Ministry for Primary Industries
Manatū Ahu Matua

Establishing cost recovery regulations to support the Food Act 2014

Regulatory Impact Statement

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Growing and Protecting New Zealand

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This Regulatory Impact Statement (RIS) has been prepared by the Ministry for Primary Industries (MPI). It provides an analysis of options for cost recovery under the Food Act 2014 (the Food Act).

Cost recovery is required by the Food Act. The Minister and the MPI chief executive must take all reasonable steps to ensure that MPI's direct and indirect costs in administering the Food Act are recovered where they are not funded by the Crown. This is the starting point for the analysis. It means that it is not a feasible option to do nothing and not implement cost recovery.

The Food Act provides for regulations to give effect to cost recovery. These provisions, and long-standing government policy on cost recovery mean there are no feasible non-regulatory options.

Within this context, economic good principles are used to determine the services and activities to be cost recovered. The assumption is that cost recovery is appropriate for private, industry and merit goods, but not public goods, which are Crown funded.

The analysis does not consider charges for MPI's function of maintaining and developing food standards. The status quo of Crown funding is maintained, pending a wider review of the costs of, and charges for, establishing standards.

Multi-criteria analysis is used to determine the appropriate charging mechanisms to recover the costs of the services and activities to be cost recovered.

The RIS sets out the methodology for estimating how much it costs MPI to provide these goods and services. Only one methodology is proposed, as there is longstanding government policy on how this should be done. This policy is set in the Treasury *Guidelines for Setting Charges in the Public Sector*[1]. The methodology is applied to information from MPI's financial systems and experience with existing cost recovery systems in other regulatory regimes to produce costs estimates that form the basis of the proposed fees and charges.

There are limitations on the accuracy of the cost estimates and of the fees and charges that are proposed as a result because all of these services and activities are new. MPI has, however, developed the estimates on a sound basis as noted above. We will monitor the accuracy of these estimates once the cost recovery system is implemented, and will propose adjustments as necessary.

Dan Bolger

Deputy Director General

Office of the Director-General, Ministry for Primary Industries

[1] *Guidelines for Setting Charges in the Public Sector*, The Treasury, December 2002. http://www.treasury.govt.nz/publications/guidance/finmgmt-reporting/charges

Summary

This Regulatory Impact Statement summarises MPI's analysis of options for cost recovery under the Food Act 2014 (the Food Act).

The objectives of this work are to implement a Food Act cost recovery system that is efficient, justifiable, transparent and equitable.

A number of services and activities to be provided by MPI are identified as private goods and therefore appropriate to be cost recovered. These services are:

- **Registration**: assessment of applications for registration or variation of food control plans, of businesses operating under national programmes, or of food importers.
- **Approval of laboratories**: assessment of applications for approval or variation of approval for laboratories.
- **Recognition**: assessment of applications for agency or person recognition, or for variation or renewal of recognition.
- **Verification, inspections and audits**: processes to meet these requirements.
- **Compliance**: issue of improvement notices, assessment of applications to review the issue of an improvement notice, assessment of applications for issue of a statement of compliance, and issue of food recall notices by the chief executive.
- **Imported food:** clearance of imported food, and administration of imported food defined as of 'increased regulatory interest'.

Standards maintenance and development will continue to be Crown funded pending a broader review of the funding of this function.

Multi-criteria analysis is used to compare different charging mechanisms for these private goods. On the basis of this analysis, the recommendations are as follows:

- **Fixed fee plus hourly charge –** to be used for services with a standard component and a variable element determined by the particular application, the industry, and/or the food type. These services are: registration, approval of laboratories, recognition, compliance, and clearance of imported food as described above.
- **Hourly rate fees –** to be used for services which are likely to be highly variable. These services are verifications, inspections, audits, and administration of food of 'increased regulatory interest'.
- **Actual and reasonable costs –** to be used for all disbursements.

The RIS sets out the methodology for estimating how much it costs MPI to provide these goods and services. These estimates form the basis of the proposed fees and charges, which are detailed in table 3.

Regulations are proposed to set out the circumstances under which the chief executive of MPI or a territorial authority may grant an exemption, waiver or refund of a fee. This enhances the equity and efficiently of the system by enabling consideration of individual circumstances within prescribed limits.

The cost recovery proposals were set out in a public discussion paper released in January 2015. The results of this consultation are outlined.

When implementing the cost recovery proposals, MPI will draw on the experience and systems it has developed to provide similar services under existing legislation.

There is a legislative requirement for a review of fee levels and methods at least once every three years. In addition, MPI will monitor the accuracy of the costs estimates on the basis of experience, and consider after twelve months whether any adjustments are necessary. There will be management monitoring of performance standards relating to the timeliness of service provision.

Territorial authorities are co-regulators under the Food Act and may also set fees and charges for the services and activities they deliver. MPI does not consider it is necessary at this time to propose regulations that prescribe the methodologies territorial authorities should use in setting their fees and charges. This advice is based on the considerable experience of territorial authorities in establishing fees and charges for cost recovery purposes, the audit processes of the Local Government Act 2002, and the need for territorial authorities to tailor their fees and charges, within the legislative boundaries, to reflect the particular needs and circumstances of their communities and the objectives of their long term plans.

Context

The legislative framework

1. The Food Act 2014 (the Food Act) was passed into law in June 2014 and will replace the Food Act 1981 over the transition period from 1 March 2016 to 30 June 2019.

2. The Food Act, section 198 requires the Minister and MPI's chief executive to take all reasonable steps to ensure recovery of the direct and indirect costs of administering the Food Act that are not provided for by money funded by the Crown. This means the Crown (taxpayer) funds, or partially funds, some functions, powers or services, but others are to be paid for in whole or in part, by the third parties (businesses, individuals) that use or benefit from these functions, powers or services. Section 203 provides that regulations may be made to set fees, charges and other cost recovery mechanisms.

Other guidance on cost recovery

3. The context for MPI's establishment of cost recovery regulations is also set by the constitutional principles in Parliament's Standing Orders, reports of the Regulations Review Committee, the Treasury's *Guidelines for Setting Charges in the Public Sector* (Treasury guidelines)[2] and the Office of the Auditor-General's Good Practice Guide *Charging fees for public sector goods and services* (Auditor-General guide)[3].

Timing

4. Most of the Food Act, including the proposed cost recovery regulations, will come into force on 1 March 2016 (unless an earlier date is appointed by the Governor- General).

5. The cost recovery regulations must, however, be made by 1 July 2015. This is because section 201 requires that any cost recovery regulation must have been made before the start of the financial year to which it applies, unless those affected by the regulation substantially agree to the new or changed regulation.

6. As a result, the cost recovery proposals are being developed in advance of proposals for the main suite of regulations under the Food Act. These broader proposals are under development and Cabinet approvals will be sought in mid-2015.

Issue definition

7. The issue to be addressed is the Food Act requirements for cost recovery for services and activities that are not funded by the Crown, and are used by food services providers, including businesses and individuals, or are provided for their benefit. These services and activities are all newly established under the Food Act.

8. To address the Food Act cost recovery requirements it is necessary to determine:
   - which services and activities will be cost recovered;
   - which charging mechanisms will be used to recover the costs of these services and activities;
   - how much these services and activities will cost; and

[2] *See footnote 1 above.*

[3] *Charging Fees for Public Sector Goods and Services*. Good Practice Guide. Office of the Auditor-General, June 2008. http://www.oag.govt.nz/2008/charging-fees/

- to set the levels of the actual fees and charges.

9. The issue is significant given the Food Act requirement of all food service providers that they provide safe and suitable food. A large majority of the approximately 45,000 food service providers (operating from about 85,000 premises) will be directly involved through registration of either their business or their food safety measures. The sector is characterised by the very wide range of business types and sizes; from the corner dairy to nationwide supermarket chains.

10. Overall the food retail sector turns over an estimated $28b annually, and food manufacturing about $47b. MPI expects that the services and activities to be cost recovered will cost about $3m to deliver, and that the same amount will be cost recovered.

Scope

11. This analysis applies to services and activities provided by MPI only. It does not apply to cost recovery of the services and activities undertaken by the territorial authorities as co-regulators under the Food Act. (The services and activities delivered by territorial authorities relate to registration, verification, compliance and monitoring).

12. The analysis looks at the option of making regulations under the Food Act, section 206, to prescribe a methodology or framework to be applied by a territorial authority in fixing any fees.

13. The analysis does not cover cost recovery options for the services MPI provides by maintaining and developing standards under the Food Act. This issue is being dealt with as part of wider work being done within MPI on the costs and appropriate funding mechanisms for establishing standards under different pieces of legislation, including the Food Act 2014 and the Animal Products Act 1999. In the meantime, it is proposed to maintain the status quo under which the Crown funds Food Act standards development.

14. The analysis does not concern services provided by third parties. These are services such as sampling and testing, or verification of food control plans that are provided in a contestable market situation. Such services will be paid for by the person requesting the service, with the price determined by negotiation between the parties under normal private contractual arrangements.

Objectives

15. To determine the objectives of this work we have looked to the cost recovery principles in the Food Act. We have also taken account of the guidance on cost recovery provided by The Treasury and the Office of the Auditor-General[4].

16. Section 198 articulates the principles that must be applied in setting fees and charges to recover costs. In determining the most appropriate method of cost recovery and its level, the Minister and the MPI chief executive must have regard to the following, as far as is reasonably practicable:

    - **Equity** – funding for a particular function, power, or service, or a particular class of functions, powers, or services, should generally, and to the extent practicable,

[4] See footnotes 1 and 3 above.

be sourced from the users or beneficiaries of the relevant function, power, or service at a level commensurate with their use or benefit from the function, power or service.

- **Efficiency** – costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost.
- **Justifiability** – costs should be collected only to meet the actual and reasonable costs (including indirect costs) of the provision or exercise of the relevant function, power, or service.
- **Transparency** – costs should be identified and allocated as closely as practicable in relation to tangible service provision for the recovery period in which the service is provided.

17. We have used these principles to determine the overall objective for this work, which is to implement a Food Act cost recovery system that is:

- **efficient**, ie costs are generally allocated and recovered in ways that ensure that maximum benefits are delivered at minimum cost for both the food sector and the regulators, including minimum compliance cost;
- **justifiable**, ie costs are collected only to meet the actual and reasonable costs (including indirect costs) of the provision of the service or activity;
- **transparent**; ie costs are identified and allocated as closely as practicable in relation to the service or activity provided and the time period in which it is provided; and
- **equitable,** ie the amount charged to each payer is generally commensurate with their use of, or benefit from, the provision of the service or activity.

18. The objective provides the criteria we have used to analyse the options. Where there are trade-offs to be made between criteria, efficiency is the most important. A cost recovery system should not result in administrative costs that outweigh the amount to be collected, nor should it contribute to inefficiencies in the sector being regulated.

Options and impact analysis

19. As outlined above, the Food Act, section 198 requires cost recovery of services and activities not funded by the Crown.

20. The status quo (do nothing) option is not included in the options analysis because it would mean that key aspects of the Food Act would not be able to be implemented. There would be Crown funding of all services and activities, or these services and activities would not be provided. Taxpayer funding of services and activities that primarily benefit particular food services providers would be at odds with both the requirements of section 198 of the Food Act and longstanding government policy on cost recovery. It would also mean that cost recovery was not available as a lever to support and incentivise individuals and businesses the food sector to take responsibility for ensuring safe and suitable food. An example of such incentives is the reduced compliance costs that would come from sustained positive verification audits.

21. Non-regulatory options, ie voluntary cost recovery is not feasible. This would also be at odds with the Food Act and longstanding government policy. It would not meet the

criteria of efficiency, (the regulator would not be able to plan and budget on the basis of a sustainable funding stream), justifiability and transparency (amounts and frequency of payments would be at the will of the third party), nor equity (the system would rely on good will and encourage free-riders).

22. We have developed the cost recovery proposals through analysis of the following issues:
    - Which services and activities undertaken by MPI should be cost recovered?
    - Which charging mechanisms should be used to recover the costs of these non-Crown funded services and activities?
    - How will MPI establish the particular costs for the services and activities to be cost recovered?
    - Setting rates for the proposed charges.

Which services and activities undertaken by MPI should be cost recovered?

The economic characteristics

23. The Treasury charging guidelines[5] require analysis of the economic characteristics of services and activities. This analysis looks at who should pay on the basis of who benefits and who is adversely affected by the service or activity.

24. This analysis divides services and activities into four types of economic goods: public, industry (club), private and merit. In practice there is often no clear delineation between these categories, and a service or activity can have elements of all four.

25. The definitions of the four types of economic goods are as follows:

    - **Public good** – It is difficult or costly to exclude users from benefiting from a public good, and its use by one person does not detract from its use by another. These characteristics are termed non-excludable and non-rivalrous. In practice, pure public goods are rare. Many government-provided services share the characteristics of public goods to some extent. There is a good case for recovering the costs of a public good from the community as a whole by general taxation. Law enforcement is an example of a public good.

    - **Industry good** (also called 'club goods') – Users can be excluded from the benefits of an industry good at low cost, ie it is excludable, unlike a public good. Its use by one person does not detract from its use by another, ie it is non-rivalrous like a public good. The ability to exclude users implies that it is feasible to charge for use. Charging the members of a particular industry can be an efficient way of recovering costs. Setting quality standards to benefit marketing of a product is an example of an industry good.

    - **Private good** – Users can be excluded from the benefits of a private good at low cost, ie it is excludable. Its use by one person conflicts with use by another, ie it is rivalrous. There is a strong case for recovering the costs of private goods from those who benefit directly from their provision. Registration of a business is an example.

    - **Merit goods** – These are goods desired by the community as a whole at a higher rate of consumption than the community is prepared to pay for. Merit goods may

[5] See footnote 1 above.

involve a mixture of Crown and third party funding, and the loss in public benefits from charging at full cost has to be significant. An example is standards that have both a marketing and a product safety component.

26. The assumption is that cost recovery is appropriate for all or some of the costs of industry, private, and merit goods. A key issue then becomes the degree to which the practical considerations of how costly it is to charge the user of a service outweigh the benefits of charging.

27. The following paragraphs set out how we have categorised the services and activities to be provided by MPI under the Food Act and associated with the Food Act.

28. **Public goods:**
    - Policy advice on the Food Act and related matters
    - Joint standard setting for Australia and New Zealand
    - Some compliance and enforcement activities, ie those where the public interest outweighs other considerations. These include prosecutions and some aspects of the food recall process.

29. **Industry goods:** We have not at this point identified any industry goods amongst the services and activities provided. We note, however, that this analysis does not include MPI's development and maintenance of standards under the Food Act.

30. **Private goods:**
    - **Registration**: assessment of applications for registration or variation of food control plans, of businesses operating under national programmes, or of food importers.
    - **Approval of laboratories**: assessment of applications for approval or variation of approval for laboratories.
    - **Recognition**: assessment of applications for agency or person recognition, or for variation or renewal of recognition.
    - **Verification, inspections and audits**: processes to meet these requirements.
    - **Compliance**: issue of improvement notices, assessment of applications for review of issue of an improvement notice, assessment of applications for issue of a statement of compliance, and issue of food recall notices by the chief executive.
    - **Imported food:** clearance of imported food, and administration of imported food defined as of 'increased regulatory interest'.

31. **Merit goods:** We have not at this point identified any merit goods amongst the services and activities provided. We note, however, that this analysis does not include MPI's development and maintenance of standards under the Food Act.

Summary of analysis and recommendations for services to be cost recovered

32. On the basis of this assessment, we recommend that the services and activities identified above as private goods are subject to cost recovery (with the caveat that cost recovery is at a level and in a manner that meets the needs of efficiency).

33. As outlined below in the consultation section, these cost recovery proposals were set out in a public discussion paper. Most submitters, other than those who did not support cost recovery in any form, thought the areas identified for cost recovery were appropriate.

Which charging mechanisms should be used to recover the costs of these non-Crown funded services and activities?

Options for charging mechanisms

34. The Food Act, section 199 provides the following options for cost recovery for a service or function:
    - fixed fees or charges;
    - fees or charges based on a scale, formula or hourly or other unit basis;
    - use of a formula or other method of calculation for fixing fees and charges;
    - a fee or charge for actual and reasonable costs;
    - estimated fees or charges, or fees or charges based on estimated costs, paid before the provision of the service or function, with post–service reconciliation (further payment or refund);
    - refundable or non-refundable pre-paid deposits;
    - fees or charges imposed on users of services or third parties;
    - levies;
    - any combination of the above.

35. When developing feasible options for charging mechanisms we took account of:
    - the categorisation of all of the services and activities to be cost recovered as private goods;
    - the degree to which these services and activities are standardised in terms of process and the likely demands on time and resources;
    - the method and location of service delivery – for example, whether site visits are required or whether the service is office-based; and
    - MPI's previous experience with charging for similar services under the Animal Products Act 1999, the Biosecurity Act 1993, the Agricultural Compounds and Veterinary Medicines Act 1997, the Food Act 1981, and the Wine Act 2003.

36. Fees and charges are the most appropriate cost recovery mechanism for private goods as it is possible to identify both a chargeable unit and a unique payer.

37. Levies are not a viable option as they are not suitable for private goods. Levies are appropriate where benefits and commensurate costs cannot be attributed to individuals.

38. From the range of possible options for fees and charges the following have been developed and assessed.

    - **Option 1: Fees based on actual and reasonable costs –** This requires calculation of the direct and indirect costs of each service or activity provided. Individualised invoices would be generated for each instance of a service or activity.

    - **Option 2: Fixed fees** – This requires estimates to be made of the costs of each type of service or activity. The estimates would be based on the standard, average time required to carry out the service or activity, multiplied by a set hourly rate. These estimates become the fixed fees. Standard invoices would be generated for each service or activity. Pre-payment would be possible.

    - **Option 3: Fixed fee plus hourly charge –** This includes a fixed component to cover costs common to every transaction (such as standardised administrative processing) and an hourly charge to reflect the individual effort required for each transaction. As with option 2, estimates would be made of the costs of each type

of service or activity. The estimates would include identifying the actual time this work would be normally be expected to take. The estimates then become the standard fees. In addition, an estimate would be made of the standard hourly rate for the type of service or activity. If the standard time is exceeded, additional time is charged as units of this hourly rate. Invoicing would not be possible until after the service or activity is completed, but invoicing would be expected to be more standardised than under option 1.

- **Option 4: Hourly rate fees** – This requires an understanding of the type and level of skills required for the particular task. An estimate is made of the appropriate hourly rate and this becomes the charging unit, which is set and advised in advance. Invoicing would not be possible until after the service or activity is completed, but invoicing would be expected to be more standardised than under option 1 because the charging unit is fixed.

Assessment of options for charging mechanisms

39. The following assessment looks at the expected impacts of each option as they relate to the four criteria. As noted above, where there is a trade-off between criteria, efficiency is considered the most important.

40. The assessment against the criteria will vary depending on the extent to which the service or activity is standardised or not.

41. Most of the services and activities identified for cost recovery have a standard component, but will vary in complexity according to the industry or food type involved. Many of the services involve assessment of applications. The time taken for these assessments may also vary according to the quality (completeness and accuracy) of the information provided. The compliance actions identified for cost recovery and the clearance of imported food have similar characteristics.

42. Of the remaining services and activities identified for cost recovery, verifications, inspections, audits, and administration of food of 'increased regulatory interest' are likely to be highly variable.

43. The symbols ✘ and ✓ indicate the overall assessment, ie on balance it meets or does not meet the criteria. Where the symbols are doubled (✘✘ and ✓✓) the option very clearly meets or does not meet the criteria. In some cases the assessment is neutral (—).

Table 1: Multi criteria analysis of charging options

	Efficient (maximum benefit for minimum cost)	Justifiable (meet only actual and reasonable costs)	Transparent (clearly identified with the actual service or activity)	Equitable (commensurate with the payer's use of, or benefit from the service or activity)
Option 1: Fees based on actual and reasonable costs	✗ **for both standardised and highly variable services** Administrative costs would be relatively high and this would be reflected in the fees. Does not provide certainty for either the payer (re outgoings) or MPI (re income). Potential for delays and additional administration if disputes arise over amounts. Places incentives on applicants to have complete and accurate applications. Less incentives on MPI to be efficient, although costs must be 'reasonable'.	– **for both standardised and highly variable services** Will be based on actual costs, but administrative aspects may increase costs to more than reasonable in some instances.	✓ **for both standardised and highly variable services** Costs would be clearly identified with the actual service provided, although they would only be able to be identified after the event.	✓ **for both standardised and highly variable services** The amount charged would be commensurate with what it actually costs. It should reflect the actual benefit/use, although it is possible that it will reflect the complexity or otherwise of each instance of service provision.

	Efficient (maximum benefit for minimum cost)	Justifiable (meet only actual and reasonable costs)	Transparent (clearly identified with the actual service or activity)	Equitable (commensurate with the payer's use of, or benefit from the service or activity)
Option 2: Fixed fees	**✓ for both standardised and highly variable services** Simple to administer, with relatively low transaction costs. Provides certainty for payers and MPI. Compared with option 3, creates less incentives towards efficiency on the part of either MPI or payer.	**✓ for standardised services** **× for highly variable services** Will not reflect actual costs as based on estimates. Where services are standardised estimates should be reasonable and close to actual costs.	**✓ for standardised services** **× for highly variable services** Estimated costs for each activity would be identified and made public as the basis of the fees. Where services are standardised the estimates should be reasonable and close to actual costs.	**✓ for standardised services** **× for highly variable services** Where services are standardised the fees should be close to the benefit received and the time taken. For variable services may over- or under-recover costs and create cross-subsidies.

	Efficient (maximum benefit for minimum cost)	**Justifiable (meet only actual and reasonable costs)**	**Transparent (clearly identified with the actual service or activity)**	**Equitable (commensurate with the payer's use of, or benefit from the service or activity)**
Option 3: Fixed fees plus hourly charge	✓ **✓for standardised services** **✓for highly variable services** More complex to administer than option 2, but not as complex as option 1. Creates incentives towards efficiency on the part of the payer (if their application is complete and as simple as possible then they will be charged less.) Creates efficiency incentives on MPI (if the task is completed in the standard time it is administratively simpler).	**✓for standardised services** **× for highly variable services** Closer to actual costs than option 2, but not as close as option 1. Simpler administration means costs may be more reasonable then under option 1. Costs likely to be closer to actual for standardised services.	**✓for both standardised and highly variable services** Estimated costs for each activity, and for extra time related to the activity would be identified and made public as the basis of the fees.	✓ **✓for standardised services** **✓for highly variable services** The amount charged will closely reflect the effort involved, especially for standardised activities. Less cross-subsidy between payers than under option 2, as those with more complex needs pay more. Cross subsidy is less for standardised activities.

	Efficient (maximum benefit for minimum cost)	Justifiable (meet only actual and reasonable costs)	Transparent (clearly identified with the actual service or activity)	Equitable (commensurate with the payer's use of, or benefit from the service or activity)
Option 4: Hourly rate fees	**✗ for standardised services** **✓ for highly variable services** Administratively less complex than option 1, but more complex than option 2. Does not provide certainty for either the payer or MPI, as full fee is not known till task completed, although more certainty than option 1 as unit charge is known. Incentives on payer towards efficiency, but not necessarily on MPI.	**✓ for both standardised and highly variable services** Based on actual time and estimated cost per hour. Administrative costs lower than option 1, which should help to keep costs within bounds of reasonable.	**✓ for both standardised and highly variable services** Estimated hourly rate is specifically linked to the service, and unit fee is identified before the event.	**✓ for both standardised and highly variable services** The amount charged will reflect the actual time involved. It should reflect the actual benefit or use, but may also reflect the complexity of each instance of service provision.

Summary of analysis and recommendations for charging mechanisms

44. The following conclusions can be drawn from the analysis:

- **Option 1: Fees based on actual and reasonable costs –** This is the most inefficient of the options for both the payers and MPI, and therefore is not recommended for time bound activities. It is, however, the most practical approach to recovery of expenses incidental to provision of a service or activity (disbursements). These cover things such as photocopying, printing and stationery, phone, fax, video conferencing, postage and courier charges. For some activities MPI may need to incur expenses for travel and accommodation, and possibly things such as expert review, notification, or product testing. The variability of these expenses means it is generally not practical to estimate and standardise these payments.
- **Option 2: Fixed fees** – These fees meet efficiency criteria for both standardised and variable services, but do not meet the other criteria for highly variable services.
- **Option 3: Fixed fee plus hourly charge** – These fees and charges are best suited to standardised services. They do not meet the justifiable criteria for highly variable services.

- **Option 4: Hourly rate fees** – The administrative costs and uncertainty of the final fee mean this is less efficient for standardised services than option 3, but it is the most efficient option for highly variable services.

Recommendations

45. **Option 3: Fixed fee plus hourly charge –** to be used for services with a standard component and a variable element determined by the particular application, the industry, and/or the food type. These services are:

    - **Registration**: assessment of applications for registration or variation of food control plans, of businesses operating under national programmes, or of food importers.
    - **Approval of laboratories**: assessment of applications for approval or variation of approval for laboratories.
    - **Recognition**: assessment of applications for agency or person recognition, or for variation or renewal of recognition.
    - **Compliance**: issue of improvement notices, assessment of applications to review the issue of an improvement notice, assessment of applications for issue of a statement of compliance, and issue of food recall notices by the chief executive.
    - **Imported food**: clearance of imported food.

46. **Option 4: Hourly rate fees –** to be used for services which are likely to be highly variable. These services are**:**
    - verifications, inspections, audits, and
    - administration of food of 'increased regulatory interest'.

47. **Option 1: Actual and reasonable costs –** to be used for all disbursements.

How will MPI establish the particular costs for the services and activities to be cost recovered?

48. The starting point is to calculate **the full costs** of the service or activity. This reflects the Treasury guideline that charges should, in general, be set at the full cost of providing the service, where full cost includes all overheads and non-cash payments (such as capital charges), measured in accrual accounting terms.

49. Full costs means including direct and indirect costs. Direct costs relate in general to the time and resources spent on the particular activity.

50. Indirect costs include MPI's management and support services costs, including maintenance of associated public registers; and monitoring compliance with requirements. They include corporate overhead costs (eg accommodation, equipment and communications). These costs will be apportioned across all cost recovered services and activities on the basis of personnel (numbers), IT costs (e.g. numbers of work stations), or other cost drivers as appropriate.

51. All of these costs as they relate to MPI's approval, recognition and registration functions have been built into an hourly rate, as set out in table 2 below. This method of calculating costs builds on our experience of cost recovery for other legislation and on information from our financial systems.

Table 2: Factors for hourly rate calculation

Chargeable costs (GST exclusive):		
		201X/1Y
Personnel		
Operational		
Overheads		
Other Directorates		
Total		$
Number of employees (FTEs[6]):		
Billable Hours:		201X/1Y
Working Year (Days)		Xxx
Less:		
Statutory Holidays	X	
Annual Leave	X	
Sick leave	X	
Courses & Conferences	X	
Technical Training	X	
Net work days p.a.		Xxx
Productivity assumption		xx%
Annual Billable Hours per FTE		Xxxx
Total Billable Hours		(xxx FTEs)
Hourly Rate (GST excl)		$xxx.xx
Hourly Rate (GST incl)		$xxx.xx

[6] Full time equivalent

Moving from costs to charges

52. Once the full costs of the relevant services have been calculated these can then be used as the basis for the charges.

53. The aspects of the Treasury guidelines that are relevant to establishing the charges are as follows:
    - charges should, in general, be set at the full cost of providing the service;
    - charges should not be excessive in relation to the costs incurred;
    - charges can be set to vary by the location where the service is provided or by the time at which the service is provided, but a balance needs to be struck between the gains from complex fee structures and the costs in terms of a loss of simplicity; and
    - there should be a robust basis for any charges.

54. MPI has applied these guidelines in the following ways:
    - **Full costs as the basis for charges:** as noted above, full costs of the activities will be calculated.
    - **Charges should not be excessive**: fees will be set on the basis of the average cost.
    - **Charges may vary by location or time taken provided this does not impose undue compliance costs**: this is reflected in the use of disbursements and hourly rates.
    - **Robust basis for the charges:** table 2 above shows the basis for the hourly rate. This rate is then applied to particular functions on the basis of the estimated time required to undertake the functions. The result of this calculation is a fixed fee.

55. Where the time taken to perform a function is subject to high variability on a case by case basis, an hourly rate is best.

The proposed charges

56. Table 3 sets out our proposed fees and charges for the services and activities identified for cost recovery. This table is based on:

    - our analysis of the four charging options as set out in table 1;
    - our methodology for determining average costs and average hourly rates for these services and activities is set out in table 2; and
    - comments received during consultation on the level of specificity at which charging is appropriate.

Table 3: Proposed fees and charges

	Service area	Type of fee	Fee	When fee payable and by whom
	Registration			
1	Application for, assessment of, and registration of custom food control plans	Application for registration fee	$348.50 per application plus $155.00 per hour in excess of 2 hours and 15 minutes processing application	$348.50 payable by the applicant on application for registration and any remainder payable within 20 working days of receipt of written demand for payment
2	Application for renewal of registration of custom food control plans	Application for renewal	$77.50 per application plus $155.00 per hour in excess of 30 minutes processing application	$77.50 payable by the applicant on application for renewal and any remainder payable within 20 working days of receipt of written demand for payment
3	Application for registration of a significant amendment of custom food control plans	Application for registration fee	$310.00 per application plus $155.00 per hour in excess of 2 hours processing application	$310.00 payable by the applicant on application for registration and any remainder payable within 20 working days of receipt of written demand for payment
4	Not-significant amendment of custom food control plans	Amendment fee	$77.50 per notification of amendment plus $155.00 per hour in excess of 30 minutes processing notification	$77.50 payable by the applicant on notification of amendment and any remainder payable within 20 working days of receipt of written demand for payment

5	Amendment to custom food control plans for a significant change in circumstances	Amendment fee	$155.00 per notification of amendment plus $155.00 per hour in excess of 1 hour processing notification	$155.00 payable by the applicant on notification of amendment and any remainder payable within 20 working days of receipt of written demand for payment
6	Voluntary suspension of registered food control plans	Suspension fee	$77.50 per notification of suspension plus $155.00 per hour in excess of 30 minutes processing notification	$77.50 payable by the applicant on notification of suspension and any remainder payable within 20 working days of receipt of written demand for payment
7	Application for, registration of food control plans based on a template or model issued by the chief executive	Application for registration fee	$193.75 per application plus $155.00 per hour in excess of 1 hour 15 minutes processing application	$193.75 payable by the applicant on application for registration and any remainder payable within 1 month of the granting or refusal to grant registration
8	Application for renewal of registration of food control plans based on a template or model issued by the chief executive	Application for renewal	$77.50 per application plus $155.00 per hour in excess of 30 minutes processing application	$77.50 payable by the applicant on application for renewal and any remainder payable within 20 working days of receipt of written demand for payment
9	Application for registration of a significant amendment of food control plans based on an approved template or model	Application for registration fee	$155.00 per application plus $155.00 per hour in excess of 1 hour processing application	$155.00 payable by the applicant on application for renewal and any remainder payable within 20 working days of receipt of written demand for payment

10	Not-significant amendment of food control plans based on an approved template	Amendment fee	$77.50 per notification of amendment plus $155.00 per hour in excess of 30 minutes processing notification	$77.50 payable by the applicant on notification of amendment and any remainder payable within 20 working days of receipt of written demand for payment
11	Amendment to food control plans based on an approved template for a significant change in circumstances	Amendment fee	$77.50 per notification of amendment plus $155.00 per hour in excess of 30 minutes processing notification	$77.50 payable by the applicant on notification of amendment and any remainder payable within 20 working days of receipt of written demand for payment
12	Voluntary suspension of a registered food control plan	Suspension fee	$77.50 per suspension plus $155.00 per hour in excess of 30 minutes processing application	$77.50 payable by the applicant on notification of suspension and any remainder payable within 20 working days of receipt of written demand for payment
13	Application for, assessment of, and registration of a business subject to a national programme	Application for registration fee	$116.24 per application plus $155.00 per hour in excess of 45 minutes processing application	$116.24 payable by the applicant on application for registration and any remainder payable within 1 month of the granting or refusal to grant registration
14	Application for renewal of registration of a business subject to national programmes	Application for renewal	$77.50 per application plus $155.00 per hour in excess of 30 minutes processing application	$77.50 payable by the applicant on application for renewal and any remainder payable within 20 working days of receipt of written demand for payment

15	Amendment to registration of a national programme because of a significant change in circumstances	Amendment fee	$77.50 per notification of amendment plus $155.00 per hour in excess of 30 minutes processing notification	$77.50 payable by the applicant on notification of amendment and any remainder payable within 20 working days of receipt of written demand for payment
16	Voluntary suspension of registration of business subject to a national programme	Suspension fee	$77.50 per notification of suspension plus $155.00 per hour in excess of 30 minutes processing notification	$77.50 payable by the applicant on notification of suspension and any remainder payable within 20 working days of receipt of written demand for payment
17	Application for, evaluation of, and registration of as an importer of food	Application for registration fee	$116.24 per application plus $155.00 per hour in excess of 45 minutes processing application	$116.24 payable by the applicant on application for registration and any remainder payable within 1 month of the granting or refusal to grant registration
18	Application for renewal of registration as an importer of food	Application for renewal	$77.50 per application plus $155.00 per hour in excess of 30 minutes processing application	$77.50 payable by the applicant on application for renewal and any remainder payable within 20 working days of receipt of written demand for payment
19	Voluntary suspension of a registered importer	Suspension fee	$77.50 per notification of suspension plus $155.00 per hour in excess of 30 minutes processing notification	$77.50 payable by the applicant on notification of suspension and any remainder payable within 20 working days of receipt of written demand for payment

20	Amendment to registration of an importer of food because of a significant change in circumstances	Amendment fee	$77.50 per notification of suspension plus $155.00 per hour in excess of 30 minutes processing notification	$77.50 payable by the applicant on notification of amendment and any remainder payable within 20 working days of receipt of written demand for payment
21	Application for, assessment of, and granting of an exemption	Application for exemption fee	$155.00 per application plus $155.00 per hour in excess of 1 hour processing application	$155.00 payable by the applicant on application for registration and any remainder payable within 1 month of the granting or refusal to grant registration
		Disbursements	Actual cost	
	Approvals			
22	Application for, the approval of laboratories	Application for approval fee	$193.75 per application plus $155.00 per hour in excess of 1 hour 15 minutes processing application	$155.00 payable by the applicant on application for approval and any remainder payable within 1 month of the granting or refusal to grant approval
		Disbursements	Actual cost	
	Recognition			
23	Application for, assessment of, and recognition, of agency or person or class as a recognised agency or recognised person or class of persons	Application for recognition fee	$193.75 per application plus $155.00 per hour in excess of 1 hour 15 minutes processing application	$77.50 payable by the applicant on application for approval and any remainder payable within 1 month of the granting or refusal to grant approval

24	Application for renewal of recognition of agencies, persons and classes of persons.	Application for renewal	$77.50 per application plus $155.00 per hour in excess of 30 minutes processing application	$77.50 payable by the applicant on application for renewal and any remainder payable within 20 working days of receipt of written demand for payment
		Disbursements	Actual cost	
	Verification			
25	Verification, inspection and audit	Verification, inspection or audit fee	$155.00 per hour	Payable by the operator of the business subject to verification, inspection or audit payable within 20 working days of receiving a written demand for payment.
		Disbursements	Actual cost	
	Compliance			
26	Issue of improvement notice, including development of the notice, by food safety officer	Fee for notice	$155.00 per notice plus $155.00 per hour in excess of 1 hour for development and issue	Payable by the operator of the business subject to improvement notice within 20 working days of receiving a written demand for payment
27	Application for review of issue of improvement notice	Application for review fee	$155.00 per application plus $155.00 per hour in excess of 1 hour processing application	$155.00 payable by the applicant on making application for review and any remainder payable within 20 working days of receiving a written demand for payment

28	Application for, compilation of, and issue of statement of compliance	Fee for statement	$155.00 per application plus $155.00 per hour in excess of 1 hour processing application	$155.00 payable by the applicant on making application for statement of compliance and any remainder payable within 20 working days of receiving a written demand for payment
29	Issue of food recall direction by chief executive	Fee for directed recall	$155.00 per direction plus $155.00 per hour in excess of 1 hour for development and issue of direction	Payable by the operator of the business subject to food recall direction, within 20 working days of receiving a written demand for payment
		Disbursements	Actual cost	
	Imported Food			
30	Clearance of imported food	Fixed charge plus hourly rate	$120.00 per clearance plus $120.00 per hour in excess of 1 hour processing clearance	Payable by the operator of the business responsible for the imported food within 20 working days of receiving a written demand for payment
31	Administration of imported food categorised in regulations made under the Food Act as being of increased regulatory interest	Hourly rate	$120.00 per hour spent on administration activity for each consignment of imported food	Payable by the operator of the business responsible for the imported food within 20 working days of receiving a written demand for payment
		Disbursements	Actual cost	

Note: all rates are exclusive of goods and services tax (GST).

Exemptions, waivers and refunds of fees and charges

57. The Food Act, section 208 enables regulations to be made to provide for exemptions, waivers or refunds of fees, charges or levies. This issue was considered as part of the public consultation process described below.

58. The discussion paper proposed that a regulation authorise the MPI or territorial authority chief executive to grant an exemption, waiver or refund of a levy, fee or charge, in the following circumstances:
    - if the amount of the charge is less than the reasonable cost of recovering the fee, charge, or levy;
    - in the case of an administrative error on the part of MPI or the territorial authority as the case may be;
    - if the chief executive of MPI or a territorial authority considers, in any particular case, that it would be unreasonable or unfair to require the payment of the whole of any fee prescribed; or
    - if the chief executive of MPI or a territorial authority considers that efficiencies can be made by, for example, batching services, resulting in lower costs.

59. This proposal was developed on the basis of current practice with legislative regimes that enable such exemptions, waivers or refunds. It enables the regulator to take account of individual circumstances within prescribed limits, thereby enhancing the equity and efficiency of the system. It is very similar to existing regulations of this type, and helps to promote a consistent approach across MPI's cost recovery regimes.

60. Submissions did not raise any concerns with this proposal. MPI proposes that regulations setting out the circumstances described above be made, with an expiry date after five years to ensure there is a review based on experience with the regulation.

Consultation

61. The cost recovery proposals were included in MPI *Public Discussion Paper No: 2015/01 Proposals for regulations under the Food Act 2014*, released in January 2015.

62. During February 2015, MPI hosted meetings to explain the proposals and answer questions in 11 centres (Dunedin, Queenstown, Christchurch, Nelson, Wellington, Palmerston North, New Plymouth, Hastings, Rotorua, Hamilton, Auckland, and Whangarei). In each centre there was a meeting specifically for the territorial authorities, as co-regulators under the Act, and another for the food industry. A meeting was also held in Queenstown which was specifically for industry. Overall, around 600 people attended these meetings, ranging from chefs to representatives from major sector groups and territorial authorities.

63. Written submissions were invited on the proposals and the questions in this discussion document. Submissions on the cost recovery proposals closed on 20 February 2015. Fifty-four written submissions were received.

64. The consultation process sought views on whether fees and charges are generally the most appropriate systems for cost recovery for services provided under the Food Act. MPI also invited suggestions for alternative mechanisms for cost recovery.

65. Most submissions accepted that there will be cost recovery, and most of these were in agreement with the proposed mechanisms for the fees and charges.

66. Some submissions were opposed to the idea of any cost recovery. Some expressed concern at the proposed level of the fees and charges, suggesting they need to be significantly reduced.

67. The proposed fees and charges are based on established methodology for cost recovery systems, as set out in this document. They also take account of information from MPI's financial systems and our experience with existing costs recovery systems in other regulatory regimes.

68. MPI will monitor the accuracy and reasonableness of the fees and charges on the basis of experience once underway, and will adjust as necessary at scheduled reviews. We will also monitor the performance of territorial authorities regarding levels of fees and charges.

69. Feedback on potential hardship caused by fees was received from the early childhood sector. MPI is working with sector representatives and the Ministry of Education to address these and other concerns expressed by food services providers within the education sector.

70. The New Zealand Food and Grocery Council submitted that there should be more specification of services to which fees and charges would apply. For example, they suggested that the proposal to cost recover for "registration or variation of registration…" should detail and establish fees and charges for the particular actions intended by "variation".

71. The point made is a sensible one, and MPI now proposes different fee rates for initial applications as opposed to renewals of registrations. The new proposal also differentiates the fees for significant variations to registrations from the lower proposed fees for non-significant variations. (See 'registration' section of table 3).

Related issues

Proposal: that there be no change at present to Crown funding for the development of standards

72. The Crown currently provides funding for maintaining and developing standards in relation to food. Standards setting is a major function for MPI across its responsibilities. The approach to funding of this function is to be considered as part of a wider review of the costs of establishing standards and the appropriate mechanisms for collection of costs from sectors through, for example, levies or annual fees. This is expected to have been completed by the beginning of the 2016/17 financial year.

73. The consultation process sought views on the proposal to maintain the status quo of Crown funding for standards development pending the results of this wider review.

74. Submissions expressed no concerns about this proposal.

Proposal: That territorial authorities are able to develop cost recovery systems without an immediate requirement for regulations prescribing the methodologies to be used

75. Territorial authorities will set their own fees and charges for the registration, verification, compliance and monitoring activities that they carry out under the Food

Act. These may differ from the proposed fees for functions and activities carried out by MPI.

76. The Food Act (section 205) requires territorial authorities, when setting fees:
    - to have regard to the principles of cost recovery set out in the Food Act;
    - to not recover more than the reasonable costs incurred; and
    - to undertake consultation in accordance with section 83 of the Local Government Act 2002.

77. The Food Act (section 206) provides for regulations to be made that prescribe a methodology or framework for fee fixing to be applied by a territorial authority in fixing any fees.

78. The discussion document proposed that such regulations not be made at this stage. This proposal recognises that territorial authorities have considerable experience in establishing fees and charges for cost recovery purposes. Further, their general compliance with legal requirements is reviewed through audit processes required under the Local Government Act. This allows territorial authorities to tailor their fees and charges, within the legislative boundaries, to reflect the particular needs and circumstances of their communities, and to reflect and support the objectives of their long term plans.

79. The consultation process sought views on the proposal to not prescribe methodologies through regulations at this time. Responses were mixed as outlined below.

    - Several businesses or business groups expressed concern about potential inconsistency between regulatory bodies (territorial authorities and MPI) in their fees and charges.

    - Some businesses, and some territorial authorities, asked that regulations be made to establish a methodology to be used by territorial authorities in establishing fees and charges.

    - Others from both groups did not see this as necessary at this time. Those who did not favour these regulations noted the experience of territorial authorities in setting fees and charges, the transparency of local authority processes, and the importance of reflecting local considerations.

Response

80. MPI will monitor fees and charges set by territorial authorities, including their consistency, and if problems are identified, will consider proposing regulations to set a methodology.

81. We will also work more generally with Local Government New Zealand and with territorial authorities to support them in implementing their responsibilities under the Food Act.

Conclusions and recommendations

82. Based on the analysis summarised in this document, the following recommendations are made.

83. The services to be cost recovered should be those identified as private goods at paragraph 30, that is: registration, approval of laboratories, recognition of agencies or

persons, verifications, inspections, audits, some compliance actions related to improvement notices, statements of compliance and food recall notices by the chief executive, clearance of imported food and administration of food of 'increased regulatory interest'.

84. The charging mechanisms to be used should be those set out at paragraphs 45-47, that is:
    - **Fixed fee plus hourly charge** for services with a standard component and a variable element determined by the particular application, the industry, and/or the food type. These services are: registration, approval of laboratories, recognition of agencies or persons, some compliance actions related to improvement notices, statements of compliance and food recall notices by the chief executive, and clearance of imported food.
    - **Hourly rate fees** for verifications, inspections, audits, and administration of food of 'increased regulatory interest' (highly variable services).
    - **Actual and reasonable costs** for all disbursements.
85. The actual fees and charges should be those set out in table 3.
86. Regulations should be made setting out the circumstances under which the MPI or territorial authority chief executive may grant an exemption, waiver or refund of a levy, fee or charge, as set out at paragraph 58.
87. Regulations should not be proposed at this time to prescribe a methodology or framework for fee fixing by territorial authorities.
88. The status quo of Crown funding for standards development under the Food Act should be maintained pending the results of MPI's wider review of the funding of standards setting.

Implementation plan

89. The proposed cost recovery fees and charges will be implemented through regulations made under the Food Act, section 203.
90. Section 201 requires that such a regulation must have been made before the start of the financial year to which it applies, unless those affected by the regulation substantially agree to the new or changed regulation. The effect of section 203 is usually that these regulations must be made by the beginning of the relevant financial year; in this case by 1 July 2015.

Transition period

91. As with most aspects of the Food Act 2014, the cost recovery regulations will come into effect on 1 March 2016. As of that date, each new food service provider will need to comply with the new requirements, and be subject to the new fees. Existing food service providers will become subject to the new requirements and fees as they come under the coverage of the Food Act over the staged transition period up until 30 June 2019.

Implementation systems

92. MPI already operates cost recovery across the food safety, biosecurity, animal welfare and fisheries regulatory regimes. There is a sound platform of systems and experience on which to base the implementation of these new fees and charges.

Compliance and enforcement

93. MPI has extensive compliance and enforcement experience across the regulatory regimes it administer. Food Act compliance and enforcement will benefit from this body of experience and systems. This includes use of the Voluntary, Assisted, Directed, Enforced compliance model (VADE). This supports use of the best possible intervention taking account of the level of potential or actual harm and the barriers to compliance, or motivations for non-compliance.

94. We will work with sector groups, industry leaders and territorial authorities to develop guidance to support the implementation of the Act. This will be undertaken through targeted communications with particular groups as well as information made generally available through, for example, the MPI website.

Monitoring, evaluation and review

95. The Food Act (section 202) requires that the Minister must review levels and methods of cost recovery at least once in every three year period.

96. The proposed fees and charges all relate to services and activities that are newly established under the Food Act so they are based on our best estimates of the time and skills required. MPI will monitor the accuracy of the costs estimates on the basis of experience, and consider after twelve months whether any adjustments are necessary.

97. Annual fees reviews across all of MPI's cost recovery systems will be considered as part of our first principles review of overall cost recovery frameworks. This review will look more broadly at questions of Crown funding or cost recovery from third parties. As noted above, it will consider funding arrangements for standard setting under the Food Act and other legislation administered by MPI. This review is expected to have an impact on the nature of fees in 2016/17.

98. MPI's administration of the services for which it seeks cost recovery is subject to performance standards agreed with the Minister. An example of such a performance standard is the requirement that 85 percent of all applications for registrations are to be completed within 20 working days. Significant variations from those time limits need to be explained.

99. We will monitor the fees and charges set by territorial authorities, including their consistency. This is part of the longer term consideration of whether it is necessary to make regulations to establish a methodology to be used by territorial authorities in setting fees.

100. MPI may propose further regulatory development to assist monitoring as implementation of the Food Act 2014 progresses.

101. In addition, the monitoring of the fees and charges will be part of the wider programme under development to monitor the effectiveness of the Food Act once it is implemented.

102. The consultation process sought suggestions for methods in addition to management monitoring to make sure that processes are delivered in a timely and cost-effective

manner. Suggestions included seeking stakeholder feedback. This will continue to be done through MPI's regular and ongoing communications with stakeholders, including territorial authorities. There were also suggestions for further timeliness targets for the delivery of services and activities. These will be taken into account in the development of MPI's monitoring proposals for operation of the Food Act as a whole.