

Customs (Levies and Other Matters) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill that contains amendments to legislation administered by the New Zealand Customs Service (**Customs**), the Inland Revenue Department, and the Ministry for the Environment (**MfE**). The policy objective of the Bill is to improve revenue collection on goods by making collection fairer and more effective. The improvements will be made to Customs' cost recovery charges, goods and services tax (**GST**), and MfE's product stewardship fees. To do that, the Bill contains the three key changes outlined below.

Part 1 amends the Customs and Excise Act 2018 (the **C&E Act**) to require specified persons to pay a levy to the chief executive of Customs where there is a levy order in place. The Bill inserts *new section 414A*, which enables the Governor-General to make Orders in Council, on the recommendation of the Minister of Customs, establishing levies for the purpose of recovering costs incurred by Customs in, or for the purpose of, performing its functions in relation to the management of goods. The Bill also amends existing sections of the C&E Act that apply to levy orders made under the existing section 413 so that those provisions also apply to levy orders made under the *new section 414A*. Those provisions relate to trust accounts, audits, auditors, and offences.

Part 2 amends the Waste Minimisation Act 2008 (the **WMA**). The Bill aims to enable efficient cost recovery of product stewardship fees under the WMA. The WMA provides regulatory options to reduce and manage waste products, including through the accreditation and regulation of product stewardship schemes. These product stewardship provisions include the ability to set fees payable for the management of a product. This Bill amends the WMA to clarify that the Governor-General may, by Order in Council, specify other persons to be responsible for collecting a product stewardship fee. The Bill also amends the WMA to provide that, if the chief executive of Customs is designated as a person responsible for collecting a fee under the WMA,

then the provisions of the C&E Act that apply to the collection of duties will apply to the collection of that fee as if it was a duty under the C&E Act.

Part 3 amends the Goods and Services Tax Act 1985 to ensure that imported goods valued over \$1,000 (for which GST is collected by Customs) receive the same GST treatment as other goods. The amendments achieve this by broadening the criteria under which an importer can get a GST refund for returned goods (ie, when the imported goods are sent back to the overseas supplier). A further change will give people up to 12 months (or longer if the goods are under warranty for a longer period) to claim GST back when returning goods for any reason to allow GST to be refunded when goods are returned overseas within a reasonable time frame. The changes will also ensure that GST is only paid once on goods that are repaired or replaced under warranty and subsequently reimported (currently, people receiving replacement goods would have to pay twice and claim a refund of the first payment).

Departmental disclosure statement

The New Zealand Customs Service is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=112>

Regulatory impact statement

The New Zealand Customs Service produced a regulatory impact statement on 15 August 2024 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.customs.govt.nz/about-us/information-releases/regulatory-impact-statements/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill will come into force on the day after Royal assent.

Part 1

Amendments to Customs and Excise Act 2018

Clause 3 states that *Part 1* amends the Customs and Excise Act 2018.

Clause 4 amends section 5 by including references to *new sections 414A and 414B* in the definition of prescribed.

Clause 5 amends the cross-heading above section 413 to reflect that sections 413 to 420 relate to levy orders made under section 413 and *new section 414A*.

Clause 6 inserts *new sections 414A and 414B*. *New section 414A* requires specified persons to pay a levy to the chief executive. The levy is to recover costs incurred by Customs in, or for the purpose of, performing a function under the Customs Act 2018, or any other legislation, relating to the management of goods. This includes (without limitation) activities relating to the importation or exportation of goods and the shipment, transshipment, or transport of goods, and prohibited goods, craft, and other prescribed goods.

New section 414B provides for the contents of a levy order made under *new section 414A*. *New section 414B(1)(a)* provides that a levy order must specify the persons or classes of persons primarily responsible for paying the levy. *New section 414B(1)(b)* sets out other matters that may be included in the levy order. For example, the levy order may—

- prescribe different rates of levy for different persons or different classes of persons, different goods or classes of goods, or on any other differential basis:
- prescribe a maximum rate or maximum rates of levy:
- prescribe persons responsible for collecting the levy from those primarily responsible for paying it:
- require that returns be made to the chief executive or some other person or body to enable the amounts of levy payable to be calculated, determined, or verified:
- require that levy funds payable be held on trust in separate accounts.

New section 414B(2) provides that every levy order made under *new section 414A* must, for the purpose of determining whether the order is being complied with, require any of the chief executive, persons responsible for paying the levy, or persons responsible for collecting the levy to keep statements, accounts, or records. The levy order must also provide for remuneration of auditors under section 418(2).

Clauses 7 to 11 amend sections 415 to 419, which relate to levy orders made under section 413, so that the provisions also relate to levy orders made under *new section 414A*, as follows:

- section 415 applies if a levy order provides that the levy funds payable are to be held on trust in separate accounts. The definition of levy order in subsection 415(7) is amended to include a levy order made under *new section 414A* so that section 415 also applies to those levy orders:
- section 416 describes the effect of a levy order. It is amended to provide that every person responsible for paying or collecting a levy under a levy order made under *new section 414A* must do so and that the chief executive may

recover the levy in any court as a debt due from any person responsible for paying or collecting it:

- section 417 provides for compliance audits. It is amended to provide that the chief executive may request that the Minister appoint 1 or more auditors to conduct an audit of the affairs of any person responsible for collecting a levy while an order made under *new section 414A* is in force:
- section 418 relates to the role of auditors. It is amended to provide that an auditor may require a person to produce for inspection any statements, accounts, or records that are required to be kept under *new section 414B(2)* and that are in that person's possession or under that person's control:
- section 419 is amended to provide that the offence and penalty provisions relating to a levy order made under section 413 also apply to a levy order made under *new section 414A*.

Part 2

Amendments to Waste Minimisation Act 2008

Clause 12 states that *Part 2* amends the Waste Minimisation Act 2008.

Clause 13 amends section 23, which provides for the Governor-General to make regulations for 1 or more specified purposes. Section 23(1)(d) provides for regulations to be made setting fees payable for the management of a product. *New section 23(1)(d)(iv)* clarifies that regulations may specify the persons responsible for collecting the fees.

Clause 14 replaces the cross-heading above section 24 to reflect that the New Zealand Customs Service has a broader role as a result of *new section 24A*.

Clause 15 inserts *new section 24A*, which applies if the chief executive of the New Zealand Customs Service is specified as a person responsible for collecting fees under *new section 23(1)(d)(iv)*. *New section 24A* provides that the provisions of the Customs and Excise Act 2018 that apply to the collection of duties apply to the collection of fees under the Waste Minimisation Act 2008 as if the fees were duties under the Customs and Excise Act 2018.

Part 3

Amendments to the Goods and Services Tax Act 1985

Clause 16 states that *Part 3* amends the Goods and Services Tax Act 1985.

Clause 17 amends section 12 to provide that in certain cases where goods are subject to a written warranty or a written returns policy and the goods or substantially the same goods are imported or exported under the warranty or returns policy, the correct amount of goods and services tax is imposed.

Hon Casey Costello

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Part 3

Goods and Services Tax Act 1985

16	Principal Act	5
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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Customs (Levies and Other Matters) Amendment Act **2024**.

2 Commencement

This Act comes into force on the day after Royal assent.

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Part 1

Customs and Excise Act 2018

3 Principal Act

This Part amends the Customs and Excise Act 2018.

4 Section 5 amended (Definitions for Act)

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In section 5(1), definition of **prescribed**, paragraph (b), after “414,”, insert “**414A, 414B**,”.

5 Cross-heading above section 413 replaced

Replace the cross-heading above section 413 with:

Levy orders

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6 New sections 414A and 414B inserted

After section 414, insert:

414A Levies for recovering costs relating to goods management

- (1) In this section, **specified person** means any person or class of person specified in a levy order made under **subsection (3)** as primarily responsible for paying a levy. 20
- (2) Every specified person is liable, while there is a levy order in force under **subsection (3)**, to pay a levy to the chief executive in relation to the costs incurred by Customs in, or for the purpose of, performing a function under this Act,

or any other legislation, relating to goods management, including (without limitation) costs incurred relating to—	
(a) any of the following activities:	
(i) the importation or exportation of goods:	
(ii) the shipment, transshipment, or transport of goods:	5
(b) any of the following goods:	
(i) prohibited goods:	
(ii) craft:	
(iii) other prescribed goods.	
(3) The Governor-General may, by Order in Council, made on the recommendation of the Minister, make a levy order prescribing—	10
(a) the rate of levy or the basis on which the rate is to be calculated or ascertained; and	
(b) to the extent that the order does not set an actual rate, how the actual rate of the levy is to be set; and	15
(c) when and how the levy is to be paid; and	
(d) how the rate of levy, and any variation of the rate, is to be notified.	
(4) The Minister must, before recommending that a levy order be made under this section, consult the persons, representative groups, government departments, and Crown agencies that the Minister considers reasonable and appropriate to consult in the circumstances.	20
(5) A levy order must not be made in respect of costs that are otherwise recovered, or otherwise to be recovered, under this Act.	
(6) A levy order under this section is secondary legislation (<i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).	25
414B Contents of goods management levy order	
(1) A levy order under section 414A —	
(a) must specify the persons or classes of persons primarily responsible for paying the levy; and	
(b) may—	30
(i) prescribe different rates of levy for different persons or different classes of persons, different goods or classes of goods, or on any other differential basis:	
(ii) prescribe a maximum rate or maximum rates of levy:	
(iii) prescribe persons responsible for collecting the levy from those primarily responsible for paying it:	35

<ul style="list-style-type: none"> (iv) exempt certain persons or classes of persons from the requirement to pay the levy: (v) allow persons collecting the levy to recover the costs of collecting the levy and, if so, prescribe the basis on which those costs are to be calculated or ascertained: (vi) require that returns be made to the chief executive or some other person or body to enable the amounts of levy payable to be calculated, determined, or verified: (vii) provide, subject to any conditions that may be prescribed, for extensions of time for the payment of the levy: (viii) provide for the payment of additional or increased levy in the event of late payment or non-payment: (ix) provide for circumstances in which levy paid may be refunded: (x) require that levy funds payable be held on trust in separate accounts. 	<p>5</p> <p>10</p> <p>15</p>
<p>(2) Every order must,—</p> <ul style="list-style-type: none"> (a) for the purpose of determining whether the order is being complied with, require any of the following persons to keep statements, accounts, or records of specified classes or descriptions: <ul style="list-style-type: none"> (i) the chief executive: (ii) persons responsible for paying the levy: (iii) persons responsible for collecting the levy; and (b) provide for those statements, accounts, or records to be retained for a specified period; and (c) provide for the remuneration of auditors under section 418(2). 	<p>20</p> <p>25</p>
<p>7 Section 415 amended (Trust accounts for levy money payable to chief executive)</p> <p>In section 415(7), definition of levy order, after “section 413”, insert “or 414A”.</p>	<p>30</p>
<p>8 Section 416 amended (Effect of levy order)</p> <p>In section 416, after “section 413”, insert “or 414A”.</p>	<p>30</p>
<p>9 Section 417 amended (Compliance audits)</p> <p>In section 417(1), after “section 413”, insert “or 414A”.</p>	<p>30</p>
<p>10 Section 418 amended (Auditors)</p> <p>In section 418(3)(a)(i), after “section 414(2)”, insert “or 414B(2)”.</p>	<p>35</p>

- 11 Section 419 amended (Offences in relation to levy orders)**
 In section 419(1), (2), and (3), after “section 413”, insert “or **414A**”.

Part 2
Waste Minimisation Act 2008

- 12 Principal Act** 5
 This Part amends the Waste Minimisation Act 2008.

- 13 Section 23 amended (Regulations in relation to products (whether or not priority products), materials, and waste)**
 After section 23(1)(d)(iii), insert:
 (iv) the persons responsible for collecting the fees: 10

- 14 Cross-heading above section 24 replaced**
 Replace the cross-heading above section 24 with:

Role of New Zealand Customs Service

- 15 New section 24A inserted (Application of provisions of Customs and Excise Act 2018)** 15
 After section 24, insert:

- 24A Application of provisions of Customs and Excise Act 2018**
 (1) This section applies if the chief executive of the New Zealand Customs Service is specified as a person responsible for collecting fees payable for the management of a product pursuant to regulations made under **section 23(1)(d)(iv)**. 20
 (2) The provisions of the Customs and Excise Act 2018 that apply to the collection of duties (including, without limitation, subpart 8 of Part 3 of that Act) apply, with all necessary modifications, to the collection of fees under this Act as if the fees were duties to which that Act applies.

Part 3 25
Goods and Services Tax Act 1985

- 16 Principal Act**
 This Part amends the Goods and Services Tax Act 1985.

- 17 Section 12 amended (Imposition of goods and services tax on imports)**
 (1) After section 12(1A), insert: 30
 (1AB) Goods and services tax is not payable under subsection (1) for any goods if the chief executive of the New Zealand Customs Service is satisfied that, at the

time of importation or entry for home consumption under the Customs and Excise Act 2018 (the **current importation**),—

- (a) goods and services tax has been paid on the importation or entry for home consumption of the goods or substantially the same goods on another occasion (the **original importation**) before the current importation; and 5
- (b) the goods and services tax paid on the original importation goods has not been refunded, drawback, or otherwise remitted; and
- (c) the goods of the current importation are goods that are the replacement, repair, or refurbishment of the original importation goods under a written warranty or a written returns policy. 10

(2) Replace section 12(4)(d) with:

- (d) section 147 of the Customs and Excise Act 2018, where a person imports goods and the person is either not a registered person or the person is a registered person but not entitled to make an input tax deduction under section 20(3) in respect of the imported goods, if— 15
 - (i) the imported goods or substantially the same goods are exported by the person within 12 months of the goods' importation:
 - (ii) the imported goods or substantially the same goods are exported by the person as a return under a written warranty or a written returns policy in effect at the time of the export; and 20