

Departmental Disclosure Statement

Border Processing (Arrivals and Departures) Levy Bill
--

The departmental disclosure statement for a Government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for Primary Industries and New Zealand Customs Service.

The Ministry for Primary Industries and New Zealand Customs Service certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

10 May 2015

Contents

Contents..... 2

Part One: General Policy Statement 3

Part Two: Background Material and Policy Information 4

Part Three: Testing of Legislative Content..... 6

Part Four: Significant Legislative Features 9

Part One: General Policy Statement

This Bill provides for amendments to the Biosecurity Act 1993 and Customs and Excise Act 1996 to impose a levy to fund the direct and indirect costs of functions performed by the Ministry for Primary Industries (MPI) and New Zealand Customs Service (Customs) for the purpose of identifying and managing the risks relating to processing the arrival and departure of passengers and crew in and from New Zealand.

Border processing costs that are subject to the levy include profiling and risk assessment activities before arrival at the border, processing activities to verify compliance at the border, as well as some activities post-border, where relevant to identifying and managing risk.

The objective of this Bill is to ensure that funding arrangements for MPI and Customs are sustainable and the costs associated with the delivery of these activities are borne by those that directly benefit, or give rise to the risks.

The Bill specifies that the levy will be imposed, the purpose of the levy, and other provisions necessary to impose the levy. The levy rate and the basis for calculating the levy, details of costs to be recovered and other provisions relating to the administration of the levy will be specified through Order in Council.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
<p>A Regulatory Impact Statement (RIS) was not prepared in support of the decision to implement the policy. However, the regulatory impact of imposing a levy and alternative options was set out at a high level in the Cabinet paper proposing its introduction.</p> <p>A consultation RIS will be prepared and submitted for consideration by Cabinet when approval is sought in late May 2015 to release a public consultation document on levy design options. The substantive RIA elements will also be incorporated into the consultation document.</p> <p>A final RIS will be prepared and submitted for consideration when Cabinet decisions are sought, following consultation, on the final levy design in October 2015. This RIS will be quality assured by the Regulatory Impact Analysis Team (RIAT) in the Treasury.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
<p>Officials from MPI and Customs have considered the potential impacts on visitor numbers from the levy.</p> <p>Officials consider that at the rate it is likely to be set at, the proposed levy is unlikely to have anything more than a very minimal impact on the number of travellers visiting New Zealand. It would be a very small component of not only the cost of an international airline ticket (especially for long haul flights) but also of overall travel costs.</p> <p>It is likely that economic conditions in travellers' home countries and fluctuations in the exchange rate would be more significant than price increases for travellers' decisions on whether to visit New Zealand.</p> <p>Any impact would be more pronounced for the lower priced, short haul Trans-Tasman market than for long haul travel. Officials will undertake further analysis to quantify the precise impacts, and the results of this work will inform the final levy design, including the level of the levy. This analysis will also be incorporated in the RIS.</p>	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The size of the cost to travellers will be the amount of the levy multiplied by the number of travellers. Because it is likely that the levy will be charged when a ticket for travel is bought rather than when the travel occurs, not all trips in 2015/16 or 2016/17 will be subject to the levy. This is because tickets are purchased some weeks or months in advance. Costs to travellers are expected to be approximately \$25.9 million in 2015/16 and \$78.1 million in 2016/17, rising to \$104.5 million in 2018/19. The initial cost of the levy will be offset by the savings to the Crown (and costs to taxpayers) of border processing activities which will no longer be Crown-funded.</p> <p>Analysis indicates that demand for international travel is inelastic. Overall, impacts on visitor numbers (and therefore tourism spending) are expected to be low. Some segments of the market (visitors visiting friends and relatives, travellers on budget airlines, short haul flights) have a greater elasticity, but the levy is still not expected to have a significant impact on visitors from this market. Further quantitative work on precise impacts is being completed, and this will inform the final design of the levy, including the level of levy.</p> <p>Costs to implement and administer are expected to be minor, as it is expected that the levy will be able to leverage off existing collection mechanisms for other levies.</p> <p>The benefits of the levy include: cost recovery for passenger and crew border processing is more consistent with cost recovery principles (namely, it is equitable that the costs of border processing activities are borne by those who benefit from them, or who give rise to the risks that require delivery of the functions). It will also ensure funding arrangements for MPI and Customs are sustainable.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>MPI and Customs do not expect there to be any significant non-compliance that would impact substantively on the costs and benefits of the proposal. Further analysis of any impact on costs and benefits from levels of compliance and regulator effort will be incorporated into the RIS.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
--

MPI and Customs have worked with their internal staff (including Legal and International Policy areas) and confirmed with the Ministry of Foreign Affairs and Trade that the policy is consistent with New Zealand's international obligations.

These international obligations include the Convention on International Civil Aviation. The Convention includes expectations that any charges should not be differentiated by the nationality of the carrier, or charged in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon. Parties to the convention are able to file a difference to the relevant annex. This is an administrative requirement and would not prevent the levy being implemented.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

MPI and Customs have worked with their internal Policy and Legal departments and do not consider that the Bill will have implications on the rights and interests of Maori protected by the Treaty of Waitangi and common law.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The BORA Vetting team at the Ministry of Justice has advised the Attorney-General that the Bill is consistent with the rights and freedoms affirmed in the New Zealand Bill Of Rights Act.
--

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill applies the following existing offence in the Biosecurity Act to the new levy. The Bill creates new offences in the Customs and Excise Act in sections 288H and 288I.</p> <p>The Biosecurity offences are:</p> <ul style="list-style-type: none"> - Failure to keep statement, accounts or records of leviable activity (section 154N(15)) - Failure to maintain statements, accounts or records of leviable activity (section 154N(16)) - Making of a false or misleading return (section 154O(7)) - Failure to update information supplied in advance (section 154NA) - Failure to comply with a requirement to produce statements, accounts or records for auditor inspection (section 154N(12)). <p>The Customs and Excise offences are:</p> <ul style="list-style-type: none"> - Failure to keep statement, accounts or records of leviable activity (s288H(1)) - Fails to make a return or declaration (s288H(2)) - Making of a false or misleading return (s288H(3)) - Failure to comply with requirements imposed under s288G(3)(a) (auditing and recordkeeping provisions) 	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was provided with a copy of the final legislation and were satisfied the provisions were appropriate.</p> <p>The differences in levels of penalties between the new Customs and Excise Act offences and the existing Biosecurity Act offences are because the level of the penalties for the new Customs and Excise Act offences have been made consistent with similar offences already in the Customs and Excise Act. The new Customs and Excise Act offences are mirrored on the relevant Biosecurity Act offences however.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
<p>The Bill will provide for the Order in Council to specify the making of returns for the purpose of enabling or determining the amounts of levy payable and the keeping of such records. However, these details will not include personal passenger details that are additional to the details already collected and held by both agencies.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
Public consultation will be undertaken on levy design options prior to Cabinet making final decisions on design of the levy.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
The levy details are, however, based in a large part on existing Biosecurity Act 1993 levy provisions.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
The levy is not proposed to be greater than cost recovery and there will be a clear relation to the costs of the functions performed. The funds collected will be held in a Trust Account to be used solely for funding the costs of the levied services. Given this, officials consider the levy is not in the nature of tax.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
For both the Biosecurity Act 1993 and Customs and Excise Act 1996 amendments, the Bill adopts the current strict liability offence under section 154N(12), (15) and (16) of the Biosecurity Act. In the case of the Customs and Excise Act 1996 amendments, the Bill also expressly provides that the offence under section 288H(2) of the Bill is strict liability (failure to make return). These provisions are necessary to maintain consistency with current provisions in the Biosecurity Act (s154N) Mitigation is available by the defences available in s154N(3) and (4) of the Biosecurity Act and s 288I of the Bill. The defendant will be better placed to know whether there is any defence for a failure to keep, maintain or provide required records of leviable activity and requiring the defendant to prove this defence is not an undue burden.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The Bill creates a power to, in the Levy order, exempt persons or classes of persons from the obligation to pay the levy. This is due to the nature of collection being inappropriate or inefficient from some classes of person (such as guests of Government). The classes of exempt persons will be decided through the design and consultation process.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The relevant power is in sections 140AA(3) and s 140AB (Biosecurity Act Amendment) and 288B(3) and 288C (Customs and Excise Act Amendment), and grants the power to create an Order in Council to specify the detail of the levy.</p> <p>It is appropriate to have this power delegated, as the levy contains matters of detail and procedure that will be regularly reviewed and amended for which it is not appropriate to use Parliamentary time.</p> <p>The safeguards on the use of this power would be the procedural safeguards that apply to Orders in Council, including being subject to Cabinet scrutiny, consultation requirements, and the fact it will be a disallowable instrument under the Legislation Act 2012.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO