

Departmental Disclosure Statement

Customs (Levies and Other Matters) Amendment 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 New Zealand Customs Service, with input from Inland Revenue and the Ministry for the Environment.

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

6 November 2024

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Part One: General Policy Statement

This Bill is an omnibus bill that contains amendments to legislation administered by the New Zealand Customs Service (**Customs**), the Inland Revenue Department, and the Ministry for the Environment (**MfE**). The policy objective of the Bill is to improve revenue collection on goods by making collection fairer and more effective. The improvements will be made to Customs' cost recovery charges, Goods and Services Tax (**GST**) and MfE's product stewardship fees. To do that, the Bill contains three key changes outlined below.

Part 1 amends the Customs and Excise Act 2018 (the **C&E Act**) to require specified persons to pay a levy to the chief executive of Customs where there is a levy order in place. The Bill inserts *new section 414A*, which enables the Governor-General to make Orders in Council, on the recommendation of the Minister of Customs, establishing levies for the purpose of recovering costs incurred by Customs in, or for the purpose of, performing its functions in relation to the management of goods. The Bill also amends existing sections of the C&E Act that apply to levy orders made under the existing section 413, so that those provisions also apply to levy orders made under the *new section 414A*. Those provisions relate to trust accounts, audits, auditors, and offences.

Part 2 amends the Waste Minimisation Act 2008 (the **WMA**). The Bill aims to enable efficient cost recovery of product stewardship fees under the WMA. The WMA provides regulatory options to reduce and manage waste products, including through the accreditation and regulation of product stewardship schemes. These product stewardship provisions include the ability to set fees payable for the management of a product. This Bill amends the WMA to clarify that the Governor-General may, by Order in Council, specify other persons to be responsible for collecting a product stewardship fee. The Bill also amends the WMA to provide that, if the chief executive of Customs is designated as a person responsible for collecting a fee under the WMA, then the provisions of the C&E Act that apply to the collection of duties will apply to the collection of that fee as if it was a duty under the C&E Act.

Part 3 amends the Goods and Services Tax Act 1985 to ensure that imported goods valued over \$1,000 (for which GST is collected by Customs) receive the same GST treatment as other goods. The amendments achieve this by broadening the criteria under which an importer can get a GST refund for returned goods (ie, when the imported goods are sent back to the overseas supplier). A further change will give people up to 12 months (or longer if the goods are under warranty for a longer period) to claim GST back when returning goods for any reason to allow GST to be refunded when goods are returned overseas within a reasonable time frame. The changes will also ensure that GST is only paid once on goods that are repaired or replaced under warranty and subsequently reimported (currently, people receiving replacement goods would have to pay twice and claim a refund of the first payment).

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?	YES
<p>For Part 1, the following reports have informed the policy to be given effect by this Bill:</p> <ul style="list-style-type: none">• Setting and administering fees and levies for cost recovery: Good practice guide, the Controller and Auditor-General, August 2021 (https://oag.parliament.nz/2021/fees-and-levies/)• Guidelines for Setting Charges in the Public Sector, The Treasury, April 2017 (https://www.treasury.govt.nz/publications/guide/guidelines-setting-charges-public-sector)• Ministry for Primary Industries Cost Recovery Policy Guidance, August 2018 (https://www.mpi.govt.nz/dmsdocument/30855/direct). <p>For Parts 2 and 3, the main drivers have been driven by the operation of the current systems identifying ways to improve/streamline the systems.</p>	

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?	YES
<p>For Part 1, Regulatory Impact Statement: Modernising Customs' cost recovery regime, the New Zealand Customs Service, 15 August 2024 at https://www.customs.govt.nz/about-us/information-releases/regulatory-impact-statements/</p> <p>Parts 2 and 3 are exempt.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The Regulatory Impact Statement: Modernising Customs' cost recovery regime was reviewed by Customs' Regulatory Impact Analysis (RIA) Panel. Customs' RIA Panel provided the following statement, which was incorporated into the Cabinet paper considered by the Cabinet Economic Policy Committee on 21 August 2024:</p> <p>'The accompanying Regulatory Impact Statement on the option to amend the C&E Act to include a levy making regime has been reviewed by Customs' Regulatory Impact Analysis (RIA) Panel. It has been assessed as partially meeting the RIA criteria. This is because there has been no consultation with stakeholders.</p> <p>The Panel notes that should Ministers agree to amend the Act that there will be an opportunity for public input during select committee consideration of the bill. The proposal is to create an enabling provision in the C&E Act. 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.'</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

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?	NO

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?	YES
<p>The amendments are about allocative fairness and effectiveness:</p> <ul style="list-style-type: none"> • Part 1 is about recovering appropriate levies from those who generate the risks/costs, to ensure they pay an appropriate share of those costs. • Part 2 is about reducing the administrative burden so that the fees are recovered in the most effective and efficient way. • Part 3 gives GST refunds to others who otherwise cannot obtain them (generating a small transfer from Crown Revenue to affected individuals). <p>Analysis on the Bill is available in the Cabinet Economic Policy Committee paper and the Regulatory Impact Statement: Modernising Customs' cost recovery regime which are available at https://www.customs.govt.nz/globalassets/documents/cabinet-material/Omnibus-Bill-to-improve-collection-of-duty-fees-and-levies.pdf</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>For Parts 1 and 3 the proposals will be implemented by Customs existing tools and mechanisms which work effectively to ensure compliance. No particular new efforts will be required.</p> <p>For Part 2 the WMA amendments do not create new obligations, rather they enable options for future regulatory measures.</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?

Careful consideration has been given to whether there are any relevant international obligations. All of the changes are adjustments to existing Acts and no impacts have been identified.

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?

The potential for the amendments to impact Treaty of Waitangi implications has been considered during policy development. No Treaty of Waitangi implications have been identified.

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
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Part 1 of the Bill engages existing offences in the C&E Act related to collection agents' conduct under the existing traveller-related levy regime in the C&E Act (clause 11 of the Bill). Three of the four offences engaged by the Bill are strict liability offences. Strict liability offences limit the right to be presumed innocent until proved guilty according to law, affirmed in section 25(c) of the NZ Bill of Rights Act (NZBORA), because a person can be convicted without the prosecution having to prove a mental element. Customs considers that the limit on this NZBORA right is justified in this regulatory setting because there is a need to provide an incentive for agents who undertake levy collection activities on Customs' behalf to take appropriate actions to support accurate and transparent levy collection. In addition, the collection agent would be best placed to establish absence of fault should they be prosecuted with an offence for failure to keep required statements, accounts or records or make a relevant return, as these are matters primarily within their knowledge.

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at:

http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/

For Parts 2 and 3 of the Bill, no.

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>As outlined in 3.3 above, Part 1 engages four existing offences in the C&E Act relating to the existing levy regime for Customs' traveller-related costs, including three strict liability offences (see clause 11 of the Bill). The offences aim to encourage agents to keep accurate and transparent records about levy collection. The justification for the offences was outlined in the advice to Cabinet.</p> <p>For Parts 2 and 3 of the Bill, no.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>Customs has provided advice to the Ministry of Justice outlining the rationale for engaging the existing offences in the C&E Act for levy collection agents' conduct, in particular to explain the rationale for engaging strict liability offences, given the impact on the right to be presumed innocent (as outlined above in question 3.3). The Ministry of Justice had no outstanding comments in relation to the offence and penalty vet undertaken on the Bill.</p> <p>This question is not applicable to Parts 2 and 3 of the Bill.</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

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?	YES
<p>For Part 1, public consultation on the levy regime to be created by the Bill is intended to be carried out through the select committee process rather than a separate earlier process. A related public consultation process has also recently been held on proposals to improve Customs' existing goods cost recovery fee rates and structure. Public consultation on proposals occurred from September to October 2024: https://www.customs.govt.nz/goods-fees-review. This consultation included a proposal for a new commercial vessel charge which, if progressed, would be required to be implemented as a levy (not a fee). The Bill would need to be in effect before certain proposals, such as the new commercial vessel charge, could be implemented.</p> <p>For Part 2, the amendments introduce an enabling power only. If new regulation is developed, affected parties would be consulted.</p> <p>For Part 3, no consultation has been done as this is a mainly operational change with only positive impacts for affected parties.</p>	

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

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
<p>Part 1 creates a new levy making power to recover costs from levy payers but these are carefully managed to align revenue generated with the relevant costs so does not form the nature of a tax.</p> <p>Part 2 amends an existing fee regime but does not change the nature of the fee.</p> <p>Part 3, no.</p>	

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
<p>Part 1 creates a new levy making power which engages an existing offence regime, including strict liability offences, for any entity appointed to collect the new goods-related levy or levies on behalf of Customs. See clause 11 of the Bill and the responses to questions 3.3 and 3.4.</p> <p>For Parts 2 and 3, no.</p>	

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?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>For Part 1 of the Bill, yes. Part 1 of the Bill creates a new provision empowering the Governor-General to, on the recommendation of the Minister of Customs, make an Order in Council that creates a levy for the purposes of recovering costs incurred by Customs in or for the purposes of performing a legislative function relating to goods management. An Order in Council made under this new provision must prescribe the particulars of the levy, including:</p> <ul style="list-style-type: none"> - the rate of the levy or the basis on which the rate is to be calculated - how the levy rate is to be set - when and how the levy is to be paid - how the rate of levy, and any variation of the rate, is to be notified. <p>The power is necessary to enable a levy or levies to recover Customs' costs related to its goods management functions. For secondary legislation to prescribe a fee or levy, an Act must include an empowering provision that specifically authorises this (Legislation Design and Advisory Committee <i>Legislation Guidelines (2021)</i>).</p> <p>Safeguards that will apply to the power to ensure that it is properly constrained and used appropriately include:</p> <ul style="list-style-type: none"> - limitations on the type of costs that can be recovered: to be recovered, costs must be incurred by Customs in, or for the purpose of, performing a function under the C&E Act or any other legislation relating to goods management; - consultation requirements: the Minister of Customs must, before recommending a levy order be made, consult the persons, representative groups, government departments, and Crown agencies that the Minister considers reasonable and appropriate to consult in the circumstances (clause 6, new section 414A(4)); - provision to prevent recovery of costs funded or recovered elsewhere: under the Bill a levy order must not be made in respect of costs that are otherwise recovered, or otherwise to be recovered under the C&E Act. This means that the scope of Customs' goods management costs to be recovered under a levy order cannot overlap with costs that are recovered elsewhere, for example, through Customs' levy relating to traveller-related costs (the Border Processing Levy) (clause 6, new clause 414A(5)). <p>For Part 2 of the Bill, yes. The Bill amends an existing empowering provision in the WMA to enable regulations to specify a fee collection entity or entities, and if Customs is that entity to enable the collection of fees under the WMA to be treated as if the fees were duties to which the C&E Act applies. The same safeguards apply as currently contained in the WMA; before recommending the making of regulations the Minister must obtain and consider advice of the Waste Advisory Board; and be satisfied that there has been adequate consultation with persons or organisations who may be significantly affected by the regulations; and the benefits expected from implementing the regulations exceed the costs expected from implementing the regulations; and the regulations are consistent with New Zealand international obligations.</p> <p>For Part 3 of the Bill, no.</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