

## Legislative Provisions for Cost-recovery Fees and Commercial Charges 2013/2014

---

### SUMMARY

Section 97 of the *Local Government Act 2009* provides for a local government to fix a cost-recovery fee and section 98 provides for a Register of Cost-recovery Fees.

Section 262(3)(c) provides for a local government power to charge for a service or facility, other than a service or facility for which a cost-recovery fee may be fixed.

Various non-local government legislation fixes fees for a local government or provides a specific head of power for a local government to set fees/charges in relation to a function imposed on the local government.

Part 2 of Chapter 5 of the *Local Government Regulation 2012* establishes the requirements for the Revenue Policy and Revenue Statement to include information on fees.

The Revenue Policy must include the principles that the local government intends to apply in the financial year for cost-recovery methods.

The Revenue Statement must outline the criteria used to decide the amount of a cost-recovery fee. If the local government conducts a business activity on a commercial basis - the fees the local government receives for the activity must be described.

### DETAIL

#### **A. Cost-recovery Fees under section 97**

The *Local Government Act 2009* section 97 provides –

- (1) A local government may, by local law or resolution, fix a cost-recovery fee.
- (2) A cost-recovery fee is a fee for—
  - (a) an application for the issue or renewal of a licence, permit, registration or other approval under a Local Government Act;
  - (b) recording a change of ownership of land;
  - (c) giving information kept under a Local Government Act;
  - (d) seizing property or animals under a Local Government Act.
  - (e) the performance of a function, other than a function mentioned in paragraphs (a) to (d), imposed on the local government under the Building Act or the Plumbing and Drainage Act.
- (3) A local law or resolution for subsection (2)(d) or (e) must state—
  - (a) the person liable to pay the cost-recovery fee; and
  - (b) the time within which the fee must be paid.
- (4) A cost-recovery fee, other than an application fee, must not be more than the cost to the local government of taking the action for which the fee is charged.
- (5) However, an application fee may also include a tax—
  - (a) in the circumstances and for a purpose prescribed under a regulation; and
  - (b) if the local government decides, by resolution, that the purpose of the tax benefits its local government area.

### **(a) What are Cost-recovery Fees?**

Cost-recovery fees are fees fixed for the particular activities identified in 97(2)(a) to (e). The policy intent of the provision is that cost-recovery fees under s 97, other than application fees, should recover no more than the costs incurred by the local government in providing the service or administering the regulatory regime. This head of power is not a taxation power other than for application fees. Consequently, there is no authority for local governments to set non-application cost-recovery fees at a level higher than needed to recover the costs of providing the service or administering a regulatory regime i.e. to raise revenue.

Section 97 is intended to authorise a cost-recovery fee which reflects the cost of providing a particular activity eg the cost of issuing a licence for a regulated activity may include administration, compliance and enforcement costs and other relevant costs associated with the regulatory regime. It is not intended to authorise a fee that is in fact a device for the raising of revenue to fund an unrelated activity.

### **(b) Identifying Cost-recovery Fees**

#### (i) Section 97 (2)(a)

This section applies to regulatory regimes being administered by local governments in the nature of granting approvals, consents, licences, permissions, registrations and other like actions relating to regulatory regimes.

Fees set under this section must relate to an action under a regulatory regime. They do not include fees where the fee is set under a specific head of power under another Act.

Those fees, which are directly fixed for local governments by a specific head of power under another Act/subordinate legislation, are not “cost-recovery fees” for the purposes of section 97.

#### (ii) Sections 97(2)(b), (c) and (d)

The powers to set cost-recovery fees under section 97(1)(b) recording a change of ownership, (c) giving information kept under a local government Act and (d) seizing property or animals are very specific and relate to all fees set by a local government in carrying out these functions.

#### (iii) Sections 97(2)(e)

Fees under section 97(1)(e) for the performance of a function imposed on the local government under the Building Act or the Plumbing and Drainage Act. These fees are part of the Development Assessment Fees and Charges coordinated by the Regional Strategy and Planning Department.

#### (iv) Criteria for Identifying Cost-recovery Fees

As a rule of thumb the following criteria assist in identifying what is a cost-recovery fee:-

- (1) Fee must be or relate to an action in respect of:-
  - (a) an application for, or issue of an approval, consent, licence, permission, registration or other authority; or
  - (b) a function relating to recording a change of ownership,
  - (c) giving information kept under a local government Act, or
  - (d) property or animals under a local government Act.
- (2) Fee must reflect the cost of administering the regulatory regime or performing the function under (b), (c) or (d).
- (3) The activity is not one which an individual could exercise.

(4) Fee must be identified in the Register of Cost-recovery fees.

**(c) Fixing Cost-recovery Fees**

Local governments, when determining the cost of the cost-recovery fee under section 97, must not charge more than the cost to the local government for the provision of the service or taking the action for which the fee is charged, unless it is for an application fee.

In determining the fee, local governments should calculate the total cost of the regulatory regime, which could include direct and indirect costs such as administration, operation, maintenance, inspections and salaries of specially appointed officers eg youth welfare officer in amusement parlour control regime. However, the amounts must be reasonable and relevant as a cost element in providing that service or facility.

When the forecast demand for the service is matched against all the relevant costs, the amount of the cost-recovery fee may then be determined. Whilst the fee cannot be more than the cost, local governments may subsidise the cost from general revenue.

**(d) Register of Cost-recovery Fees under Section 98**

Local governments must keep a register of cost-recovery fees only. The register is open to inspection and must identify the paragraph of section 97 under which the fee is fixed. The register must also identify the provision of the local government Act under which section 97(2)(a), (c), and (d) fees are fixed.

**B. Commercial Charges under Section 262(3)(c)**

Section 262(3)(c) provides a local government may charge for services and facilities it supplies, other than a service or facility for which a cost-recovery fee may be fixed.

A valid section 262(3)(c) charge is one that an individual could impose but may also extend to services and facilities of an appropriate commercial character which a local government may provide.

The power to make these charges may be delegated in accordance with the delegation powers under the Act.

**C. Other Fees and Charges – Non-Local Government Act Charges**

Where a fee/charge is fixed by legislation or alternatively where legislation provides a specific head of power for a local government to set fees/charges in relation to a function imposed on the local government, the provisions under section 262(3)(c) and section 97 of the *Local Government Act 2009* do not apply.

**D. Local Government Regulation 2012**

Part 2 of Chapter 5 of the *Local Government Regulation 2012* establishes the requirements for the Revenue Policy and Revenue Statement to include information on fees.

The Revenue Policy must include the principles that the local government intends to apply in the financial year for cost-recovery methods - section 193(1)(a)(iv).

The Revenue Statement must outline the criteria used to decide the amount of the cost-recovery fee- section 172(1)(c). If the local government conducts a business activity on a commercial basis - the fees the local government receives for the activity must be described - section 172(1)(d).