



First Principles Review of Cost Recovery Arrangements Terms of Reference

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1 Introduction

The primary industries earned New Zealand \$38.3 billion in exports in the year to June 2014.

Our biosecurity, food safety, primary production and trade systems are critical to the operation and viability of the primary industries. They provide the basis for New Zealand's official assurances to its trading partners about the safety and provenance of exports, protect consumers in New Zealand and overseas, enable good management of resources like fisheries and help prevent biosecurity incursions which could damage people, primary production and the environment. The systems add significant value to the returns New Zealand producers receive for their exports.

The Ministry for Primary Industries (MPI or the Ministry) provides policy and regulatory advice to the government, market access and trade services and operates large-scale biosecurity, food safety, forestry, fisheries management and animal welfare programmes.

MPI's core business is directed through four major systems:

- **Biosecurity system** – MPI works to prevent harmful pests and diseases from entering New Zealand, manages systems to detect and respond to incursions and established pests, facilitates trade and encourages co-operation and participation in the system.
- **Food safety system** – MPI sets minimum regulatory requirements, and undertakes verification to support assurances to export markets that food products produced in New Zealand are safe and suitable, so that consumers in New Zealand and overseas can be confident that their food is safe.
- **Primary production system** – MPI contributes in the areas of: natural resource use, animal welfare, forestry, trade, market access, innovation, improving productivity of Māori-owned resources, sector structure, fisheries management and aquaculture. The operation of this system is critical to realising the productivity gains and sustainable resource use that will underpin the export success of the primary industries.
- **Trade system** - MPI maintains and enhances market access and the New Zealand export system. Many companies and primary producers depend upon MPI's facilitation, certification and verification activities to get products across borders. MPI also plays a key role in influencing international arrangements and standards that facilitate trade.

The Ministry's work is funded by Government and by cost recovery through a range of fees, charges and levies. The Authority for charging, for the most part is set out in statute, but in some circumstances MPI charges fees for services provided which are non-regulated.

2 Context

Recent reviews of fees, charges and levies

The Ministry recently completed a wide ranging review of biosecurity and food safety fees. The review sought to respond to increasing demand for services driven by increasing trade volumes as well as a greater number of food businesses. A rising volume of services, improvements to services, and cost pressures (price inflation) had also increased the cost of delivering services.

This was the first cost recovery review of biosecurity fees since 2010 and the first substantive review of food safety fees since 2008. It was also the first review of both systems since MPI was formed in 2011. The review resulted in updates to more than 254 biosecurity and food safety fees, charges, and levies and has improved the consistency and equity of charges between and within industries. New and updated regulations under six statutes came into effect on 1 July 2015¹.

The Ministry reviews fisheries levies annually, and the process for setting the 2015/16 levy is currently underway. New levies are scheduled to be in place in time for the fishing year commencing on 1 October 2015.

Problem definition

Notwithstanding recent improvements, there remains considerable variation across the Ministry's cost recovery arrangements including; the scope of services that the Ministry recovers for across sectors, the way fees are designed, the nature of reporting to and engagement with fee payers, statutory requirements around review of fees and a range of other administrative matters such as how memorandum accounts must be managed.

There is scope to articulate a clearer principles framework to guide cost recovery, and improve transparency about the way that principles are applied in setting fees and levies. Industry has also communicated a desire for greater transparency of costs and service performance.

Some areas of the Ministry's cost recovery arrangements have not yet been reviewed, and certain issues raised during the recent review of biosecurity and food safety fees were not able to be progressed for implementation on 1 July 2015. It is proposed these areas be considered as part of the First Principles Review of Cost Recovery arrangements (the FPR).

While the fishery and conservation services Levy Orders are updated every year, the principles of fisheries cost recovery are stated in the Fisheries Act 1996 and have not been amended since 1996. The cost recovery rules, which provide the methodology for setting the levies each year, have not been reviewed since 2001.

¹ One exception is the Food (Fees and Charges) Regulations which come into force on 1 March 2016 alongside relevant amendments to the Food Act 2014.

3 Objectives

The purpose of this review is to provide recommendations to the MPI Senior Leadership Team and to the Minister for Primary Industries and Minister for Food Safety on changes to the Ministry's cost recovery arrangements.

Specifically the review will seek to achieve the following objectives:

1. Provide a clear description of the principles and policy considerations that will guide the Ministry's approach to cost recovery and how they will be applied.
2. Align the Ministry's approach with available best practice guidance issued by the Treasury and the Office of the Auditor-General and consider approaches taken by other government agencies.
3. Improve transparency of the basis for determining where fees, charges and levies will be imposed and the levels at which they will be set.
4. Enable greater harmonisation of arrangements across all of the Ministry's cost recovery activities.
5. Improve communication, collaboration and certainty for fee payers of the frequency, timing and process for review and update of fees, charges and levies.
6. Enhance transparency of costs and service performance for fee payers.

4 Scope

In Scope

The review will examine all of the Ministry's existing regulated and non-regulated cost recovery activities including:

- The appropriateness of existing frameworks as they relate to cost recovery including regulations, rules and orders and how they are applied. This will include consideration of:
 - The objectives of cost recovery
 - The principles that should guide cost recovery
 - The authority to charge for services
 - The economic characteristics of the Ministry's services (eg public good, private good, merit and club good)
 - What activities should be subject to cost recovery
 - Who could be charged and who is it 'best' to charge
 - How much should be recovered and how costs are constructed and allocated
 - Policies that guide the application of exemptions and waivers.
- Appropriateness of all fees, charges and levies in place for current services, outputs and activities.
- All services, outputs and activities that may be appropriately considered for cost recovery.
- Regulatory arrangements which authorise and set out the processes for recovery, including any requirements for correcting over-recovery and under-recovery.
- Mechanisms to ensure efficiency of enforcement and collection of fees, charges and levies.
- Internal business systems and processes which give effect to cost recovery.
- Administrative arrangements for managing memorandum accounts and treatment of revenue.
- Existing reporting arrangements and information about recovered activities that is provided to fee payers.

Out of Scope

It is not intended that this review examine whether services, outputs and activities currently undertaken by the Ministry could or should be provided by other entities, or whether the Ministry should substantially expand its activities.

We will consider whether the adequacy and appropriateness of information provided to industry could be improved to increase transparency of cost recovered service performance. Where matters relating to service efficiency and effectiveness are raised during the review, we will consider how these types of issues could be progressed through other mechanisms; such as the recently announced fisheries operational review which aims to provide a future-proofed fisheries management system.

The timeframe for the fisheries operational review is similar to that of the FPR. The two review teams will work closely to ensure that issues identified are progressed appropriately.

Cost sharing and cost recovery arrangements for Government Industry Agreements and National Pest Management Plans are out of scope for this review. However, any future reviews in relation to GIA and National Pest Management Plans will have regard to the cost recovery policy framework that is developed.

MPI has a number of other initiatives, programmes, and activities that may have relationship to the outcomes of the FPR. Where possible, efforts will be made to align work and consultation processes associated with this review and other MPI cost recovery related consultation processes.

5 Approach

The review will be undertaken in two phases:

Phase one (September 2015 – 1 July 2016)

Phase one will focus on developing a framework to guide the development of cost recovery and the application of fees, charges and levies. The development of the framework will be cognisant of best practice approaches to cost recovery in New Zealand (i.e. approaches in other government agencies), and approaches taken in international jurisdictions. The framework will align with Treasury and Office of the Auditor General guidance and will take into consideration of other relevant documents including the Productivity Commission's 2014 Report on Regulatory Institutions.

It will be informed by a review of existing principles and objectives related to cost recovery in all statutes under which the Ministry provides services. The FPR will also assess any existing policies around the application of exemptions and waivers.

Public consultation on the framework will be undertaken in from late January 2016 until mid-March 2016.

Phase one will also assess whether there are any early improvements to the fisheries levies that could be progressed for implementing prior to the commencement of the fishing year on 1 October 2016. Otherwise substantive matters related to fisheries cost recovery processes will be considered as part of Phase two.

Phase two (Jan 2016 – July 2018)

Phase two will *apply* the framework developed in phase one to the Ministry's existing cost recovery arrangements and identify areas where changes may be desirable. It will also review the broad design of existing fees, charges and levies.

We anticipate public consultation to take place in late 2016 for implementation on 1 July 2017 for food safety and biosecurity fees, and 1 October 2017 for fisheries levies.

Phase two work is likely to take a minimum of 10-12 months and may result in recommended changes to statutes and regulations. Any substantive policy issues identified in phase one will also be progressed in phase two.

Independent quality assurance

The policy framework and the proposed methodology for fees, charges and levies will be reviewed by an independent third party to be appointed by the Director-General (or delegate). The Ministry may also refer other aspects of the work for quality assurance as required.

6 Governance

The governance arrangements for this review are as follows:

- The review will report to the MPI Cost Recovery Governance Board, with advice provided by the MPI Steering Group.
- The review will be informed by an industry reference group, comprising of key industry participants and chaired by an independent chairperson.
- The Terms of Reference have been jointly approved by the Minister for Primary Industries and the Minister for Food Safety and may be varied by agreement with those Ministers as the review progresses.

Secretariat and analytical support for the review

The review will be supported by MPI.

7 Industry Participation

To ensure that the outcomes of the review are successful, industry engagement is essential. With that in mind the process has been designed to provide industry participation at several levels and stages. In Phase one of the review there will be:

- Two rounds of industry workshops/meetings.
- Establishment of an industry reference group to provide input to the development of the framework.
- Specific targeted meetings with industry and other stakeholders as required.
- Formal public consultation for six-eight weeks on the proposed framework.

Phase two will also require a high level of industry engagement, including a second round of public consultation on substantive policy and fee changes during the second part of 2016. Detailed planning for Phase two will take place towards the end of 2015.

Industry workshops/meetings

Industry groups/members will be invited to participate in a series of issue specific and/or sector specific meetings to facilitate policy development. Meetings will be held at two points in the process:

- Prior to the development of proposals – to facilitate the Ministry's understanding of the issues from industry perspective and inform the development of the framework.
- During public consultation – to work through the proposed framework in detail and facilitate the Ministry's understanding of the implications/impacts for industry.

The review team will make themselves available to industry groups throughout the duration of the review to run information sessions and/or hold ad hoc workshops as required.

Industry reference group

An industry reference group comprising an independent chair (external to the Ministry) and between 10 - 14 members will be convened. Membership will also include a member of MPI's senior leadership team.

The group will meet regularly at Ministry premises during the framework development phase of work to raise and test thinking on proposals as they are developed. This will be a voluntary reference body whose role will be to provide advice and information to the MPI Cost Recovery Governance Group. Specifically it will:

- Assist the Ministry in identifying and understanding cross-cutting issues.
- Provide advice and information to support the Ministry in undertaking the review.
- Input into the development of proposals.

Members will not be expected to represent the views of their sectors, but to apply their expertise and understanding of the primary industries to contribute to the design of cost recovery arrangements. The Ministry will retain responsibility for making recommendations to Ministers.