



Regulatory Impact Statement: Protecting Customs officers on the frontline

Decision sought	Analysis produced for the purpose of informing final Cabinet decisions
Agency responsible	New Zealand Customs Service
Proposing Ministers	Minister of Customs
Date finalised	3 October 2025

Regulatory proposal:

The Minister of Customs is proposing to:

- amend the Customs and Excise Act 2018 (the Act) to provide legislative authority to enable Customs officers to carry and use defensive equipment (eg batons, pepper spray, tasers), restraint equipment (eg handcuffs), and protective equipment (eg body-worn cameras)
- increase the penalty for assaulting a Customs officer to imprisonment not exceeding three years or a fine not exceeding \$20,000.

Summary: Problem definition and options

What is the policy problem?

The scope, scale, sophistication, and impact of transnational, serious and organised crime (TSOC) has changed the nature of border security in New Zealand. Customs has observed an increasing trend at the border of brazen behaviour, including intimidation, violence, and dangerous items on an individual at the border.

This means Customs officers are increasingly exposed to heightened risks as they undertake certain functions such as maritime patrols, searches of craft and goods, site visits, audits, surveillance operations, and controlled deliveries.¹ Customs officers are increasingly operating in environments marked by unpredictability, confrontation, and elevated risk.

There are two specific issues being analysed through this Regulatory Impact Statement (RIS):

1. There is no clear legislative authority for Customs officers to carry and use defensive equipment (such as batons, pepper spray, or tasers), restraint equipment (such as handcuffs), or protective equipment (such as body-worn cameras). This leaves Customs officers without suitable equipment to manage risk, de-escalate situations, and ensure they are protected.

¹ A controlled delivery occurs when a consignment of illicit or prohibited goods is detected. Then under the control of Customs and Police, the consignment is delivered to the recipient enabling Customs and Police to identify and secure evidence against those involved for the importation or exportation of those goods.

2. The penalty for assaulting a Customs officer is no longer reflective of the risk officers' face and has become misaligned with similar offences in domestic legislation.²

What is the policy objective?

The primary objective is to enhance the safety and protection of Customs officers for the foreseeable trajectory of the threat environment at the border.

A secondary objective is to ensure Customs officers are well-equipped to de-escalate and manage certain situations at the border in a proportionate way.

What policy options have been considered, including any alternatives to regulation?

Issue one – ensuring Customs officers are well-equipped to respond to risks and situations at the border:

Three options are considered in this RIS in relation to how Customs officers are equipped to undertake their functions. The options exclude lethal defensive equipment, such as firearms. The Police are generally unarmed, so it would be inconsistent for Customs to be equipped with this equipment.

Option one – the status quo would retain the current standard equipment (some of which is limited to certain functions or roles) and training provided to Customs officers (eg officer safety tactics and arrest).

Option two – would progress operational improvements including investing in more tactical equipment (eg ballistic or stab-resistant vests) and extending threat-specific training, as a non-regulatory option.

Option three – would enable a framework in legislation for Customs officers to carry and use less-lethal defensive, restraint, and protective equipment, with the specific equipment to be prescribed through secondary legislation in the future as necessary.³

A combination of option two and three is preferred. Progressing these options together is expected to best achieve the objective of enhancing the safety and protection of Customs officers given the current border security environment. It will also enable Customs officers to effectively and proportionately manage and de-escalate certain situations.

Issue two – ensuring appropriate consequences for assaults on Customs officers:

Two options are considered in this RIS in relation to the offence of assaulting a Customs officer.

Option one – the status quo would retain the current penalty of imprisonment not exceeding 12 months or a fine not exceeding \$15,000.

Option two – would increase the penalty for assaulting a Customs officer to a penalty of imprisonment not exceeding three years or a fine not exceeding \$20,000.

Option two is preferred as, compared to the status quo, it best achieves the objective.

What consultation has been undertaken?

Consultation has been undertaken with the Department of Corrections, Department of Prime Minister and Cabinet, Government Communications Security Bureau, the Ministries of Business, Innovation and Employment, Defence, Justice, Primary Industries, and Transport,

² The current penalty for assaulting a Customs officer (section 376 of the Act) is imprisonment not exceeding 12 months or a fine not exceeding \$15,000.

³ The terminology of “less-lethal” equipment matches the terminology in the Corrections Act 2004.

New Zealand Defence Force, New Zealand Police, New Zealand Security and Intelligence Service, and Office of the Privacy Commissioner.

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 Customs and Excise (Border Security) Amendment Bill (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 (Core information)

There are no monetised costs for the preferred option of enabling a framework to authorise Customs officers to carry and use defensive equipment. However, the enabling framework will lead to future financial implications (eg investing in the defensive, restraint, or protective equipment, creating operational policies and guidance, storage of body camera footage, and setting up the process for complaints and incidents to be considered). The procurement costs may not be able to be covered through existing baselines.

The enabling framework created by the preferred option will require costs, benefits, and risks to be assessed prior to making the secondary legislation to enable the specific defensive, restraint, or protective equipment to be used.

The preferred non-regulatory option to invest in operational improvements will have monetised costs. Business cases will be developed to inform those organisational decisions.

There is not expected to be any increase in costs to Customs for the preferred option of increasing the penalty for assaulting a Customs officer. There potentially will be higher costs for Corrections if courts apply higher custodial sentences. This will also impact persons convicted of this offence. However, we expect this impact to be marginal given the low number of prosecutions for this specific offence.

Benefits (Core information)

There will be direct non-monetised benefits in terms of improved safety for Customs officers, those employed within Customs-controlled areas (CCAs), and others who may be present within a CCA. There will also be indirect benefits for Police as Customs' ability to manage and de-escalate certain situations itself means Police resource can be focussed on their own priorities. Police will still be available to support, if necessary.

Balance of benefits and costs (Core information)

The benefits of greater safety and operational control are expected to outweigh the costs on Customs to invest in the equipment, training, prosecutions, and other associated costs in the future.

Implementation

Changes to the Act and new regulations are required for implementation. The legislative amendment resulting from the preferred options would come into effect following Royal Assent of the Bill, expected by late-2026.

Once the legislation is enacted, secondary legislation will be required to support the adoption of each individual item of less-lethal defensive, restraint, and protective

equipment, along with the necessary policy analysis, regulatory guidance, practices, reporting, and training to support safe and reasonable use.

This will be led by Customs' Policy and Legal teams with input from Customs' operational teams as they will be responsible for the implementation and ongoing monitoring of this change, as they have a greater understanding of the nature and level of risks for differing functions.

Customs will need to establish a process for complaints to be considered relating to the use of the less-lethal defensive, restraint, and protective equipment. A delegated role within Customs could be responsible for investigating complaints and making recommendations or directions to the chief executive of Customs. Alternatively, the chief executive of Customs could appoint a person or persons external to Customs for this purpose. When investigating a complaint, the delegated individual will be independent from their regular role. A person can also submit their complaint to the Ombudsman.

Specifically for body-worn cameras, Customs will need to make operational policy decisions about the collection, storage, access, retention, and deletion of the information obtained from the body-worn cameras. This will be considered as the secondary legislation is developed.

Limitations and Constraints on Analysis

This proposal has been developed under tight timeframes to enable its consideration and incorporation into the Bill, which is currently being drafted. This means no targeted consultation has been undertaken for this proposal.

This analysis assumes that volatile and confrontational behaviour and situations of elevated risk will continue, if not increase.

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)

Acting Deputy Chief Executive Policy, Legal and Strategy
3 October 2025

Quality Assurance Statement

Reviewing Agency: New Zealand Customs Service

QA rating: Partially meets

Panel Comment:

The Customs' Regulatory Impact Analysis Panel has reviewed this RIS 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

What is the context behind the policy problem and how is the status quo expected to develop?

A core function and expectation is that Customs actively protects New Zealand from risks at and through the border

1. Through the Customs and Excise Act 2018 (the Act) and other Acts,⁴ Customs officers are specifically empowered to enforce the law at the border. This includes protecting New Zealand from prohibited goods and responding to certain criminal activity or national security threats at the border.
2. Customs officers can undertake certain duties and exercise specific powers at the border, including:
 - 2.1. gathering evidence and intelligence to inform investigations
 - 2.2. questioning travellers
 - 2.3. searching people, craft, goods, and devices
 - 2.4. seizing and detaining goods involved in certain offences
 - 2.5. using reasonable force, if necessary, to detain or arrest an individual.
3. The use of force is generally only used where there is a refusal to co-operate, the situation has heightened risks, and/or de-escalation and communication techniques are no longer appropriate. Customs officers must determine that it is reasonable, proportionate, and necessary to use force. In this context, reasonable force is considered as a last resort. Section 437 of the Act requires a report to the chief executive of Customs within five days when a Customs officer uses force under the Act.
4. Customs officers are currently issued with standard equipment which can include a radio, flashlight, earpiece, gloves, hardhat, handcuffs, or tactical vest. The equipment provided will depend on the function or activity the Customs officer is operating in (eg surveillance activity versus maritime patrols). Only trained Customs officers are authorised to carry and use handcuffs and exercise arrest powers.

Customs officers are increasingly operating in environments characterised by unpredictability, confrontation, and elevated risk

5. The environment at the border has shifted within the past few years. New Zealand has always faced risk at the border, but the scope, scale, sophistication, and impact of transnational, serious and organised crime (TSOC)⁵ has changed the nature of border security in New Zealand.
6. TSOC groups have developed a good understanding of border processes and international supply chain operations. Consequently, TSOC groups are exploiting key vulnerabilities at the border. This includes through corrupting people in positions within supply chains (eg trusted insiders⁶) and a sustained increase in the scale of illicit drug importations.

⁴ For example, the Misuse of Drugs Act 1975 and Films, Videos and Publications Classifications Act 1993.

⁵ TSOC is crime operating across national borders and often links with domestic criminal groups.

⁶ A trusted insider is any person who, through their employment (past or present) within the supply chain, uses their access to goods, systems, or premises for malicious purposes.

7. Tracking devices are also commonly used by TSOC groups to give them precise visibility of the location of their goods in containers or parcels. This enables TSOC groups to monitor the movement of their illicit goods and locate its position for retrieval. This has resulted in heightened risks of unauthorised persons entering Customs-controlled areas (CCA)⁷ and interception or confrontations, notably in ports. This puts Customs officers at increased risk as they undertake their functions, such as patrols or inspections.
8. For these reasons, Customs' functions and priorities have expanded to combat increasing and evolving threats at the border.
- 8.1. In 2019, the Border Protect Supply Chain team was established. Customs officers within this team are regularly visiting CCA, engaging with staff working in CCAs, and educating them on TSOC threats and how to report them. This has increased Customs' presence in CCAs that previously would have had minimal direct interaction with Customs officers, particularly warehouse and storage facilities where there are known individuals who are affiliated with gangs.
- 8.2. From 2023, \$20 million has been invested to strengthen Customs' presence at maritime ports, specifically to increase patrols and searches of craft and goods and to deter or investigate TSOC activity. Customs officers have increased patrolling at maritime ports, from ad hoc patrols to 392 patrols between December 2024 and September 2025. Customs officers are also "clearing" yachts which can sometimes have firearms onboard. In 2024, Customs cleared 587 yachts.
- 8.3. In July 2023, Customs implemented a comprehensive audit programme. This means Customs officers are auditing specific CCAs (ie port, airport, warehouse, or storage facility) in person every two years, some of which have known TSOC risks.
- 8.4. S6(d)
9. S6(d)
10. Alongside these heightened risks as the impact of TSOC continues to rise, globally there is increasing targeting and intimidation of enforcement and border agency officials. Customs has observed an increasing and ongoing trend of brazen approaches, intimidation, violence, and risk of assault. Some examples include:
- 10.1. incidents of travellers and workers in the border environment displaying threatening behaviours at the border and/or towards Customs officers
- 10.2. while clearing a vessel, Customs officers have encountered intimidation, unwanted touching, and sexually suggestive comments

⁷ A CCA is a secure and controlled licensed environment that is approved to conduct certain functions or activities such as processing international passengers, storing, loading or unloading cargo, and manufacturing excisable goods.

10.3. during a maritime clearance operation at a floating dock (an isolated setting), Customs officers encountered a threatening individual.

11. Recent intelligence indicates this type of behaviour is likely to continue, if not increase in the near future, given the trajectory of TSOC in New Zealand.

Domestic and international enforcement and border agencies have responded to evolving threat environments

12. Enforcement or border agencies in other countries have responded to the evolving threat environment by authorising their officers to carry and use a range of less-lethal defensive equipment. Many countries have also authorised their officers to carry firearms.

13. There are different ways that the use of less-lethal defensive equipment is authorised. For example, in some countries, officers carry this equipment (eg Australia, United States, and Denmark) while others may have access to certain equipment in particular circumstances (eg United Kingdom, Netherlands, and Norway). Some countries limit the use of particular equipment to certain functions (eg maritime patrols, search, or arrest).

14. Domestically, Police and Corrections have clear use-of-force legislation, standards, and protocols. Since 2022, Fishery officers have been equipped with body-worn cameras for safety and de-escalation reasons.

15. The table below shows the type of equipment domestic agencies or other border agencies currently use, in comparison to New Zealand Customs.

Agency	Body-worn camera	Handcuffs	Baton	Pepper Spray	Taser	Firearm
New Zealand agencies						
New Zealand Customs Service	-	*Yes, only trained officers	-	-	-	-
New Zealand Fishery Officers	✓	✓	-	-	-	-
New Zealand Corrections	✓	✓	✓	✓	-	-
New Zealand Police	-	✓	✓	✓	✓	*Yes, but not carried on officer
Similar international agencies						
UK Border Force	-	✓	✓	✓	✓	*Only in high-risk situations
Canada Border Services Agency	-	✓	✓	✓	✓	* Yes, in certain situations
Australian Border Force	✓	✓	✓	✓	✓	* Yes, in certain situations
US Customs and Border Protection	-	✓	✓	✓	✓	✓

Without a different approach, Customs officers will be limited in their ability to effectively and safely respond to threats at the border

16. Although suitable for the previous border security environment, the current approach leaves Customs officers exposed and hinders their ability to safely respond to or manage similar situations. This is a health and safety risk for Customs officers on the frontline, especially those operating outside the airport environment (as the airport is a more controlled environment with increased security measures and personnel). It also limits the ability for Customs officers to ensure the safety of those around them as well, such as others present in the CCA.
17. This underscores the need for Customs to adapt its readiness to a more dynamic and unpredictable threat environment.

What is the policy problem or opportunity?

The first issue is there is no clear legislative authority for Customs officers to carry and use defensive, restraint, or protective equipment

18. While the Act enables Customs officers to use reasonable force against a person,⁸ it does not set out what this allows. Legal advice indicates, in the absence of a clear statutory mandate, officers may face criminal liability for carrying or using equipment like batons or tasers, even in self-defence.⁹
19. This is because these types of equipment are considered offensive or restricted weapons which have certain limitations around its use, as set out in the table below.

Equipment	Type of weapon	Legislative and use considerations
Baton	Offensive weapon	A baton is an offensive weapon and it is an offence (under section 202A of the Crimes Act) to be in possession of an offensive weapon without lawful authority.
Pepper Spray	Restricted weapon	Officers can carry restricted weapons in the course of their duties (such as examining or seizing goods). But this doesn't enable officers to carry and use these weapons defensively. Officers would commit an offence under the Arms Act 1983 by carrying, possessing, presenting, or discharging a restricted weapon.
Taser	Restricted weapon	
Handcuffs	Mechanical restraint	Currently certain Customs officers can use handcuffs for arrest purposes. ¹⁰ However, there is not a legislative mandate for Customs officers to use handcuffs to support de-escalating a situation where there is no arrest. A clear mandate to use restraints would mitigate any risk of challenge.

⁸ For example, section 204, 212, 213, 215, 220, and 221 of the Act.

⁹ Note Customs officers will still be liable for excessive and unnecessary use of force.

¹⁰ Currently only the Customs Investigations Unit can arrest and are authorised to use handcuffs, if necessary. The Frontline Investigations Team at Auckland International Airport are authorised to use handcuffs, but only for high-risk situations (eg to detain someone and there's a serious risk of harm).

Equipment	Type of weapon	Legislative and use considerations
Body-worn cameras	Visual and audio recording device	A body-worn camera is not inherently illegal and can be worn/used. But in Customs' context, it may raise questions or concerns around whether it is a search and the legal justification for the collection, use, disclosure and retention of the footage.

20. The border security environment has changed since the Act was enacted in 2018. This means there is a gap between the reality of the current operating environment at the border and what Customs officers are lawfully able to do.

21. While Police support is sought where appropriate, Police are not routinely present at CCAs or for all operations (eg x-ray scanning, processing yachts, or port patrols). Most Customs' functions do not typically warrant such involvement and given there are over 1,500 CCAs across New Zealand, routine Police presence is simply unfeasible.

22. Even where Police are onsite 24/7, such as Auckland Airport, response times may not match the urgency and immediacy of escalating situations. Incidents can unfold in seconds, meaning it could escalate before Police arrive. For search warrant activities, controlled deliveries, or in isolated maritime settings, this vulnerability is even more pronounced as Police support or back-up is dependent on Police priorities, availability, and proximity in that moment.

23. This means Customs officers do not have suitable equipment to manage risk, de-escalate situations, and ensure they are protected. This type of equipment provides a critical layer of protection for Customs officers, enabling a proportionate and confidence response.

Research shows defensive and protective equipment can support de-escalation and enhance safety

24. Less-lethal equipment can support officers to effectively maintain control in volatile situations while minimising the risk of injuries or further escalation.¹¹ It can also prevent physical struggles or escalation.¹²

25. Body-worn cameras can play a significant role in de-escalating volatile or unpredictable situations, especially in conjunction with other de-escalation tools and processes. Individuals often change or moderate their behaviour towards an officer or person wearing a body-worn camera when they are informed the encounter is being recorded.¹³

¹¹ Police Executive Research Forum – 2020 Report, February 2020

<https://www.policeforum.org/assets/LessLethal.pdf>

¹² NIJ Journal, Police Use of Force: The Impact of Less-Lethal Weapons and Tactics

<https://www.ojp.gov/pdffiles1/nij/233281.pdf>

¹³ Department of Corrections, On body cameras in prison, 2016

https://www.corrections.govt.nz/resources/research/journal/volume_4_issue_1_august_2016/on_body_cameras_in_prison#:~:text=Conclusion,when%20managing%20prisoners%20are%20reduced.

The second issue is the penalty for assaulting a Customs officer no longer reflects the risk

26. Since 2018 when the Act was enacted, two offenders have been prosecuted for assaulting a Customs officer (under section 376 of the Act). The offence has a penalty of a term of imprisonment not exceeding 12 months or a fine not exceeding \$15,000, which has remained the same since the Customs and Excise Act 1996.
27. Given the increases in TSOC offending, threatening behaviour, and high-risk situations at the border, there is a need to review and strengthen the current penalty level for the offence of assaulting a Customs officer to provide a deterrent factor.
28. The current penalty level has also become misaligned with penalties for similar offences in domestic legislation.
 - 28.1. The Biosecurity Act 1993 offence for a person who threatens, assaults, or intentionally obstructs or hinders an official under that Act (section 154O(2)) has a penalty of imprisonment not exceeding five years or a fine not exceeding \$100,000 for an individual or \$200,000 for a body corporate.
 - 28.2. Subject to legislative process, there will be three new offences in the Crimes Act 1961 for assault on first responders, including:
 - 28.2.1. assaulting first responders (imprisonment not exceeding three years)
 - 28.2.2. assaulting a first responder or prison officer with intent to injure (imprisonment not exceeding five years)
 - 28.2.3. injuring a first responder or prison officer with intent to injure (imprisonment not exceeding seven years).
29. Offences in the Act need penalty levels that will have an impact on offenders' behaviour, be consistent with other domestic legislation, and be proportionate to the harm caused by the offending.

These two issues tie into existing work being progressed in relation to border security and the safety of those on the frontline

30. In July 2025, Cabinet agreed (ECO-25-MIN-0111) to a package of policy changes through the Customs and Excise (Border Security) Amendment Bill (**the Bill**) that will:
 - 30.1. clarify and strengthen Customs' border and national security function
 - 30.2. prevent, detect, deter, and respond to criminal activity through enhancing Customs' powers and offences regime
 - 30.3. enable a risk-based approach to border security and the way CCAs are regulated
 - 30.4. strengthen two-way information sharing with supply chain partners.
31. The purpose of these proposals is to strengthen Customs' ability to combat border security threats and ensure Customs fulfils its role in the border security system.
32. There are other initiatives underway across government to strengthen border security including:
 - 32.1. developing proposals that will enhance and strengthen background checking and access controls for workers who access border infrastructure
 - 32.2. progressing the Immigration (Enhanced Risk Management) Amendment Bill

- 32.3. implementing anti-money laundering and countering financing of terrorism reform.
33. The Ministry of Justice is strengthening consequences in the Crimes Act 1961. This work includes creating a graduated set of offences for assaults on first responders. The policy was agreed to by Cabinet in June 2025 (CBC-25-MIN-0019). Customs officers were not included in the Crimes Act changes as it was determined Customs officers were not within the scope of the definition of a first responder.
34. The proposal discussed in this RIS contributes to the wider enhancements and strengthening of New Zealand's border security and the safety of Customs officers on the frontline.

What objectives are sought in relation to the policy problem?

35. The primary objective is to enhance the safety and protection of Customs officers for the foreseeable trajectory of the threat environment at the border.
36. A secondary objective is to ensure Customs officers are well-equipped to de-escalate and manage certain situations at the border in a proportionate way.

What consultation has been undertaken?

37. Consultation has been undertaken with the Department of Corrections, Department of Prime Minister and Cabinet, Government Communication Security Bureau, the Ministries of Business, Innovation and Employment, Defence, Justice, Primary Industries, and Transport, New Zealand Defence Force, New Zealand Police, New Zealand Security Intelligence Service, and the Office of the Privacy Commissioner.
38. No public consultation was undertaken over the options considered in this RIS. This proposal has been developed under tight timeframes to enable its consideration and incorporation into the Customs and Excise (Border Security) Amendment Bill, which is currently being drafted. This means no targeted consultation has been undertaken for this proposal.
39. Groups representing the public interest in law enforcement matters, as well as the wider public, will have an opportunity to input at the Select Committee stage of the Bill.

Section 2: Assessing options to address the policy problem

Issue One – Ensuring Customs officers are well-equipped to respond to risks and situations at the border

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

40. The criteria to compare options to the status quo includes:

- 40.1. safety – provides Customs officers with greater protection
- 40.2. de-escalation – supports the deterrence and de-escalation of certain behaviours
- 40.3. proportionate – is commensurate to the risks at the border and enables a proportionate response to those risks
- 40.4. alignment – is aligned with relevant domestic and international agencies.

41. The criterion of safety is weighted more than the de-escalation and proportionate criterion, given the safety of Customs officers is the primary objective.

What scope will options be considered within?

- 42. This RIS focusses on establishing an authorising legislative framework for defensive, restraint, and protective equipment within Customs' context.
- 43. The options exclude lethal defensive equipment, such as firearms. The Police are generally unarmed, so it would be inappropriate for Customs to be equipped with this equipment.

What options are being considered?

Option One – status quo

44. This option would retain the current limited standard equipment and training provided to Customs officers.

Option Two – operational improvements (preferred)

45. This is a non-regulatory option that would progress specific operational improvements including investing in:

- 45.1. tactical equipment (such as ballistic vests and stab resistant body-armour)
- 45.2. developing or revising training material to build confidence in threat-specific and scenario-based contexts.

46. This would build on Customs' existing standard issued equipment and training.

Option Three – authorising Customs officers to carry and use defensive, restraint, and protective equipment (preferred)

47. This option would amend the Customs and Excise Act 2018 to:

- 47.1. enable a framework for Customs officers to carry and use less-lethal defensive, restraint, and protective equipment

- 47.2. enable secondary legislation to prescribe the specific less-lethal defensive, restraint, or protective equipment that can be used (which may include batons, pepper spray, tasers, body-worn cameras, or handcuffs)
- 47.3. establish reporting requirements and a process for complaints to be considered relating to the use of the less-lethal equipment.
48. Once the legislation is enacted, secondary legislation will be required to support the adoption of each individual item of equipment, along with the necessary regulatory guidance, practices, and training to support safe and reasonable use. This process will address the specific costs, benefits, and risks in adopting any particular item of equipment.
49. The defensive and restraint equipment will be able to be used in any situation where Customs officers are permitted by the Act or other Acts¹⁴ to use reasonable force. This would be in addition to, and not supplant, any existing authority to use reasonable force. Through training, Customs officers are instructed on how to consider and determine when use of force is justified and confirm the legal authority to act.
50. The protective equipment will primarily be deployed for safety purposes, but any footage from body-worn cameras capturing offending or an incident may be retained for investigative or training purposes.

¹⁴ Including the Misuse of Drugs Amendment Act 1978 (s13EA), Search and Surveillance Act 2012 (s118 and s125), Crimes Act 1961 (s39, s40, s41, and s48), and Maritime Security Act 2004 (s54 and s56).

Key:

++ much better than the status quo -- much worse than the status quo

+ better than the status quo - worse than the status quo

0 about the same as the status quo

How do the options compare to the status quo/counterfactual?

	Option One – status quo	Option Two – operational improvements (preferred)	Option Three – authorise use of defensive, restraint, and protective equipment (preferred)
Safety	0 Safety will not be notably improved under the status quo.	++ Enhanced training will support Customs officers to understand how to remain safe in certain situations. However, their ability to manage or control certain situations may be limited. Investing in further tactical equipment will improve safety for some Customs officers, however, this will be limited.	++ The presence and use of the equipment provides a critical layer of protection enabling effective management and control of situations with confidence.
De-escalation	0 Customs officers will remain limited in their ability to de-escalate situations.	++ Further training will increase the confidence of Customs officers on how to manage and de-escalate certain situations. However, the effectiveness of this may be limited.	++ This option provides a robust suite of equipment to effectively and efficiently de-escalate potentially volatile, confrontational, or unpredictable situations. The visible presence of a camera or equipment like a baton can deter certain behaviours.
Proportionate	0 This option would not provide Customs officers with a proportionate response to escalating or volatile situations. This would leave Customs officers under-equipped given the risks at and through the border.	0 This option would not provide Customs officers with a proportionate response to escalating or volatile situations at the border. The extent of further tactical equipment is unlikely to be proportionate to the risks at the border.	++ The range of equipment will support a graduated response, providing trained Customs officers with proportionate and appropriate options.
Alignment	0 This option will not bring Customs into alignment with like-minded domestic or international agencies.	0 This option will not bring Customs into alignment with similar domestic or international agencies.	++ This option brings Customs much more in alignment with international border agencies and relevant domestic agencies.

	Option One – status quo	Option Two – operational improvements (preferred)	Option Three – authorise use of defensive, restraint, and protective equipment (preferred)
Overall assessment	0 Ultimately, the status quo will leave Customs officers vulnerable and ill-equipped to manage and control situations.	+ The operational improvements being progressed as part of the status quo are important changes but on their own are expected to have a limited impact given the reality of the threat environment at the border. This option will support the use of defensive, restraint, and protective equipment to keep Customs officers safe.	++ This option would enhance the safety of Customs officers given the nature of the threats at the border. It would also deter and de-escalate certain behaviour, enabling a proportionate and confident response.

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

- 51. A combination of option two and three is preferred. Progressing these options together is expected to best achieve the objective of enhancing the safety and protection of Customs officers given the current border security environment. It will also enable Customs officers to effectively and proportionately manage and de-escalate certain situations.
- 52. This change would bring Customs more in line with similar international and domestic enforcement or border agencies.
- 53. This approach balances maximising the protection of Customs officers with the ability to confidently manage confrontational, volatile, or escalating situations.
- 54. Establishing this framework in the Act will provide certainty and clarity for further legislative and operational decisions to be made in the future to enable the use of specific equipment.

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

- 55. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

- 56. There are no monetised costs for the preferred option itself. However, it will establish an enabling framework that will lead to future financial implications (eg creating operational policies and guidance, investing in the equipment, and establishing a reporting process and a process for complaints to be considered relating to the use of the equipment).
- 57. The enabling framework created by the preferred option will require costs, benefits, and risks to be assessed prior to the making of the secondary legislation to enable the specific defensive, restraint, or protective equipment to be used. Operational considerations, such as the risk profile for particular tasks, will be a factor to balance against available baseline funding at the time decisions are made (in terms of the extent of the adoption of the equipment across the range of Customs' functions and activities). It is possible existing baseline funding will not be sufficient.
- 58. There will be direct non-monetised benefits for:
 - 58.1. Customs – as there will be improved safety for frontline Customs officers
 - 58.2. Police – as Customs' ability to manage and de-escalate certain situations itself means Police resource can be focussed on their own priorities (noting Police support will still be available, if necessary)
 - 58.3. those employed within CCAs – as there will be improved safety for those who work within a CCA and may be near where a Customs officer is de-escalating a situation

- 58.4. others who may be present – as there will be improved safety for those who may be travelling or otherwise present within a CCA and near where a Customs officer is de-escalating a situation.

Issue Two – Ensuring appropriate consequences for assaults on Customs officers

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

59. The criteria to compare options to the status quo includes:

- 59.1. proportionate – to the risks and the harm caused
- 59.2. alignment – with other legislation and criminal justice principles
- 59.3. deterrence – supports the deterrence of certain behaviours
- 59.4. effective – in reinforcing the safety of Customs officers.

60. All criteria are weighted and prioritised the same.

What scope will options be considered within?

61. There are no feasible non-regulatory options to address this aspect of the policy problem.

What options are being considered?

Option One – status quo

62. This option would retain the current penalty for assaulting a Customs officer (section 376 of the Act) to a term of imprisonment not exceeding 12 months or a fine not exceeding \$15,000.

Option Two – increase the penalty for assaulting a Customs officer (preferred)

63. This option will increase the maximum penalty level for the existing offence of assaulting a Customs officer to:

- 63.1. a term of imprisonment not exceeding three years, or
- 63.2. a fine not exceeding \$20,000.

64. The imprisonment penalty level has been aligned with the proposed new penalty level in the Crimes Act 1961 for assaulting a first responder. Imprisonment is justified in this circumstance due to the intentionality (also known as mens rea). This refers to the mental state of the offender at the time of committing the offence, which needs to be proven for a person to be held responsible for the crime.

65. The financial penalty level is aligned with the new offence being progressed through the Bill for deliberately circumventing Customs controls. This offence also has a mens rea element.

	Option one – status quo	Option two – increase penalty (preferred)
Proportionate	0 This option maintains the current penalty level which is no longer proportionate to the reality of the risk environment at the border.	++ Increasing the penalty is proportionate to the risk Customs is seeing at the border and the harm caused by offenders. The increasing threats, intimidation, and volatile situations reinforce this.
Alignment	0 This option maintains the current penalty level which will now be out of step with the penalty for assaulting other frontline officers (eg Police, ambulance, firefighters, and Corrections).	++ This option will ensure the penalty level is consistent with other relevant legislation, particularly assaults on other frontline officers.
Deterrence	0 There is already a level of deterrence as this is an existing offence.	+ This may further deter non-compliance, especially with the increase in the imprisonment term. However, this is expected to be marginal.
Effective	0 This option will not enhance or reinforce the safety of Customs officers.	+ This option signals that assaults on Customs officers are not condoned, and Customs officers should be able to undertake their functions safely.
Overall comment	0 The status quo would retain the existing penalty level for assaulting a Customs officer which is no longer proportionate to the risk or aligned with other similar penalties.	+ This option reinforces the importance and necessity of protecting Customs officers, and ensures there is a proportionate consequence for this type of behaviour.

Key:

++ much better than the status quo -- much worse than the status quo
 + better than the status quo - worse than the status quo
 0 about the same as the status quo

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

66. Option two is the only option that would effectively address the problem, meet the objectives, and provide benefits to Customs officers.

67. The safety of Customs officers is paramount, and this change will reinforce this. It will also seek to deter certain behaviour, ensure the penalty is proportionate given the risks at the border, and ensures this offence and penalty remains consistent with other similar offences and penalties.

68. This change will ensure this offence and penalty remains fit for purpose in the current border security environment.

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

69. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Offenders	Ongoing – higher penalties will act as a deterrent to offending behaviour and when offending does occur higher and harsher penalties may be applied.	Low – only the most serious offenders will likely get the maximum penalty levels. Given the low number of prosecutions within the past seven years, we expect the impact of this will be minimal.	Medium – there is limited information to confidently forecast impacts, but it is anticipated that serious offenders will receive higher penalties.
Customs	One-off – making legislation, updating guidance and training, and gazetting.	Low – these can be met through existing baseline funding.	High – as these costs can be compared against the implementation of previous law changes.
Department of Corrections	Ongoing – if longer imprisonment sentences are imposed, it will have a marginal impact on the overall corrections system costs.	Medium – there will be some increased costs to the Department of Corrections due to the proposed increase in maximum imprisonment levels. This cannot be predicted as it is judicial decision-making that will influence these costs. Given the expected low rate of prosecutions, these costs will likely remain low.	Medium – there is limited information to confidently forecast impacts, but it is anticipated that serious offenders will receive higher penalties.
Total monetised costs	N/A	N/A	N/A
Non-monetised costs	Ongoing	Low to Medium	Medium to High

Additional benefits of the preferred option compared to taking no action			
Customs	Ongoing – an increase in the deterrence value of this offence may reduce likelihood of offending, ultimately ensuring the safety of Customs officers as they undertake their functions.	Low – removing high-risk persons from the community and preventing further offending.	Low to medium – there is no quantitative data available to evidence the deterrent value of the increase in penalty, given it is an existing offence and will depend on the situation.
General public	Ongoing – Customs’ implementation plan will involve publicising the changes and updating Customs’ operational training to ensure the benefits of this change is maximised.	Medium – it will remove high-risk persons from the community and prevent further offending. Public perception of rule of law is enhanced.	High – public perception will be improved with the intended public-facing communications shared by Customs and the Government.
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	Ongoing	Low to medium	Medium

Section 3: Delivering an option

How will the proposal be implemented?

70. Changes to the Act and relevant regulations are required for implementation. The legislative amendment resulting from the preferred options will come into effect following Royal Assent of the Bill, expected by late-2026.
71. Once the legislation is enacted, secondary legislation will be required to support the adoption of each individual item of equipment, along with the necessary regulatory guidance, practices, and training to support safe and reasonable use.¹⁵ This is expected to leverage off the existing processes and systems in place including training, reporting, and code of conduct.
72. The secondary legislative process will address the specific costs, benefits, risks, and operational decisions in adopting any particular item of equipment. This will be led by Customs' Policy and Legal teams with input from Customs' operational teams as they will be responsible for the implementation and ongoing monitoring of this change, and have a greater understanding of the nature and level of risks for differing functions.
73. Customs will need to establish a process for complaints to be considered relating to the use of the equipment. The public need assurance that defensive, restraint, and protective equipment is being used safely and appropriately. A delegated role within Customs would be responsible for investigating complaints and making recommendations or directions to the chief executive of Customs. Alternatively, the chief executive of Customs could appoint a person or persons external to Customs for this purpose. When investigating a complaint, the delegated individual will be independent from their regular role. Alternatively, a person can submit their complaint to the Ombudsman. This approach is adopted from the existing Corrections model.
74. Specifically for body-worn cameras, Customs will need to make operational policy decisions about the collection, storage, access, retention, and deletion of images and information obtained from the body-worn cameras. This will be considered as the secondary legislation is developed.
75. The preferred options and its implementation will come within the wider communications plan for the Bill.

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

76. Customs' operational teams will have ongoing responsibility for monitoring and evaluating of the day-to-day operations and applications.

¹⁵ This will include de-escalation and communication training, scenario-based training, policy, and training for situations where an officer may be disarmed and have their defensive equipment used against them.

77. The mechanism to process complaints (discussed in paragraph 73) will review incidents and ensure continuous improvement. This will ensure:

77.1. there is sufficient accountability

77.2. people are protected from potential abuse of power, public trust is maintained

77.3. Customs' use of the equipment is appropriate and responsible.

78. Section 437 of the Act requires any Customs officer who uses force under the Act to provide a report to the chief executive of Customs within five working days on the use of force and the circumstances in which it was used. A similar mechanism will be established for the instances of use of less-lethal defensive equipment. There will also be a requirement for the use of less-lethal defensive equipment to be reported in the annual report. This will provide sufficient mechanisms to ensure transparency and monitor the use of the equipment.

79. This reporting and complaints process will feed back into Customs' review of training, assessment of officer competence, and regulatory guidance. This will ensure continual and quality regulatory stewardship.

80. The Act is subject to Customs' ongoing regulatory stewardship function as the agency responsible for administration of the Act. The Act will be reviewed within the next few years which will provide a useful opportunity to consider the legislative changes, if they are working as intended, and to make further refinements if necessary.