



# Consultation Paper on Proposed Revisions to the Cost Recovery Regimes

Biosecurity, Animal Products, Agricultural Compounds  
and Veterinary Medicines, Wine and Animal Welfare

Agricultural Compounds and Veterinary  
Medicines proposals and fee updates

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## **5 Cost recovery under Agricultural Compounds and Veterinary Medicines Act 1997**

### **5.1 OVERVIEW**

Agricultural compounds are used through many areas of the primary industries. The setting of appropriate standards, input into international conventions, such as the Codex Alimentarius Commission (CODEX) and Veterinary Co-operation on International Harmonisation (VICH), and regulation of these compounds is an important part of maintaining trade, food safety and biosecurity. MPI provides a range of services under the ACVM Act, including registration of trade name products, compliance activities, setting standards and guidance on agricultural compounds.

This is the first review of fees since 2008.

The current review of the Food Sector (the Agricultural Compounds and Veterinary Medicines, Animal Welfare, Animal Products and Wine Acts) covers approximately 200 fees, with total revenue for ACVM 2014/15 of \$1.37 million.

### **5.2 ACTIVITIES UNDER THE AGRICULTURAL COMPOUNDS AND VETERINARY MEDICINES (ACVM) ACT 1997**

This section sets out the services provided by MPI under the ACVM Act 1997 to regulated parties and to interested industry parties, and it details the sub-services provided.

#### **5.2.1 ACVM Act functions**

MPI is charged with developing, implementing and confirming compliance with the requirements of the Act, which consist of:

- authorisation of agricultural compounds and monitoring their importation, manufacture, sale and use;
- recognition of persons, classes of persons and organisations such as veterinarians;
- approval of operating plans such as Good Manufacturing Practice (GMP) approvals;
- suspension of registrations;
- recall of agricultural compounds;
- prohibition of agricultural compounds;
- issue of certificates of compliance;
- developing, implementing, evaluation and review of requirements, and guidance relating to agricultural compounds;
- maintaining public registers and lists;
- confirmation of compliance and investigation of non-compliance.

MPI's ACVM Group provides services in several areas, including:

- requirements and guidance;
- authorisation;
- audit;
- compliance and monitoring.

More details of the ACVM Group's activities are provided in Appendix 1, section 5.8

## 5.3 POLICY PROPOSALS

*ACVM#1 – Recover costs for provisionally registering a trade name product*

*ACVM#2 – Clarify that MPI can recover costs for determining what class an imported product falls under when inspecting*

*ACVM#3 – Recover costs for recognition functions under Part 3A of the Act*

*ACVM#4 – Revise uses for which fees and charges payable for setting standards can be used*

## 5.4 ACVM#1 – RECOVER COSTS FOR PROVISIONALLY REGISTERING A TRADE NAME PRODUCT

### 5.4.1 Problem definition

*Fees and charges regulations unclear about whether MPI can recover costs for provisionally registering a trade name product of an agricultural compound*

The current fees and charges regulations state ‘registering’, which has been interpreted to include both provisional and full registration based on the definition of ‘registered’ in the Act. However, we do not consider this to be sufficiently clear.

Our inability to recover costs for this function could result in MPI under-covering on the cost of providing these services. If the current fixed approach is to continue, MPI would need to factor the costs of providing this function into other fees provided for under the Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002 and to spread the additional cost over all other fees when fees are next updated. However, this would be inequitable as other users would be penalised with a higher rate because we were unable to charge applicants seeking provisional registration. This outcome would not support efficiency or be justifiable as the charges and fees would be higher than the cost of service delivery.

### 5.4.2 Proposed fee for provisional registration of a trade name product

MPI proposes to establish a new fixed fee of \$155.00 and hourly rate assessment charge (in 15-minute intervals after 1 hour) of \$155.00 for provisionally registering a trade name product of an agricultural compound under section 26. This new item would be inserted into Part 3 of the Schedule of the Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002.

### 5.4.3 Questions for consideration

#### Question 5.4

Do you consider the proposed approach to be fair to those who provisionally register products and other users of the product registration service?

## 5.5 ACVM#2 – CLARIFY THAT MPI CAN RECOVER COSTS FOR DETERMINING WHAT CLASS AN IMPORTED PRODUCT FALLS UNDER WHEN INSPECTING

### 5.5.1 Background

MPI Biosecurity inspectors determine what class imported products fall under when inspecting them for clearance under sections 5 and 6 of the Act. This activity is charged at the Biosecurity Inspectors’ hourly rate, which is currently \$102.27.

### 5.5.2 Problem definition

*Legislation is unclear on whether MPI can recover costs for determining what class an imported product falls under when inspecting.*

It is not clear whether this is a function that can be included in charge 1 in Part 2 of the Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002.

### 5.5.3 Proposed fee for determining a class for imported products

*Clarify that MPI can recover costs when determining what class an imported product falls under when inspecting under the Act.*

MPI proposes to amend the wording in Part 2, item 1, of the Schedule of the Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002 to include determining the status of a product.

### 5.5.4 Questions for consideration

#### Question 5.5

- 1) Do you think these product class determinations should be cost-recovered as proposed?
- 2) If not, how should they be recovered?

## 5.6 ACVM#3 – RECOVER COSTS FOR RECOGNITION FUNCTIONS UNDER PART 3A OF THE ACT

### 5.6.1 Background

The Agricultural Compounds and Veterinary Medicines Amendment Act 2012 amended the principle Act by inserting a new Part 3A providing for recognised agencies, persons and classes of persons. Sections 44C, 44E, 44F and 44G of the Act provide for recognition. Section 44I requires applicants to submit applications and pay a prescribed application fee.

### 5.6.2 Problem definition

*MPI has not yet implemented cost recovery for recognition functions under Part 3A of the Act*

Fees and charges under Part 3A of the Act have not yet been implemented. The costs of providing these services are being met by the Crown, but are private or industry goods in nature. The current review is the first available opportunity to promulgate these fees or charges.

### 5.6.3 Proposed fee and hourly rate assessment charges for Part 3A recognition functions

MPI proposes to establish a new fixed fee of \$155.00 and hourly rate assessment charge (in 15-minute intervals after 1 hour) of \$155.00 for:

- applications for recognition under section 44I;
- recognition of certain persons without application under section 44F;
- applications to renew recognition under section 44R;
- applications to substitute recognition under section 44S.

We also propose to establish an annual fee payable by each recognised agency, recognised person or recognised class of person under section 44T.



## 5.6.4 Questions for consideration

### Question 5.6

Would you prefer a different method of cost recovery for recognition functions under Part 3A of the ACVM Act? If so, what?

## 5.7 ACVM#4 – REVISE USES FOR WHICH FEES AND CHARGES PAYABLE FOR SETTING STANDARDS CAN BE USED

### 5.7.1 Background

Part 1 of the Schedule of the Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002 provides for annual fees payable by certain persons for:

- (a) *setting standards to identify and evaluate risks and benefits under section 21 of the Act; and,*
- (b) *participating in national and international forums, having regard to New Zealand's international obligations, assurances, and reputation in identifying risks and benefits under section 21 of the Act.*

MPI considers these standard setting services as industry/club goods. The range of standard setting activities is detailed in section 5.8, Appendix 1.

### 5.7.2 Problem definition

#### *Uncertainty about whether legislation provides for recovery of costs for these services*

The regulations prescribe setting standards to identify and evaluate risks and benefits under section 21 of the Act. There is uncertainty about whether the current definition covers the costs of providing the activities described above. The intention when the current regulations were made was for the costs of these activities to be recoverable.

### 5.7.3 Proposal to make the reference to 'standard setting' more general

MPI proposes that the reference to standard setting in Part 1 (a) of the Schedule of the Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002 should be amended to clarify that the services described include (as outlined above) the services and provision of related advice in the following policy areas:

- development and review of standards for the regulatory control of agricultural compounds (included generic work relating to general operational standards development under the Act);
- technical contribution to national and international forums on standards for agricultural compounds<sup>12</sup>;
- technical policy advice.

The intention is that the costs for undertaking standard-setting activities would be recoverable.

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<sup>12</sup> Examples of multilateral work are CCPR (Codex Committee on Pesticide Residues), VICH, OECD (harmonisation of pesticides requirements), CCRVDF (Codex Committee on residues of veterinary drugs in food) and the Codex antimicrobial task force. An example of the bi-lateral work is the work that the ACVM Group does to support the Mutual Recognition Agreement with the European Union (EU) on Good Manufacturing Practice for selected veterinary medicine products.

The Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002 currently also provide that the amount payable is a 'fee or charge'. MPI proposes that this be changed to a levy to reflect the fact that the services are 'industry/club' goods.

#### 5.7.4 Questions for consideration

##### Question 5.7

Do you agree with the proposal to make the reference to 'standard setting' in the ACVM (Fees and Charges) Regulations more general?

## 5.8 **APPENDIX 1 – MPI ACTIVITIES UNDER THE AGRICULTURAL COMPOUNDS AND VETERINARY MEDICINES ACT**

### 5.8.1 Requirements and guidance function

The setting of requirements and guidance consists of the following services and related policy advice:

- development and review of requirements and guidance for the regulatory control of agricultural compounds (including generic requirements and guidance-setting work relating to general operational requirements and guidance development under the Act);
- technical contribution to national and international forums on requirements and guidance for agricultural compounds;
- technical policy advice.

The key services undertaken under each of these service areas are as follows:

- provision of public information in relation to requirements and guidance and related information for regulated parties;
- representation of the New Zealand position at the CODEX, Organisation for Economic Co-Operation and Development (OECD), VICH and other international forums for setting standards;
- representation at relevant trans-Tasman forums;
- technical support and advice for the development, review and maintenance of the Act and regulations made under it;
- technical support and advice for other parts of MPI;
- technical support and advice on market access issues;
- development and review of requirements and guidance for agricultural compounds and recognised agencies and persons, including managing regulatory, compliance and performance issues;
- support for and co-ordination of the Agricultural Compounds and Veterinary Medicines Advisory Council (AVMAC);
- technical contribution to international forums such as trans-Tasman harmonisation, the New Zealand and European Union mutual recognition arrangements, OECD Pesticides Forum, VICH meetings, CODEX meetings and bilateral relationships;
- consideration of residue and trade implications in relation to applications for registration and for exemption under special circumstances;

- development and maintenance of business systems necessary for the delivery of the activities above.

### **5.8.2 Appraisal services**

Under the Act, MPI provides the following appraisal services to regulated parties:

- consideration of applications for registration and variations to registrations of agricultural compounds and other related approvals such as those related to manufacture, sale and use;
- processing of applications for class determination;
- processing Generally Recognised as Safe requests;
- reassessment of registrations;
- recognition of agencies, persons and classes of persons to undertake some services relating to Act functions;
- maintaining public registers of agricultural compounds and other relevant approvals;
- providing clearance of agricultural compounds at the border;
- consideration of applications for the exemptions from the requirement to register certain products<sup>13</sup>;
- consideration of application for exemptions to register products in special circumstances<sup>14</sup>;
- consideration of applications for the approval of operating plans (including the approval and ongoing audit of GMP premises);
- suspension and cancellation of approvals in certain circumstances;
- issuing and withdrawing certificates of compliance.

Within these areas, MPI provides the following key services:

- processing enquiries relating to regulatory control under the Act;
- processing applications for registration and variations of registrations of trade name products and other approvals;
- providing for clearance of agricultural compounds at the border;
- recognition of agencies and persons to undertake activities related to the Act, such as data assessors, traders, manufacturers, facilities and systems;
- developing and maintaining a public register for registered trade name products and for other approvals;
- providing a service to enable the public to inspect registers.

### **5.8.3 Compliance and monitoring**

MPI provides the following compliance and monitoring services in accordance with the Act:

- border services for controlling the importation of agricultural compounds;
- monitoring activities related to the manufacture, sale and use of agricultural compounds;

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<sup>13</sup>Product groups with known risk factors are assessed and exempted by class. Risks associated with their use are managed through generic conditions of exemption in regulations.

<sup>14</sup>Special circumstances may include drug shortages, and agricultural compound use to control the outbreak of disease.

- provision and operation of compliance programmes for monitoring compliance with legislation and or conditions;
- appointment of ACVM Act Officers;
- investigation and enforcement of the provisions of the Act.

Within this area, MPI provides the following services for regulated parties:

- monitoring importation of agricultural compounds;
- auditing and monitoring ACVM Officers and regulated parties and activities;
- conducting monitoring and audit of manufacturers, distributors, traders, wholesalers, and users of agricultural compounds;
- monitoring and auditing persons approved to provide authorisation for agricultural compounds;
- resolving complaints related to compliance;
- managing recalls of agricultural compound;
- applying appropriate sanctions in the event of non-compliance with the Act;
- investigation and prosecution of illegal activities associated with the use of agricultural compounds.

#### **5.8.4 Standard setting activities**

MPI carries out a range of activities related to setting of standards under the Act and subsidiary regulations and notices.

The setting of standards involves the provision of services and related advice in the following policy areas:

- development and review of standards for the regulatory control of agricultural compounds (including generic work relating to general operational standards development under the Act);
- technical contribution to national and international forums on standards for agricultural compounds;
- technical policy advice.

The key services undertaken by MPI under each of these service areas are as follows:

- providing public information in relation to standards, guidelines and related information for regulated parties;
- representing the New Zealand position at CODEX, OECD, VICH and other international standard setting forums;
- representing New Zealand at relevant trans-Tasman forums;
- technical support and advice for the development, review and maintenance of the Act and regulations made under it;
- technical support and advice for other parts of MPI;
- technical support and advice on market access issues;
- development and review of standards for agricultural compounds and recognised agencies and persons, including managing regulatory, compliance and performance issues;

- support for and co-ordination of the Agricultural Compounds and Veterinary Medicines Advisory Council (AVMAC);
- technical contribution to international forums such as trans-Tasman harmonisation, the New Zealand and European Union, mutual recognition arrangements, OECD Pesticides Forum, VICH meetings, CODEX meetings and bilateral relationships;
- consideration of residue and trade implications in relation to applications for registration and for exemption under special circumstances;
- maintenance of business systems for the delivery of the activities above.

## 5.9 APPENDIX 2 – EXISTING AND PROPOSED FEES UNDER AGRICULTURAL COMPOUNDS AND VETERINARY MEDICINES ACT 1997

*Fees are shown as GST exclusive.*

*Shaded columns and headers are for referencing and commentary purposes. Light grey shaded content is for new proposals. Additional line spacing and column/row lines have been added for readability.*

### Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002

#### Part 1 – Fees and charges payable for setting standards

	Function, power, or duty for which fee or charge payable	Fee or charge	Fee or charge payable by	Proposed fee	Comment
1	For – (a) setting standards to identify and evaluate risks and benefits under section 21 of the Act; and	\$485.00	Payable annually by each – (a) registrant:	\$512.00	Refer to ACVM#4
2	(b) participating in national and international forums, having regard to New Zealand's international obligations, assurances, and reputation in identifying risks and benefits under section 21 of the Act	\$485.00	(b) person who holds an exemption under section 8C of the Act: (c) person who has obtained approval of an operating plan: (d) recognised person	\$512.00	Amend the reference to standard-setting to clarify. Change categorisation to levy to reflect the basis of charging.

## Part 2 – Fees and charges payable for compliance monitoring

	Function, power, or duty for which fee or charge payable	Fee or charge	Fee or charge payable by	Proposed fee	Comment
3 4	For an application for an inspector to give authority or clearance under section 5 or 6 of the Act	\$88.89 per hour plus actual cost of disbursements	Payable by the importer	- \$102.27 per hour, plus  - actual cost of disbursements	ACVM#2 Amend wording to include determining the status of a product.
5 6 7	For monitoring compliance with conditions imposed (whether on the registrant, importer, manufacturer, seller, purchaser, or user) under the Act or regulations made under the Act	\$132.98 per hour, plus  actual cost of disbursements	Payable by the person to whom the conditions apply	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4
8 9 10	For inspection for the purpose of enforcing provisions of the Act or regulations made under the Act	\$132.98 per hour, plus  actual cost of disbursements	Payable by the person being inspected	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4
11 12 13	For the recall of an agricultural compound under section 35G of the Act	\$132.98 per hour, plus  actual cost of disbursements	Payable by the person holding the agricultural compound	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4

### Part 3 – Fees and charges payable for applications, accreditations, and registers

	Function, power, or duty for which fee or charge payable	Fee or charge	Fee or charge payable by	Proposed fee	Comment
14 15 16	For responding to enquiries about form and content of applications under section 10 of the Act	\$132.98 per hour, plus  actual cost of disbursements	Payable by the enquirer	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4
17 18 19	For considering applications for waiver of notice under section 15 of the Act	\$132.98 per hour, plus  actual cost of disbursements	Payable by the applicant	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4
20 21 22	For assessing whether an application to register a trade name product complies with section 10 of the Act	\$132.98 per hour, plus  actual cost of disbursements	Payable by the applicant	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4
23 24 25	For considering whether to provisionally register a trade name product of an agricultural compound under section 26.		Payable by the applicant	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	ACVM#1 Common#4
26 27 28	For considering an application to register a trade name product or to vary 1 or more conditions on a registered trade name product	\$132.98 per hour, plus  actual cost of disbursements	Payable by the applicant	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4
29 30 31	For considering an application for approval of, amendment to, or revocation of an operating plan under section 28 of the Act	\$132.98 per hour, plus  actual cost of disbursements	Payable by the applicant	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4
32 33 34	For considering applications for recognition under section 44I		Payable by the applicant	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	ACVM#3 Common#4



	Function, power, or duty for which fee or charge payable	Fee or charge	Fee or charge payable by	Proposed fee	Comment
35 36 37	For considering applications for recognition of certain persons without application under section 44F		Payable by the applicant	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	ACVM#3 Common#4
38 39 40	For considering applications to renew recognition under section 44R		Payable by the applicant	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	ACVM#3 Common#4
41 42 43	For considering applications to substitute recognition under section 44S		Payable by the applicant	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	ACVM#3 Common#4
44 45 46	For ongoing recognition		Payable by the applicant	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	ACVM#3 Common#4
47 48 49	For recognising a person under section 62 of the Act	\$132.98 per hour, plus  actual cost of disbursements	Payable by the recognised person	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4
50	For registering a trade name product in the register of trade name products or for varying 1 or more conditions on a registered trade name product	\$432.00	Payable on application by the applicant	\$512.00	Updated rate
51 52 53	For inspecting the register of trade name products	\$132.98 per hour, plus  actual cost of disbursements	Payable at completion of the inspection by the person inspecting the register	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4

	Function, power, or duty for which fee or charge payable	Fee or charge	Fee or charge payable by	Proposed fee	Comment
54 55 56	For considering whether to approve under section 8C of the Act the importation, manufacture, sale, or use of an agricultural compound without registration	\$132.98 per hour, plus  actual cost of disbursements	Payable by the person seeking the approval	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4
57 58 59	For suspension under section 30A of the Act of the registration of a trade name product registered under section 21 or 27 of the Act	\$132.98 per hour, plus  actual cost of disbursements	Payable by the registrant	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4
60 61 62	For considering whether to issue a certificate of compliance under section 35A of the Act	\$132.98 per hour, plus  actual cost of disbursements	Payable by the applicant	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#1 Common#4
63 64 65	Performance of a function, power or duty that is: <ul style="list-style-type: none"> <li>• required to be undertaken under the Act, including subsidiary regulations and notices;</li> <li>• not prescribed elsewhere in the relevant cost recovery regulations.</li> </ul>		Payable by the person whose actions resulted in the specific function, power or duty being required.	- \$155.00, plus - \$155.00 per hour, charged in 15-minute increments, after the first hour, plus - actual cost of disbursements	Common#5 Common#4



## 9 Proposals that impact across multiple cost recovery regimes

### 9.1 BACKGROUND

The current structure of the Ministry is a result of the merger of different agencies that administered a range of Acts that provide for cost recovery. Because of this there are differences in the approach to cost recovery between sectors.

Some cost recovery issues, or features of them, are common across the different cost recovery regimes. The Ministry is therefore proposing to amend multiple sets of regulations at the same time to standardise some approaches to cost recovery, and the language used to describe them.

As a means of seeking feedback from all affected sectors, these multi-regime issues have been grouped for consultation purposes. Implementation for individual cost recovery regimes will be through the Regulations made under the authority of individual Acts.

### 9.2 POLICY PROPOSALS

*Common#1 – Align hourly rate charges*  
*Common#2 – Use Inland Revenue Department vehicle mileage rates*

*Common#3 – Recover costs for support staff involved in specialist services*

*Common#4 – Recover other costs incurred by MPI*

*Common#5 – Charge for performance of function, power or duty under the Act, Regulations and Notices not prescribed elsewhere*

*Common#6 – Correct use of the term ‘levy’*

*Common#7 – Update references to recognised persons and agencies*

*Common#8 – Align veterinary professional rates across biosecurity and food regulations*

### 9.3 COMMON#1 – ALIGN HOURLY RATE CHARGES

#### 9.3.1 Background

The food safety cost recovery regulations prescribe hourly rate charges using a number of different approaches, for example:

- Animal Products (Fees, Charges, and Levies) Regulations – one hour of time, with time thereafter charged on the basis of an assessment charge at hourly increments until the last half hour, which is done in 15 minute increments;
- Animal Products (Dairy Industry Fees and Charges) Regulations 2007 – similar approach, but prescribed in a different manner;
- Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002 – different approach;
- Animal Welfare Export Certificate Regulations 1999 – different approach.

#### 9.3.2 Regimes affected by this proposal

This change would apply to the following regulations:

- Animal Products (Fees, Charges, and Levies) Regulations 2007;
- Animal Products (Dairy Industry Fees and Charges) Regulations 2007;
- Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002;
- Animal Welfare Export Certificate Regulations 1999;
- Wine Regulations 2006.

### 9.3.3 Problem definition

The different hourly rate charging approaches under each set of regulations adds complexity for staff performing similar functions under the different Acts as they may be required to follow different administrative processes for charging for services under each Act.

#### *Options considered*

The Ministry considered two options:

- Option 1 — maintain the status quo (inconsistent wording across multiple regulations).
- Option 2 — adopt a common approach across regulations, to the extent possible.

MPI's preferred approach is to establish a common approach across regulations. This will help to ensure consistency (and thereby promote efficiency) for staff performing similar functions under the different Acts.

The majority of cost-recoverable activity falls under the Animal Products Act 1999. Extending the approach prescribed in Part 1 and Part 2 of Schedule 1, of the Animal Products (Fees, Charges, and Levies) Regulations 2007 to regulations under other Acts is considered the most appropriate approach to take. A minimum charge of one hour also allows for the administrative costs associated with invoicing and collection.

### 9.3.4 Proposed alignment of hourly rate charging approach in keeping with the animal products fees

All time spent by an officer or employee of the Ministry would be chargeable at:

- a minimum charge of one hour, at the appropriate rate for the activity;
- an hourly rate, charged in 15-minute increments, for any time in excess of the first hour.

The Ministry proposes to apply this approach to the following regulations, with any necessary modifications:

- Animal Products (Fees, Charges, and Levies) Regulations 2007;
- Animal Products (Dairy Industry Fees and Charges) Regulations 2007;
- Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002;
- Animal Welfare Export Certificate Regulations 1999;
- Wine Regulations 2006.

### 9.3.5 Questions for consideration

#### Question 9.3

- 1) Do you support the adoption of a common approach for hourly rate charging under the various food sector cost recovery regimes?
- 2) If not, what is your preferred approach for each of the food sector cost recovery regimes, and what are your reasons for this preference?

## **9.4 COMMON#2 – USE INLAND REVENUE DEPARTMENT VEHICLE MILEAGE RATES**

### **9.4.1 Background**

The Ministry recovers vehicle costs using mileage rates prescribed in the regulations for each regime. A number of different rates are currently in force, and these rates can quickly become out of date.

Similarly, the various regulations prescribe the bases for recovery of other costs incurred by the Ministry when delivering services to users.

The Inland Revenue Department (IRD) collects data on the costs of operating a motor vehicle, and the Commissioner promulgates a standard vehicle mileage rate under section DE12(3) of the Income Tax Act 2007.

The Ministry proposes to remove ‘static’ references in the current regulations and adopt the periodic rate promulgated by the Commissioner of Inland Revenue.

### **9.4.2 Regimes affected by this proposal**

This change would apply to the all cost recovery regulations:

- Biosecurity (Costs) Regulations 2010 — veterinary inspectors only;
- Animal Products (Fees, Charges, and Levies) Regulations 2007;
- Animal Products (Dairy Industry Fees and Charges) Regulations 2007;
- Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002;
- Animal Welfare Export Certificate Regulations 1999;
- Wine Regulations 2006.

### **9.4.3 Problem definition**

The vehicle mileage rates are prescribed in various regulations and quickly become out of date. MPI’s collective employment agreement with its verifiers and some other staff provides for charging at the rate published by the Commissioner of Inland Revenue under section DE 12 (3) of the Income Tax Act 2007. The current rate<sup>33</sup> is \$0.77 cents per kilometre.

The difference in employment agreement rates and the regulated rates for mileage and other costs can also lead to a discrepancy in the costs the Ministry recovers from service users and the reimbursements made to Ministry staff for some activities.

### **9.4.4 Proposed change to a common approach for mileage rates and the recovery of any other travel costs**

MPI proposes to amend various regulations to provide for cost recovery of motor vehicle costs at the rate promulgated from time to time by the Commissioner of Inland Revenue under section DE 12 (3) of the Income Tax Act 2007.

This proposal would apply to the travel costs for veterinary inspectors only in the Biosecurity (Costs) Regulations 2010.

This proposal will support efficiency and equity.

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<sup>33</sup> <http://www.ird.govt.nz/technical-tax/op-statements/os-review-mileage-rate-2014.html>

### 9.4.5 Questions for consideration

#### Question 9.4

- 1) Do you agree with the proposal to harmonise vehicle mileage rates and other travel costs across the various cost recovery regimes?
- 2) Do you agree with the use of the mileage rate promulgated from time to time by the Commissioner of Inland Revenue under section DE12(3) of the Income Tax Act 2007?
- 3) If not, what is your preferred approach to mileage rates for each cost recovery regime, and what are your reasons for these preferences?

## 9.5 COMMON#3 – RECOVER COSTS FOR SUPPORT STAFF INVOLVED IN SPECIALIST SERVICES

### 9.5.1 Background

Support staff members within the Ministry perform essential but non-specialist services that support the delivery of specialist certification. This includes the maintenance and administration of registers and the preparation and filing of documents.

MPI is able to recover costs for these services, but no mechanism currently exists in the various regulations to do this.

### 9.5.2 Regimes affected by this proposal

This change would apply to the following regulations:

- Biosecurity (Costs) Regulations 2010;
- Animal Products (Fees, Charges, and Levies) Regulations 2007;
- Animal Products (Dairy Industry Fees and Charges) Regulations 2007;
- Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002;
- Animal Welfare Export Certificate Regulations 1999;
- Wine Regulations 2006.

### 9.5.3 Problem definition

By way of example, as part of the process for issuing live animal and germplasm export certificates, MPI support staff prepare paper export certificates that are issued by recognised persons. This practice is more cost-effective than using specialist recognised persons, and allows recognised persons to focus on technical matters instead of administration.

Part 8 of the Animal Product (Fees, Charges, and Levies) Regulations 2007 does not include a provision for MPI to recover the costs of non-recognised persons involved in specialist functions and activities necessary for the export of live animals or germplasm. Consequently, MPI cannot fully recover the cost of these services.

This problem could be resolved by only using expert staff whose time can be cost-recovered for undertaking this work, but this is a very inefficient use of their time. Another option would be to build administration time into levies, but this does not apportion the costs as directly as a fee to that person or group who caused the costs to be incurred.

A similar problem exists for other cost recovery regimes.

#### **9.5.4 Proposed charges for support staff involved in export certification**

MPI proposes to create a new cost recovery item in each of the relevant regulations to allow MPI to recover for time spent by other employees undertaking functions and activities necessary for the production of certificates or provision of expert services.

#### **9.5.5 Questions for consideration**

##### **Question 9.5**

- 1) What is your preferred method for cost recovery of support staff time across the various cost recovery regimes?
- 2) If you prefer different methods for individual cost recovery regimes, what are these methods and what are your reasons for these preferences?

### **9.6 COMMON#4 – RECOVER OTHER COSTS INCURRED BY MPI**

#### **9.6.1 Background**

Other costs include incidental and additional costs that the Ministry incurs during the delivery of services to users. These costs are often unpredictable and vary depending on the nature of the service provided.

These costs include categories such as external review, expert review, notification, product testing, travel and accommodation, as well as disbursements such as photocopying, printing and stationery, phone, fax, video conferencing, postage and courier charges.

#### **9.6.2 Problem definition**

Inconsistent regulatory approaches add administrative complexity, particularly for staff that work across multiple regimes.

#### **9.6.3 Proposed charges for support staff involved in export certification**

MPI proposes that actual and reasonable costs incurred by an officer or employee of the Ministry may be recovered when they arise from:

- a request by the operator of a risk management programme, or other processor;
- an act, or omission, of an operator or processor.

MPI proposes that recoverable costs include, but not be limited to, costs such as external review, expert review, notification, product testing, travel and accommodation, as well as disbursements such as photocopying, printing and stationery, phone, fax, video conferencing, postage and courier charges.

MPI proposes that a common approach for recovering other costs be applied to the following regulations, with any necessary modifications:

- Biosecurity (Costs) Regulations 2010;
- Animal Products (Fees, Charges, and Levies) Regulations 2007;
- Animal Products (Dairy Industry Fees and Charges) Regulations 2007;
- Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002;
- Animal Welfare Export Certificate Regulations 1999;
- Wine Regulations 2006.



## 9.6.4 Questions for consideration

### Question 9.6

What is your preferred approach for the recovery of incidental costs incurred by the Ministry for delivery of services to users for each cost recovery regime (or for all cost recovery regimes)?

## 9.7 COMMON#5 – CHARGE FOR PERFORMANCE OF FUNCTION, POWER OR DUTY UNDER THE ACT, REGULATIONS AND NOTICES NOT PRESCRIBED ELSEWHERE

### 9.7.1 Background

MPI provides a range of functions, powers and duties under various Acts, and subsidiary regulations and notices and standards. The various cost recovery regulations prescribe fees, charges and levies for specific functions, powers or duties under the relevant Act, regulations and notices.

Item 23 of the Schedule of the Biosecurity (Costs) Regulations 2010 enables MPI to recover the costs of performing a function, power, or duty—

- required to be undertaken under the Act or regulations made under the Act; and
- not prescribed elsewhere in the Schedule.

The item is payable as an hourly rate for each adviser involved and is payable by the person whose actions resulted in the specific function, power or duty being required.

The Ministry is proposing to adopt this approach for other cost recovery regimes.

### 9.7.2 Problem definition

The Ministry currently cannot charge for the exercise of functions, powers or duties under Acts, regulations and notices unless they are prescribed for that regime.

It is not practical or possible to specify all of MPI's functions, powers or duties under all Acts and subsidiary regulations and notices, or the associated fees or charges for them, in an exhaustive manner. There are two main reasons:

- The Ministry was not aware of the function, power or duty when the regulations were promulgated.
- The function, power or duty under the Acts, and subsidiary regulations and notices is new. For example, halal-related services were not included in the Animal Product (Fees, Charges, and Levies) Regulations 2007, and were subsequently added by the Animal Products (Overseas Market Access Requirements for Halal Assurances) Notice 2013.

MPI's inability to recover costs for the exercise of functions, powers or duties under the Acts and subsidiary regulations and notices is causing it to under-recover the cost of delivering these services.

### 9.7.3 Proposed fees for performance of function, power or duty under the Act, Regulations and Notices not prescribed elsewhere

The Ministry proposes to include cost recovery for performance of a function, power or duty that is:

- required to be undertaken under the relevant Act, including subsidiary regulations and notices;
- not prescribed elsewhere in the relevant cost recovery regulations.

The hourly rate would be the relevant rate for other services provided under the empowering Act. MPI proposes that this approach be applied to the following regulations, with any necessary modifications:

- Animal Products (Fees, Charges, and Levies) Regulations 2007;
- Animal Products (Dairy Industry Fees and Charges) Regulations 2007;
- Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002;
- Animal Welfare Export Certificate Regulations 1999;
- Wine Regulations 2006.

The item would be payable by the person whose actions resulted in the specific function, power or duty being required.

This proposal would support equitable cost recovery and efficient service delivery.

#### **9.7.4 Questions for consideration**

##### **Question 9.7**

What is your preferred method of cost recovery for time spent performing functions, powers or duties not specified elsewhere for each cost recovery regime (or for all cost recovery regimes)?

## **9.8 COMMON#6 – CORRECT USE OF THE TERM ‘LEVY’**

### **9.8.1 Background**

MPI imposes levies on some products to fund industry good services. For historic reasons, when some cost recovery regulations were created, certain charges (industry goods) were described in regulations as ‘standard’ charges, when from a legal perspective these are actually levies.

### **9.8.2 Regimes affected by this proposal**

This change would affect the:

- Animal Products (Fees, Charges, and Levies) Regulations 2007;
- Animal Products (Dairy Industry Fees and Charges) Regulations 2007;
- Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002;
- Animal Welfare Export Certificate Regulations 1999;
- Wine Regulations 2006.

### **9.8.3 Problem definition**

The regulations inappropriately describe certain cost recovery items as ‘fees’ and ‘charges’ when, in law, they are ‘levies’.

The options are:

- Option 1: maintain the status quo;

- Option 2: update the descriptions.

The Ministry's preferred approach is to update the descriptions to remove ambiguity and clarify the application of the various types of charges.

#### **9.8.4 Proposed re-categorisation of fixed fees as levies**

MPI proposes to change the terminology used for items recovering industry good costs in the various regulations from 'fees' or 'charges' to the legally correct term 'levies'. This proposal involves no changes to fees.

#### **9.8.5 Questions for consideration**

##### **Question 9.8**

Do you have any concerns about the proposed clarification of use of the term 'levy'?

### **9.9 COMMON#7 – UPDATE REFERENCES TO RECOGNISED PERSONS AND AGENCIES**

#### **9.9.1 Background**

The Agricultural Compounds and Veterinary Medicines Act 1997, Animal Products Act 1999, and Wine Act 2003 have been amended since the relevant cost recovery regulations were last reviewed.

#### **9.9.2 Regimes affected by this proposal**

This change would affect the:

- Animal Products (Fees, Charges, and Levies) Regulations 2007;
- Animal Products (Dairy Industry Fees and Charges) Regulations 2007;
- Agricultural Compounds and Veterinary Medicines (Fees and Charges) Regulations 2002;
- Animal Welfare Export Certificate Regulations 1999;
- Biosecurity (Costs) Regulations 2010;
- Wine Regulations 2006.

#### **9.9.3 Problem definition**

The references in regulations to the relevant parts of the Agricultural Compounds and Veterinary Medicines Act 1997, Animal Products Act 1999, and Wine Act 2003 relating to recognised persons and agencies are out of date.

#### **9.9.4 Proposed amendments**

MPI proposes to amend the cost recovery regulations to update the references to the relevant parts of the Agricultural Compounds and Veterinary Medicines Act 1997, Animal Products Act 1999, and Wine Act 2003 relating to recognised persons and agencies.

This is a minor and technical adjustment to cost recovery regulations to make changes to update the regulations. It involves no changes to fees.

### 9.9.5 Questions for consideration

#### Question 9.9

Do you have any concerns about the proposed updates to references to the Agricultural Compounds and Veterinary Medicines Act 1997, Animal Products Act 1999, and Wine Act 2003 in various regulations?

## 9.10 COMMON#8 – ALIGN VETERINARY PROFESSIONAL RATES ACROSS BIOSECURITY AND FOOD REGULATIONS

### 9.10.1 Background

MPI has a responsibility to service users to ensure that charges for similar activities and services across different regulations are consistent, and that the rationale for differential charging is clear.

### 9.10.2 Problem definition

Veterinary inspectors undertake a variety of activities and functions under biosecurity and food legislation.

Current hourly rates for veterinary inspector activities were set prior to the creation of MPI from its predecessor agencies. These predecessor agencies had different cost (including overhead) structures. As a result, veterinary inspectors undertaking similar work, but now with the same cost structure, are being recovered at different rates for activities undertaken under biosecurity and food legislation.

The options considered were:

- Option 1: maintain the status quo;
- Option 2: amend the veterinary inspector hourly rates in the Biosecurity (Costs) Regulations to align with that specified in the relevant food regulations (proposed rate of \$186.30 per hour).

### 9.10.3 Proposed charges

The proposal is to amend the veterinary inspector rate in the Biosecurity (Costs) Regulations to \$186.30 per hour to align with the rate proposed in the relevant food sector regulations.

### 9.10.4 Questions for consideration

#### Question 9.10

Do you have any concerns about the proposed alignment of charging rates for veterinarians under the biosecurity cost recovery regime and the food cost recovery regime?