



Regulatory Impact Statement: Modernising Customs' cost recovery regime

15 August 2024

Coversheet

Purpose of Document

Decision sought:	Analysis produced to inform Cabinet decisions to amend the Customs and Excise Act 2018 (the C&E Act) to provide for the making of levies to recover costs incurred by Customs in carrying out its functions over goods
Advising agencies:	New Zealand Customs Service (Customs)
Proposing Ministers:	Hon Casey Costello, Minister of Customs
Date finalised:	15 August 2024

Problem Definition

The C&E Act 2018 allows for cost recovery for the functions undertaken with respect to the management of goods crossing New Zealand's border. Customs is undertaking a review of the fees it uses to cost recover, including the fee structure, funding sources and fee rates. The current fee regime has some cross-subsidies which means some fee payers bear a higher portion of the costs than they should.

Because it is based on charging fees, the current regime requires 'line of sight' between the fee charged and the costs being recovered. The review has identified cost recovery options that would be better implemented through a levy regime, which allows for charges for particular functions to be made or for charges to be levied on a class of entities. One option being considered is for a new commercial vessel charge which could not be set using the existing fee regime.

The current fee regime is limited in what it can do by public sector guidance (as defined by Treasury¹ and the Auditor General²) and therefore lacks the flexibility required to implement cost recovery policy for Customs' goods functions where for equity or efficiency reasons certain costs should be recovered from all users of a function or service.

The C&E Act needs to be amended to include a levy making power to address these problems.

Executive Summary

Customs' goods management functions are essential to facilitating trade, supporting supply chains, protecting New Zealand from harm, and upholding New Zealand's international obligations. The costs of these functions are currently recovered through Customs' goods fees.

We propose to allow for the recovery of costs for Customs' goods management functions through levies when such an approach would give a more fair and balanced outcome. Levies will better align with Customs' existing cost recovery regime for travellers, and with comparable levy powers in the Biosecurity Act 1993.

¹ See [Guidelines for Setting Charges in the Public Sector | The Treasury New Zealand](#)

² See [Setting and administering fees and levies for cost recovery: Good practice guide — Office of the Auditor-General New Zealand \(oag.parliament.nz\)](#)

A levy making power in the C&E Act will be required. This power would enable secondary legislation to make levies to recover the costs incurred in goods crossing New Zealand's borders. A levy making power would also be necessary to implement an option for change under the goods cost recovery review (a new commercial vessel charge). The fee making power in the C&E Act would be retained for where a fee is the appropriate cost recovery mechanism.

There are two options in this analysis:

- to retain the status quo provision in the C&E Act (section 409(1)(b)) which only provides for 'fees or other charges' to recover Customs costs related to goods, or
- to amend the Act to introduce a levy regime for goods (including the power to charge levies for craft).

The options in this RIS only relate to the design of the enabling provisions in the C&E Act – which authorise the types of charges that can be used to recover costs. There is no direct cost impact on fee payers associated with the options in this RIS. Secondary legislation would be needed to introduce any new type of charge (whether fee or levy), or to change the existing fee rates (as is required now). Consultation over the making of any levies and fees would be required under the proposed levy making power.

The Minister of Customs is intending to report to Cabinet with proposals for inclusion in a public consultation document in the second half of 2024. The outcomes of the review of goods fees will not be implemented before mid-2025.

The proposed amendments to the C&E Act to create a levy making power itself are not expected to be controversial. The changes will provide a more robust basis for cost recovery and bring Customs into line with recommended public sector guidance for cost recovery design.

Limitations and Constraints on Analysis

There has been no consultation or engagement with stakeholders on these options. There will be the opportunity for public input during the Select Committee consideration of the Bill.

The preferred option is to create an enabling provision. A feature of this option is that consultation and stakeholder engagement would need to be undertaken before any levies were set using the levy making provisions.

Despite this limitation it is considered that there is sufficient analysis of the impacts of the options to support Ministers' decision making.

Responsible Manager(s) (completed by relevant manager)

Approved for upload, 15 August 2024

Paula Strickson
Acting Manager, Revenue Policy
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Quality Assurance (completed by QA panel)

Reviewing Agency: New Zealand Customs Service Regulatory Impact Analysis Panel

Panel Assessment & Comment:

This Regulatory Impact Assessment has been assessed as partially meeting the RIA criteria. This is because there has been no consultation with stakeholders. The Panel notes that should Ministers agree to amend the Act (preferred option) that there will be an opportunity for public input during Select Committee consideration of the Bill. The preferred option is to create an enabling provision in the Act, and a feature of the provision would be a requirement for consultation to be undertaken with affected parties as part of the levy making process. Despite this limitation it is considered that there is sufficient analysis of the impacts of the options to support Ministers' decision making.

Section 1: Diagnosing the policy problem

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

The C&E Act provides legal authority to cost recover using existing goods fees

1. There are currently five fees relating to goods which are incurred when documents are submitted. These fees have differentiated rates based on the Customs value of the goods, their Secure Export Scheme³ status and whether they have been transported by air or sea.⁴ For example an Import Entry Transaction Fee must be paid by an importer who imports a consignment of goods that has a Customs value over \$1,000 and is required to lodge an Import Entry in relation to those goods to Customs.
2. The current empowering provision in the C&E Act for goods cost recovery is section 409(1)(b). This section provides for secondary legislation (regulations) to be made to prescribe fees or charges to recover the costs and expenses incurred by Customs carrying out its functions under the C&E Act in relation to the importation or exportation of goods.
3. 'Goods' has a broad definition in the C&E Act, meaning all kinds of movable personal property, including animals (subject to some specific inclusions and exclusions relating to objectionable publications and prohibited imports and exports). Ships (or other vessels) are included in this definition but are not expressly included in the goods fees set currently.⁵
4. If a levy making power is not created, there will have to be trade-offs made with fee setting under the current settings. The result will be some cross-subsidies will continue and the system of cost recovery will not be as robust, fair or efficient as it could be.

³ The Secure Exports Scheme meets global supply chain security standards and is a voluntary arrangement between exporters and Customs. The scheme helps New Zealand exporters minimise customs delays at international borders and get priority in recovering from trade disruptions.

⁴ The existing goods fees comprise of the Import Entry Transaction Fee, Inward Cargo Transaction Fee, Export Entry Transaction Fee, Outward Cargo Transaction Fee-Outward cargo report, Outward Cargo Transaction Fee-Cargo report.

⁵ Subject to sections 95(3) to (6), 96(11) and (12), 97(10) and (11), and 243(5) of the Act.

What is the policy problem or opportunity?

The current fee regime will mean costs recovered will increasingly not align with effective cost recovery practice, leading to inequitable outcomes

5. Fees are different from levies as they require 'line of sight' between the fee charged and the costs being recovered. This requirement for line of sight between the fee charged and the costs it is recovering will increasingly make it difficult to set fees equitably. Any existing cross-subsidisation is likely to persist meaning those inequities will continue over time.
6. The problem impacts persons or entities that submit reports to Customs as required under the Act in order for goods to enter or leave New Zealand. Allowing a levy as an alternative to a fee is not likely to increase the scope or number of persons and entities impacted by cost recovery. What it would enable is for costs to be recovered in a way that is more equitable and efficient, for example by better managing the risk of cross-subsidies or the over or under recovery of costs.
7. The preferred option to allow for levy making for cost recovery does not disproportionately affect any population groups.

What objectives are sought in relation to the policy problem?

8. The primary objective is to modernise Customs' goods cost recovery regime in the C&E Act, so that it provides an agile and future-proofed structure for cost recovery charges to be made, as appropriate, in secondary legislation. The policy objective is that the legislation ensures that cost recovery can be configured in ways that reduce the risk of cross-subsidies and to enable the replacement of Crown funding with third party funding where justified under cost recovery policy, and to match revenues with costs going forward.
9. Levies are a more appropriate mechanism for cost recovery going forward, given some of the changes that are being proposed in the review of goods fees. Levies are charged to a class of people or group rather than individuals; and levies are made for defined purposes or functions, rather than fees which generally recover the costs of a specific good or service.
10. For Customs' costs related to goods, levies would better support the recovery of costs that are spread across classes of payers, such as the costs of Customs' rummage (search) of vessels. Not all craft are rummaged, but under the potential new commercial vessel charge, ship operators would be levied to meet the costs of rummage capability regardless of whether their ship has been rummaged. The commercial vessel charge therefore has more of the features of a levy (not a fee).⁶
11. The secondary objective is to ensure Customs' cost recovery regime for goods aligns with public sector guidance on cost recovery design features.

⁶ The proposed payers are risk exacerbators (ship operators), a class of people is being charged rather than individuals, and for some costs (such as rummage) there may be no 'direct line of sight' (or immediate connection) between costs that will be recovered and the commercial shippers that would incur the fee.

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

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

12. The criteria that will be used to compare the options to the status quo are:

- Does the option support Customs cost recovery principles of:
 - **Equity:** Customs' cost recovery regime supports costs being recovered in a way that is equitable (fair). We will generally source funding for our services from those that use them.
 - **Efficiency:** Customs will deliver high service standards at a sustainable cost.
 - **Justifiability:** Customs will only recover the costs of delivering the service. The costs recovered through fees or levies reasonably relate to the goods or services Customs is charging the fees or levies for. Where possible, it means eliminating cross-subsidisation.
 - **Transparency:** Customs will provide information about our funding decisions, including costs and charges.
- **Agility:** The option enables the legal authority for Customs' cost recovery regime to be agile, so the regime can meet potential future needs for recovering costs incurred by Customs managing goods and commercial vessels, for a defined purpose.
- **Consistency:** The options for cost recovery are consistent across the C&E Act for recovering costs related to people, goods and commercial vessels, similar to other relevant border legislation (the Biosecurity Act) and aligned with public sector guidance.

What scope will options be considered within?

13. There are no feasible non-regulatory options. Options for cost recovery charges must be provided for in primary legislation.⁷

What options are being considered?

Option One – Status Quo

14. The C&E Act currently enables secondary legislation to make fees or other charges that are payable to Customs to meet its costs incurred in carrying out its functions under the C&E Act that relate to the importation or exportation of goods. Levies are not provided for as an option for recovering goods-related costs.
15. Fees and charges under the existing regime must be closely linked to the cost they are recovering. It is difficult to charge a fee to a class of people, activities or vessels using the existing fee regime. This may lead to some costs not being recovered from the person or vessel that creates the risk and for existing cross-subsidies to persist over time.

⁷ See LDAC Legislation Guidelines: [The Legislation Design and Advisory Committee \(Idac.org.nz\)](https://www.idac.org.nz/)

Option Two – Introduce a levy regime in the C&E Act for functions related to goods, similar to Customs’ existing levy regime for travellers

16. The C&E Act would provide for levies to be made to recover Customs’ costs related to its functions under the C&E Act relating to the importation or exportation of goods. It would also allow for cost recovery of a wider range of costs relating to Customs’ integrated Goods Management System, including costs not directly related to importation and exportation of goods (for example, activities taken in other jurisdictions or offshore to prevent risk goods coming to New Zealand).
17. The features of the proposed levy making power would be based on those already in the C&E Act for making levies for travellers (the Border Processing Levies or BPL), including:
 - requiring consultation to be undertaken before any levy is made
 - specifying a cost allocation process for calculating the levy or levies
 - requiring the use of memorandum accounts to manage the collection of revenue between levy periods
 - setting out periodic review requirements (currently every three years for the BPL)
 - requiring publication of reports on revenue and expenditure (likely annually)
 - allowing for the use of collection agents (where appropriate) and specifying the rules for these to operate.

How do the options compare to the status quo?

Criteria	Option One: Fees or other charges to recover Customs' costs related to goods	Option Two: Introduce a levy regime to recover the majority of Customs' costs related to goods
<p>Does the option support Customs' cost recovery principles:</p> <ul style="list-style-type: none"> equity transparency efficiency justifiability? 	<p style="text-align: center;">+</p> <p>The current fees are set with these principles in mind within the constraints of the fee regime itself.</p> <p>The fee setting provision is fit for purpose for certain cost recovery scenarios.</p>	<p style="text-align: center;">++</p> <p>The ability to charge levies would support greater transparency and justifiability as there would be a better ability for future levies to remove cross-subsidisation, through charges being spread across a broader class of levy payers. Levies allow for recovering costs when there may be no direct line of sight between the cost of activities and the activity.</p> <p style="color: red;">9(2)(h)</p>
<p>Agility: The option enables the legal authority for Customs' cost recovery regime to be agile, so that the regime can meet potential future needs for recovering costs incurred by Customs managing goods and commercial vessels, for a defined purpose.</p>	<p style="text-align: center;">+</p> <p>The current fees allow for some flexibility but requiring a direct line of sight to the activity being charged limits the ability to adjust over time.</p>	<p style="text-align: center;">++</p> <p>Levies are charged to a class of people or group rather than individuals; and levies are made for defined purposes or functions, rather than fees which generally recover the costs of a specific good or service and require a clear line of sight between the cost and the fee.</p>
<p>Consistency: The options for cost recovery are consistent across the C&E Act for recovering costs related to people, goods and commercial vessels, similar to other relevant border legislation (the Biosecurity Act) and aligned with public sector guidance.</p>	<p style="text-align: center;">0</p> <p>The current fee regime is not well aligned with the other regimes in the C&E Act 2018, other border agencies' legislation or goods cost recovery practice.</p>	<p style="text-align: center;">++</p> <p>While fees would continue to be used if appropriate, enabling levies for goods cost recovery would align better the existing levy regime for travellers and with the levy regime under the Biosecurity Act. Public sector guidance supports levies as the appropriate mechanism when a class of people are charged and the output is for a specified purpose (rather than a defined good or service).</p>
<p>Overall assessment</p>	<p style="text-align: center;">+</p>	<p style="text-align: center;">++ (preferred)</p>

Option two (legislative amendment) is preferred

18. The Legislation Design and Advisory Committee's (LDAC) Legislation Guidelines state that for secondary legislation to prescribe a fee or levy an Act must include an empowering provision that specifically authorises this. The C&E Act does not currently include an empowering provision that enables Customs to prescribe levies in relation to goods.
19. Building a levy regime into the C&E Act will enable the Minister of Customs to recommend secondary legislation to make levies for goods (including vessels). These levies will be able to be set in a way that better aligns with public sector guidance on appropriate options for cost recovery. It would also align with the Biosecurity Act which is the other principal border legislation containing a cost recovery regime over imported and exported goods. The Biosecurity Act allows for levies, fees, and other types of charges.⁸
20. The existing ability to set fees or other charges to recover costs related to Customs' goods functions will be retained, for situations where a fee is the appropriate cost recovery mechanism.

Section 3: Delivering an option

How will the new arrangements be implemented?

A change in the Statute is required

21. The new arrangements would come into effect through amendments to the C&E Act. However, there would be no implementation implications until changes are made in secondary legislation to create new levy making powers via regulations.

To make new levies and fees, regulations would be required

22. Under a feature proposed for the levy setting power, implementation of any changes to levy (or fee) rates, or to the structure of fees and/or levies would require public consultation and stakeholder engagement on proposed levies or fees. Each would require a separate and corresponding Regulatory Impact Analysis to be completed at the time to support Ministerial decision making.

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

23. Requirements associated with the preferred option would require Customs to implement systems and publish summaries to assist monitor revenue and expenditure to ensure that significant deficits and surpluses do not arise. Any surpluses or deficits that do arise would be required to be managed through memorandum accounts in line with instructions from the Minister of Finance and the Treasury.
24. Customs currently publishes annual reports on the performance of the levy regime applying to travellers, and we propose equivalent public reporting would be required for any levies set under this preferred option. This is part of an overall requirement for transparency around costs and revenue management which provides a strong incentive to manage costs.

⁸ See section 135 'Options for cost recovery' and section 137 'Levies' of the Biosecurity Act 1993.

25. If any collection agents were to be used, then the regulation would require appropriate reporting and audit processes to be put in place to ensure the collection agents are undertaking their activities in a clear and transparent way, and audit requirements would be required to ensure that was the case.
26. As part of its review of goods clearance Customs is consulting over a proposal to implement a three-yearly review cycle for goods cost recovery. Whatever regular review cycle arises out of that consultation would be applied to any levies made under this preferred option.