

Chair
Cabinet Legislation Committee

APPROVAL OF UPDATES TO COST RECOVERY ARRANGEMENTS FOR SELECTED SERVICES PROVIDED BY THE MINISTRY FOR PRIMARY INDUSTRIES

Proposal

- 1 I seek Cabinet approval to implement six proposals to improve the Ministry for Primary Industries' (MPI's) cost recovery arrangements; and to submit amended regulations and levy orders to the Executive Council to give effect to these proposals.

Executive Summary

- 2 In February and March 2018, MPI consulted on seven proposals to update its cost recovery arrangements – three in the biosecurity system and four in the food system. These proposals were considered high priority to have in place by 1 July 2018 to prevent sharper rate increases in future and avoid unrecoverable debts of approximately \$6.4 million.
- 3 The key themes that emerged from consultation and my response to issues raised were outlined in the paper I provided to the Cabinet Business Committee (CBC) on 24 April 2018. I proposed proceeding with six of the seven proposals outlined in the consultation (with the exception of a proposed increase in fees for circuit verifications):
 - update levies under the Animal Products Act for red meat, dairy and fish processors;
 - introduce a targeted rate over two years for storage premises and fish processors;
 - align biosecurity inspection fees across all jurisdictions;
 - update the Biosecurity System Entry Levy rate and maximum rate;
 - extend the Biosecurity Border Processing Levy (BCL) levy period;
 - introduce new charges under the Food Act.
- 4 CBC (with power to act) agreed that I issue drafting instructions for amendments to the relevant fee regulations and levy orders.

- 5 I am now seeking final agreement to implement these six proposals. To give effect to this decision, I am also seeking agreement for draft regulations and orders (Appendix 1) to be submitted to the Executive Council as soon as possible, to ensure they come into effect from 1 July 2018 and comply with the 28-day rule.

Background

- 6 In February and March 2018, MPI consulted on seven cost recovery proposals – three in the biosecurity system and four in the food system. The proposals were to:
- a. update levies under the Animal Products Act for red meat, dairy and fish processors;
 - b. introduce a targeted rate over two years for circuit verification services for storage premises and fish processors;
 - c. align biosecurity inspection fees across all jurisdictions;
 - d. update the Biosecurity System Entry Levy rate and maximum rate;
 - e. extend the Biosecurity Border Processing Levy (BCL) levy period;
 - f. introduce new charges under the Food Act;
 - g. update the rate for cost recovery of circuit verification services.
[CAB-18-MIN-0041 refers]
- 7 These proposals were considered high priority to have in place by 1 July 2018 as they sought to prevent the need for sharper rate increases in future and avoid unrecoverable memorandum account debts of approximately \$6.4 million.
- 8 The key themes that emerged from consultation and my response to issues raised were outlined in the paper I provided to the Cabinet Business Committee (CBC) on 24 April 2018. At that meeting, CBC (with power to act) agreed that I direct the Parliamentary Counsel Office (PCO) to draft revisions to the regulations and levy orders for six of the seven proposals (a-f above) [CBC-18-MIN-0049 refers].
- 9 CBC also agreed to maintain the current rate set out in regulations for cost recovery of circuit verification services¹ (proposal g above; decision 6 of CBC-18-MIN-0049). I still intend that MPI should recover these costs in the medium term. However, it is important to ensure that service delivery is as efficient as possible and small business compliance requirements are thoroughly examined before making further decisions on cost recovery for these services.
- 10 I am now seeking final agreement to implement the six proposals listed in paragraph 3 a-f above, which are summarised in Appendix 2. Obtaining policy approval for these six proposals at the 24 April CBC meeting would have been inconsistent with the Budget moratorium in place at that time (because the decision would have affected MPI's revenue).

¹ Verifications are intended to confirm that premises are operating their internal systems (and in some cases, aspects of their external supply chains) consistently with legal requirements and risk management plans. In particular, they confirm compliance with domestic and export food standards. MPI circuit verifiers travel between a wide range of businesses processing food and related products, rather than being permanently located on-site on client premises.

- 11 To give effect to this decision, I am also seeking agreement for the attached draft regulations and orders to be submitted to the Executive Council as soon as possible to ensure they come into effect from 1 July 2018 (Appendix 1).

Policy proposals

- 12 I am seeking approval to updates to cost recovery arrangements across the food and biosecurity systems administered by MPI. Appendix 2 contains a table setting out further detail on the proposed amendments, with supporting information about the services and updates set out below.

Update levies under the Animal Products Act 1999 for red meat, dairy, and fish processors

- 13 I propose to update rates for levies under the Animal Products Act 1999 charged to red meat, dairy and fish processors,² with effect from 1 July 2018. In the majority of cases, this will result in increases in the levies.³
- 14 These levies recover costs associated with certain types of monitoring programmes (such as testing food products for chemical residues), development and maintenance of standards for processing food products for domestic and export markets, and engagement with other governments in support of market access for exports.
- 15 There is an emerging memorandum account deficit for these services, driven by higher costs for these activities. Consequently there is a requirement to increase these levies for all processors.
- 16 The consultation document sought feedback on options for the timing and amount of any levy increases. There was little feedback on timing, with most submitters silent or requesting 1 July 2018 implementation. However, the dairy industry requested a delay of 12 months to align with its forward planning and budgeting.
- 17 I propose to proceed with the updates for all sectors from 1 July 2018, to avoid the need for larger increases in future. I consider that implementing the changes on this date will not significantly affect the dairy industry. The proposed change to the levy for the dairy sector equates to approximately \$100 per year for a mid-size dairy farm (herd size of 300-349, and approximately \$770,000 annual revenue).

Introduce a targeted rate for circuit verifications over two years for storage premises and seafood processors

- 18 I propose to introduce a targeted rate of \$23.60 per hour for circuit verifications to be charged to coolstores and other storage premises, and fish processors. This is in addition to current charges for circuit verifications, but would apply for two financial years only, for 2018/19 and 2019/20.

² This does not include processors of bivalve molluscan shellfish; costs for these processors are accounted for separately, and there are no immediate financial pressures relating to these costs.

³ The exception is levies on red meat processors supplying only the domestic market, for whom estimated costs are lower.

- 19 The introduction of the targeted rate is required to recoup an historical under-recovery for circuit verifications relating to these premises from the 2015/16 financial year.
- 20 During consultation the fishing industry accepted, or took a neutral position on, the recovery of these costs.

Amend the Biosecurity (Costs) Regulations 2010 to align inspection rates for all jurisdictions

- 21 I propose to remove specific rates for inspection activities for imported live animals, animal products and other goods from the European Union (EU) and Switzerland, and apply the inspection rates used for imports from other countries.
- 22 Importers of general goods, including animals and animal products, from the EU and Switzerland are currently paying lower rates than other countries because the EU and Swiss rates were limited by an earlier version of the EU Sanitary Agreement. This agreement was amended in 2015 to allow higher rates to be charged. The changes will ensure consistency of treatment between imports from the EU and Switzerland and other countries.

Increase the Biosecurity System Entry Levy (BSEL), including raising the maximum allowable rate

- 23 I propose to increase the total BSEL rate (including the component for the Joint Border Management System, JBMS) by \$2.99 from \$17.37 to \$20.36 per consignment. I also propose to raise the maximum rate to which the Director-General of MPI may raise the BSEL, from \$18.00 to \$23.00 per consignment.
- 24 The BSEL funds initial screening to determine if further inspection is required to manage biosecurity risks posed by the importation of goods. It also contributes to the costs of related services such as surveillance activities and monitoring programmes.
- 25 An increase in the BSEL rate is required to address a forecast deficit due to additional investment in frontline staff and infrastructure (including increased use of data analysis and technology to more effectively identify and manage risk). In addition, one component of the BSEL partially funds the JBMS (with the Crown currently contributing the balance), and I propose increasing this component to reduce requirements for Crown funding. Industry is aware that the use of JBMS is planned to become compulsory later in 2018.
- 26 The BSEL may be set by the Director-General of MPI by notice in the Gazette, up to the maximum rate specified in the Biosecurity (System Entry Levy) Order 2010. Implementing the proposed increase to \$20.36 will require an amendment to increase the maximum levy rate currently permitted in the levy order (currently \$18.00).
- 27 Feedback from submitters included that the proposed maximum levy rate of \$25.00 would provide too much discretion for MPI to increase the rates without Parliamentary scrutiny. I therefore recommend increasing the maximum levy rate to \$23.00; this provides a buffer of 13% above the current fee, which I consider balances the flexibility needed in setting rates with the concerns above.

Amend the Biosecurity (Border Processing Levy) Order 2015 to enable the Traveller Border Clearance Levy (BCL) to be set for a period of up to three years

- 28 I propose that the levy period for the BCL be extended from 12 months to up to three years.
- 29 This levy funds MPI's border processing activities for travellers entering New Zealand. Currently the levy period is defined as 12 months. This change will enable a levy period of up to three years which will allow more stable levy rates over time. This will also align MPI's levy settings with those of the New Zealand Customs Service, which also uses this mechanism to fund border processing activities; Customs' levy order specifies a three-year levy period.
- 30 I propose the longer levy period be incorporated in the levy order from 1 July 2018. However, as the levy has already been set for 2018/19, the longer levy period will not commence until 1 July 2019, and is likely to initially be set for two years to align its end date with that of Customs (30 June 2021).

Introduce new charges for services under the Food Act 2014

- 31 I propose introducing new charges to enable MPI to recover costs associated with
- 31.1. the approval of templates for food control plans (FCPs) developed by third parties under the Act, and renewals, amendments and voluntary suspensions of such templates;
 - 31.2. certain services relating to registration of FCPs based on templates or models issued by the Director-General of MPI or developed the third parties; and
 - 31.3. a small number of other low-volume administrative services.
- 32 These changes are required to enable MPI to charge for services which it is legally required to provide. They will ensure consistency with similar services provided under other parts of the Act and other Acts.
- 33 A FCP identifies risks to food safety in a business's operations and describes how that business will actively manage these risks; and is required for higher risk foods specified in Schedule 1 of the Act. Industry organisations can develop a template for FCPs which may be approved by MPI under section 40 of the Act. MPI has also developed and issued templates under section 39 of the Act.
- 34 When templates have been issued or approved, MPI is then able to register FCPs from businesses based on this template (along with amendments, renewals and voluntary suspensions of FCPs).

Implementing the proposals

- 35 I propose that the six cost recovery proposals set out above are implemented from 1 July 2018. To achieve this, I propose that the following amendments to the relevant regulations and levy orders are submitted to the Executive Council:
- a. Animal Products (Fees, Charges, and Levies) Amendment Regulations 2018;
 - b. Animal Products (Dairy Industry Fees, Charges, and Levies) Amendment Regulations 2018;
 - c. Biosecurity (Costs) Amendment Regulations 2018;
 - d. Biosecurity (System Entry Levy) Amendment Order 2018;
 - e. Biosecurity (Border Processing Levy) Amendment Order 2018;
 - f. Food (Fees and Charges) Amendment Regulations 2018.

Timing and 28-day rule

- 36 The proposed amendments will come into force on 1 July 2018. It is intended that the regulations and orders will be notified in the New Zealand Gazette by 1 June 2018 to ensure sufficient time for stakeholders to be informed of the changes and to meet the 28-day rule.

Compliance

- 37 The regulations and orders comply with:
- 37.1. the principles of the Treaty of Waitangi;
 - 37.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 37.3. the principles and guidelines set out in the Privacy Act 1993 (the amendments do not raise any privacy issues);
 - 37.4. relevant international standards and obligations;
 - 37.5. *the LAC Guidelines on the Process and Content of Legislation* (2014 edition), which are maintained by the Legislation Design and Advisory Committee.
- 38 I am satisfied that the statutory pre-requisites relating to the making of regulations have been met. Statutory pre-requisites include specific requirements relating to cost recovery, and consultation requirements.
- 39 I am satisfied that the applicable cost recovery requirements in the following parts of the Acts have been met:
- 39.1. Biosecurity Act 1993, Part 6, sections 135 to 142;
 - 39.2. Animal Products Act 1999, Part 9;
 - 39.3. Food Act 2014, Part 4, Subpart 3.
- 40 Regarding consultation requirements; section 164D of the Biosecurity Act 1993, section 163 of the Animal Products Act 1999, and section 379 of the Food Act 2014 contain consultation requirements that apply before the Minister can recommend the making of regulations. I am satisfied that these consultation requirements have been met. Please refer to paragraphs 48 and 49 below.

Regulations Review Committee

- 41 There are no known grounds for the Regulations Review Committee to draw the disallowable instruments or regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

- 42 The draft regulations and levy orders were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact analysis

- 43 MPI prepared a Stage 2 Cost Recovery Impact Statement (CRIS2) for the regulation amendments. This was submitted along with the earlier paper to CBC seeking approval for drafting instructions, as an attachment to CBC-18-SUB-0049.
- 44 MPI's Regulatory Quality Team and the Treasury determined that the proposal to align biosecurity inspections rates for all jurisdictions was exempt from the requirement to provide a regulatory impact assessment. The exemption was granted on the grounds that these regulatory decisions are essential (the minimum necessary) to comply with the international obligations that are binding on New Zealand.
- 45 The MPI Regulatory Impact Analysis Panel reviewed the CRIS2 and considered that the information and analysis summarised in it met the quality assurance criteria. This is based on the panel's current understanding of the quality assurance criteria, noting that the use of a CRIS2 is a relatively new process, and there are few existing CRIS2 against which to benchmark.

Publicity

- 46 Once the regulations and orders have been approved, information regarding the changes will be provided to stakeholders and published on MPI's website.
- 47 I propose that MPI should proactively release this paper (with any necessary redactions) and the resulting Cabinet minute at an appropriate time.

Consultation

- 48 Public consultation on the proposals took place from 21 February to 21 March 2018. MPI directly advised stakeholders of this consultation via approximately 2700 emails and 575 letters. MPI met with 16 organisations during the consultation period to discuss the proposals.
- 49 MPI received 39 submissions (19 industry organisations, 19 businesses and one individual). A comprehensive summary of submissions will be published on the MPI website after final Cabinet decisions.

- 50 The Treasury was consulted throughout the policy development process. The amended regulations and orders were developed in alignment with cost recovery guidance published by the Treasury and the Controller and Auditor-General.
- 51 The following departments were consulted, with feedback taken into consideration in the development of this paper: Department of the Prime Minister and Cabinet (Policy Advisory Group), New Zealand Treasury, Department of Internal Affairs, New Zealand Customs Service, Ministry of Foreign Affairs and Trade, Ministry of Business, Innovation and Employment (MBIE), and Ministry of Transport. The State Services Commission has been informed.

Financial implications

- 52 These changes will result in an increase of approximately \$9.4 million per annum in third party revenue from charges.

Recommendations

53 I recommend that the Committee:

- 1 **Note** that in February and March 2018 MPI consulted on seven proposals for updates to MPI's cost recovery arrangements – three in the biosecurity system and four in the food system [CAB-18-MIN-0041 refers];
- 2 **Note** that the key themes that emerged from consultation and responses to issues raised were provided to the Cabinet Business Committee on 24 April 2018 [CBC-18-MIN-0049 refers];
- 3 **Note** that the Cabinet Business Committee (with power to act) agreed not to progress the proposal to update the current rate for cost recovery of circuit verification services at this time [CBC-18-MIN-0049 refers];
- 4 **Note** that on 24 May 2018 the Cabinet Business Committee authorised me to issue instructions to Parliamentary Counsel Office to prepare draft regulations and levy orders to give effect to six of the seven proposals consulted on [CBC-18-MIN-0049 refers];
- 5 **Agree** to implement the following six changes to MPI's current cost recovery arrangements, set out in the attached instruments in Appendix 1:
 - a. update levies under the Animal Products Act for red meat, dairy and fish processors;
 - b. introduce a targeted rate for circuit verifications over two years for storage premises and fish processors;
 - c. amend the Biosecurity (Costs) Regulations 2010 to align inspection rates for all jurisdictions;
 - d. increase the Biosecurity System Entry Levy (BSEL), including raising the maximum allowable rate;
 - e. amend the Biosecurity (Border Processing Levy) Order 2015 to enable the Traveller Border Clearance Levy (BCL) to be set for a period of up to three years; and
 - f. introduce new charges under the Food Act 2014;
- 6 **Agree** to authorise submission to the Executive Council of the following instruments to give effect to the decisions referred to in paragraph 5 above:
 - a. Animal Products (Fees, Charges, and Levies) Amendment Regulations 2018;
 - b. Animal Products (Dairy Industry Fees, Charges, and Levies) Amendment Regulations 2018;
 - c. Biosecurity (Costs) Amendment Regulations 2018;
 - d. Biosecurity (System Entry Levy) Amendment Order 2018;
 - e. Biosecurity (Border Processing Levy) Amendment Order 2018;
 - f. Food (Fees and Charges) Amendment Regulations 2018;

7 **Note** that the instruments listed above come into force on 1 July 2018.

Authorised for lodgement

Hon Damien O'Connor
Minister of Agriculture
Minister for Biosecurity
Minister for Food Safety

Appendix 1: Summary of all proposals, including fee or levy rate changes

Proposal	Rationale	Current rates	Proposed rates
Increase the maximum levy rate to allow for an increase in the Biosecurity System Entry Levy (BSEL), including recovering the full costs for the Joint Border Management System (JBMS) component of the BSEL	Improve equity by charging importers the full costs of biosecurity services at the border relating to goods	Maximum levy rate: \$18 BSEL rate only: \$13.15 JBMS rate: \$4.22 (paid in addition) Total: \$17.37 (all rates per consignment)	Maximum levy rate: \$23 BSEL rate only: \$15.24 JBMS rate: \$5.12 (paid in addition) Total: \$20.36 (all rates per consignment)
Allow the levy period for the Border Clearance Levy (BCL) to be extended to up to 36 months	Improve equity between travellers, reduce volatility in BCL rates and be more transparent for stakeholders	Levy period of 12 months	Levy period of up to 36 months
Align biosecurity inspection rates for all jurisdictions	Improve equity by ensuring charges are the same for importers of products from all jurisdictions. This will require updating charges for the European Union and Switzerland	Biosecurity inspections (animal/pet): \$28.19 Inspection of documents: \$28.19 Other types of inspection: \$56.37 Veterinary inspector: \$94.38 per hour	Charged according to time required: Biosecurity inspector: \$102.27 per hour Veterinary inspector: \$186.30 per hour
Update Animal Products Act (APA) levies for red meat, dairy, and fish processors to recover historical and ongoing deficits	Improve equity and justifiability by ensuring businesses using APA services are charged full costs	20 rates, based on volumes processed or exported	Range from decrease in red meat domestic rates to increase in fish export rate
Introduce new charges under the Food Act relating to: <ul style="list-style-type: none"> templates for food control plans developed by third parties approvals, renewals and amendments of some types of food control plans a small number of low-volume services 	Improve equity by ensuring comparability of MPI charges for these and other services	N/A – new charges	Approvals, amendments and renewal of a third party template: \$155 per hour Other charges: range of fixed fees, based on this hourly rate
Introduce a targeted rate to address 2015/16 under-recovery of circuit verifications for storage premises and fish processing facilities	Improve equity and justifiability by ensuring businesses using verification services are charged full costs	N/A – new charge	\$23.60 per hour for two years only (in addition to the general hourly rates)