



Regulatory Impact Statement: Standardising the threshold for the power to copy documents

Decision sought	Analysis produced for the purpose of informing final Cabinet decisions
Agency responsible	New Zealand Customs Service
Proposing Ministers	Hon Casey Costello
Date finalised	10 July 2025

The Regulatory Proposal

The regulatory proposal is to amend the Customs and Excise Act 2018 (CEA) to lower the threshold for copying documents in relation to customs offending in sections 257 and 258 from “*reasonable cause to believe*” to “*reasonable cause to suspect*”, in line with the thresholds specified in sections 242 and 243 that apply to other types of offending.

Summary: Problem definition and options

Higher legal thresholds to copy documents for CEA offending, increases the risk of not detecting offending in some circumstances.

The CEA specifies two thresholds in relation to the copying of documents located in a search. Documents can be copied if a Customs officer has **reasonable cause to suspect** the documents are evidence of offending under sections 6, 7, 12A, 13 or 22 of the Misuse of Drugs Act 1975 (MODA) or sections 123, 124, 131 or 131A the Films, Videos, and Publications Classification Act 1993 (FVPCA). Under sections 257 and 258 of the CEA, documents can only be copied if the officer has **reasonable cause to believe** the documents are evidence of other offences contained in the CEA¹.

Transnational, Serious and Organised Crime (TSOC) groups are involved in a wide range of customs related offending. This can range from circumventing or subverting border processes to facilitate illegal activity (for example, by falsifying Customs import documentation), or offending related to prohibited or restricted goods (such as tobacco and firearms smuggling). The involvement of TSOC groups in customs and border related offending is recognised as a serious threat to national security.

¹ The reasonable cause to believe threshold applied in sections 257 and 258 is a high one, requiring more than mere suspicion that an offence may have been committed. This means a Customs officer must have an objective and credible basis for thinking that it is likely, although it is not necessary to prove that an offence has been committed. The reasonable cause to suspect threshold in sections 242 and 243 operates at a lower level of certainty. “Reasonable suspicion” means that a Customs officer has to have a particularised and objective basis for suspecting the person of offending against the Act.

The problem is that the higher legal threshold relating to CEA offending makes it harder to detect these types of offences in comparison to MODA or FVPCA offending. The impact is that some offending may be going undetected, which may have been detected under a lower threshold for copying (through enabling those documents to be subject to further investigation and the application of intelligence processes).

Better detection of customs related offending in these areas can disrupt and dismantle TSOC groups and reduce threat levels across the spectrum. It is therefore proposed that the lower threshold be adopted for customs related offending to support actions to combat TSOC groups.

What is the policy objective?

The primary objective is to set a legal threshold in the CEA for document copying powers that supports the detection of offending through intelligence driven risk assessment at the border, which supports Customs to respond effectively to the threats from TSOC groups.

Policy options considered

There are no non-regulatory options. Legal thresholds to copy documents for the purposes of detecting offending must be established in legislation. Two options were evaluated:

Option one - status quo, continue to operate two different thresholds in the CEA for copying documents for CEA offending and for MODA and FVPCA offending.

Option two – bring the threshold for CEA offending into line with the threshold for MODA and FVPCA offending, allowing documents to be copied on the threshold of *reasonable cause to suspect* evidence of offending.

Option two is preferred.

Option two best achieves the objective by giving a reasonable balance between law enforcement objectives and the protection of individual rights and freedoms. It enables Customs to better detect and respond to customs related offending, often perpetrated by TSOC groups, while ensuring that a reasonable threshold still must be met before Customs officers can copy documents. The threshold of *reasonable cause to suspect* is applied throughout the CEA (such as for the initial search of electronic devices) and its application is well understood by Customs officers. It would simplify application of the legislation.

Consultation

Consultation has been undertaken with the Department of the Prime Minister and Cabinet, the New Zealand Security Intelligence Service, the Ministry of Justice, New Zealand Police, the Ministry of Transport and the Ministry for Primary Industries.

No public consultation was undertaken over the proposal in this RIS. Groups representing the public interest in law enforcement matters, as well as the wider public, will have an opportunity for input at the Select Committee stage of the Bill.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes.

Summary: Minister's preferred option in the Cabinet paper

Costs and Impacts

The monetised costs fall on Customs and are estimated to be small with a high level of certainty. These include the costs of updating operational policies and procedures. There

will be minor ongoing costs to maintain policies and procedures and train Customs officers.

The preferred option is expected with a high degree of certainty to not materially affect Customs' day-to-day operational costs as it is straightforward to integrate within "business as usual" border risk management processes. Costs will be able to be met within baseline.

TSOC groups will be negatively impacted as better detection of customs related offending will disrupt their activities and may also lead to more detection of wider offending.

There will be an impact on persons crossing the border or clearing goods across the border where they, because of the circumstances of an interaction with a Customs officer, will have documents in their possession copied at the lower threshold for customs offending in comparison to the previously higher legal threshold. The number of persons impacted cannot be estimated with any certainty due to the large number of contributing variables, but it is expected to be a small proportion of total border interactions.

Lowering the threshold for copying in relation to customs offending is expected to generate more investigations which in turn may result in more prosecutions. This has implications for the wider justice system eg, increased prosecution costs. There is limited evidence that would support predicting any sustained increase in prosecution costs across the system. This risk is therefore assessed as low but with a potentially high impact.

Benefits

Due to the variables involved, the scale or quantity of benefits cannot be accurately predicted or measured and therefore must be qualitatively assessed against the costs and impacts. The assumption is that New Zealand's border security would be improved if the CEA were recalibrated to better support detection of customs related offending. It is difficult to assess how much this would affect overall national security levels but noting the evidence of TSOC involvement in a wide range of illegal activity such as tobacco and firearms smuggling, it's a small but important improvement.

The benefits would accrue from:

- disruption – where people continue to offend, it increases the possibility of detection of customs offending and uncovering links to wider offending (eg, Crimes Act 1961 offending or Biosecurity Act 1993 offending)
- supporting the generation of investigative leads to counter border-related risks and improving the quality of intelligence
- deterrence – an assumption that stronger border controls will deter some activity.

Balance of benefits and costs

Benefits are expected to outweigh costs, noting that due to the variables involved, the scale or quantity of benefits cannot be accurately predicted or measured and therefore must be qualitatively assessed against the costs and impacts.

An assumption is that the scale of the costs and harms imposed on society by TSOC groups are high and so even a marginal increase in the probability of detecting or disrupting their offending (through adjusting legal thresholds to copy documents) will be beneficial if it can be achieved at low cost.

To weigh up against the potential for benefit realisation, the preferred option has low implementation and ongoing costs and is straightforward to integrate within "business as usual" border risk management processes.

Implementation

Amendments to the CEA are required for implementation.

Customs will make changes to operational policies and procedures and update training material for Customs officers.

No implementation risks are anticipated.

Limitations and Constraints on Analysis

There is a lack of data that would give more certainty to the link between the effect of strengthening border control legislation in the manner proposed and the beneficial outcomes, and so the benefits realisation must be qualitatively assessed.

The lack of public consultation is a limitation on understanding whether the wider public would accept the preferred option and the likely impacts of placing reasonable limits on the rights and freedoms that are justified in a free and democratic society.

Despite these limitations, the analysis is considered adequate to support Cabinet making an informed decision.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature

S9(2)(a)

Group Manager, Policy and Strategy

Date: 10 July 2025

Quality Assurance Statement

Reviewing Agency: New Zealand Customs Service

QA rating: Partially meets

Panel Comment: The Customs' Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement and considers the information and analysis summarised in the RIS partially meets the Quality Assurance criteria due to the lack of public consultation on the proposal. The lack of public consultation is fully acknowledged in the RIS. Taking this into account and the nature of the proposal, the Panel considers Ministers have enough information of sufficient quality, to make an informed decision.

Section 1: Diagnosing the policy problem

Context – status quo

1. Sections 257 and 258 of the Customs and Excise Act 2018 (CEA) permit a Customs officer to copy any document located during an inspection, audit, or examination if the officer **has reasonable cause to believe** the document is evidence of the commission of an offence under the CEA or is intended to be used for the purpose of committing any offence under the CEA.
2. In relation to certain controlled drugs and objectionable publications, the combined effects of sections 242 and 243 (1), (5), and (6) of the CEA are that a Customs officer may copy any document produced or located in exercising any power of search or inspection that the officer has **cause to suspect on reasonable grounds** are evidence of the commission of an offence against several Acts.² Section 243 includes the commission of offences against the Misuse of Drugs Act 1975 (MODA) or the Films, Videos and Publications Classification Act 1993 (FVPCA).
3. The *reasonable cause to believe* threshold applied in sections 257 and 258 to customs offending is a high one, requiring more than mere suspicion that an offence may have been committed. This means a Customs officer must have an objective and credible basis for thinking that it is likely, although it is not necessary to prove that an offence has been committed.
4. On the other hand, the *reasonable cause to suspect* threshold in sections 242 and 243 operates at a lower level of certainty. “Reasonable suspicion” means that a Customs officer has to have a particularised and objective basis for suspecting the person of offending against the Act. That does not mean that the Customs officer will have particularised their suspicion to a specific offence, but merely that in the circumstances it is reasonable to conclude some form of offending is possible.
5. The definition of document in section five of the CEA covers a wide range of written (“any form of writing on material”) and electronic information (“information recorded, transmitted, or stored digitally or electronically and any material subsequently derived from that information”).

What is the policy problem or opportunity?

The higher legal threshold to copy documents related to CEA offending increases the risk of not detecting offending in some circumstances.

6. The thresholds for copying documents must be satisfied by different tests depending on the type of offending suspected. For example, a Customs officer who suspects that a person is involved in CEA offending and who encounters a document in a search of that

² Including: Section 130 of the Animal Products Act 1999
Section 98C of the Crimes Act 1961
Section 232 or 233 of the Fisheries Act 1996
Section 342 (1)(c) of 345 (1) of the Immigration Act 2009
Section 37 or 43 of the Medicines Act 1981
Section 29A, 30 or 31 of the Passports Act 1992.

person's luggage, would have to meet the threshold of *reasonable cause to believe* involvement in offending, before the document could be copied and used for further investigation. However, if that suspicion related to controlled drug or objectionable publication offending, the officer may copy that same document at the *reasonable cause to suspect* threshold. The higher threshold for CEA offending means that there is a significant risk that some offending will not be detected in those circumstances.

7. The different thresholds may reflect historical factors, for example Customs' long-standing role in Crown revenue collection, and investigation of related offending compared to the more recent inclusion in the CEA of MODA and FVPCA offending.
8. Operating under two different thresholds for document copying has implications for Customs' contribution to government's law enforcement and border security objectives. The impact is that some offending may be going undetected, which may have been detected under a lower threshold for copying (through enabling those documents to be subject to further investigation and the application of intelligence processes). For example, a document could be indicative of a CEA offence such as making a false or erroneous declaration (which can only be copied at the higher threshold), but the underlying purpose of the false declaration could be to facilitate the importation of any of a range of restricted or prohibited goods.
9. Knowledge of any underlying factors or a wider purpose behind the initial offence suspected may not be apparent to a Customs officer processing passengers, where the officer will not have the time or the resources at their disposal to further assess or verify information viewed in a document to assist reaching the higher threshold of belief that would then allow a document to be copied for investigative purposes. This may result in a missed opportunity to uncover other illegal activity through the investigation of customs related offending. In comparison, if the document can be linked to MODA or FVPCA offending then it can be copied at the lower threshold and the potential for a lost opportunity is reduced.
10. The involvement of Transnational, Serious and Organised Crime (TSOC) groups in border-related offending such as drug smuggling is recognised as a serious threat to national security. The lower threshold to copy documents where MODA related offending is suspected supports actions to detect, investigate and prosecute TSOC activity. However, TSOC groups are also heavily involved in other border related offending, such as tobacco and firearms smuggling and are actively seeking to circumvent or subvert border processes to facilitate illegal activity. This includes actions such as falsifying documentation used to process goods into New Zealand through Customs' systems. Detection of customs related offending at a lower threshold in these areas can assist to disrupt and dismantle TSOC groups and reduce threat levels across the national security spectrum.
11. Border offending is rapidly changing, and the *reasonable cause to believe* threshold is impacting Customs ability to detect and further investigate offending. The following examples illustrate where the lower threshold would have acted to assist detection of offending:
 - An initial search of a traveller's electronic devices revealed substantially large deposits into the traveller's bank account, which indicated money laundering or

financial fraud. This information was not enough to justify copying the documents or the retention of devices for further investigation under the *reasonable cause to believe* threshold. Subsequently, the entities in the documents (sighted but not copied) were linked to a money laundering ring of interest in another enforcement operation (Operation Beach).

- A foreign national arrived at Auckland International Airport. Customs' Financial Crime Unit interacted with the passenger. A notebook was located in the traveller's luggage which may have indicated an "informal value transfer" network S6(c) at the time. This material was not copied as the threshold was not considered to be met.
12. The magnitude of the increased risk of not detecting offending and therefore missing opportunities to detect and disrupt criminal activity cannot be measured. The analysis rests on an assumption of whether a document that could not be legally copied at the higher threshold, had it been copied at the lower threshold, would, upon further investigation, lead to the detection of offending.
13. There is also an assumed benefit from increasing disruption to TSOC activities – insofar that lowering the threshold for copying documents in relation to CEA offences will increase the possibility of detecting offending.

What objectives are sought in relation to the policy problem?

14. The primary objective is to set a legal threshold in the CEA for document copying powers that supports the detection of offending through intelligence driven risk assessment at the border, which supports Customs to respond effectively to the threats from TSOC groups.

What consultation has been undertaken?

15. Consultation has been undertaken with the Department of the Prime Minister and Cabinet, the New Zealand Security Intelligence Service, the Ministry of Justice, New Zealand Police, the Ministry of Transport, and the Ministry for Primary Industries.
16. No public consultation was undertaken over the options considered in this RIS. Groups representing the public interest in law enforcement matters as well as the wider public will have an opportunity for input at the Select Committee stage of the Bill.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

17. Criteria used to evaluate impacts on border security outcomes:
- fit for purpose and reflects the risk
 - ensures similar situations result in similar responses
 - effectiveness with desired outcomes being achieved.
18. The options are also evaluated for:

- transparency and perceived reasonableness of impacts on personal rights and freedoms
- administrative costs and ease of implementation.

What scope will options be considered within?

19. There are no non-regulatory options. Legal thresholds to copy documents for the purposes of detecting offending must be established in legislation.
20. The thresholds for conducting a search of a person or an electronic device are out of scope.
21. Options that would introduce new (and therefore different) levels of legal threshold to the power to copy other than “*reasonable cause to believe*” and “*reasonable cause to suspect*” were not considered. This is because of the uncertainty that would be created through using thresholds that are not elsewhere used in the legislation.

Australian legislation was looked at for comparison

22. The Australian Customs Act 1901 (section 186A) allows documents examined under the Act to be copied where a Border Force officer is satisfied that the document “may contain information relevant to” customs offences and the functions of certain named national security agencies. This allows Border Force officers to make a broad interpretation of what information might be relevant, without having any specific knowledge of how a particular piece of information fits into the full picture of a person’s possible illegal activities.
23. The Australian power is comparable to the *reasonable cause to suspect* threshold applied in New Zealand, and additionally the document copying power also links to the functions of national security agencies. Customs does not consider that the Australian approach gives any additional insights into options to address the problem as defined in the New Zealand context.

Options considered and features

24. Option one - status quo, continue to operate two different thresholds in the CEA for copying documents for CEA offending and for MODA and FVPCA offending
25. Option two - bring the threshold for CEA offending into line with the threshold for MODA and FVPCA offending, allowing documents to be copied on the threshold of *reasonable grounds to suspect* evidence of offending.

Comparison of options to the status quo

	Option one – status quo - continue to operate two different thresholds in the CEA for copying documents for CEA offending and for MODA and FVPCA offending	Option two – bring the threshold for CEA offending into line with the threshold for MODA and FVPCA offending – allow documents to be copied on the threshold of reasonable grounds to suspect evidence of offending
Fit for purpose and reflects the risk	- Customs copying powers continue to be limited by having to reach a higher threshold to copy documents related to CEA offending and is ineffective for detecting all types of offences that relate to how TSOC groups are currently operating across international borders.	++ Would allow greater use of Customs copying powers to aid in the detection of offences that relate to how TSOC groups are currently operating across international borders. This includes involvement in customs offending (eg, tobacco smuggling) which may provide a link to evidence of wider offending (such as drug offending). Expected to improve the quality of intelligence and evidence to support the generation of investigate leads across a range of TSOC risks.
Ensures similar situations result in similar responses	- CEA offending is not treated the same as MODA and FVPCA offending when it comes to copying documents. By having a higher threshold to copy documents relating to CEA offending, it makes it more difficult to detect the links between CEA offending and wider offending.	++ CEA offending would be treated the same as MODA and FVPCA offending when it comes to copying documents. Would also make it easier to detect the links between CEA offending and wider offending.
Effectiveness with desired outcomes being achieved	- Is not expected to support better quality investigative outcomes and intelligence products and does not improve	++ Is expected to support better quality investigative outcomes and intelligence products with the ability to link CEA offending to wider offending and which

	the ability to link CEA offending to wider offending. Will not help to achieve more lasting disruption of TSOC activities.	are more targeted towards TSOC groups and lead to more lasting disruption of TSOC activities.
Costs and implementation	0 No change.	0 Additional costs can be met within baselines.
Overall assessment	-	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

26. Option two is preferred.

27. Option two best achieves the objective to set a legal threshold in the CEA for document copying powers that supports the detection of offending through intelligence driven risk assessment at the border, which supports Customs to respond effectively to the threats from TSOC groups by supporting the generation of investigative leads to counter TSOC risks and improving the quality of intelligence) and the protection of individual rights and freedoms. The threshold of *reasonable cause to suspect* is applied throughout the CEA (such as for the initial search of electronic devices) and is widely used in other New Zealand legislation.

28. The assumption is that New Zealand's border security would be improved if the CEA were recalibrated to better support detection of customs related offending. The scale of the costs and harms imposed on society by TSOC groups are high and so even a marginal increase in the probability of deterring or detecting their offending (through adjusting legal thresholds to copy documents) will be beneficial. It is difficult to assess how much this would affect overall TSOC disruption, but we expect it to aid in the detection of offending, noting the evidence of TSOC involvement in a wide range of illegal activity such as tobacco and firearms smuggling. Disruption of TSOC activities will contribute to a reduction of harm in New Zealand communities.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

29. Yes.

What are the marginal costs and benefits of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Customs	One off cost of making legislation and updating operational policies and procedures. Ongoing costs to maintain policies and procedures and provide training.	Low.	High certainty.
TSOC groups	Ongoing – increases the probability for detection and disruption.	Low - legal defence costs and imprisonment.	High certainty.
Justice system	Ongoing - Lowering the threshold for copying in relation to customs offending is expected to generate more investigations which in turn may result in more prosecutions. This has implications for the wider justice system (eg, increased prosecution costs and increased costs of imprisonments).	Low - Number of additional persons expected to be prosecuted is low, but there is limited information to confidently forecast impacts.	Low to medium certainty. There is limited information to confidently forecast impacts.
Non-monetised costs	<i>Ongoing.</i>	<i>Low to medium.</i>	<i>Medium to high.</i>
Additional benefits of the preferred option compared to taking no action			
General public	Ongoing – increases possibility of detecting and disrupting TSOC groups. Reduces the potential for social harm.	Low – costs and negative impacts of offending on society are well understood.	High certainty.
New Zealand Police and Security agencies	Ongoing – improving the quality of intelligence and evidence to support the generation of investigative leads across the national security system.	Low – improving the ability to target TSOC offending is designed to have a more enduring impact of disrupting those groups.	Medium to high certainty.
Non-monetised benefits	<i>Ongoing.</i>	<i>Low.</i>	<i>High.</i>

Section 3: Delivering an option

How will the proposal be implemented?

30. Changes to the CEA are required for implementation.

31. Customs will make changes to operational policies and procedures and update training material for Customs officers. The proposal is considered straightforward to integrate within “business as usual” border risk management processes. No implementation risks are anticipated.

How will the proposal be monitored, evaluated, and reviewed?

32. Success in the operationalisation of the proposal will be measured by how many times the power is used, to show it is used responsibly, the extent to which evidence obtained through the use of border control powers assists in the identification, investigation, and disruption of TSOC groups and the extent to which that evidence also supports the generation of intelligence to enable improved risk management and targeting at the border. This is monitored through reporting in Customs' Annual Report on achieving Customs border protection strategy.

33. The CEA is subject to Customs' ongoing regulatory stewardship function as the agency responsible for administration of the CEA. It will be difficult to attribute with any certainty any observed changes in the border risk profile to specific regulatory amendments, noting that the behavioural changes of TSOC groups are driven by a multiplicity of factors.