

Chair
Cabinet Economic Development Committee

BIOSECURITY STRATEGY FOR NEW ZEALAND: FUNDING AND COST RECOVERY

Proposal

1. *This paper is one of a suite of four papers reporting on the Government's response to the finalised Biosecurity Strategy for New Zealand. It recommends a series of high level changes to the funding and cost recovery arrangements used for biosecurity services. It has no direct financial implications. Instead it proposes further work on implementation be carried out and a series of report backs to this committee. The objective of the proposed changes is to ensure greater consistency of approach to funding across the different biosecurity functions, and better alignment of those arrangements with the Government's broader objectives.*

Executive summary

2. This paper recommends a series of changes to the funding of biosecurity services. They are aimed at achieving a more consistent approach across the different biosecurity functions, and at ensuring greater alignment between funding arrangements and the Government's overarching objectives.
3. I am recommending an increase in the use of both user charges and levies to fund biosecurity services. However, I expect that there will continue to be an ongoing need for considerable levels of tax funding. Specifically I recommend that:
 - biosecurity agencies adopt the following 'cascading decision rule' when developing recommendations on future biosecurity funding arrangements:
 1. *Costs should be recovered from the users of each service, or those whose actions caused the need for the service or function to be provided, where this is practical and cost-effective;*
 2. *Otherwise the funds required should be raised through the imposition of levies on those who benefit from the provision of the service or function, where they are an identifiable individual or class of individuals and where the cost of doing so is reasonable;*
 3. *Otherwise taxpayer funding should be used.*
 - in applying this decision rule, biosecurity agencies should ensure that funding arrangements are consistent with New Zealand's international obligations;
 - the full costs of inspecting, treating, responding to interceptions and clearing goods at the border should in most cases be recovered through a clearance charge on importers;
 - the practicality and desirability of recouping the costs associated with clearing passengers at the border should be investigated further;
 - there should be an increase in the use of levies (established under the Biosecurity Act) to fund surveillance, incursion response and pest management services, but that a considerable portion of tax funding remain;
 - the full cost of accreditation services be met through service charges placed on the individuals or agencies seeking certification.

4. If the policy directions in this paper are agreed, MAF will need to undertake considerable further work in order to prepare the necessary regulations and administrative procedures. I therefore do not expect new charges to be able to be put in place before the 2005/06 financial year.

Background

5. The Draft Biosecurity Strategy and previous reviews of the biosecurity system have been critical of the inconsistent approach currently taken to funding and cost recovery, and the associated lack of a clear rationale behind the approaches used. Accordingly, an effort has been made to develop a framework for thinking about who should pay for the costs of different services.

Comment

Potential payers

6. There will typically be a range of parties that can be charged the cost of a biosecurity service. A fee for service could be charged to those who create, continue, worsen or can control a biosecurity risk. In the broadest sense, these parties can include shipping companies, importers, port companies and transport operators, or those who sail a vessel into New Zealand waters, import a product or organism, or simply travel to or from New Zealand. Alternatively, a levy could be imposed on those who benefit in some way from the reduction of a given biosecurity risk. These parties can include port companies, exporters, producers in the industry affected by the risk, purchasers of the industry's products. The public could also be charged, via general taxation.

Goals

7. There has already been considerable work within Government on the development of a high-level framework for deciding who should be required to pay for different types of services. That work has been summarised in a separate working paper, and is not repeated here.
8. For the purposes of this paper, the key point to arise from that work is that any rules on how to fund services need to be based on a clear set of goals. I recommend that the goals for guiding decisions on cost recovery in biosecurity be that any arrangements (in no particular order):
 - efficiently minimise biosecurity risk;
 - keep the costs of supply low;
 - ensure ongoing improvements in service delivery;
 - minimise the costs of compliance and administration;
 - ensure fairness;
 - collect the funds required; and
 - ensure consistency with our international obligations.

Guidelines

9. The goals listed above provide only limited practical guidance for funding decisions. They have therefore been used to derive the following, more operational, cascading decision rule:

1. *Costs should be recovered from the users of each service, or those whose actions caused the need for the service or function to be provided, where this is practical and cost-effective;*
2. *Otherwise the funds required should be raised through the imposition of levies on those who benefit from the provision of the service or function, where they are an identifiable individual or class of individuals and where the cost of doing so is reasonable; and*
3. *Otherwise taxpayer funding should be used.*

10. I consider that this cascading decision rule, if applied consistently, will ensure that the funding source chosen for a particular service provides the best overall contribution to the higher level goals set out in the previous section. Table 1 below attempts to explain this by summarising how each of the three funding sources is likely to contribute to each goal. (A tick sign indicates a positive impact, a cross a negative impact, and an equals sign a neutral or mixed impact).

Table 1: Potential contribution of the funding sources to the Government’s objectives

Goal	Fee for service	Levy on beneficiaries	Tax funding
Efficiently minimise biosecurity risk		✗	✗
Keep the costs of supply low			✗
Ensure ongoing improvements in service delivery			✗
Minimise the costs of compliance and administration	✗	✗	
Ensure fairness	≈	≈	≈
Collect the funds required	≈	≈	≈
Ensure consistency with our international obligations	≈	≈	≈

11. As shown in the table, only a fee for service has the potential to change the level of biosecurity risks facing the country. This is because the consumer of the service can control the biosecurity risk at which the service is directed, whereas beneficiaries have no ability to control the risk. In many cases, however, the impact of a fee for service on the level of risk may be very modest.
12. Similarly, both fee for service charges and levies on beneficiaries have the potential to assist in keeping the costs of supply low, and ensuring ongoing improvements in service delivery. This reflects the fact that when third parties have a financial interest, they are far more likely to seek input into decisions on the level and nature of services provided¹. In contrast, tax funding will typically lead to lower compliance and administration costs than service fees or levies.
13. There is no clear systematic difference in the contribution of the three funding sources to the remaining goals of fairness, securing the funds required, and ensuring consistency with our international obligations. However, consistency with New Zealand’s international obligations will need to be considered in each case.

¹ A second potential benefit from the use of fee for service charges (but not beneficiary charges which will typically not be set on a ‘per service’ basis) is that the revenue earned by the biosecurity agencies will automatically adjust to changes in the volume of services they are required to deliver. This should help to ensure that quality does not suffer where increases in service levels are required

14. Drawing this analysis together leads to the derivation of the cascading decision rule: costs should be recovered from the users of each service (or those whose actions caused the need for the service or function to be provided) where this is practical and cost-effective; otherwise the funds required should be raised through the imposition of levies on those who benefit from the provision of the service or function, where they are an identifiable individual or class of individuals and where the cost of doing so is reasonable; otherwise taxpayer funding should be used.
15. It should be noted that while I am recommending that taxpayer funding only be used if fee for service charges or levies are found not to be appropriate, I am not suggesting that taxpayer funding should only rarely be used. The analysis officials have undertaken suggests that there will be many instances where neither type of third party charge is appropriate. I therefore expect there to be a significant and ongoing role for taxpayer funding, especially in the areas of pest management, surveillance and incursion responses.
16. I would also note that this discussion focuses solely on how a service should be funded. Clearly, the net benefit of each service the Government provides also needs to be assessed on a case by case basis, and the service only provided where it is in the national interest.

Application of the framework

General Application

17. If the policy direction recommended in this paper is agreed, considerable further work will be required to define biosecurity services, propose a funding source for each service, consult with affected parties, and prepare any necessary Orders in Council. New and improved administrative systems and procedures will also be needed (these are discussed further in the implementation section below).
18. I propose to require that this work be completed before the end of December 2004, including preparation of any required Orders in Council. Where new services are being introduced, I intend that an appropriate funding source will be recommended at the time of seeking approval for the necessary appropriation.

Pre-border and border services

19. As a class, pre-border and border biosecurity services are likely to be most suitable for fee for service charges. These services include: the inspection, treatment and clearance of goods and passengers at the border; preparation of import health standards (IHSs); and development of standards for quarantine and transition facilities. A total of \$46.100 million has been appropriated for the provision of these services for 2003/04².
20. At present, the level of cost recovery for border and pre-border services is low – taxpayer funding provides approximately 60% of the overall cost. It is also inconsistently applied: for example cargo and container clearance is fully cost recovered, whereas passenger and mail clearance is totally tax funded.
21. I consider that there is considerable scope for increasing the level of cost recovery for these services. For the costs directly associated with inspecting, treating and clearing goods at the border, the relevant charge should typically take the form of a clearance fee for each good, consignment or container crossing the border. Preliminary analysis suggests that full cost recovery should be continued for cargo and container clearances and introduced for vessel clearances. Specific recommendations on cost recovery for passenger clearance costs are provided in a separate section below.

² Under Vote: Biosecurity Departmental Output Class D4

22. The choice of charging mechanism is more complicated for those services that can not be directly associated with a specific good or passenger, such as the preparation of IHSs and development of containment standards. While the need for these standards is clearly driven by the passage of goods across the border, there is a less clear relationship between the costs incurred and the arrival or departure of any particular good. Attempting to identify and charge the individuals that led to the need for an IHS or standard is therefore unlikely to be practical (although I see benefit in continuing the current practice of allowing individuals to pay for an IHS where they want it to be prepared more quickly than would otherwise occur).
23. Nor is there any clear class of individuals that benefit from these services. Accordingly, an obvious option for charging for these services is to include the costs in the general clearance charge attached to each good. If this is found not to be appropriate, the services will need to be tax funded. This issue will need to be assessed further by officials, including an assessment of the consistency of the suggested approach with our international obligations.

Overall approach to behind-the-border services

24. Fee for service charges are likely to be far less suitable in the area of surveillance, incursion response and pest management services. A total of approximately \$74.000 million has been appropriated for the provision of these services within Vote: Biosecurity for 2003/04³. With the exception of the TB control measures there is little third party charging for these services⁴.
25. Fee for service charges will typically be inappropriate for these services because it will often not be clear who 'used' the service, or what behaviour led to the need for it⁵. Moreover, even where the source of an incursion or cause of spread can be identified, the people responsible may have acted unwittingly or have complied with all of the biosecurity procedures required of them⁶. Accordingly, if used, service fees for these types of services could also raise issues of consistency with New Zealand's international obligations.
26. However, industry levies on those benefiting will often be appropriate, especially where the impact of the pest in question has primarily economic impacts which fall predominantly on a small number of industries. The use of levies in such instances would contribute to the goal of keeping the costs of supply low and ensuring ongoing improvements in service delivery.
27. I therefore consider that the use of levies (under the Biosecurity Act) should be increased for recovering costs of surveillance, incursion response and pest management services. However, tax funding will continue to be most appropriate where the impacts of a pest are spread widely, primarily of a social or environmental nature, or where there are strong equity concerns. Accordingly, it is not possible or sensible to adopt a blanket levy funding approach.

Passenger arrivals

28. The annual cost of passenger clearance services delivered by MAF, NZ Customs Service and NZ Immigration Service is significant (some \$45 million (GST inclusive)). Most of these costs are tax funded, and there are arguments in favour of recovering them by way of a passenger clearance charge. Doing so would ensure that travellers and the travel industry recognise the true cost of international travel in their travel decisions. Depending on who is charged, recovering costs may also create an environment that promotes improved operational efficiency as the party being charged attempts to find ways to reduce costs⁷.

³ There is also considerable further expenditure in these areas within Vote: Conservation and by Regional Councils

⁴ Cabinet recently decided to introduce a levy to fund Scrapie Surveillance, but this has not occurred yet

⁵ For example, it is still not clear how the Southern Salt Marsh mosquito, Varroa mite, and White Spotted Tussock moth entered the country

⁶ For example, there is still a risk that gypsy moths could enter the country on imported cars even if the importer has followed all relevant IHS requirements

⁷ MAF found this to occur at the regional airports where cost recovery charges were in place (prior to the recent Privy Council ruling).

29. There are also arguments against recovering passenger clearance costs. Tourism interests consider that a passenger clearance charge may lead to a reduction in passenger arrival numbers if price sensitive travellers choose not to travel here⁸. Other stakeholders have questioned the consistency of a passenger clearance charge with our international obligations and other economic objectives.
30. The Cabinet recently established a Joint Ministerial Committee to oversee progress on border cost recovery issues, with a key objective of ensuring a consistent approach is taken to charging across the full range of government border services (i.e. for biosecurity, customs, immigration and other purposes). Officials are currently preparing advice for the Joint Ministerial Committee on border charging options, and any proposals for a passenger clearance charge will be brought before this Committee.

Overall approach to accreditation and standards setting

31. Many of the activities associated with the issue of export certificates by MAF Biosecurity Authority and the treatment of goods prior to export are no longer undertaken by MAF. Instead MAF specifies the standards required and accredits suitable people to undertake the tasks on the Government's behalf. The focus of much of MAF's work is therefore in the areas of standards setting, development of quality assurance systems, approving and registering facilities, and auditing processes and facilities.
32. Much of the costs of these activities are already recovered through fee for service charges. However, there is evidence that this approach is not consistently applied. I consider that user charges should be consistently applied to recover the costs of these services.

International obligations

33. Any funding arrangements used will clearly need to be consistent with New Zealand's international obligations. The key GATT/WTO obligations in relation to charging for biosecurity services are:
 - Under GATT Article VIII(1) any charges levied for quarantine related services imposed in connection with importation or exportation "shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes";
 - Under paragraph (f) of Annex C of the WTO Agreement on Sanitary and Phytosanitary Measures "any fees imposed on imported products are equitable in relation to any fees charges on like domestic products or products originating in any other Member and should be no higher than the actual cost of the service"; and
 - Under Article 15, the Chicago Convention precludes "fees, dues or other charges imposed by any contracting State 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."
34. It is important that any charges or levies imposed are designed in a way that is consistent with these requirements. It will be particularly important to ensure that, regardless of which funding mechanism is used, any charges do not exceed the approximate cost of the services rendered.

⁸ Analysis by NZIER in 1998 (Clarke & Gale) suggested that a passenger charge of \$14 could result in a loss of passenger arrivals of between 0.2% to 0.6%.

Implementation

35. Cost recovery regimes can be difficult and time consuming to put in place properly. They require strong and consistent administrative systems and processes, the services provided to be clearly defined, and careful consultation with stakeholders. Failure to do these things properly will significantly increase the likelihood of charges being challenged at the Courts.
36. I expect that MAF will require a full 18 months to be ready. I therefore propose to direct MAF, in consultation with other agencies, to undertake the necessary work by the end of December 2004 at the latest, and would expect to introduce the new charging regime for the 2005/06 financial year. Each of the tasks MAF needs to undertake is discussed below.

Legislative authority

37. The Biosecurity Act allows for the establishment of regulations that impose cost-recovery for biosecurity services (under s.135 and s.165). These powers are quite general, allowing a range of different types of charge to be imposed. The Act also allows for the imposition of levies (under s.137). The proposals in this paper therefore do not require any legislative change.

Regulatory authority and administrative procedures

38. Any levies imposed under the Act require an Order in Council to be put in place. However, the imposition of cost recovery charges for a specific service or function does not. This differs from cost recovery under the Fisheries Act where the services provided, and the approach to charging for them, are specified in regulation.
39. Despite not being required under the Act, I propose to direct MAF to publish an annual list of the services it provides and how it intends to fund each service. This will help to ensure MAF's actions are transparent, and allow it to be held more accountable.

Service definition

40. Where cost recovery has been comprehensively applied in other areas of the Government's operations, it has taken some time to define a sensible list of services and functions that is acceptable to all stakeholders. I expect that to also be the case for MAF.
41. A key issue in preparing such a list is deciding how broadly a particular service, and associated set of users, should be defined. By way of example, should passenger clearance nationally be seen as a service, or is it more appropriate to define the service as specific to each airport, or possibly even passengers arriving from different regions at each airport? On balance I see it as desirable that services and users be defined relatively broadly. In other words, taking the specific example, I would see passenger clearance nationally as an appropriate definition of the single service. With a broader definition like this it is more practical for MAF to ensure that the charges levied on a particular group of users or beneficiaries broadly equates to the costs involved in providing the service.

Good accounting information

42. In order for charges to be set at a level that recoups the cost of providing a service, it is clearly necessary for the relevant agency to know what the cost of providing that service is. At present MAF does not have sufficiently robust cost recording and accounting systems to derive this information. I propose to direct MAF to update its cost recording and accounting systems to a standard that allows it to accurately determine the cost of providing each service.

Administrative Law

43. All of MAF's decisions and processes must comply with the principles of administrative law.

Fines

44. Fines do not constitute a funding source for the biosecurity agencies. Any revenue earned from them is returned directly to the Crown. However, fines can play an important role in modifying behaviour and thereby minimising New Zealand's biosecurity risk. Discussion of them is included in this paper for that reason.
45. MAF officials have the authority to impose infringement notices (instant fines) of \$200 on passengers that attempt to bring undeclared goods into the country. In 2002/03 a total of \$1.6 million was collected by MAF through these fines. For more serious infringements, prosecution can be made under the Biosecurity Act. The offences listed under the Act include making a false statement and knowingly having unauthorised goods in ones possession. On breach of the Act, an individual can be fined up to \$100,000 and/or given a prison term of up to five years. For a corporation, the fine can be up to \$200,000.
46. The working group's analysis of the effectiveness of public awareness campaigns concluded that they work best when combined with rigorous enforcement activities. Where educational campaigns are combined with strong enforcement, behavioural changes are typically faster and more significant. The successful road safety programme is a good example of this.
47. Accordingly, I see it as critical that biosecurity enforcement is rigorous. I am concerned that, because of the significant time and resource effort required, and the high burden of proof necessary, prosecutions are not pursued as frequently as they might be. I therefore recommend that MAF coordinate a review of all enforcement activities by 31 December 2004, and provide recommendations to the Ministerial Committee on the effectiveness of current enforcement efforts and ways that they could be strengthened.

Consistency with border charging in other areas

48. Considerable work is being carried out within the government on reviewing cost recovery for other border services, such as those provided by the New Zealand Customs Service and the Ministry of Transport. As noted above, the Cabinet recently established a Joint Ministerial Committee to ensure consistency of approach to charging across the full range of border services [CAB Min (03) 20/4B refers]. I recommend that, once it has been considered, this paper should be referred to the Joint Ministerial Committee, and its proposals in relation to border charging be incorporated into the broader government review.

Consultation

49. The following departments have been consulted during the preparation of this paper: The Treasury, Department of Conservation, Ministry of Fisheries, Ministry of Health, Ministry for the Environment, Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, New Zealand Customs, the Ministry of Research, Science and Technology, the Department of Prime Minister and Cabinet, the Ministry of Economic Development, and the State Services Commission. The Chair of the Biosecurity Council and the Environmental Risk Management Authority have also been provided with a copy.

50. The New Zealand Food Safety Authority is concerned that the approach to cost recovery provided for in this paper may give insufficient consideration to the nature (private, club or public good) of the service being provided. It will be consulted in the further development and implementation of biosecurity cost recovery.

Financial implications

51. This paper has no direct financial implications. However, it will lead to subsequent work that is likely to lead to greater use of cost recovery charges, and therefore a reduction in the use of taxpayer funding.

Human rights

52. The proposals in this paper are consistent with the Human Rights Act 1993.

Legislative implications

53. This paper has no legislative implications.

Regulatory impact and compliance cost statements

54. Neither a regulatory impact statement nor a business compliance cost statement is required as the proposals in this paper would not result in a Government Bill or statutory regulations.

Gender implications

55. There are no gender implications associated with the proposals in this paper.

Publicity

56. MAF will issue a media release and each of the biosecurity agencies will advise its consultative forums of the changes.

Recommendations

57. I recommend that the Committee:

1. **agree** that the following decision rule be used by MAF to determine how biosecurity services should be funded:
 - i. *costs should be recovered from the users of each service, or those whose actions caused the need for the service or function to be provided, where this is practical and cost-effective;*
 - ii. *otherwise the funds required should be raised through the imposition of levies on those who benefit from the provision of the service or function, where they are an identifiable individual or class of individuals and where the cost of doing so is reasonable; and*
 - iii. *otherwise taxpayer funding should be used.*

Pre-border and border services

2. **agree** that MAF should, in most cases, recoup the costs of inspecting, treating and clearing goods at the border through a charge levied in the form of a clearance fee for each good;

3. **direct** MAF to undertake further analysis, in consultation with other agencies, on how to best recoup the costs of those services that are not directly associated with a particular good, such as the preparation of import health standards and the development of containment standards;
4. **direct** MAF to undertake further analysis, in consultation with other agencies, on whether the costs associated with clearing arriving passengers should be recovered;

Surveillance, incursion response and pest management services

5. **agree** that a mix of fees for specific services, industry levies and tax funding should be used to fund surveillance, incursion response and pest management services;

Accreditation and standards setting

6. **agree** that the cost of accreditation services be met through charges levied on the individuals or agencies seeking certification;
7. **agree** that these accreditation charges cover the costs incurred in the development and promulgation of the standards used, and any associated audit activity;

Implementation

8. **direct** MAF to undertake the following tasks before 31 December 2004:
 - i. draw up a clearly defined list of its services and functions;
 - ii. propose an approach to the cost recovery of each service that is consistent with the decision rule and other recommendations above;
 - iii. consult on this service list and cost recovery approach;
 - iv. update its cost recording and accounting systems to a standard that allows it to accurately determine the cost of providing each service;
9. **agree** that any charges or levies imposed for biosecurity should be consistent with New Zealand's international obligations, and set at a level no higher than necessary to recover the full cost of the service rendered;

Fines

10. **direct** MAF, in consultation with other agencies, to review all enforcement activities by 31 December 2004, and to provide recommendations to the Ministerial Committee on the effectiveness of those efforts and ways that they could be strengthened;

Other border cost recovery developments

11. **note** that Cabinet recently established a Joint Ministerial Committee to oversee progress on border cost recovery issues, including any proposals arising out of this biosecurity package;
12. **refer** this paper to that Joint Ministerial Committee for information, and **direct** MAF to submit any proposals for specific biosecurity-related border charges to the Committee for review.

Hon Jim Sutton
Minister for Biosecurity