

Managing Food Safety and
Suitability in New Zealand

DOMESTIC FOOD REVIEW

PRINCIPLES AND POSSIBLE
METHODS FOR A
COST RECOVERY
FRAMEWORK



New Zealand Food Safety Authority

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1. Introduction

This is Paper 5 in a Review of government involvement in the domestic food sector.

The Review is a significant long-term project that is likely to run over at least five years. Its purpose is to put in place a food regulatory programme across all sectors of New Zealand's domestic food industry that promotes and delivers safe and suitable food in New Zealand.

This is only the second time in the last 30 years that the government's role in the New Zealand domestic food sector has been critically examined at official level. The last review was undertaken in the late 1980s, and led to the Food Amendment Act 1996 and eventually the establishment of the New Zealand Food Safety Authority (NZFSA).

This Paper proposes the principles to apply in cost recovery arrangements and the methods that could be applied. It has been developed by NZFSA in conjunction with groups representing Public Health Units (who are part of District Health Boards) and Territorial Authorities (as represented by Local Government New Zealand). The Paper includes an outline of current principles and methods.

Other Papers in the series include:

- [Paper 1](#): Context
- [Paper 2](#): Regulatory roles, responsibilities and structures
- [Paper 3](#): Food Control Plans
- [Paper 4](#): Implementation of Food Control Plans.

At the end of public consultation on this and the other four Papers, NZFSA will analyse all submissions and provide policy advice to Government.

Submissions are sought from interested people and organisations. A response form is provided, but submissions will be accepted in any format.

The closing date for submissions is 28 February 2005.

Submissions should be sent to:

Submissions – Domestic Food Review
c/o Policy Group
New Zealand Food Safety Authority
PO Box 2835
WELLINGTON
Email: robbie.thomson@nzfsa.govt.nz
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The discussion document will be available on the NZFSA website www.nzfsa.govt.nz/policy-law/projects/domestic-food-review. Following analysis of submissions, a summary of issues raised will be made available on the above website.

All submissions are subject to the Official Information Act 1982, which specifies that information is to be available unless there are grounds for withholding it. If you wish your submission or any part of it to be withheld, please indicate the grounds within the Official Information Act that apply. NZFSA will take your request into account when determining whether or not to release information. Please note that any decision by NZFSA to withhold information is reviewable by the Ombudsman.

2. Executive Summary

It is important that there be consistency and predictability about the costs associated with the food safety and suitability regime across New Zealand. The costs associated with administering the New Zealand food regulatory regime must be met by the government or by industry.

One of the basic principles of the Domestic Food Review is that regulatory compliance costs imposed on the food sector will be minimised consistent with Government policies and the need for regulatory control. Thus any costs imposed will be the minimum required to achieve the desired objectives.

This Paper:

- describes the current regulatory environment for cost recovery in the food sector, and current practice;
- outlines the current best practice guidelines and criteria used by central government for assessing options for cost recovery;
- proposes principles and possible methods for a cost recovery framework for the domestic food sector.

Annexes to this Paper:

- summarise current cost recovery provisions in existing legislation;
- describe the range of cost recovery approaches at local government level (based on a survey undertaken by NZFSA); and
- summarise central government cost recovery guidelines.

The paper does not comment on, or cover, those costs that might be incurred by businesses related to requirements for delivering safe food within a food control plan such as laboratory testing, training, verification etc. In these circumstances, the businesses will pay market rates for services.

This Paper proposes that where possible provision will be made for functions to be carried out by third party providers in a contestable environment. Competition among providers helps to ensure that market pressures keep costs fair.

The paper states that there will be some functions that need to be provided by the regulator. The direct and indirect costs for these functions must be fully funded by the Government or industry. Where industry pays, decisions need to be made about who in industry should pay (for example, users, beneficiaries, individuals or groups) and how and what amount they should pay.

3. Purpose of the Paper

The purpose of this discussion Paper is to propose principles and possible methods for a cost recovery framework for domestic food safety that will determine the funding of functions undertaken by the regulator or on its behalf and who will fund those functions.

This Paper is not about what the actual charges might be. This will be the subject of more detailed discussion papers when decisions on roles and responsibilities, and therefore functions to be undertaken by the regulator, are made (see Paper 2 for discussion of this aspect).

4. Scope

Inclusions

The scope of this Paper extends to the principles and mechanisms proposed to be used to fund certain functions that central government provides and who should pay for those functions. It covers provisions for accountability and transparency including consultation and review. It covers sanctions that might be applied if fees and charges are not paid, the types of fees and charges that might be applied (set out in law or administrative) and issues around accounting for cost recovery by the regulator ('overs and unders' and memorandum accounting). An important feature of the cost recovery proposals is that they are founded on a consistent functional structure between the domestic food regime and other areas the NZFSA is responsible for.

Separate but related issues

There are a number of separate but related government guidelines, processes and principles that must be considered when decisions are made regarding cost recovery. These include:

- decisions the government makes about the funding of government provided functions through the budget and its associated appropriations;
- various government guidelines for cost recovery; and
- constitutional principles relating to the setting fees and charges.

These are discussed further in Annex 4.

Exclusions

While the principles and possible methods for a cost recovery framework for central government may well have applicability at local government level, this will depend on the future roles and responsibilities of local government in the food regulatory regime (as discussed in Paper 2). Having said that, cost recovery for local government purposes is outside the scope of this Paper. The processes and principles for local authorities to consider regarding cost recovery are outlined in the Local Government Act 2002 and in each local authority's Long-term Council Community Plan and the associated Funding Impact Statement. These are discussed in Annex 1.

5. Background

Current Cost Recovery in the Food Sector

Legislative provisions for the cost recovery of activities applied and delivered by the regulator are summarised in Annex 1. Activities associated with operating in the food industry services that are not covered by the discussion in this document include, for example, laboratory testing, training and third party verification. In these circumstances, the businesses will pay market rates for services.

Regulator costs in the food sector are incurred at three levels:

- central government (New Zealand Food Safety Authority)
- regional (public health units)
- local (territorial authorities).

Central

Government-provided services and activities are funded both by the government through direct appropriation, and by stakeholders through cost recovery mechanisms (Food Act, Animal Products Act, Wine Act and Dairy Industry Act).

Regional

Public Health Units are funded in the main by the government (through a contractual arrangement administered by NZFSA). There is some cost recovery from stakeholders (e.g. for some import clearances).

Local Government

Territorial Authorities differ widely in the level, type, method and range of cost recovery for food related services (a summary of Territorial Authority cost recovery from a recent NZFSA Survey is provided in Annex 2).

Problems with the Current Cost Recovery Arrangements

At the central government level there are differences and interface issues across the cost recovery provisions in NZFSA administered food legislation. This is particularly the case, although not limited to, the cost recovery provisions in the Food Act (see Annex 1). It is difficult for NZFSA to justify different levels of fees and charges across the statutes it administers when the same, or similar, services are provided. It would be contrary to the government's principles of minimising compliance costs, consistent application of legislative requirements and the provision of a seamless and coherent food regulatory programme. For these reasons also it is difficult for NZFSA to justify different charging regimes. Nonetheless, the specific structure of a sector may provide the basis for such justification.

There are inconsistencies and interface issues around the funding of the levels of regulator provided service. For example, domestic processors of dairy, meat, poultry and fish contribute to monitoring costs while domestic processors of other products do not pay for any monitoring. Cross-subsidisation and less than full cost recovery appears in some of the charges. Issues around responsibilities and who undertakes what functions (as detailed in Paper 2: Regulatory Roles, Responsibilities and Structures) creates issues for funding functions. Together these contribute to a lack of certainty about the full costs of running a food business in New Zealand.

Where performance-based services are provided, it is particularly important for charging regimes to be comprehensive and consistent. If this is not the case there is the potential to mask the cost drivers and thereby reduce the incentive for behaviours to change. This is particularly the case in relation to performance-based verification. By making verification performance-based, the intention is to provide an incentive for 'doing things right' first time round. Where a business doesn't do this, it will pay more for return verification visits. If verification is subsidised, the incentive to do it right is reduced or removed.

Charging regimes and the issues they raise will depend to some extent on the roles and responsibilities finally determined for the public health units, local government and NZFSA (see Paper 2 in this series).

6. Who Pays for what Functions

Food regulatory services will be provided by the regulator and by agents acting on behalf of the regulator.

It is important that there is consistency and predictability about the costs associated with the food safety and suitability regime across New Zealand. This will be achieved by setting a national rate through legislation that will apply to all agents acting on behalf of the regulator.

This is consistent with the Sale of Liquor Regulations 1990, where Territorial Authorities act as agencies for the Ministry of Justice.

Regulator costs

The regulator (NZFSA, public health units and territorial authorities) will incur costs associated with the functions listed in the table below.

Table 1: Classification of Domestic Food Regulatory Regime Activities

<p>1. Policy Advice Providing policy advice and decision support to the Government.</p>
<p>2. Multilateral Standard Setting Contributing to the generic aspects of international food-standard setting processes that will have application across the domestic food regulatory regime (e.g. food hygiene, food labelling, food additives and contaminants). Includes multilateral negotiations of a generic nature and contributing to generic regional and multilateral activities (e.g. the FAO and WHO, APEC etc).</p>
<p>3. Domestic Standards Activities Setting and promoting standards for food for New Zealand consumers that are necessary for the domestic market and that may provide a platform for export activities. Includes providing technical advice to assist the policy formulation process, science activities that underpin domestic standard setting such as risk profiling, the Total Diet Survey and the contract with ESR, the contract with FSANZ (for labelling and composition standards development) and communication activities that contribute to, promote or enhance understanding about domestic standards.</p>
<p>4. Approvals, Accreditation and Registrations Registration or approval of food control plans, codes of practice, models, templates, laboratories, recognised persons and agencies against the established standards. Clearance of imported food and goods.</p>
<p>5. Programme Performance Monitoring This includes the sampling and testing of products as part of the overall systems audit approach for the regulatory programme.</p>
<p>6. Compliance and Audit Reviewing and auditing the food regulatory system both horizontally (across the board or across a sector) and vertically (on a business-by-business approach) for compliance and performance of the system.</p>
<p>7. Investigations and Enforcement Undertaking investigations in specific areas associated with breaches of the law. Implementation of sanctions or prosecution of offenders who have broken the law.</p>
<p>8. Health Promotion Undertaking health promotion for improving the safety of food.</p>
<p>9. Other Education, training, and providing food safety advice to the public.</p>

Third Party Costs

Contestable services provided by third party suppliers will be recovered at market rates by commercial arrangement between the supplier of the service and the person the service is being provided to. Competition for the supply of such services should ensure that market pressures keep costs fair. Commercial arrangements between the service supplier and buyer will generally have no regulator involvement in terms of costs.

Government would only consider intervention in relation to the provision of third party of services where there is market failure. Ways government might seek to deliver corrections in such situations are varied but could, for example, result in provision of information and material (such as Codes of Practice) to inform users about the services they need. They would then be in a better position to negotiate the service they require and not have additional services/costs unnecessarily imposed on them.

Local Authority Costs

Where it has been determined that local authorities will perform functions the processes and principles for local authorities to consider regarding cost recovery are outlined in the Local Government Act 2002 and in each local authority's Long-term Council Community Plan and the associated Funding Impact Statement. These are discussed in Annex 1.

Determining Government versus Industry Contributions

The government makes decisions about the provision and funding of government provided functions through the Budget and its associated appropriations and purchase agreements. Government is guided by departmental advice on whether it needs to provide or undertake certain functions and on whether the government or industry should fund those functions. There are a number of guidelines that assist in this process, which are detailed in Annex 3. Generally the government funds policy advice, multilateral standards setting and investigation. Currently, for functions carried out under the Food Act the government funds most of the central government provided functions.

7. Legislative Provision for Cost Recovery

Legislation will provide principles and mechanisms for cost recovery at the Act level. Regulations will detail who will pay, what mechanisms of cost recovery will be employed and how much the fees, charges or levies will be.

7.1 Features and Principles of a Cost Recovery Framework

It is proposed the cost recovery regime will:

- be principles based
- recover the full cost of service provision, including overheads
- not over-recover costs or be excessive (the basis for apportioning indirect costs is especially important here)
- be sustainable
- to the extent possible, be simple rather than complex
- be consistent and applied equitably across sectors and groups
- reflect a process for monitoring changes in costs and supply and demand conditions, and provision for regular reviews of charges
- provide for stakeholder consultation, so that those being charged have the ability to influence the level and quality of service, but without compromising public policy objectives
- have a sound statutory base, to define the powers of, and constraints on, the regulatory agency concerned, and provide an appropriate level of scrutiny of charges through the regulatory process.

The cost recovery regime must also be flexible so that:

- charges may be aligned as closely as possible with the actual cost of service provision, and take account of different cost drivers (for example vary according to the location in which the service is provided, or the time at which it is provided); and
- varying methods of cost recovery, such as fees, charges and levies, can be applied to allow the most appropriate method to be selected according to the nature of the service provided

The principles of cost recovery and the methods of cost recovery provided for in New Zealand's most recent legislation (the Animal Products Act 1999 and Wine Act 2003) provide criteria that closely match best practice government guidelines for cost recovery (detailed in Annex 4). It is proposed that those principles be adopted into the domestic food regulatory regime. This will provide legislative consistency across all NZFSA legislation. The principles are:

- **Equity**
Equity means that users or beneficiaries of a function, power or service will generally be required to fund the cost of providing the function, power or service at a level that reflects their use or benefit.
- **Efficiency**
Costs should generally be allocated and recovered in a manner that ensures maximum benefits are delivered at minimum cost. This includes taking account of transaction costs.
- **Justifiability**
The costs (including the indirect costs) associated with providing a function, power or service should be reasonable and justifiable.
- **Transparency**
The cost of providing a service, function or power should be identifiable and allocated in a transparent manner.

7.2 Methods and Review of Cost Recovery

Methods of cost recovery are identified as:

- Fixed fees or charges.
- Fees or charges based on a scale or formula, or at a rate determined on an hourly or unit basis.
- Fees or charges of actual and reasonable costs expended in or associated with the performance of a service or function.
- Estimated fees or charges, or fees or charges based on estimated costs paid before the provision of the service or function followed by reconciliation and an appropriate further payment or refund after the provision of the service or function.
- Refundable or non-refundable deposits paid before provision of the service or performance of the function.
- Fees or charges imposed on users of services or third parties.
- Levies.
- Any combination of the above.

It is proposed that provision will be made for the Minister to review the cost recovery regime, at least once in every 3-year period occurring since the original setting of, or latest change to. This review is intended to cover the current levels and methods of cost recovery and the levels and methods of cost recovery in the relevant area that are likely to be appropriate for the following financial year or years.

7.3 Consultation

Consultation will occur with all affected parties or representative organisations of affected parties prior to any recommendation being made to set fees charges and levies.

7.4 Sanctions and Penalties for Failure to Pay

Where a person has failed to pay by the due date any fee, levy, or charge, provisions in the Ministries of Agriculture and Forestry (Restructuring) Act 1997 enable:

- an increase in the amount payable;
- the regulator to withdraw, or refuse to provide the person in default with, any service of the kind to which the debt relates.

It is not intended that these provisions be changed in relation to the domestic food regime. To support those provisions the regulator may:

- withhold or suspend any approval, or refuse to perform any function in relation to the person in default; or
- withhold the registration of a food control plan or require the suspension of any relevant operations under the food control plan.

7.5 Fees and Charges to be Set Out in Regulations

For transparency, and to ensure there is formal recourse to review mechanisms for those subject to cost recovery arrangements, it is proposed arrangements be set out in regulations. A key feature of the cost recovery regime in regulations is that the regulations will set out:

- the mechanism (type) of cost recovery;
- who is liable to pay fees, charges and levies; and
- the amount each person is liable to pay.

When proposing cost recovery regulations the regulator must take into account the legislative principles and mechanisms the legislation provides. This will include consulting affected parties with justification for proposals and being transparent about how the proposals were arrived at.

In addition when proposing cost recovery regulations the regulator must also take into account the government requirements for:

- A Regulatory Impact Statement that details amongst other things the options that were considered, the relevant costs and benefits of each option and a demonstration of the net benefit of the proposal.
- A Business Compliance Cost Statement that details compliance cost (costs to businesses of meeting regulatory requirements) implications for all affected parties.
- A Regulations Review Process that requires the demonstration that Treasury and Audit Office guidelines have been considered and constitutional principles have been adhered to (see Annex 4).

7.6 Memorandum Accounting

It is intended that provision be made for an 'overs and unders' approach to the accounting by the regulator for funds received for services. This enables the regulator to carry forward monies collected in excess of the charges for services to a subsequent financial year and for this to be credited to the industry in funding future use of the service. It also means that under-recovery of a service can be carried forward and paid for in the subsequent year.

8. Conclusion

A cost recovery framework set out in legislation provides the basis for consistency of application across a sector, in this case the domestic food sector, and with other sectors undertaking similar activities. It also provides transparency and recourse for those subject to the recovery of costs.

Annex 1: Legislative Provisions for Cost Recovery

Food Act 1981

Regulations for fees and charges may be made, “after consultation with all organisations or bodies appearing to the Minister to be representative of persons likely to be substantially affected by the regulations”, to meet or help meet the costs and expenses incurred in exercising powers, or performing functions or duties, or providing services, under the Act.

Any regulations made may:

- (a) Prescribe the matters in respect of which fees or charges, or both, are payable, which may include (without limitation) -
 - (i) Additional fees or charges, or both, for services or work provided or carried out outside normal working hours, at weekends, or on statutory holidays:
 - (ii) Charges for reimbursement of travelling time and other expenses:
- (b) Prescribe the amounts of the fees or charges, or the methods by which they are to be assessed:
- (c) Specify the persons by whom, and to whom, any fees or charges, or both, are payable:
- (d) Provide for the refund, waiver, or rebate, or enable the refund, waiver, or rebate, of any fee or charge, or both:
- (e) Fix, or enable the fixing, of a date by which any fee or charge is to be paid:
- (f) Provide a discount for early payment of any fee or charge or a penalty for late payment, or both:
- (g) Prescribe any returns, and the conditions relating to such returns, to be made by persons by whom any fees or charges are payable.

Any regulations may—

- (a) Prescribe different rates of fees or charges, or both; or
 - (b) Prescribe different methods by which fees or charges, or both, are to be assessed -
- in respect of different classes of persons, foods, or other matters.

Animal Products Act 1999

Part 9 – Cost Recovery

113 Principles of cost recovery

- (1) The Minister and the Director-General are to take all reasonable steps to ensure that so many of the direct and indirect costs of administering this Act as are not provided for by money appropriated by Parliament for the purpose are recovered under this Part, whether by way of fees, levies, or otherwise.
- (2) In determining the most appropriate method of cost recovery under section 114, and its level, in any particular case or class of cases of animal material or product, animal product business, person, or other matter, the Minister and Director-General are to have regard, as far as is reasonably practicable, to the following criteria:
 - (a) Equity, in that funding for a particular function, power, or service, or a particular class of functions, powers, or services, should generally, and to the extent practicable, 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:
 - (b) Efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost:
 - (c) Justifiability, in that costs should be collected only to meet the reasonable costs (including indirect costs) for the provision or exercise of the relevant function, power, or service:
 - (d) Transparency, in that 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.
- (3) Costs should not be recovered under this Part unless there has been appropriate consultation with affected parties in accordance with section 163, and the parties involved have been given sufficient time and information to make an informed contribution.
- (4) Nothing in subsection (3) or section 163 requires consultation in relation to specific fees or charges, or the specific levels of fees or charges, so long as the fees or charges set are reasonably within the purview of any general consultation or any consultation carried out for the purposes of section 116, and a failure to comply with subsection (3) does not affect the validity of any regulations made for the purposes of this Part.

- (5) Nothing in this section requires a strict apportionment of the costs to be recovered for a particular function or service based on usage, and, without limiting the way in which fees or charges may be set, a fee or charge may be set at a level or in a way that—
- (a) Is determined by calculations that involve an averaging of costs or potential costs:
 - (b) Takes into account costs or potential costs of services that are not directly to be provided to the person who pays the fee or charge but which are an indirect or potential cost arising from the delivery of the service in question to a class of persons or all persons who use the service.

114 Methods of cost recovery

The methods by which costs may be recovered under this Part are as follows:

- (a) Fixed fees or charges:
 - (b) Fees or charges based on a scale [or formula] or at a rate determined on an hourly or other unit basis:
 - (c) The recovery by way of fee or charge of actual and reasonable costs expended in or associated with the performance of a service or function:
 - (d) Estimated fees or charges, or fees or charges based on estimated costs, paid before the provision of the service or function, followed by reconciliation and an appropriate further payment or refund after provision of the service or function:
 - (e) Refundable or non-refundable deposits paid before provision of the service or performance of the function:
 - (f) Fees or charges imposed on users of services or third parties:
 - (g) Levies:
 - (h) Any combination of the above.
- 115 Cost recovery to relate generally to a financial year
- 116 Three-yearly review of cost recovery
- 117 Fees and charges to be prescribed by regulations
- 118 Regulations may impose levies
- 119 Trust accounts required to be kept by persons collecting levies
- 120 Other charges not requiring to be prescribed
- 121 Exemptions, waivers, and refunds
- 122 Fees, levies, and charges to constitute debt due to Director-General
- 123 Penalties for failure to pay fee, levy, or charge
- 124 Obligation to pay fee, levy, or charge not suspended by dispute
- 125 Levy regulations to be confirmed

Wine Act 2003

Subpart 2—Cost recovery

84 Principles of cost recovery

- (1) The Minister and the Director-General must take all reasonable steps to ensure that so many of the direct and indirect costs of administering this Act as are not provided for by money appropriated by Parliament for the purpose are recovered under this subpart, whether by way of fees, levies, or otherwise.
- (2) In determining the most appropriate method of cost recovery under section 85, and its level, in any particular case or class of cases of wine, business, person, or other matter, the Minister and Director-General must have regard, as far as is reasonably practicable, to the following criteria:
 - (a) equity, in that funding for a particular function, power, or service, or a particular class of functions, powers, or services, should generally, and to the extent practicable, 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:
 - (b) efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost:
 - (c) justifiability, in that costs should be collected only to meet the reasonable costs (including indirect costs) for the provision or exercise of the relevant function, power, or service:
 - (d) transparency, in that 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.

- (3) Costs should not be recovered under this subpart unless there has been appropriate consultation with affected parties and relevant industry organisations in accordance with section 115, and the parties involved have been given sufficient time and information to make an informed contribution.
- (4) Nothing in subsection (3) or in section 87 or section 115 requires consultation in relation to specific fees or charges, or the specific levels of fees or charges, so long as the fees or charges set are reasonably within the purview of any general consultation or any consultation carried out for the purposes of section 115, and a failure to comply with subsection (3) does not affect the validity of any regulations made for the purposes of this subpart.
- (5) Nothing in this section requires a strict apportionment of the costs to be recovered for a particular function or service based on usage; and, without limiting the way in which fees or charges may be set, a fee or charge may be set at a level or in a way that—
 - (a) is determined by calculations that involve an averaging of costs or potential costs:
 - (b) takes into account costs or potential costs of services that are not directly to be provided to the person who pays the fee or charge but which are an indirect or potential cost arising from the delivery of the service in question to a class of persons or all persons who use the service.

85 Methods of cost recovery

The methods by which costs may be recovered under this subpart are as follows:

- (a) fixed fees or charges:
- (b) fees or charges based on a scale or formula or at a rate determined on an hourly or other unit basis:
- (c) use of a formula or other method of calculation for fixing fees and charges:
- (d) the recovery by way of fee or charge of actual and reasonable costs expended in, or associated with, the performance of a service or function:
- (e) estimated fees or charges, or fees or charges based on estimated costs, paid before the provision of the service or function, followed by reconciliation and an appropriate further payment or refund after provision of the service or function:
- (f) refundable or non-refundable deposits paid before provision of the service or performance of the function:
- (g) fees or charges imposed on users of services or third parties:
- (h) levies:
- (i) any combination of the above.

86 Cost recovery to relate generally to financial year

87 Three-yearly review of cost recovery

88 Fees and charges to be prescribed by regulations

89 Regulations may impose levies

90 Trust accounts required to be kept by persons collecting levies

91 Other charges not requiring to be prescribed

92 Exemptions, waivers, and refunds

93 Fees, levies, and charges to constitute debt due to Director-General

94 Penalties for failure to pay fee, levy, or charge

95 Obligation to pay fee, levy, or charge not suspended by dispute

96 Levy regulations to be confirmed

Agricultural Compounds and Veterinary Medicines Act 1997

81 Regulations prescribing fees and charges

- (1) The Governor-General may from time to time, by Order in Council, make regulations prescribing or providing for fees and charges payable in respect of the exercise or performance of any of the functions, powers, or duties under this Act.
- (2) Any such regulations may—
 - (a) Specify the persons by whom any fees and charges so prescribed or fixed are payable; and
 - (b) Prescribe the matters for which direct and indirect costs may be recovered; and
 - (c) Prescribe a scale of fees and charges or a rate based on the time involved in carrying out the function,

- power, or duty; and
- (d) Prescribe a scale of fees and charges or a fee and charge for a prescribed function, power, or duty; and
 - (e) Prescribe a formula for fixing fees and charges; and
 - (f) Prescribe an annual fee or charge or classes of fees or charges payable by the registrants of a trade name product; and
 - (g) Prescribe the time of payment of fees and charges, the means of collection of fees and charges, and the person who is responsible for paying a fee or charge.
- (3) Any regulations made under subsection (1) may fix the fees or prescribe the scale or formula for fixing fees and charges so as to recover—
- (a) The actual and reasonable costs of carrying out any specified action:
 - (b) The actual and reasonable costs of carrying out any specified class of actions for a specified period of time and, where applicable,—
 - (i) Increase the costs by an amount sufficient to recover the difference between the costs incurred in a previous specified period and the costs recovered, where the costs recovered were less than the costs incurred; or
 - (ii) Reduce the costs by an amount sufficient to refund the difference between the costs incurred in a previous specified period and the costs recovered, where the costs recovered were more than the costs incurred.
- (4) The Director-General may estimate the total fees and charges payable in accordance with regulations made under subsection (1) and may require the person who is liable to pay the fees and charges to pay some or all of those fees and charges in advance, and need not perform any actions to which the fee and charge relates until the amount required to be paid has been paid to the Director-General in full. Any such estimate may from time to time be amended.
- (5) The Director-General may, as he or she thinks fit, refund or waive any fee and charge prescribed in regulations made under subsection (1) in whole or in part in any case or class of cases including, but not limited to, any functions, powers, or duties carried out under Part 2.

Local Government Act 2002

Part 6 - Subpart 3-Financial management

100 Balanced budget requirement

- (1) A local authority must ensure that each year's projected operating revenues are set at a level sufficient to meet that year's projected operating expenses.
- (2) Despite subsection (1), a local authority may set projected operating revenues at a different level from that required by that subsection if the local authority resolves that it is financially prudent to do so, having regard to—
 - (a) the estimated expenses of achieving and maintaining the predicted levels of service provision set out in the long-term council community plan, including the estimated expenses associated with maintaining the service capacity and integrity of assets throughout their useful life; and
 - (b) the projected revenue available to fund the estimated expenses associated with maintaining the service capacity and integrity of assets throughout their useful life; and
 - (c) the equitable allocation of responsibility for funding the provision and maintenance of assets and facilities throughout their useful life; and
 - (d) the funding and financial policies adopted under section 102.

101 Financial management

- (1) A local authority must manage its revenues, expenses, assets, liabilities, investments, and general financial dealings prudently and in a manner that promotes the current and future interests of the community.
- (2) A local authority must make adequate and effective provision in its long-term council community plan and in its annual plan (where applicable) to meet the expenditure needs of the local authority identified in that long-term council community plan and annual plan.
- (3) The funding needs of the local authority must be met from those sources that the local authority determines to be appropriate, following consideration of,—
 - (a) in relation to each activity to be funded,—

- (i) the community outcomes to which the activity primarily contributes; and
 - (ii) the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals; and
 - (iii) the period in or over which those benefits are expected to occur; and
 - (iv) the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity; and
 - (v) the costs and benefits, including consequences for transparency and accountability, of funding the activity distinctly from other activities; and
- (b) the overall impact of any allocation of liability for revenue needs on the current and future social, economic, environmental, and cultural well-being of the community.

103 Revenue and financing policy

- (1) A policy adopted under section 102(4)(a) must state—
- (a) the local authority's policies in respect of the funding of operating expenses from the sources listed in subsection (2); and
 - (b) the local authority's policies in respect of the funding of capital expenditure from the sources listed in subsection (2).
- (2) The sources referred to in subsection (1) are as follows:
- (a) general rates, including—
 - (i) choice of valuation system; and
 - (ii) differential rating; and
 - (iii) uniform annual general charges:
 - (b) targeted rates:
 - (c) fees and charges:
 - (d) interest and dividends from investments:
 - (e) borrowing:
 - (f) proceeds from asset sales:
 - (g) development contributions:
 - (h) financial contributions under the Resource Management Act 1991:
 - (i) grants and subsidies:
 - (j) any other source.
- (3) A policy adopted under section 102(4)(a) must also show how the local authority has, in relation to the sources of funding identified in the policy, complied with section 101(3).

150 Fees may be prescribed by bylaw

- (1) A local authority may prescribe fees or charges payable for a certificate, authority, approval, permit, or consent from, or inspection by, the local authority in respect of a matter provided for—
- (a) in a bylaw made under this Act; or
 - (b) under any other enactment, if the relevant provision does not—
 - (i) authorise the local authority to charge a fee; or
 - (ii) provide that the certificate, authority, approval, permit, consent, or inspection is to be given or made free of charge.
- (2) A bylaw may provide for the refund, remission, or waiver of a fee in specified situations or in situations determined by the local authority.
- (3) Fees provided for in subsection (1) must be prescribed either—
- (a) in bylaws; or
 - (b) using the special consultative procedure set out in section 83.
- (4) The fees prescribed under subsection (1) must not provide for the local authority to recover more than the reasonable costs incurred by the local authority for the matter for which the fee is charged.

- (5) The local authority must ensure that copies of all bylaws made under subsection (1) or subsection (3) are available for public inspection free of charge at the public office of the local authority during ordinary office hours.
- (6) This section does not apply to charges for goods, services, or amenities provided by the local authority in reliance on the general power under section 12. Section 150 provides that a local authority may prescribe fees or charges payable for a certificate, authority, approval, permit, or consent from, or inspection by, the local authority in respect of a matter provided for—
 - (a) in a bylaw made under the Act; or
 - (b) under any other enactment, if the relevant provision does not—
 - (i) authorise the local authority to charge a fee; or
 - (ii) provide that the certificate, authority, approval, permit, consent, or inspection is to be given or made free of charge.

A bylaw may provide for the refund, remission, or waiver of a fee in specified situations or in situations determined by the local authority.

The fees prescribed must not provide for the local authority to recover more than the reasonable costs incurred by the local authority for the matter for which the fee is charged.

Local authorities may also set fees etc under general powers. The Act provides (Section 12) that, for the purposes of performing its role, a local authority has

- (a) full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction; and
- (b) for the purposes of paragraph (a), full rights, powers, and privileges.

Section 150 does not apply to charges for goods or services provided by the local authority using the general power under section 12.

Consideration is also given to section 155 (Determination whether bylaws is appropriate) and to sections 158-160 (Review of bylaws).

Food Act 1981 Regulations

1. Food (Fees and Charges) Regulations 1997

These regulations set fees and charges for certain applications and services under the Food Act 1981.

The services are:-

- (a) the issue or variation of an exemption from the Food Hygiene Regulations 1974;
- (b) the surrender or revocation or replacement of an exemption from the Food Hygiene Regulations 1974;
- (c) the issue or renewal of a multiple release permit under the Act;
- (d) the inspection of prescribed foods or tableware;
- (e) the collection and dispatch of samples required for analysis;
- (f) the clearance of prescribed foods or tableware.

2. Food Hygiene Regulations 1974

The Regulations provide for every occupier of any premises which are specifically exempted from having to be registered to pay to the local authority in respect of any inspection of the premises carried out by the local authority for the purposes of the regulations such reasonable annual fee as the local authority may prescribe by resolution.

3. Health (Registration of Premises) Regulations 1966.

The Regulations provide for fees payable on applications for certificates of registration and upon the issue, renewal, and noting¹ of such certificates shall be such as the local authority by resolution decides.

¹ "Noting" means notification of a change of occupier

Annex 2: Survey of Territorial Authorities

An NZFSA survey of the 74 Territorial Authorities (TAs) in New Zealand revealed wide differences in the extent of charging (what proportion of food-related costs is recovered), the basis (how charges are set) and the level of charges.

Proportion of costs recovered

Ranges from 10% to 147%; median 66%. The extent to which costs are recovered does not appear to be related to either the number of premises in a TAs area, or population.

Methods of Cost Recovery

The methods of setting charges varies across TAs. The survey did not explore the rationale for selection of the method:

- flat fee all premises (17 TAs);
- risk-based fee structure (24 TAs);
- by activity type (24 TAs);
- ground area or seating numbers (9 TAs).

Level of charges

Annual fees for registration vary from \$25 to \$1880. This appears to depend on the nature of the service being provided (e.g. copy of certificate to full premise inspection), as well as the basis for charging.

Annex 3: Determining Government Industry Contributions

Ultimately it is the government that makes decisions about the provision and funding of government provided functions through the budget and its associated appropriations and purchase agreements. However, the government is guided by departmental advice on whether it should purchase regulatory functions and on whether the government or industry should fund those functions. There are a number of guidelines that assist in this process.

Treasury document ‘Guidelines for Setting Charges in the Public Sector’

In determining the respective contributions of the Government and Industry, the Treasury document Guidelines for Setting Charges in the Public Sector are taken into account.

The Treasury Guidelines identify four types of benefits or outputs that are achieved by government activities (called “goods”). These are public goods, private goods, club goods and merit goods.

- Public goods are activities that benefit the community as a whole. Excluding people from the benefits of a public good is either difficult or costly and its use by one person does not prevent its use by another person.
- Private goods are activities that provide a specific benefit or output for an identified individual. People can be excluded from the benefits of a private good at low cost and its use by a person conflicts with its use by another.
- Club goods are activities that may directly benefit identified groups or sections of the community. People can be excluded from the benefits of the club good at low cost, but its use by one person does not detract from its use by another.
- Merit goods are activities where the community as a whole desires a higher use of an output than would be likely if it were charged for at full cost. Merit goods combine elements of public and private goods. The loss in public benefits from charging at full costs has to be significant.

Other Considerations

In principle, the appropriate source of funding of an activity depends on the nature of the good or service.

Public goods should be funded by the Government or risk exacerbators (those whose actions create the risk that needs to be addressed by government).

Examples of pure public goods are rare. For example, some have argued that a lighthouse is a public good, as use by one ship of the light does not diminish the ability of another ship to use the light and it is generally difficult or impossible to prevent a ship from benefiting from the service. However, it has been noted that original lighthouse services were in fact provided by private operators who funded the activity by charges on ships entering the harbour. Similarly, in the case of radio broadcasting, while it may meet the criteria for a public good, there are ways other than general taxation of funding the activity (i.e., advertising).

In practice, the distinction between a public good, industry good and private good is not black and white. The issue is more one of degree, with the practical question being how costly it is to charge (or exclude) a user of the publicly provided service.

- Private goods should be funded by the users or beneficiaries or risk exacerbators.
- Private goods are by far the most common. There is a strong case for recovering the costs of a private good from those who use of benefit from it.
- Club goods should be funded by groups of the users or beneficiaries and/or risk exacerbators.
Club (Industry) goods can, in principle be provided by member-owned “clubs” (e.g. an industry organisation), by a separate organisation or by the public sector.

There are typically advantages in an industry good being funded by the industry (rather than by the taxpayer). These advantages can include:

- more equitable outcomes, as those who impose the cost of supplying the good or service, or who benefit from it (rather than the general taxpayer) pay for the costs of supplying the good or service;
- better incentives for the industry to moderate its demand for the publicly-provided services and to minimise the activities that give rise to the cost or risk associated with the activity; and
- better incentives for efficiency in the provision of the good or service, as the industry is likely to have better ability and greater incentives than the general taxpayer to monitor the performance of the supplier.

Annex 4: Best Practice Guidelines and Criteria for Assessing Options for Cost Recovery

Treasury Guidelines

The Treasury document 'Guidelines for Setting Charges in the Public Sector' provides a framework for assessing the optimal source of funding (who should pay), and determining the appropriate charging structure and mechanisms. The guidelines are aimed at ensuring that the charges set for services provided by public sector agencies:

- take proper account of efficiency, equity and fiscal concerns; and
- are not excessive in relation to the costs incurred.

The efficiency principle requires the charging regime that best induces the producer to provide the quality and quantity of output desired by consumers at least cost.

The Treasury Guidelines state that holding down the costs of a monopoly supplier is an important policy objective, and stakeholders must be assured that the process for setting charges is clear and appropriate.

Key principles for cost recovery set out in the Treasury Guidelines are:

- Charges should in general be set at the full cost of providing the service including all overheads.
- 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 account needs to be taken of the costs resulting from complex fee structures, compared with more simple ones.
- The process for setting charges should be clear and appropriate.
- Transaction costs in setting and collecting the charges should be kept low.
- Appropriate consultation with those affected should be undertaken.
- There should be a robust statutory basis for any charges.
- There should be fair treatment for taxpayers, beneficiaries of the service and risk exacerbators.

Audit Office Guidelines

Amongst other things, the Audit office Guidelines provided some guidance over the type of charge to be used. Fixed fees are appropriate where there is little variation in the time required to perform a function, or the costs of administering a variable fee would outweigh any benefit in doing so. Annual charges calculated on the basis of the costs of performing those functions and allocated amongst the persons who benefit from the service or cause the service to be provided.

Variable fees, such as hourly rates, are appropriate where there is likely to be a wide variation in the time taken to perform a function, for example, providing verification services.

Levies may be appropriate where industry sectors or defined groups as a whole benefit (or contribute to the need for the service).

Administrative Aspects

Constitutional principles

The Regulations Review Committee's approach to the scrutiny of fees regulations is based on two principles. The first is a constitutional principle that the government cannot level taxes without the explicit authority of parliament. The second general principle is that the fixing of a fee or charge may be objectionable if it raises issues under parliament's Standing Orders and:

- is not in accordance with the general objects and intentions of the statute under which it is made, for example, if the fee is so high it defeats the purpose of the Act or is not in accordance with the general objects and intention of the Act;
- trespasses unduly on personal rights and liberties, for example, if a fee is imposed in unfair circumstances;
- appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made; and
- contains matter more appropriate for parliamentary enactment.

Incentive Effects

Cost recovery arrangements may have important influences on:

- the behaviour and efficiency of regulatory agencies;
- behaviour, innovation and product development in the regulated industry; and
- consumer behaviour.

The impact on agencies may be positive (heightening firms' or consumers' interest in the efficiency of the regulator) or negative (creating incentives for regulatory creep and gold plating).

The effect on the regulated industry may be adverse:

- if property rights are weak; for example, in the absence of intellectual property rights, a variation in a standard initiated by one firm would be available to all firms in the industry and allow the latter to "free ride" on the application of the first firm, thus inhibiting innovation and product development ; or
- if charges are poorly designed; for example, given that some firms and some products may impose greater risks than others, and thus require more regulation, a flat charging structure would benefit some firms at the expense of others.