer funds	Date to be published	19 October 2020

List of documents that have been proactively released

Date	Title	Author
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Information redacted

NO

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet

Support for travel businesses to recover New Zealand consumer funds

Proposal

1. This paper seeks agreement to establish a COVID-19 consumer travel reimbursement scheme to support the recovery of refunds and credits owed to New Zealand consumers by overseas travel suppliers. The scheme would seek to achieve this by issuing grants to New Zealand-based travel agencies for recovery of these funds.

Relation to Government Priorities

2. This proposal is part of the government's measures to cushion New Zealanders against the impacts of COVID-19.

Executive Summary

3. Border restrictions and other impacts of the COVID-19 pandemic have resulted in widespread cancellation of international travel bookings held by New Zealanders.
4. There is approximately **\$690 million** held by travel suppliers from bookings made through New Zealand-based travel agents.
5. Travel agents and wholesalers are working to recover refunds and credits owed to New Zealand consumers, but are under severe financial pressure. Insolvencies have already begun and more are imminent. At least some of the outstanding funds are unlikely to be recovered in the absence of a travel agency or wholesaler. This is due to the complexity of international travel supply chains and the contractual uncertainty that may result from the loss of an intermediary.
6. I propose to provide a consumer travel reimbursement scheme (**the scheme**) to assist the return of refunds and credits to New Zealand consumers via travel agents. The scheme would pay travel agencies 7.5 per cent of all refunds and 5 per cent of credits successfully secured on behalf of New Zealand consumers.
7. The scheme would be funded at a total capped cost of \$47.6 million. This would be funded by new departmental and non-departmental output expense appropriations for 2020/21, with the increase met from Imprest Supply. These expenses would be charged against the COVID-19 Response and Recovery Fund established as part of Budget 2020.
8. Given the recent expiry of wages subsidies, it is important that the scheme is established as soon as practicable. This will limit further travel agency insolvencies and maximise consumer access to refunds and credits.

Background

9. Border restrictions and other impacts of the COVID-19 pandemic have resulted in widespread cancellation of international travel bookings held by New Zealanders.
10. MBIE officials have worked with travel agencies to reach a shared view of the amount of consumer funds outstanding. They estimate that there is approximately \$690 million held by travel suppliers from bookings made through travel agents. The table below provides a breakdown of outstanding consumer funds, as at mid-August, based on information provided by travel agencies:

	Refunds pending (\$million)	Credits (\$million)	Future bookings (\$million)	Totals (\$million)
Airlines	145	217	50	413
Other suppliers	131	79	65	276
Totals	277	297	115	688

Note: Rows and columns do not add up to totals, as figures have been rounded to the nearest \$1m

11. Travel agents and wholesalers are working to recover refunds and credits owed to New Zealand consumers, but are under severe financial pressure. These businesses have been operating with near-zero revenue since March 2020 when significant restrictions on international travel came into force. With the expiry of wage subsidies, many travel agencies are facing imminent insolvency. I am concerned that if a large scale collapse of the travel agency industry occurs, consumers will lose access to a significant portion of their outstanding funds.
12. While a sizeable portion of the outstanding funds would likely remain available to consumers in the event that some travel agencies collapse, these refunds and credits would become considerably more difficult for consumers to access. At least some of the outstanding funds are unlikely to be recovered in the absence of a travel agency or New Zealand-based wholesaler. This is due to the complexity of international travel supply chains and the contractual uncertainty that may result from the loss of an intermediary.
13. To illustrate some of the consequences of travel agent failure, STA Travel (NZ) Limited entered voluntary administration on Monday 24 August after its Swiss parent company STA Travel Holding AG filed for insolvency. Deloitte have been appointed as the administrators of the New Zealand company and have released a document stating that they are “not currently in a position to offer any cash refunds for cancelled trips” nor to “honour any credit for cancelled trips.”
14. Deloitte suggest that travellers with cancelled bookings through STA Travel should contact the individual travel suppliers or their credit card companies to attempt to retrieve any outstanding funds directly. In the unlikely event that some travellers’ funds are made available to them by the administrators, I expect that this would be many months in the future.

15. Travel agencies and suppliers have requested government support to enable them to continue processing refunds and credits for consumers.

Proposed Support Package

16. I propose to provide a consumer travel reimbursement scheme (**the scheme**) to assist the return of refunds and credits to New Zealand consumers via travel agents. The scheme would pay travel agencies 7.5 per cent of all refunds and 5 per cent of credits successfully secured on behalf of New Zealand consumers.
17. This scheme would be funded at a total capped cost of \$47.6 million (see 'Financial Implications' below). As travel agencies and suppliers would only be paid for refunds and credits secured, actual amounts paid out may fall short of this.
18. The 7.5 per cent payment rate is based on travel agencies' estimates of the costs of recovering refunds from overseas. Travel agencies have indicated that they have already severely cut back their costs, and laid off significant numbers of staff.
19. The lower 5 per cent payment rate for credits is intended to provide incentives for travel agents to favour refunds over credits, where there is an option to do so, given the uncertain and generally lower value of credits to consumers.

Scheme implementation

20. Travel agencies and wholesalers would apply to join the scheme and on acceptance would be paid a percentage of the value of their 'eligible transactions'.
21. I propose that the final definition of eligible transactions will be jointly agreed by the Ministers of Finance and Commerce and Consumer Affairs. For travel agencies these are envisaged to comprise three types of transactions:
 - 21.1. refunds paid to travellers, to which all of the following applies:
 - 21.1.1. previously paid to a travel agency by a travel supplier
 - 21.1.2. processed by the travel agency by staff predominantly located in New Zealand
 - 21.1.3. the traveller is an individual ordinarily resident in New Zealand, or a body corporate incorporated in New Zealand
 - 21.2. credits, upon notification to travellers, to which all of the following applies:
 - 21.2.1. previously confirmed to the travel agency by a travel supplier
 - 21.2.2. has been processed by the travel agency by staff predominantly located in New Zealand
 - 21.2.3. the traveller is an individual ordinarily resident in New Zealand, or a body corporate incorporated in New Zealand

- 21.2.4.the traveller is notified of the amount of the credit and that it is available to be rebooked at the convenience of the traveller
- 21.2.5.the traveller has not been previously notified of the credit
- 21.3. rebooking of a traveller using credits to which all of the following applies:
 - 21.3.1.the credit was issued by a travel supplier in respect of a travel booking previously made by the travel agency that has been cancelled
 - 21.3.2.the rebooking was processed by the travel agency by staff predominantly located in New Zealand
 - 21.3.3.the traveller is an individual ordinarily resident in New Zealand, or a body corporate incorporated in New Zealand.
- 22. In each case the refunded or credited booking must have been made with that supplier through the travel agency before 31 August 2020, and only one payment can be made in respect of a given booking (and any previous booking that it replaced).
- 23. Analogous definitions will apply for New Zealand based travel wholesalers and suppliers, but at this stage it is envisaged that only refunds and credits recovered for consumers from unrelated overseas suppliers would be covered. For example, a travel wholesaler who arranges travel with a number of overseas tour operators and cruise ship lines would be covered. However, a New Zealand branch or subsidiary of an airline or international tour operator would not be paid for recovering refunds and credits from its parent company. It is expected to be less costly to recover funds from related parties. There are also risks around the scope of the scheme if payments were made generally to suppliers, which could include airlines with New Zealand offices etc.
- 24. Documentation setting out eligible transactions and claiming grants would be filed monthly by travel agents, wholesalers and suppliers, and payment would be in arrears.
- 25. Given the time it will take to establish the scheme and the likelihood of further imminent travel business insolvencies, the first payment would be made upon the travel agency joining the scheme in respect of refunds, credits and rebookings secured over the previous month. This will help to provide cash flow for these businesses and increase the likelihood that they are able to continue processing refunds and credits for consumers. These refunds and credits are included in the estimate of outstanding transactions above (which is based on amounts outstanding in mid-August), and so have already been taken into account in the estimated scheme cost.
- 26. It is likely that the four major travel agency groups and franchises (Flight Centre, House of Travel, Helloworld and First Travel) along with the Travel Agent Association of New Zealand (TAANZ) would join the scheme as groups, with administration and

payment distribution carried out centrally by the head offices of those organisations. These groups would also provide their own third-party audit reports.

27. Some independent travel agencies and wholesalers will not be captured by any of these groups. These businesses will be dealing with a relatively small proportion of the outstanding consumer funds, although these could still be spread across a number of individual businesses.
28. There is a risk that audit and compliance will not be sufficiently robust because the Crown will be relying on contractual arrangements rather than legislative measures for these matters.
29. I propose that the Minister of Finance and the Minister of Commerce and Consumer Affairs jointly agree the further detailed design of the scheme. This will include the date from which refunds and credits become eligible transactions, the form of the agreements between government and travel businesses, systems for accepting and verifying claims under the scheme and the audit process.

Alternatives Considered

30. Some alternative approaches considered were:
 - 30.1. relying on existing government support mechanisms
 - 30.2. up-front grants based on likely travel agency costs. Travel agencies originally sought \$180 million in grants to fund operations through to March 2021
 - 30.3. grants based on a higher or lower percentage of refunds and credits secured
 - 30.4. a new loan scheme
 - 30.5. a statutory right for travel agencies to charge consumers for securing refunds and credits.

Existing government support mechanisms

31. With the expiry of wage subsidies, travel agencies and outbound travel suppliers have been largely confined to accessing loan schemes such as Business Finance Guarantee Scheme and the Small Business Cashflow Scheme. However, I understand that travel agencies have exhausted their options for obtaining support through these schemes. They also consider they have already reached their maximum sustainable levels of debt.
32. Travel agencies and outbound suppliers have generally not been able to make use of existing tourism recovery funding, which has been focussed on maintaining key inbound tourism assets. For example, the Strategic Tourism Assets Protection Programme (STAPP) was targeted at strategic assets such as nationally or internationally recognised attractions to New Zealand or regions of New Zealand.

Other grant payment options

33. Up-front grants to travel agencies based on their likely costs would be simpler to administer than the proposed support scheme, as they would not be directly linked to refunds and credits secured. However, up-front grants were ruled out on the basis that funding would not be well targeted, and would not provide confidence that New Zealand consumer funds were being successfully recovered. This approach was also likely to support the travel agent industry to an extent that was inconsistent with the treatment of other industries facing financial difficulties as a result of COVID-19.
34. Under the current, percentage based scheme design, other grant payment rates considered were:
 - 34.1. A flat rate of 7.5 per cent on refunds and credits recovered. This option was favoured by travel agencies. It would be more expensive than the differential rate proposed, and would provide weaker incentives to recover refunds over credits.
 - 34.2. A flat rate of 4 per cent of refunds and credits recovered. This would be less costly than the option proposed. However, there is a significant risk that this option would not sufficiently fund the recovery of refunds and credits, and would be likely to result in less recovery of consumer funds due to higher rates of travel agency insolvencies. Travel agencies argued that a rate of 4 per cent or lower would result in the 'imminent collapse of the travel agency sector and leave consumers' funds at significant risk.'

A new loan scheme

35. Loans would have the advantage of being a lower cost to the Crown, as well as encouraging travel agencies most requiring support to 'self-select', rather than a blanket grant scheme. However, as noted above, travel agencies considered they had already reached their maximum sustainable levels of debt.

Regulatory options such as a statutory right to charge consumers

36. Another option considered was the introduction of a statutory right for travel agents to be paid for the recovery of refunds, credit confirmation and rebookings (with the agreement of the consumer), notwithstanding terms to the contrary in contracts between travel agencies and consumers. This would be a 'beneficiary pays' model.
37. This option was ruled out due to consumers' apparent unwillingness to pay cancellation and refund fees. Some travel agencies that do have a contractual right to charge cancellation fees have received significant pressure to not charge them, and many have stopped doing so. It is unclear whether travel agencies would enforce any statutory charging right that they did have.
38. I also consider that creating a statutory provision would create an unacceptable delay, due to having to wait until the formation of a new parliament and the passage of legislation. This delay would likely threaten the solvency of many travel agencies and consumer reimbursement in the interim.

Timeline for Scheme

39. Given the expiry of wage subsidies, it is important that the scheme is established as soon as practicable to limit travel agency insolvencies that are likely to occur in the near future. As highlighted by STA Travel becoming insolvent, the industry is nearing a crisis point and without prompt intervention I anticipate mounting numbers of consumers experiencing difficulty in accessing their funds.
40. MBIE advises that the scheme could take 7–10 weeks to begin making payments, and payments may be staggered and further delayed by limited processing capacity. There is a risk of a high number of travel agency insolvencies over this period.
41. The incentives provided by scheme may mitigate this by encouraging other travel agencies (particularly travel agencies within the same group/franchise) to take on the task of retrieving consumers' funds from travel agencies that have become insolvent, but it is unclear to what extent this will occur in practice.

Financial Implications

42. The proposed scheme would be largely funded by a new non-departmental output expense appropriation for 2020/21, with the increase met from Imprest Supply. These expenses would be charged against the COVID-19 Response and Recovery Fund established as part of Budget 2020.
43. Based on the payment rates for the grants proposed, the total cost of recovering \$690 million in consumer refunds and credits is estimated at \$47.6 million:

Travel agencies	\$43.0 million
Travel wholesalers and suppliers	\$4.2 million
Scheme administration costs	\$0.415 million
Total	\$47.615 million

44. The scheme administration costs would cover 3 FTEs for departmental staff to process claims and disburse funds to travel businesses, a communications strategy and database build.
45. Only refunds and credits for bookings made prior to 31 August 2020 would be eligible for grant payments. This means that the amount of recoveries and the above expenses are capped based on the value of existing bookings.
46. Actual recovery of consumer refunds and credits in 2020/21 may fall short of the \$47.6 million amount, due to the timing of booking cancellations – some existing bookings may not be cancelled until 2021/22 – and the likelihood that some credits are not rebooked. I propose that the Minister of Finance and the Minister of Commerce and Consumer Affairs be authorised to transfer any unspent funding into subsequent financial years.

Impact Analysis

47. The impact analysis requirements do not apply to this proposal, because it is solely a request to authorise spending in an Appropriation Bill or an Imprest Supply Bill.

Population Implications

48. Support for travel agencies to recover consumer funds is likely to provide indirect benefits for women and those living in regional New Zealand. The travel agency sector notes that it has continued to expand into regional New Zealand, while other industries have withdrawn to urban centres and overseas. The travel agency industry has also pointed out that its workforce comprises over 70 per cent women, and that women fill over 60 per cent of business owner and leadership roles in the industry.

Human Rights

49. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

50. This paper was prepared by the Ministry of Business, Innovation and Employment. The Department of Prime Minister and Cabinet and Treasury have been consulted.
51. The proposals in this paper were developed in consultation with travel agencies, and outbound travel suppliers and wholesalers.
52. Officials have also discussed the proposals at a high level with Consumer NZ, who were broadly supportive of funding that would help secure refunds and credits for consumers. Consumer NZ noted that there was an issue at present with travel agencies not properly informing consumers about the options available to them – e.g. securing credits in situations where a refund could be obtained. The higher incentives in the proposed scheme for refunds over credits will help to address this issue.

Communications

53. The Minister of Commerce and Consumer Affairs will announce the scheme once final detailed design decisions have been made by joint Ministers.

Proactive Release

54. This paper will be published on MBIE's web site, subject to withholdings as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **note** that travel agents are working to recover an estimated \$690 million in refunds and credits owed to New Zealand consumers;

2. **note** that a significant portion of these outstanding consumer funds are unlikely to be recovered in the absence of support from a travel business, and that these businesses are currently under severe financial stress that puts consumer access to these funds at risk;
3. **agree** to establish a COVID-19 consumer travel refund scheme that pays travel businesses 7.5 per cent of refunds paid to consumers and 5 per cent of credits confirmed or rebooked for the benefit of consumers
4. **authorise** the Minister of Finance and the Minister of Commerce and Consumer Affairs to make additional decisions around the design and implementation of the scheme, including:
 - 4.1. the final definitions of the refunds and credits that are eligible for a payment under the scheme, including the start date from which those refunds and credits become eligible for payment;
 - 4.2. systems for accepting and verifying claims under the scheme and the audit process;
 - 4.3. the form of the agreements between government and travel businesses;

Financial implications

5. **agree** to establish the following new appropriation(s):

Vote	Appropriation Minister	Title	Type	Scope
Business, Science and Innovation	Minister of Commerce and Consumer Affairs	COVID-19 consumer travel reimbursement scheme	Non-Departmental Output Expense	This appropriation is limited to providing grant assistance and incentive payments for travel businesses to secure consumer refunds and credits for travel services booked prior to 31 August 2020 that were not able to be taken up by consumers

				due to the impacts of COVID-19.
Business, Science and Innovation	Minister of Commerce and Consumer Affairs	Administration of the COVID-19 consumer travel reimbursement scheme	Departmental Output Expense	This appropriation is limited to administration and ancillary services related to the COVID-19 consumer travel reimbursement scheme.

6. **approve** the following changes to appropriations to give effect to the policy decision in recommendation 3 above, with a corresponding impact on the operating balance and net core Crown debt:

	\$m – increase/(decrease)				
Vote Business, Science and Innovation	2020/21	2021/22	2022/23	2023/24	2024/25 & Outyears
Minister of Commerce and Consumer Affairs					
Non-departmental Output Expense: COVID-19 Consumer Travel Reimbursement Scheme	47.200	-	-	-	-
Departmental Output Expense Administration of the COVID-19 consumer travel reimbursement scheme (funded by Revenue Crown)	0.415	-	-	-	-
Total	47.615	-	-	-	-

7. **agree** that the proposed change to appropriations for 2020/21 above be included in the 2020/21 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;

8. **agree** that the expenses incurred in paragraph 6 above be charged against the COVID-19 Response and Recovery Fund established as part of Budget 2020;
9. **authorise** the Minister of Finance and the Minister of Commerce and Consumer Affairs to:
 - 9.1. adjust the scope of the appropriation as necessary to address issues that arise in the further detailed design of the scheme;
 - 9.2. transfer any unspent funding into subsequent financial years.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs