

# **Policing (Cost Recovery) Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The Policing (Cost Recovery) Amendment Bill amends the Policing Act 2008 to enable cost recovery for certain Police services.

At present the Policing Act 2008 does not explicitly enable Police to charge users for any of its services. Currently, most services are funded out of Police's baseline funding and no fee or charge is attached to their provision. Exceptions to this are firearm licensing fees set pursuant to the Arms Act 1983 and willing buyer/willing seller agreements Police has with other agencies, such as the Department of Corrections, which do not require legislation.

Across all of the services Police provides, most services (for example, conducting criminal investigations) are provided for the benefit of the general public on a non-excludable basis, are core police services, and can be defined as public goods.

However, there are other services where there is a degree of private benefit to the user(s) of the service. It is considered appropriate to shift funding for some of these services (or components of services) from general taxation to the specific users or beneficiaries of the service.

Amending the Policing Act 2008 to provide Police with the ability to recover the cost of providing certain services will help Police achieve—

- *efficiency in consumption*: users of certain Police services that deliver primarily private benefits will pay prices that reflect the costs of delivering those services. This should ensure a more efficient allocation of resources, as demand that is not strictly necessary, but which occurs due to a zero nominal price, should be eliminated. Increases in demand for certain services can be better managed because of the additional revenue that will self-fund those services. This avoids placing additional strain on the public purse or shifting resources towards those services at the expense of core policing activities:
- *efficiency in production*: users facing a nominal price will demand high-quality services from Police. This transparency around costs will drive Police to be innovative and seek production efficiencies:
- *resources directed to priority areas*: cost recovery for services that benefit individuals frees up resources for the delivery of front-line and preventative services across the whole community.

Cost recovery by government agencies from other government agencies already occurs and leads to a better allocation of taxpayer resources overall. It leads to greater transparency of the use of public money and agencies consider their use of services more carefully once costs are internalised.

Introducing cost recovery also brings New Zealand in line with international practice. New Zealand Police remains one of the few police services in comparable overseas jurisdictions that does not currently have legislation allowing some degree of cost recovery for certain services.

The Bill introduces a new Part into the Policing Act 2008 which sets out—

- the types of Police services that may be the subject of cost recovery:
- the criteria that cost recovery should comply with. These criteria are drawn from the framework for cost recovery set out in the Treasury and Auditor-General's guidelines for setting

charges in the public sector, and current New Zealand legislation that provides for cost recovery by other agencies. These criteria are—

- *justifiability*: costs should be collected only to meet the reasonable costs (including indirect costs) for the provision or exercise of the relevant service:
- *equity*: the fee or charge for a particular service, or a particular class of services, should generally, and to the extent practicable, be obtained from the users or beneficiaries of the relevant service at a level commensurate with their use of, or benefit from, the service:
- *efficiency*: costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost:
- *transparency*: the manner in which the costs relate to the nature and duration of the service should be clear:
- a requirement that consultation with the persons or organisations (or their representatives) that appear likely to be affected should precede any regulations providing for cost recovery:
- the methods by which costs may be recovered:
- that regulations providing for cost recovery may also provide for exemptions, waivers, and refunds of those fees and charges:
- a new regulation-making power in the Act to enable regulations to be made by Order in Council and on the recommendation of the Minister of Police prescribing fees or charges for specified services provided by New Zealand Police.

Following the passage of this Bill, policing regulations would be introduced for specific services, along with the charging regime for those services. At present the only service being proposed for cost recovery is the Police vetting service.

### **Departmental disclosure statement**

New Zealand Police is required to prepare a disclosure statement to assist with the scrutiny of this Bill. It provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2014&no=217&>

### Regulatory impact statement

New Zealand Police produced a regulatory impact statement on 11 October 2013 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.police.govt.nz/new-zealand-police-miscellaneous-reports>
- <http://www.treasury.govt.nz/publications/information-releases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause and provides that the Act comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* provides that the Act amends the Policing Act 2008 (the **principal Act**).

## Part 1

### Amendments relating to cost recovery

*Clause 4* inserts *new Part 4A* which comprises *new sections 79A to 79G*.

*New section 79A* sets out the purpose of *new Part 4A*.

*New section 79B* provides that the Minister may recommend a cost recovery regulation only if satisfied that the policing service in question is a demand service. **Demand service** is defined in *new section 79B(2)* and *new section 79B(3)* makes it clear that a Police vet is a demand service. For the avoidance of doubt, certain core Police functions are excluded (*new section 79B(4)*).

*New section 79C* sets out the criteria for cost recovery in respect of a demand service. The Minister may recommend a cost recovery regulation if he or she is satisfied with the criteria. Broadly, these

criteria relate to the fairness and reasonableness of the fee or charge itself.

*New section 79D* requires consultation by the Commissioner before the Minister may recommend a cost recovery regulation. More specifically, the Minister must be satisfied that the Commissioner has done everything reasonable that he or she can do to consult those who, in the Commissioner's view, are affected or likely to be affected by the imposition of the fee or charge.

*New section 79E* sets out the methods of cost recovery. These give a range of options for how the fee or charge is set.

*New section 79F* provides that a fee or charge is payable at the time prescribed. *New section 102A(b)* provides that the Governor-General may, by Order in Council, make regulations to this effect.

*New section 79G* provides for exemptions from, or waivers or refunds of, a prescribed fee or charge. *New section 102A(c)* provides that the Governor-General may, by Order in Council, make regulations to this effect. In addition, the Minister may by special direction provide for an exemption, waiver, or refund (*new section 79G(2)*).

## **Part 2**

### **Regulations**

*Clause 5* inserts *new section 102A*. This is the regulation-making power for cost recovery of certain policing services.

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*Hon Anne Tolley*

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Policing (Cost Recovery) Amendment Act **2014**.
- 2 Commencement** 5  
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act**  
This Act amends the Policing Act 2008 (the **principal Act**).
- Part 1** 10  
**Amendments relating to cost recovery**
- 4 New Part 4A inserted**  
After Part 4, insert:
- “Part 4A**  
**“Cost recovery** 15
- “79A Purpose of this Part**  
The purpose of this Part is to enable the Police to recover its costs in respect of the provision of certain policing services.
- “79B Policing services that may be subject to cost recovery**
- “(1)** The Minister may recommend a regulation under **section 102A** only if the Minister is satisfied that the policing service in question is a demand service. 20
- “(2)** For the purposes of this section, **demand service** means a service that—
- “(a)** constitutes policing; and 25
- “(b)** is provided only on the request of an individual or organisation; and
- “(c)** is provided to the individual or organisation requesting it for the direct benefit of a particular person or organisation (even though there may be indirect benefit to the public as a whole). 30

- “(3) Without limiting the generality of **subsection (2)**, an example of a demand service is the provision of vetting services by Police.
- “(4) For the avoidance of doubt, none of the following is a demand service: 5
- “(a) the response of the Police to calls for service relating to potential offending;
  - “(b) the conduct of criminal investigations;
  - “(c) the prosecution of criminal offences.
- “**79C Criteria for cost recovery** 10
- The Minister may recommend a regulation under **section 102A(a)** only if the Minister is satisfied that the fee or charge in question is consistent with the following criteria:
- “(a) subject to the provisions of **section 79E**, the fee or charge recovers no more than the actual and reasonable costs (including both direct and indirect costs) of the service to which the fee or charge relates; and 15
  - “(b) the fee or charge for the service or class of services to which the fee or charge relates is generally obtained from the users or beneficiaries of the service or class of services at a level commensurate, as far as practicable, with their use of the service; and 20
  - “(c) the costs of the service to which the fee or charge relates are efficiently incurred; that is, the service delivers the maximum benefit at the minimum cost; and 25
  - “(d) the relationship between the costs of the service to which the fee or charge relates and the nature and duration of the service is clear.
- “**79D Consultation**
- “(1) The Minister may recommend a regulation under **section 102A(a)** only if the Minister is satisfied that the Commissioner of Police has done everything reasonable on his or her part to consult the persons or organisations (or representatives of those organisations) that appear to the Commissioner to be affected or likely to be affected by the fee or charge. 30 35
- “(2) The process for consultation must, to the extent practicable in the circumstances, include—

- “(a) the giving of appropriate notice of the intention to make the regulation and of the contents of the proposed regulation; and
- “(b) a reasonable opportunity for interested persons to make submissions; and 5
- “(c) the adequate and appropriate consideration of those submissions.
- “(3) A failure to comply with this section does not affect the validity of any regulations made under **section 102A**.
- “**79E Methods of cost recovery** 10
- “(1) Regulations for the recovery of costs may provide for the following:
- “(a) fixed fees or charges:
- “(b) fees or charges based on a scale or formula or at a rate determined on an hourly or other unit basis: 15
- “(c) the recovery by way of a fee or charge of estimated actual and reasonable costs expended in or associated with the performance of a policing service:
- “(d) fees or charges based on costs incurred from charges by third parties: 20
- “(e) any combination of the above.
- “(2) Without limiting the way in which a fee or charge may be set, a fee or charge may be set at a level or in a way that—
- “(a) is determined by calculations that involve an averaging of costs or potential costs: 25
- “(b) takes into account costs or potential costs of services that are not to be provided directly to the person who pays the fee or charge but that are an indirect or potential cost arising from the delivery of the service in question to a class of persons or all persons who use the service: 30
- “(c) takes into account indirect costs, which include the costs and potential costs of support, maintenance, and development associated with provision of the service.
- “Compare: 2009 No 51 s 393(6)

**“79F Payment of fee or charge**

“(1) A fee or charge prescribed under this Act is payable at the time prescribed in respect of a particular service, whether that time is before, during, or after completion of the relevant service.

“(2) All fees and charges prescribed under this Act and received by the Police or any other government agency must be paid into a Crown Bank Account. 5

“Compare: 2009 No 51 s 393(7), (10)

**“79G Exemptions, waivers, and refunds**

“(1) Regulations made under this Act may provide for exemptions from, or waivers or refunds of, any fee or charge prescribed under this Act, in whole or in part, in any class of case. 10

“(2) The Minister may by special direction provide for an exemption from, or waiver or refund of, any fee or charge prescribed under this Act, in whole or in part. 15

“Compare: 2009 No 51 s 395”.

## Part 2 Regulations

### 5 New section 102A inserted (Regulations relating to cost recovery) 20

After section 102, insert:

**“102A Regulations relating to cost recovery**

The Governor-General may, by Order in Council,—

“(a) on the recommendation of the Minister made after due consultation in accordance with **section 79D**, make regulations prescribing fees and charges for specified demand services in accordance with the provisions of **Part 4A**: 25

“(b) make regulations prescribing the time when a fee or charge prescribed under this Act becomes payable: 30

“(c) make regulations providing for exemptions from, or waivers or refunds of, any fee or charge prescribed under this Act, in whole or in part, in any class of case.”

