

Airports (Cost Recovery for Processing of International Travellers) Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Airports (Cost Recovery for Processing of International Travellers) Bill and recommends that it be passed with the amendments shown.

Introduction

The purpose of this bill is to provide for recovery by the Government of the costs 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 way at any international airport.

Payment for non-routine traveller processing

We recommend that clause 9 be amended to make it clear when costs could be recovered for non-routine processing. It should be done

when the request for non-routine processing imposes additional costs on the agency that undertakes the processing.

We also recommend that clause 9 be amended to make it clear what processing it does not apply to, so that it is clear what processing costs could be recovered under other legislation. Processing of travellers ought not to be treated as non-routine solely because the travellers arrive or depart on an international flight that is not a scheduled international flight, or at an airport outside working hours.

We were assured by officials that agencies will take a reasonable approach when considering timeframes and costs as they arise.

We also recommend consequentially amending clause 8 to make it clear it would not apply to the processing detailed in clause 9. Clause 8 would only cover charging for the processing of travellers at new and re-established airports. Clause 9 applies to international airports in relation to non-routine processing requested by a person.

Interface with Customs and Excise Regulations 1996

The bill as introduced would amend section 287 of the Customs and Excise Act 1996 so that the customs regulations could not be used to recover costs for anything within the scope of the bill. We recommend further amendments to clause 9 to specify what processing it does not apply to, so as to make it clear what processing might be subject to cost recovery under regulations prescribing fees and charges under the Act. Clause 9, which relates to payment for the non-routine processing of travellers, would apply to all international airports and not only new and re-established international airports.

Averaging charges for cost recovery

We recommend that clause 11 be amended to provide that cost recovery regulations may be made setting charges on an average basis. Clause 11 sets out the charges that could be prescribed. The specific establishment and operational costs for each new or re-established international airport will vary, and therefore so would an airport's preference for an averaging approach to costs or a location-specific approach. We suggest this method be expressly incorporated into the bill to ensure there is an option of cost recovery by way of standard itemised cost recovery charges reflecting nationally averaged charges.

The methods of cost recovery that may be used are set out in clause 15.

Cost recovery period

We recommend that the cost recovery period be prescribed in regulations at two years. We agree that the bill would limit the period for cost recovery at new and re-established airports to a maximum of three years, with a shorter period allowed to be prescribed by regulation.

Appendix

Committee process

The Airports (Cost Recovery for Processing of International Travellers) Bill was referred to the committee on 16 September 2010. The closing date for submissions was 7 October 2010. We received and considered eight submissions from interested groups and individuals. We heard three submissions.

We received advice from the Ministry of Agriculture and Forestry, the Ministry of Transport, and the New Zealand Customs Service.

Committee membership

Shane Ardern (Chairperson)

Hon Jim Anderton

Brendon Burns

Dr Ashraf Choudhary

Craig Foss

Sandra Goudie

Colin King

Hon Damien O'Connor

**Airports (Cost Recovery for Processing
of International Travellers) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon David Carter

Airports (Cost Recovery for Processing of International Travellers) Bill

Government 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 ~~the~~ one 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 5

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 to—
 - (i) determine the traveller's eligibility to enter or leave New Zealand; and
 - (ii) 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**
This Act binds the Crown.

Part 2
Cost recovery

5

Liability for charges

- 6 Application of sections 7 and 8**
- (1) **Sections 7 and 8** apply to an airport—
- (a) that begins operating as an international airport; or 10
 - (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).
- (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. 25
- 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:
- (a) recruiting and training staff: 5
 - (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
- (1) 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.
- (2) This section does not apply to processing to which **section 9** applies. 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~~ 20
 - (b) ~~at the request of a person.~~
- (1) This section applies to the processing of travellers at an international airport at the request of a person, if the processing requested imposes additional costs on the agency that undertakes the processing. 25
- (1A) The processing of travellers is not processing to which this section applies solely because the travellers—
- (a) arrive or depart on an international flight that is not a scheduled international flight; or
 - (b) arrive or depart at an international airport outside the working hours of the agency concerned. 30
- (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 as~~ requested. 35

- (3) In this section, **working hours of the agency concerned** means,—
- (a) in relation to Customs, the working hours prescribed by, or determined under, regulation 3 of the Customs and Excise Regulations 1996: 5
 - (b) in relation to the Ministry of Agriculture and Forestry and the Aviation Security Service, the hours during which traveller processing is usually undertaken by the agency at an international airport.
- 10 Exemption from prescribed charges for aviation security processing** 10
- 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: 15
 - (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: 20
 - (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: 25
 - (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: 30
 - (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 regu- 35

lation 20(2)(g) of the Civil Aviation Charges Regulations (No 2) 1991.

Cost recovery

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: 5
- (a) prescribing a grace period shorter than 6 months:
 - (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— 10
 - (i) carrying out the activities involved in processing travellers at an international airport:
 - (ii) establishing or re-establishing the capacity to process travellers at an international airport: 15
 - (d) prescribing any returns, and the conditions relating to the returns, to be made by persons who must pay prescribed charges:
 - (e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 20
- (2) The regulations may prescribe charges using all or any of the methods specified in **section 15**.
- (3) Different charges, or different rates or types of charges, may be prescribed— 25
- (a) in relation to different airports or different classes or descriptions of persons, airports, businesses, or operations; or
 - (b) on the basis of different times of use; or 30
 - (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: 35
 - (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:
 - (d) differ for otherwise similar services provided in different ways:
 - (e) differ for otherwise similar services provided to different categories of persons: 5
 - (f) differ depending on the amount of service required or the components of the service required for the particular person or class of persons.
- (5) Despite **subsections (3) and (4)**, the charges prescribed may be set at a level or in a way that is determined by calculations that involve an averaging of costs or potential costs. 10
- 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. 15
 - (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. 20
- 13 Consultation requirements for making regulations**
- (1) Before making a recommendation for the making of regulations, the Minister— 25
 - (a) must be satisfied that consultation has been carried out in accordance with **subsection (2)**; and
 - (b) must receive and take into account the results of the consultation.
 - (2) The Director-General must— 30
 - (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 35
 - (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—
- (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. 5
- (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 10
 - (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. 15

14 Consultation before Act in force

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. 20

15 Methods of cost recovery 25

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: 30
- (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. 35

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. 5
- (2) The circumstances are—
 - (a) the work actually done does not justify the payment (or full payment) of the prescribed charge concerned; or
 - (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. 10

17 Prescribed charges to constitute debt due to the Crown

- (1) A prescribed charge or part of a charge that is not paid by the due date is a debt due to the Crown. 15
- (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.

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. 20
- (2) The penalty is the sum of—
 - (a) 10% of the debt; and
 - (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. 25
- (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. 30

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:
- (a) the person's liability to pay the debt.
 - (b) the amount of the debt.
- (2) In an action for the recovery of a debt, a court may waive 5
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: 10
- (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**
- The obligation of a person to pay any prescribed charge under 15
this Act (including any penalty), and the right of a chief ex-
ecutive 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. 20
- Consequential amendments*
- 21 Consequential amendments to other enactments**
- (1) The Acts listed in **Part 1 of the Schedule** are amended in 5
the manner set out in that Part.
 - (2) The regulations listed in **Part 2 of the Schedule** are amended 25
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

**Airports (Cost Recovery for Processing
of International Travellers) Bill**

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

Legislation history

9 September 2010	Introduction (Bill 199–1)
16 September 2010	First reading and referral to Primary Production Committee
