

Airports (Cost Recovery for Processing of International Travellers) Bill

Government Bill

Explanatory note

General policy statement

This Bill provides for Government cost recovery of aviation security, biosecurity, and customs traveller processing in relation to—

- scheduled international flights arriving at, or departing from, new or re-established international airports; and
- international flights where, on request, travellers are processed in a non-routine manner at any international airport.

A new international airport is one that begins scheduled international services for the first time. A re-established international airport is one that ceases scheduled international services for a period and then recommences the services.

The objective of this Bill is to reduce the Government's exposure to an unpredictable and unlimited liability in relation to the processing of travellers. Government funding does not budget for the resources needed to establish and operate new international traveller processing services, or to provide non-routine services.

The cost recovery introduced by the Bill will ensure that international airports, or the persons who request non-routine services, factor the

costs of aviation security, biosecurity, and customs processing into their business or travel decisions.

For new and re-established international airports, the Bill provides for the recovery of costs from airport operators. Costs incurred in providing non-routine services are to be recovered from the person who requests the services.

Cost recovery at new and re-established international airports

The charges for the processing of travellers arriving at or departing from a new or re-established international airport will be specified in regulations.

The Bill specifies the costs that may be recovered and the methods of charging, and limits the time period of cost recovery for scheduled international flights at new and re-established airports to a maximum of 3 years, with a lesser period able to be prescribed by regulation. The Government favours setting the cost recovery period at 2 years. However, its decision will take into account any submissions on this Bill that express a view on the appropriate period.

At the expiry of the cost recovery period, the costs of aviation security services will continue to be recovered, but charges will fall directly on the airline; biosecurity and customs services will be funded by the Government. This recognises the private-good aspect of aviation security services, and the public-good aspects of biosecurity and customs services.

The Bill requires consultation with persons directly affected before regulations are made.

Grace period for re-establishing international airports

In cases where scheduled international flights have completely ceased at an established international airport, an allowance is made for a “grace period” during which time the re-establishment of a scheduled international flight service would not trigger cost recovery. This allows airport companies to find a replacement airline within a reasonable time during which processing services could remain in place.

The Bill sets a maximum grace period of 6 months, and allows for a lesser period to be prescribed by regulation.

*Cost recovery for non-routine processing of
international travellers*

The Bill specifically provides for costs incurred as a result of requests for the processing of international travellers in other than a routine manner. An example is the separate processing of diplomats or celebrity passengers.

Regulatory impact statement

The Ministry of Agriculture and Forestry produced a regulatory impact statement on 7 June 2010 to help inform the main policy decisions taken by the Government relating to the content of this Bill. A copy of this regulatory impact statement can be found at—

- <http://www.biosecurity.govt.nz/biosec/pubs-news/pubs/regulatory-impact-statement>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 states the Title of the Bill.

Clause 2 provides that the Act comes into force on 1 January 2011.

Part 1

Preliminary provisions

Clause 3 states the purpose of the Act.

Clause 4 relates to interpretation.

Clause 5 states that the Act binds the Crown.

Part 2

Cost recovery

Clause 6 specifies the airports to which cost recovery under *clauses 7 and 8* applies, namely,—

- a) new international airports:

- b) international airports that have ceased international operations during the cost recovery period and then resumed international operations:
- c) international airports other than those in paragraph (b), that have ceased international operations and then resumed international operations after a period longer than the grace period.

A new cost recovery period starts each time an airport is re-established as an international airport. However, if the airport ceases international operations for a period that is no more than the prescribed period (the **grace period**), it is treated as though it had not ceased operations and is not subject to a cost recovery period. An airport does not get the benefit of the grace period if it ceases international operations while it is in the cost recovery period.

Clause 6 also specifies when the cost recovery period and the grace period begin in relation to an airport to which they apply.

Clause 7 requires the operators of airports described in *clause 6* to pay for the establishment or re-establishment of capacity to process international travellers at the airports.

Clause 8 requires the operators of airports described in *clause 6* to pay for traveller processing at the airports during the cost recovery period that applies to the airport, which is, at most, the first 3 years of operation.

Clause 9 requires a person who requests the processing of travellers to be carried out in other than a routine manner to pay the charges for the processing.

Clause 10 provides that the cost of processing specified persons by the Aviation Security Service is not recoverable.

Clause 11 authorises the Governor-General, on the recommendation of the Minister, to make regulations prescribing—

- the grace period, which is a period of 6 months or less:
- the cost recovery period, which is a period of 3 years or less:
- charges or a means by which charges may be calculated or ascertained to recover the direct and indirect costs of establishing the capacity to process, and processing, international travellers:
- returns to be made by persons liable to pay charges:
- providing for any other matters contemplated by the Act.

Charges may be prescribed on a differential basis, including different charges for different airports.

Clause 12 restricts the Minister's authority to recommend the making of regulations to the Governor-General. If the regulations relate to the processing of travellers by the New Zealand Customs Service or the Aviation Security Service, the Minister must first obtain the agreement of the relevant Minister.

Clause 13 requires the Director-General of Agriculture and Forestry to ensure that persons or industry organisations representative of those likely to be directly affected by the regulations are consulted and the results of the consultation are provided to the Minister. If the regulations relate to the processing of travellers by the New Zealand Customs Service or the Aviation Security Service, the Director-General must carry out the consultation in conjunction with the relevant chief executive. The Minister must be satisfied that the consultation has been carried out as required and take into account the results of the consultation before making a recommendation for the making of regulations. A failure to consult will not affect the validity of regulations.

Clause 14 provides that the Director-General of Agriculture and Forestry may not have to consult if adequate consultation was carried out before the Act comes into force.

Clause 15 sets out the methods of cost recovery that may be used.

Clause 16 allows the chief executive of an agency to grant an exemption, waiver, or refund of any charge.

Clause 17 states that a charge or part of a charge that is not paid by the date 20 working days after the charge is demanded is a debt due to the Crown.

Clause 18 imposes a 10% penalty on any part of a charge that has not been paid by the due date, and compounds the penalty 6-monthly.

Clause 19 authorises the chief executive of an agency to waive all or part of a penalty if the chief executive is satisfied that there is a genuine dispute between the person who owes the debt and the agency. If the matter comes before a court, the court may waive all or part of the penalty if it is satisfied there is a genuine dispute between the parties.

Clause 20 states that the obligation to pay a charge and any penalty is not suspended by any dispute between the person liable for the charge and the chief executive.

Clause 21 provides that the enactments listed in the Schedule are amended as indicated in the Schedule.

Hon David Carter

Airports (Cost Recovery for Processing of International Travellers) Bill

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Airports (Cost Recovery for Processing of International Travellers) Act **2010**.

2 Commencement
This Act comes into force on **1 January 2011**. 5

**Part 1
Preliminary provisions**

3 Purpose
The purpose of this Act is to enable the Crown to recover some of its costs incurred in— 10

- (a) establishing or re-establishing at an airport the capacity to process travellers arriving in, or departing from, New Zealand on an international flight; and
- (b) processing international travellers at new and re-established international airports; and 15
- (c) processing international travellers at an international airport in other than a routine manner.

4 Interpretation

In this Act, unless the context otherwise requires,—

agency means, in relation to the processing of travellers under—

- (a) the Biosecurity Act 1993, the Ministry of Agriculture and Forestry: 5
- (b) the Customs and Excise Act 1996, Customs:
- (c) the Civil Aviation Act 1990, the Aviation Security Service

Aviation Security Service means the Aviation Security Service established and continued by the Civil Aviation Authority under section 72B(2)(ca) of the Civil Aviation Act 1990 10

chief executive means 1 of the following:

- (a) in relation to the Ministry of Agriculture and Forestry, the Director-General: 15
- (b) in relation to Customs, the Comptroller of Customs:
- (c) in relation to the Aviation Security Service, the General Manager of the Aviation Security Service

cost recovery period means—

- (a) a period prescribed as the cost recovery period under **section 11** that begins as stated in **section 6(2)**; or 20
- (b) if no period is prescribed, 3 years beginning as stated in **section 6(2)**

Customs means the New Zealand Customs Service specified in section 5 of the Customs and Excise Act 1996 25

Director-General means the chief executive of the Ministry of Agriculture and Forestry

due date means the date that is 20 working days after the date on which the invoice requiring the payment of a prescribed charge would have been delivered in the ordinary course of the post or the date on which the invoice is actually received, whichever is later 30

grace period means—

- (a) a period prescribed as the grace period under **section 11** that begins as stated in **section 6(3)**; or 35
- (b) if no period is prescribed, 6 months beginning as stated in **section 6(3)**

international airport means an airport at which scheduled international flights arrive or depart

Minister means the Minister for Biosecurity

operator, in relation to an international airport, means the holder of an aerodrome operating certificate issued in relation to the international airport in accordance with a rule made under section 30 or 34A of the Civil Aviation Act 1990

prescribed charge means a charge prescribed or provided for by regulations made under **section 11**

processing, in relation to a traveller, means— 10

- (a) the activities carried out at international airports by the Ministry of Agriculture and Forestry under the Biosecurity Act 1993 to—
 - (i) determine what goods are in the possession or control of the traveller; and 15
 - (ii) ascertain whether any or all of the goods may be cleared for entry into New Zealand under section 26 of that Act; or
- (b) the activities carried out at international airports by the Aviation Security Service under the Civil Aviation Act 1990 to— 20
 - (i) screen the traveller and the traveller's baggage; and
 - (ii) ensure the safety and security of the civil aviation system; or 25
- (c) the activities carried out at international airports by Customs under the Customs and Excise Act 1996—
 - (i) to determine the traveller's eligibility to enter or leave New Zealand; and
 - (ii) to establish whether goods in the traveller's possession are dutiable, prohibited imports or exports, or otherwise subject to the control of Customs 30

scheduled international flight means a flight that is—

- (a) performed by an aircraft for the transportation of people between New Zealand and 1 or more points in a country or territory other than New Zealand; and 35
- (b) one of a regular or frequent series of flights, whether or not in accordance with a published timetable; and

- (c) open to use by members of the public
traveller means a passenger or another person who arrives in, or departs from, New Zealand on an international flight.

- 5 Act binds the Crown** 5
 This Act binds the Crown.

Part 2
Cost recovery

Liability for charges

- 6 Application of sections 7 and 8** 10
 (1) **Sections 7 and 8** apply to an airport—
 (a) that begins operating as an international airport; or
 (b) that ceases operating as an international airport during a cost recovery period that applies to the airport but later resumes operating as an international airport; or
 (c) other than an airport described in **paragraph (b)**, that ceases operating as an international airport but later resumes operating as an international airport, if it resumes operating as an international airport after the expiry of the grace period. 15
- (2) The cost recovery period in relation to an airport described in **subsection (1)**— 20
 (a) begins on the day that the airport begins operating as an international airport; and
 (b) begins again on the day that the airport resumes operating as an international airport (if applicable) 25
- (3) The grace period in relation to an airport described in **subsection (1)(c)** begins on the day following the day on which the international airport ceases operating as an international airport.
- 7 Liability to pay for establishment of traveller processing capacity** 30
 (1) The operator of an international airport to which this section applies must pay any prescribed charge relating to the costs incurred by an agency in establishing or re-establishing the

- capacity to process travellers at the airport, whether the costs are incurred before or after the airport begins or resumes operating as an international airport.
- (2) Examples of the costs referred to in **subsection (1)** are the costs that the agency incurs in doing all or any of the following: 5
- (a) recruiting and training staff:
 - (b) purchasing, leasing, and installing equipment:
 - (c) leasing any part of the airport and making physical alterations to that part.
- 8 Liability to pay for traveller processing at new and re-established international airports** 10
- The operator of an international airport to which this section applies must pay any prescribed charge for the processing of travellers carried out at the international airport during a cost recovery period that applies to the airport. 15
- 9 Payment for non-routine processing**
- (1) This section applies to the processing of travellers at an international airport—
- (a) in other than a routine manner; and
 - (b) at the request of a person. 20
- (2) The chief executive of the agency may recover from the person who made the request the actual and reasonable costs incurred by the agency in processing the travellers in the manner requested.
- 10 Exemption from prescribed charges for aviation security processing** 25
- Despite **sections 8 and 9**, a prescribed charge for the processing of travellers by the Aviation Security Service is not payable in relation to—
- (a) a member of the crew of any aircraft: 30
 - (b) a member of the crew of any aircraft who is being carried on an aircraft solely for the purposes of positioning the crew to carry out their duties as employees of an airline:
 - (c) a child under the age of 2 years: 35

- (d) a person travelling on an aircraft that is being used for the purposes of the New Zealand Defence Force:
- (e) a person travelling on an aircraft that is being used specifically for the military, diplomatic, or ceremonial purposes of a government: 5
- (f) a person in transit through New Zealand who—
 - (i) does not leave the transit, arrival, or departure area of the airport; or
 - (ii) leaves the transit, arrival, or departure area of the airport only because of an interruption to a flight caused by unserviceability of an aircraft or other essential facility or caused by any other delay beyond the control of the person or the airline concerned: 10
- (g) any other person or class of persons that the Minister responsible for the administration of the Civil Aviation Act 1990 specifies by notice in the *Gazette* under regulation 20(2)(g) of the Civil Aviation Charges Regulations (No 2) 1991. 15

Cost recovery 20

11 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) prescribing a grace period shorter than 6 months: 25
 - (b) prescribing a cost recovery period shorter than 3 years:
 - (c) prescribing charges or a means by which the charges may be calculated or ascertained to recover the direct and indirect costs incurred by an agency in—
 - (i) carrying out the activities involved in processing travellers at an airport: 30
 - (ii) establishing or re-establishing the capacity to process travellers at an airport:
 - (d) prescribing any returns, and the conditions relating to the returns, to be made by persons who must pay prescribed charges: 35

- (e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) The regulations may prescribe charges using all or any of the methods specified in **section 15**. 5
- (3) Different charges, or different rates or types of charges, may be prescribed—
 - (a) in relation to different airports or different classes or descriptions of persons, airports, businesses, or operations; or 10
 - (b) on the basis of different times of use; or
 - (c) on any other differential basis.
- (4) Without limiting **subsection (3)**, the charges prescribed may—
 - (a) differ depending on whether a special or an urgent service is provided: 15
 - (b) include more than 1 level of charge for the same service provided in different ways:
 - (c) differ for otherwise similar services provided at different airports: 20
 - (d) differ for otherwise similar services provided in different ways:
 - (e) differ for otherwise similar services provided to different categories of persons:
 - (f) differ depending on the amount of service required or the components of the service required for the particular person or class of persons. 25

12 Requirements for regulations

- (1) The Minister may make a recommendation for the purposes of **section 11** in relation to the processing of travellers by Customs only if the Minister responsible for Customs agrees to the proposed regulations concerned. 30
- (2) The Minister may make a recommendation for the purposes of **section 11** in relation to the processing of travellers by the Aviation Security Service only if the Minister responsible for the Aviation Security Service agrees to the proposed regulations concerned. 35

- 13 Consultation requirements for making regulations**
- (1) Before making a recommendation for the making of regulations, the Minister—
- (a) must be satisfied that consultation has been carried out in accordance with **subsection (2)**; and 5
 - (b) must receive and take into account the results of the consultation.
- (2) The Director-General must—
- (a) ensure that all reasonably practicable steps are taken to consult the persons or industry organisations that appear to the Director-General to be representative of the interests of persons likely to be directly affected by the making of regulations under **section 11**; and 10
 - (b) advise the Minister of the results of the consultation.
- (3) The Director-General must carry out the consultation required by **subsection (2)** in conjunction with— 15
- (a) the Comptroller of Customs, if the regulations relate to the processing of travellers by Customs;
 - (b) the General Manager of the Aviation Security Service if the regulations relate to the processing of travellers by the Aviation Security Service. 20
- (4) The process for consultation must, to the extent practicable in the circumstances, include—
- (a) giving adequate and appropriate notice of the intention to make the regulations; and 25
 - (b) providing a reasonable opportunity for interested persons to make submissions.
- (5) A failure to comply with this section does not affect the validity of any regulations.
- 14 Consultation before Act in force** 30
- The Director-General is not required to comply with **section 13(2)** to the extent that any matter provided for in the regulations has been the subject of consultation with the same person, group of persons, or their representative or agent before 1 January 2011 so long as that person, group, or representative or agent was advised that the information obtained from that consultation was also to apply in relation to matters under this Act. 35

- 15 Methods of cost recovery**
The methods, referred to in **section 11(2)**, by which costs may be recovered under this Act are as follows:
- (a) fixed charges:
 - (b) charges based on a scale or formula or at a rate determined on an hourly or per traveller or other unit basis: 5
 - (c) the recovery of the actual and reasonable costs spent in or associated with the processing of travellers:
 - (d) estimated charges, or charges based on estimated costs, paid before the processing of travellers, followed by reconciliation and an appropriate further payment or refund after provision of the service. 10
- 16 Exemptions, waivers, and refunds**
- (1) A chief executive may, if satisfied that either of the circumstances in **subsection (2)** exists, exempt, waive, or refund, in whole or in part, any prescribed charge that relates to the processing of travellers by the chief executive's agency. 15
 - (2) The circumstances are—
 - (a) the work actually done does not justify the payment (or full payment) of the prescribed charge concerned; or 20
 - (b) special circumstances apply to the particular case.
 - (3) The chief executive's decision under **subsection (1)** must be in writing, and must specify the reason for the exemption, waiver, or refund.
- 17 Prescribed charges to constitute debt due to the Crown** 25
- (1) A prescribed charge or part of a charge that is not paid by the due date is a debt due to the Crown.
 - (2) The chief executive of the agency that provided the services to which the charge relates may recover the debt in any court of competent jurisdiction. 30
- 18 Penalties for failure to pay prescribed charge**
- (1) If a person fails to pay a prescribed charge or part of a charge by the due date, the debt is increased by adding a penalty.
 - (2) The penalty is the sum of—
 - (a) 10% of the debt; and 35

- (b) for every complete period of 6 months after the due date during which the debt or any part of it (including any penalty) has remained unpaid, 10% of the debt or that part.
- (3) When a chief executive notifies a person of a prescribed charge, the chief executive must also tell that person of the consequences of non-payment under this section. 5

19 Waiver of penalty

- (1) The chief executive may waive payment of all or any part of a penalty added to a debt owed by a person, if the chief executive is satisfied that the failure or refusal of the person to pay all or any part of the debt was a result of a genuine dispute between the person and the agency as to either or both of the following: 10
 - (a) the person's liability to pay the debt:
 - (b) the amount of the debt. 15
- (2) In an action for the recovery of a debt, a court may waive payment of all or any part of a penalty added to the debt, if the court is satisfied that the failure or refusal of a person to pay all or any part of the debt was a result of a genuine dispute between the person and an agency as to either or both of the following: 20
 - (a) the person's liability to pay the debt:
 - (b) the amount of the debt.

20 Obligation to pay prescribed charge not suspended by dispute 25

The obligation of a person to pay any prescribed charge under this Act (including any penalty), and the right of a chief executive to receive and recover the charge or penalty, are not suspended by any dispute between the person and the chief executive regarding the person's liability to pay the charge, or the amount of the charge. 30

Consequential amendments

21 Consequential amendments to other enactments

- (1) The Acts listed in **Part 1 of the Schedule** are amended in the manner set out in that Part. 35

- (2) The regulations listed in **Part 2 of the Schedule** are amended in the manner set out in that Part.
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Schedule	s 21
Consequential amendments to other enactments	
Part 1	
Acts amended	5
Biosecurity Act 1993 (1993 No 95)	
Section 135: add:	
“(4) This section does not apply to costs incurred by a recovering authority in processing travellers to which the Airports (Cost Recovery for Processing of International Travellers) Act 2010 applies.”	10
Section 165: add:	
“(3) This section does not authorise the making of regulations prescribing fees and charges to recover the costs of processing travellers to which the Airports (Cost Recovery for Processing of International Travellers) Act 2010 applies.”	15
Civil Aviation Act 1990 (1990 No 98)	
Section 38: insert after subsection (4):	
“(4B) Nothing in this section or in section 100 authorises the making of regulations prescribing charges in relation to traveller processing to which the Airports (Cost Recovery for Processing of International Travellers) Act 2010 applies.”	20
Customs and Excise Act 1996 (1996 No 27)	
Section 287: add:	
“(5) This section does not authorise the making of regulations prescribing fees and charges to recover the costs of processing travellers to which the Airports (Cost Recovery for Processing of International Travellers) Act 2010 applies.”	25

Part 2
Regulations amended

Biosecurity (Costs) Regulations 2010 (SR 2010/135)

New regulation 3A: insert before regulation 4:

“3A Restriction on application of regulations 5
These regulations do not apply to an activity that is or is part
of processing travellers to which the **Airports (Cost Recov-
ery for Processing of International Travellers) Act 2010**
applies.”

Civil Aviation Charges Regulations (No 2) 1991 (SR 1991/143) 10

Regulation 20(2): insert after paragraph (f):

“(fa) any passenger on an aircraft departing from an inter-
national airport to which **section 7 of the Airports**
(Cost Recovery for Processing of International
Travellers) Act 2010 applies.” 15