

Policing (Cost Recovery) Amendment Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation

The Law and Order Committee has examined the Policing (Cost Recovery) Amendment Bill and recommends, by majority, that it be passed with the amendments shown.

Introduction

The Policing (Cost Recovery) Amendment Bill would amend the Policing Act 2008 to enable cost recovery for specified “demand services”; that is, policing services requested by an individual or organisation that are of direct private benefit to that individual or organisation. Currently the Policing Act 2008 does not explicitly enable Police to charge users for any of its services; most services are funded out of the Police’s baseline budget.

The bill aims to alleviate strain on police resources, to allow a more innovative and efficient allocation of resources to front-line and preventative services across the whole community. The provision of core policing services, such as responding to calls for assistance, conducting criminal investigations, and the prosecution of criminal offences, would not be affected.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Definition of demand service

We recommend amending clause 4 by deleting new section 79B(4) and incorporating the matters specified in that section into the primary definition of “demand service” in new section 79B(2).

The exclusions in 79B(4) aim to avoid doubt by specifying core police functions that are not classified as demand services and therefore subject to cost recovery. Our pro-

posed amendment would tighten the definition of “demand service”, serve as a stronger limitation, and provide more clarity and certainty as to the scope of regulation decision-making.

Exemption, waiver, and refund regulations

We recommend amending clause 4, new section 79G(2), and clause 5, new section 102A(d), to clarify the granting of exemptions, waivers, or refunds of fees and charges, payable under this Act.

As introduced, the bill would empower the Minister to provide for exemptions, waivers, and refunds of fees. Following advice from the Regulations Review Committee, we do not believe it would be necessary for the Minister to carry out such a role. Where exemptions, waivers, and refunds are to be applied, they would be specifically set out in the regulations that set those fees or granted by the Commissioner of Police in accordance with the regulations.

Departmental bank account

We recommend that new subsection 79F(2) be amended by deleting “a Crown Bank Account” and substituting “a Departmental Bank Account”. The activities for which Police will be seeking to recover costs are all departmental, and the fees or charges will need to be available to meet the costs of providing the services.

New Zealand Labour Party minority view

Labour opposes this bill which it believes will open up widespread user pay charges by the public for core police services. The bill was strongly rejected by most of those who made oral submissions to the select committee, representing a cross-section of charitable and not-for-profit organisations which provide valuable services to the community.

The promoters of the bill claim that the Police need statutory power to charge for services they provide where there is some private benefit to users. These are defined as “demand services”. However, aside from police vetting services, which will be the first to be subjected to user pays, officials were unable or unwilling to disclose what other services will be charged for. This is a concern because the power for Police to charge allows future services to be added by regulation without the scrutiny and debate required when services charged for are added by legislation.

We heard from officials that Search and Rescue, for example, might meet the definition of a “demand service”. Airports New Zealand also stated that during the consultation prior to the bill it was suggested to them that the police security presence at airports could also be charged for. We believe that it is totally inappropriate for future major changes in police charging policy to be introduced by regulation without adequate public scrutiny and debate.

We are also concerned that while there is a power to exempt some organisations from charges for police vetting, criteria for exemption were undefined at the time the bill

was being examined by select committee and officials could not explain who might be exempt.

If the bill were to proceed there are strong arguments that charities and not-for-profit organisations should be exempt from charges. Charges for vetting volunteers, who give their time freely for the good of the wider community, would completely contradict the Government's policy commitment to reduce obstacles to volunteering. Charging charities, which are funded by public donation and by government, would simply reduce their ability to provide services.

Where organisations are government-funded, charging simply represents a money-go-round which adds wasteful administrative and compliance costs. When the bill was introduced, many thought that its purpose would be to place a charge for police services on organisations that were commercial and profit-making. The Irish Government, for example, allows charging for policing events such as sports fixtures and concerts where large numbers attend and the organisers stand to make large profits. We heard that this option was discussed during pre-legislative consultation but rejected by Government because of opposition from groups organising similar events. It is ironic that it is now considering charging charities and non-profit groups instead.

We, together with most of those who made oral submissions, believe that police services should be funded not by user pays but from Vote Police. It was clear that that this bill is before Parliament because demand for police services is rising while in recent years the Police budget has, in real terms, been cut. We heard that legislation such as the Vulnerable Children's Act 2014 placed increased demand on police services such as vetting but without resources being provided to fund them.

We also heard that the Police budget since 2010 has in real terms been cut by more than \$90 million. Faced with having to do more with less, the Police have been told they can try to bridge the gap by charging for more of their services. The specific service which will be the first to be charged for is police vetting. Government justifies this on the grounds of the private benefit to service users.

Police vetting is intended to ensure that those who are working with vulnerable people, for example children, are fit and proper people to do so and that the community safety is assured. Police vetting clearly meets the definition of core police functions under section 9 of the Policing Act 2003. This definition includes "maintaining public safety", "crime prevention" and "community support and reassurance".

Parliament requires vetting, not for the benefit of those delivering the services, but for those receiving them. Vetting is clearly a public good service and if it can be redefined into a personal benefit service it appears that a very wide range of police services could also be redefined to justify user pays charging.

A large number of groups who feel they will be adversely affected by this legislation spoke against it, including the Cancer Society, the Salvation Army, the Foundation for the Blind, and Christian Social Services. They also expressed concern that while the vetting charges are initially to be set at around \$7 for each vet, in similar jurisdictions in Australia and elsewhere, costs have risen to over \$50 each time.

This legislation has not been well thought through, is unclear in its application, and unfair in its likely impact. It represents a dangerous new direction and ideology in Police charging for basic services.

We are strongly opposed to it.

Green Party of Aotearoa New Zealand minority view

The Green Party opposed this bill at first reading, and what we have learned during the select committee process has only confirmed our view that the provisions of the bill are wrong in principle and will prove counter-productive in practice.

The explanatory note to the bill proposes that there is an element of private benefit to the users of some police services, and that delivery of such services should be funded by specific users. The Greens' view is that there is almost inevitably a significant level of public good in all police services, that policing is a core function of government and should be properly funded as a public service.

We find the comment in the explanatory note, that the demands of users facing a charge for service will drive the police to be innovative and efficient, to be somewhat derogatory. It overlooks the extraordinary efforts made by Police to maintain a high level of service over recent years despite effective cuts to their funding.

Some submitters have proposed that there may be some merit in Police charging for services that directly and materially benefit a private person or organisation, such as policing of a sports or music event. While this may appear to be a defensible position, we believe that practical difficulties in defining the scope of policing requirements, and assigning accountability for concomitant events, would lead to inequitable outcomes. It would also provide an incentive for event organisers simply not to engage with or inform Police of upcoming events.

There has been an almost universal rejection by submitters of the proposition that charges for "demand services" should be applied to police vetting of individuals who may be working in a paid or voluntary capacity with children or other vulnerable people, as proposed in the bill. While the initial fee indicated is low, we believe, based on overseas experience, that over time, the fee will rise.

We have heard from numerous submitters that even a low fee would impose considerable cost on their organisations, which would reduce their capacity to deliver services. The fee would almost certainly encourage some groups to reconsider vetting individuals (where such vetting is not a legislative obligation) which increases risk to individuals and communities. Many of the groups we heard from are funded in part by government agencies, and it seems perverse that a portion of this money would then be remitted as a fee to another agency, the Police, with no nett economic or social gain, but considerable transaction cost to all parties.

We are told that the Police Commissioner will have the power to grant waivers or exemptions to fees, but nowhere are we told what the criteria or parameters for such consideration might be.

The bill specifies that “demand services” do not include the response of Police to calls for service relating to criminal offending; the conduct of criminal investigations; the prosecution of criminal offences. This leaves open to potential charging most other services provided by Police, including crime prevention activities (e.g. in commercial or residential areas, where a “private benefit” might accrue to householders or business owners); education or advisory services to private or public organisations; search and rescue activities; and much else.

The Green Party opposes this bill, and recommends that it not proceed.

New Zealand First minority view

New Zealand First believes that keeping our communities safe through policing is the core responsibility of the state and police vetting is inseparable from basic policing. The Police force and the services it provides are funded from tax revenue and we believe that it should stay that way.

New Zealand First believes that taxpayers should not have to pay for a vetting service with a separate fee. We believe that Police should carry out vetting as part of their core police work.

We also believe that this bill will provide the impetus for the Police to start charging for other services they currently provide as core business, such as attending to emergencies, family violence incidences, property crime, or child abuse. We are strongly against this.

The Vulnerable Children’s Act 2014 requires standard screening and vetting of all central government staff and government-funded contractors working with children. This will be a voluntary regime for business, non-government organisations, and voluntary organisations, but will be reviewed in two years.

Community groups, NGO’s and other community organisations who rely on volunteers and are not well resourced financially may well be prevented from going through the vetting process because of the costs imposed upon them. When that happens, children, women, the elderly and other vulnerable members of our society may well be put at risk due to caregivers and others working with these vulnerable citizens not being vetted.

Finally, it is the state that requires that all paid and unpaid staff in schools undergo a police check. Paying for the service will increase compliance costs which will have a negative impact on the operational budgets of schools, particularly small schools.

New Zealand First does not support this bill.

Appendix

Committee process

The Policing (Cost Recovery) Amendment Bill was referred to the Law and Order Committee on 4 November 2014. The closing date for submissions was 5 February 2015. We received and considered 132 submissions from interested groups and individuals. Of these, 25 submitters gave oral presentations to the committee.

We received advice from the New Zealand Police. The Regulations Review Committee reported to the committee on the powers contained in clause 4.

Committee membership

Kanwaljit Singh Bakshi (Chairperson)

Todd Barclay

Mahesh Bindra

David Clendon

Kelvin Davis

Hon Phil Goff

Ian McKelvie

Lindsay Tisch

Jonathan Young

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Michael Woodhouse

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Policing (Cost Recovery) Amendment Act **2014**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Policing Act 2008 (the **principal Act**).

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Part 1
Amendments relating to cost recovery

4 New Part 4A inserted

After Part 4, insert:

Part 4A
Cost recovery

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79A Purpose of this Part

The purpose of this Part is to enable the Police to recover its costs in respect of the provision of certain policing services.

79B Policing services that may be subject to cost recovery

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(1) The Minister may recommend a regulation under **section 102A** only if the Minister is satisfied that the policing service in question is a demand service.

(2) ~~For the purposes of this section, **demand service** means a service that—~~

~~(a) constitutes policing; and~~

~~(b) is provided only on the request of an individual or organisation; and~~

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~~(c) is provided to the individual or organisation requesting it for the direct benefit of a particular person or organisation (even though there may be indirect benefit to the public as a whole).~~

(2) For the purposes of this section, **demand service**—

(a) means a service that—

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(i) constitutes policing; and

(ii) is provided only on the request of an individual or organisation; and

(iii) is provided to the individual or organisation requesting it and is of direct benefit to that individual or organisation (even though provision of the service may also be of indirect benefit to the public as a whole); but

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(b) does not include—

- (i) the response of the Police to calls for service relating to potential offending;
 - (ii) the conduct of criminal investigations;
 - (iii) the prosecution of criminal offences.
- (3) Without limiting the generality of **subsection (2)**, an example of a demand service is the provision of vetting services by the Police. 5
- (4) ~~For the avoidance of doubt, none of the following is a demand service:~~
 - (a) ~~the response of the Police to calls for service relating to potential offending;~~
 - (b) ~~the conduct of criminal investigations;~~ 10
 - (c) ~~the prosecution of criminal offences.~~
- 79C Criteria for cost recovery**

The Minister may recommend a regulation under **section 102A(a)** only if the Minister is satisfied that the fee or charge in question is consistent with the following criteria: 15

 - (a) subject to the provisions of **section 79E**, the fee or charge recovers no more than the actual and reasonable costs (including both direct and indirect costs) of the service to which the fee or charge relates; and
 - (b) the fee or charge for the service or class of services to which the fee or charge relates is generally obtained from the users or beneficiaries of the service or class of services at a level commensurate, as far as practicable, with their use of the service; and 20
 - (c) the costs of the service to which the fee or charge relates are efficiently incurred; that is, the service delivers the maximum benefit at the minimum cost; and 25
 - (d) the relationship between the costs of the service to which the fee or charge relates and the nature and duration of the service is clear.
- 79D Consultation**
 - (1) The Minister may recommend a regulation under **section 102A(a)** only if the Minister is satisfied that the Commissioner of Police has done everything reasonable on his or her part to consult the persons or organisations (or representatives of those organisations) that appear to the Commissioner to be affected or likely to be affected by the fee or charge. 30
 - (2) The process for consultation must, to the extent practicable in the circumstances, include— 35
 - (a) the giving of appropriate notice of the intention to make the regulation and of the contents of the proposed regulation; and

	(b) a reasonable opportunity for interested persons to make submissions; and	
	(c) the adequate and appropriate consideration of those submissions.	
(3)	A failure to comply with this section does not affect the validity of any regulations made under section 102A .	5
79E	Methods of cost recovery	
(1)	Regulations for the recovery of costs may provide for the following:	
	(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:	10
	(c) the recovery by way of a fee or charge of estimated actual and reasonable costs expended in or associated with the performance of a policing service:	
	(d) fees or charges based on costs incurred from charges by third parties:	
	(e) any combination of the above.	15
(2)	Without limiting the way in which a fee or charge 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 to be provided directly to the person who pays the fee or charge but that 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:	20
	(c) takes into account indirect costs, which include the costs and potential costs of support, maintenance, and development associated with provision of the service.	25
	Compare: 2009 No 51 s 393(6)	
79F	Payment of fee or charge	
(1)	A fee or charge prescribed <u>by regulations made</u> under this Act is payable at the time prescribed in respect of a particular service, whether that time is before, during, or after completion of the relevant service.	30
(2)	All fees and charges prescribed <u>by regulations made</u> under this Act and received by the Police or any other government agency must be paid into a <u>Crown Departmental</u> Bank Account.	
	Compare: 2009 No 51 s 393(7), (10)	35

79G Exemptions, waivers, and refunds

- (1) Regulations made under this Act may provide for exemptions from, or waivers or refunds of, any fee or charge prescribed by regulations made under this Act, in whole or in part, in any class of case.
- (2) ~~The Minister may by special direction provide for an exemption from, or waiver or refund of, any fee or charge prescribed under this Act, in whole or in part.~~ 5
- (2) Regulations made under this Act may authorise the Commissioner, as he or she thinks fit in the circumstances specified in those regulations, to exempt, waive, or refund the whole or any part of a fee or charge prescribed by regulations made under this Act. 10

Compare: 2009 No 51 s 395

Part 2

Regulations

5 New section 102A inserted (Regulations relating to cost recovery)

After section 102, insert: 15

102A Regulations relating to cost recovery

The Governor-General may, by Order in Council,—

- (a) on the recommendation of the Minister made after due consultation in accordance with **section 79D**, make regulations prescribing fees ~~and or~~ charges for specified demand services in accordance with the provisions of **Part 4A**: 20
- (b) make regulations prescribing the time when a fee or charge prescribed under this Act becomes payable:
- (c) make regulations providing for exemptions from, or waivers or refunds of, any fee or charge prescribed under this Act, in whole or in part, in any class of case: 25
- (d) make regulations authorising the Commissioner, as he or she thinks fit in the circumstances specified in those regulations, to exempt, waive, or refund the whole or any part of a fee or charge prescribed by regulations made under this Act. 30

Legislative history

20 May 2014
4 November 2014

Introduction (Bill 217–1)
First reading and referral to Law and Order Committee