



Regulatory Impact Statement: Enabling Customs to undertake visual trespass surveillance

Decision sought	Analysis produced for the purpose of informing Cabinet decisions.
Agency responsible	Ministry of Justice (the Ministry)
Proposing Ministers	Minister of Justice
Date finalised	20 April 2026

The Minister of Justice is looking at enabling Customs to undertake visual trespass surveillance by way of an Order in Council under section 50 of the Search and Surveillance Act 2012 (the Act).

The proposal contributes to the Government priority of restoring law and order, by ensuring law enforcement has the necessary tools to address crime. It contributes to the Government's actions to address methamphetamine-related harm, and transnational, serious, and organised crime.

Summary: Problem definition and options

What is the policy problem?

Visual trespass surveillance (VTS) is a type of surveillance used by law enforcement where officers covertly enter or access (trespass) on private property or goods to install a device, such as camera, to obtain evidence of serious offending.

To detect and investigate the import, export, and distribution of prohibited goods, law enforcement may carry out VTS to observe places like shipping containers, storage facilities, and other large items like industrial equipment that could be used to transport drugs. Operations increasingly require VTS as criminal networks employ more complex importation and countersurveillance techniques.

Currently, Police is the only agency empowered to undertake VTS. Customs cannot, and when VTS is needed, all border operations must be joint with Police. This limits how effectively and efficiently Customs can fulfil its law enforcement function, and puts pressure on resources.

VTS is an intrusive power, which impacts rights, so it is carefully regulated. The Act has safeguards to protect against unreasonable impacts on rights, including the requirement to obtain a surveillance device warrant from a Judge, restrictions on who can apply for a warrant, and for what purpose.

What is the policy objective?

The objective is to ensure Customs can effectively, safely, and efficiently fulfil its law enforcement functions.

The proposal aligns with the objective of the Search and Surveillance Act 2012, which is to ensure that law enforcement has the tools it needs to investigate crime, while recognising fundamental rights and entitlements.

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

Section 50 of the Search and Surveillance Act 2012 (the Act), provides a mechanism for the Minister of Justice to recommend, on consultation with the Minister of Police, that a specified agency be approved to undertake VTS. The scope of options is limited to what may be achieved using this regulatory lever. Therefore, the options are limited to either the status quo or enabling Customs to undertake VTS.

Under the status quo, Customs would not be empowered to undertake VTS. It would continue to provide technical support to Police, who would continue to carry out the activity. The arrangement would continue to limit Customs' ability to respond quickly and efficiently to serious crime, potentially compromising investigations, and diverting Police from other priority work.

Enabling Customs to undertake VTS will strengthen its existing investigatory toolkit, through enabling it to use the most appropriate surveillance tools to address serious crime. It will support more effective and efficient operations by reducing delays and pressure on resources.

There may be non-regulatory changes that could address elements of the problem, such as operational changes to reduce delays. However, these would not address the underlying issue that Customs cannot act independently. It would also not resolve the resource constraints experienced by both Customs and Police.

What consultation has been undertaken?

The Act sets specific requirements for consulting on the proposal. Section 50(2) requires that the Minister of Justice consults with the Minister of Police. In line with this, the Minister of Justice consulted the Minister of Police between December 2025 and January 2026, and he advised that he endorses the proposal.

Our timelines have not allowed for broader consultation as this work is progressing at pace to meet Government commitments to address methamphetamine-related harm, and to strengthen law enforcement responses to transnational, serious, and organised crime.

We also consider that public consultation on the question of Customs' technical capability, policies, and procedures, would have limited utility, as this assessment requires technical and operational expertise and knowledge of law enforcement policies and procedures.

On the broader question of non-Police use of VTS, we have relied on the large body of work and consultation undertaken during earlier processes, including the development of the Search and Surveillance Bill, the 2010 Select Committee process, and the 2016-2017 joint Ministry of Justice and Law Commission statutory review of the Act.

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)

- **Customs:** No significant financial costs or substantial operational changes required to implement the option.
- **Police:** No additional costs identified.
- **Justice / the Courts:** Minimal impact on the volume of applications for surveillance device warrants going to the Courts.
- **People and property under surveillance:** No monetary cost identified. May intrude on privacy and property.
- **General public:** No monetary cost identified. May intrude on privacy and property.

Benefits (Core information)

- **Customs:** Strengthened investigatory toolkit, enabling more effective operations to detect, investigate, and prosecute serious crime. More efficient operations, enabling faster action. Enhanced operational intelligence for future operations.
- **Police:** Minor benefits from freed up resources that could be deployed on other priority work.
- **Justice / Courts:** Proposal aligns with the purpose of the Search and Surveillance Act 2012, which is administered by the Ministry.
- **People and property under surveillance:** Efficient and effective law enforcement may have flow on benefits for property owners impacted by criminal activity e.g. it may prevent criminal groups from using and/or damaging private property.
- **General public:** Efficient and effective law enforcement to prevent crime and hold offenders to account. Improved trust and confidence in law enforcement from more effective investigations and prosecutions.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

The benefits are likely to outweigh the costs. However, we note impacts and risks associated with the proposal.

The proposal may impact the rights of people under surveillance, including owners, staff and visitors of private property under surveillance (who may not be offending or aware of offending). The proposal may also impact the public, if unintentionally surveilled.

The Act includes safeguards to mitigate the risk of unreasonable intrusions into privacy and property, including the requirement to obtain a surveillance device warrant from a Judge, restrictions on who may obtain a warrant, and for what purpose.

Customs has established policies and procedures in place to ensure surveillance device warrants are executed in the least intrusive way, and that the information is used in a way that is in accordance with legislative requirements. The procedures were developed in conjunction with Police.

We also note the possible safety risk for Customs officers who deploy the surveillance devices. Police considers that Customs has the capability to undertake VTS safely.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

An Order in Council under the Search and Surveillance Act 2012 is required to give effect to the proposal.

Customs will be responsible for implementing the proposal. Customs advises there are no significant financial costs, and no significant operational changes are required because the proposal is an extension of existing capability and practice. Customs officers will also undertake a safety training course delivered by Police.

Limitations and Constraints on Analysis

The analysis is limited by the Ministry's statutory role in the process, which is specified at section 50(2) of the Act. The scope of options is therefore limited to what may be achieved using the regulatory lever. Responsibility for any non-regulatory options, and their assessment, lies with the enforcement agencies.

The Act requires the Minister to assess whether Customs is an appropriate agency to undertake VTS, but it recognises that the Ministry does not have the technical expertise to make the assessment, and that Police is the most appropriate agency to advise on the matter. Accordingly, our analysis of the preferred option is based on:

- the analysis provided by Police that assesses Customs' suitability to undertake VTS safely, and
- our assessment that Customs is an appropriate agency because it investigates offending that meets the penalty threshold for VTS use established in the Act.

Our analysis of the problem was limited by the quantitative evidence available. Customs does not record missed opportunities when detecting and investigating serious crime, so it has limited quantitative evidence of the scale of losses arising from the current process.

Our impact assessment in relation to risks is also limited. Customs provided high level safety and privacy risk mitigation strategies, endorsed by Police, which outline the approach taken to operational planning. Detailed strategies cannot be provided as these are designed bespoke to each operation and access to that information is restricted to those within an operation (for operational security and safety reasons).

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 signature



Caroline Greaney
Deputy Secretary, Policy
20 April 2026

Quality Assurance Statement

Reviewing Agency: Ministry of Justice

QA rating: Partially meets

The Ministry of Justice RIA Panel has reviewed the Regulatory Impact Statement “Enabling Customs to undertake visual trespass surveillance” by the Ministry of Justice and considers that it partially meets the Quality Assurance criteria.

The RIA is complete, clear and concise, and convincing. In particular, it clearly sets out the problem, constraints on analysis, and why it is appropriate for the Ministry to rely on Police analysis regarding Customs’ suitability to undertake visual trespass surveillance (VTS).

The impact analysis is constrained by limited consultation with stakeholders on the specific question of whether Customs should carry out VTS. The reasons for not consulting more broadly than government agencies and the Minister of Police are well articulated and the paper is clear that public consultation on this issue may have limited utility given the narrow scope of the question being asked. A summary of previous stakeholder views is included and is useful as proxy for what stakeholders might say if consulted now. However, wider consultation with people potentially affected by VTS by Customs may have provided different views on privacy or personal property rights. The analysis is otherwise robust and can be relied on by Cabinet in its decision-making.

Section 1: Diagnosing the policy problem

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

Law enforcement uses visual trespass surveillance to detect and investigate transnational, serious, and organised crime

1. Transnational, serious, and organised crime is increasingly sophisticated and complex to investigate.
2. Criminal groups embed and exploit ‘trusted insiders’ within the supply chain to facilitate criminal offending, including alerting offenders of suspicious delays or deviations from normal processes.¹
3. Law enforcement uses visual trespass surveillance (VTS) to detect, investigate, and ultimately prevent serious crime. VTS is a type of surveillance used by law enforcement where officers covertly trespass (enter or access) on private property or goods to install a device, such as camera, to collect evidence of serious offending.
4. VTS is used to observe shipping containers, storage facilities, and other large items such as industrial equipment used to transport illegal and prohibited goods, including drugs. VTS enables law enforcement to obtain stronger evidence. Direct camera footage of offending provides greater evidential value than camera footage of the exterior of where crime is likely occurring.²
5. Police have successfully used VTS for many years in a variety of operational settings to yield strong evidence for prosecution and gain a greater understanding of offending to inform operational planning.

The Search and Surveillance Act 2012 regulates law enforcement use of VTS in New Zealand

6. The Search and Surveillance Act 2012 (the Act) is the primary legislation for search and surveillance powers exercised by law enforcement in New Zealand. The purpose of the Act is to facilitate the investigation and prosecution of offences in a way that is consistent with human rights values.
7. The Act includes a surveillance device warrant regime to regulate the use of electronic surveillance by law enforcement.
8. The regime establishes certain requirements for a surveillance device warrant. Only a Judge may issue the warrant, and its use is subject to judicial monitoring and reporting requirements.
9. The Act includes the power to undertake device surveillance for a period of 48 hours without a warrant, in certain specific urgent or emergency situations (including serious drug offending).³ An enforcement officer must provide a report to a Judge within one month of the device’s use. The report must detail the urgent or emergency-related circumstances in which the surveillance device was used, and other matters such as

¹ [Ministerial Advisory Group on Transnational, Serious, and Organised Crime \(May 2025\) Corruption in New Zealand and the Pacific p. 3](#)

² For instance, camera footage from inside a storage unit may return better evidence of a crime taking place than camera footage of outside the unit.

³ [Section 48, Search and Surveillance Act 2012.](#)

whether the device captured evidence for a relevant offence, whether it prevented or stopped an emergency situation, or whether it facilitated the seizure of firearms.

10. The requirements for surveillance device warrants to undertake VTS and interception⁴ are tighter than those for general surveillance device warrants. The Act requires that a surveillance device warrant to undertake VTS and interception can only be issued if an investigation relates to an offence that is punishable by at least seven years' imprisonment or for specified serious drug and firearm offences. The Act also requires that only Police constables and approved specified agencies may apply for a surveillance device warrant to undertake these activities.
11. The additional requirements reflect the view that VTS is a more intrusive form of surveillance. Surveillance more generally is an intrusive power because it can be used to obtain a lot of personal information and is covert. It is anticipatory, meaning that it can be undertaken in relation to offending that may not have taken place, but where there are reasonable grounds to suspect that it might.
12. VTS is a particularly intrusive type of surveillance because it requires the covert installation of a device on or in private property or goods. Owners, staff and visitors of private property under surveillance may not be offending or aware of offending.

Customs cannot carry out VTS. When it is needed, border operations must be joint with Police

13. Currently, only Police can undertake VTS independently. If VTS is needed, the operation needs to be joint with Police.
14. Joint operations include controlled deliveries. A controlled delivery is an investigatory technique where suspect consignments (such as drugs) are not immediately seized but are instead placed under surveillance. The aim is to identify, monitor, and prosecute the organisers, financiers, and recipients involved.
15. Customs can undertake several technical elements of a controlled delivery, including installing tracking devices and non-trespass visual surveillance. However, Customs needs Police to apply for the surveillance device warrant carry out VTS.
16. The time and resources required for each joint operation varies significantly. VTS operations range from half a day to months or years-long investigations. The volume of staff involved, or the monetary costs incurred also necessarily vary.
17. In practice, to streamline the joint arrangement, Customs typically relies on Police to obtain all the surveillance device warrants required, not just those required for VTS.
18. We do not have precise data on how often Police undertake VTS, or how often Customs requires Police to undertake VTS as part of joint operations. However, a combination of Customs and Police reporting is indicative of approximate volumes of visual device surveillance more generally.
19. In 2024/25, Police obtained 78 warrants for use of a visual surveillance device, and 29 that authorised entry onto private premises, which is a reduction from a total of 40 in the year prior. However, these values include several types of surveillance, not all attributable to VTS, so are not an accurate indicator of VTS use alone.⁵

⁴ Interception refers to the use of a device to intercept or record a private communication while it is taking place or in transit. It is not restricted to listening or hearing a conversation, and may include recording or monitoring other forms of communication, including those in digital formats.

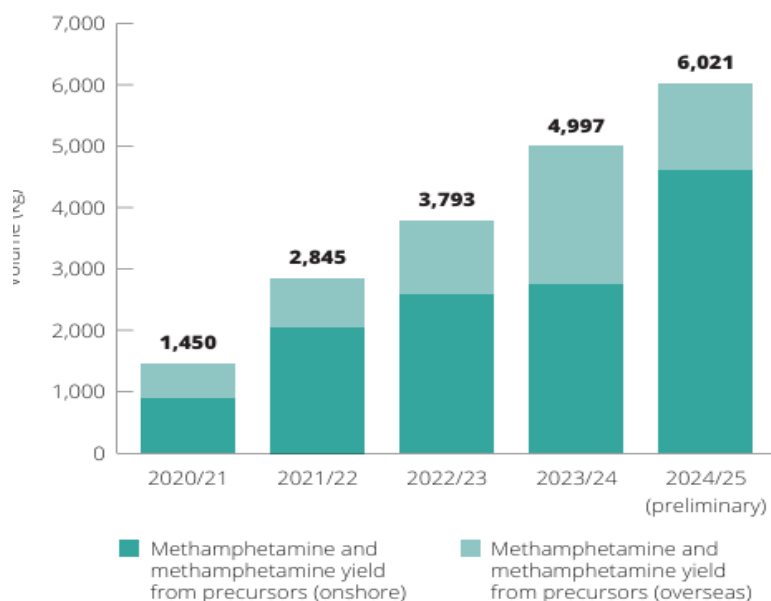
⁵ [New Zealand Police \(2024-25\) Annual Report p. 156](#)

20. From July 2024 to December 2025, Customs reported the use of 19 tracking devices, and 17 visual surveillance devices (standard CCTV). Of the visual surveillance devices, 11 were used for 3-7 days, and 6 were used for between 7-21 days. One device was used for more than 60 days, requiring multiple warrants to allow for ongoing use.⁶
21. Since 2017, Customs' use of visual surveillance devices has ranged between 12-17 instances, with an outlier increase to 34 devices in 2024. However, there does not appear to be a discernible trend of increase in device use over this time.⁷

The scale and sophistication of drug crime is increasing, which pressures joint operations

22. Over several years, Customs has observed a consistent increase in transnational, serious, and organised crime groups attempting to smuggle drugs into New Zealand. In 2024/25, Customs reported a sharp increase. It prevented 9.3 tonnes of illicit drugs from reaching New Zealand communities.⁸
23. Methamphetamine made up approximately 65 percent⁹ of illicit drugs seized, with over 6 tonnes of methamphetamine seized at the border or in transit to the border (a significant increase on years prior).¹⁰ The seizure was estimated to prevent \$6.3 billion in social harm from drug use.¹¹

Figure 1: Methamphetamine seizures by Customs and overseas partners



Source: [New Zealand Customs Service \(2025\) Annual Report p. 35.](#)

24. In September 2024, a shipping container of steel beams was imported from the United States with 450kg of methamphetamine hidden inside. It was seized at the border. The seizure prevented approximately \$480 million of social harm and demonstrates the increased scale and complexity of smuggling attempts.

⁶ [New Zealand Customs Service \(2025\) Annual Report p. 158](#)

⁷ [New Zealand Customs Service \(2018\) Annual Report p. 95-96](#)

⁸ Primarily methamphetamine, cocaine, MDMA (ecstasy), GBL (fantasy), and ketamine.

⁹ The percentage is made up of 50.5% methamphetamine and 14.5% methamphetamine-precursors.

¹⁰ [New Zealand Customs Service \(2025\) Annual Report p. 35](#)

¹¹ [New Zealand Customs Service \(2025\) Annual Report p. 35-36](#)

Customs has requested approval under the Act to carry out VTS

25. The Search and Surveillance Act 2012 (the Act) provides a process for specified agencies to obtain approval to carry out VTS.
26. The process enables the Minister of Justice to recommend an Order in Council to enable a specified agency to carry out interception and/or VTS.
27. Before making the recommendation, the Minister must be satisfied that certain conditions are met:
 - a. that it is appropriate for the agency to carry out VTS, and
 - b. that the agency has the technical capability, and the policies and procedures in place, so that the surveillance can be carried out in a manner that ensures the safety of the people involved in the surveillance.
28. To inform the Minister on the statutory requirements, the Act requires consultation with the Minister of Police.

What is the policy problem or opportunity?

29. Currently, under the Act, only Police can undertake VTS. Customs cannot. When VTS is needed to obtain stronger evidence of offending, the operation needs to be joint. Customs can carry out several elements of the operations, including the installing of tracking devices, but it needs Police to carry out VTS and apply for the associated warrant (subject to Police availability).
30. The arrangement impacts on how effectively and efficiently crime can be detected, investigated, and prosecuted. It reduces how quickly law enforcement can respond to serious crime and puts pressure on Police resources.
31. s6(c)
32. This dependency risks delays because it means that use of VTS in an operation is subject to Police availability to carry out the activity. The duration of operational delay varies depending on specific circumstances and technical requirements. While Customs cannot precisely standardize the delay, it conservatively estimates that the operational delay is one day at minimum.
33. Speed is critical because organised crime groups embed and exploit ‘trusted insiders’ (e.g. couriers) within the supply chain to facilitate criminal offending, including alerting offenders of suspicious delays or deviations from normal processes.¹² Even delays of a few hours risk compromising operations.
34. Police and Customs also operate with constrained resources that must be used as efficiently as possible to meet public expectations of law enforcement agencies and effectively address crime.

¹² In May 2025, the Government announced funding to address the threat of trusted insiders through by improving supply chain security. [Hon Casey Costello \(10 May 2025\) Investing more to stop illicit drugs entering NZ](#)

35. Customs does not record missed opportunities or 'efficiency losses' in an operation because it does not record the instances when an activity does not take place. Therefore, we have limited quantitative evidence of how much the problem limits the effectiveness of operations.
36. Without intervention, Customs will continue to not undertake VTS. It will provide technical support to Police, who will continue to carry out the activity. The arrangement will continue to limit them from responding quickly and efficiently to serious and organised crime, potentially compromising investigations, and diverting Police resources from other high-priority tasks.
37. In December 2025, Customs requested approval to undertake VTS.

What objectives are sought in relation to the policy problem?

38. The overall objective is to ensure Customs can effectively, safely, and efficiently detect, investigate, and prosecute crime.
39. This objective aligns with that of the Act, which requires that the legislation is kept in-step with advances in modern technology.¹³ The investigative tools should be sufficient for law enforcement, but consistent with human rights values.
40. The work also fits within the Government's law and order priorities, including the Government's action plans to address methamphetamine-related harm and transnational, serious and organised crime.¹⁴¹⁵

What consultation has been undertaken?

41. The Act sets specific requirements for consulting on the proposal. Section 50(2) requires that the Minister of Justice consults with the Minister of Police. In line with the required process, the Minister of Justice consulted the Minister of Police between December 2025 and January 2026.
42. Police engaged with Customs in January 2026 to undertake the technical assessment of Customs' capability, policies, and procedures, as required by the Act. Police considers that Customs meets the statutory requirements. We also closely engaged with Customs and Police to develop this advice.
43. The Minister of Police has advised that he endorses the proposal.
44. We consulted with the following agencies on draft advice in March 2026: Customs; Police; the Crown Law Office; the Ministry of Business, Innovation, and Employment; the Treasury; the Ministry for Primary Industries; the Ministry of Transport; the Department of Internal Affairs; the Office of the Privacy Commissioner; the Department of Prime Minister and Cabinet (National Security and Resilience Group); and the Ministry for Regulation.
45. These agencies were identified on the basis that they represent a range of views and expertise, including different enforcement agencies and the OPC, to support balanced advice.
46. This work is progressing at pace to meet Government commitments to address methamphetamine-related harm and strengthen border security. We consider that public consultation would have limited utility, as the assessment requires technical and

¹³ [Section 5\(a\), Search and Surveillance Act 2012.](#)

¹⁴ [Hon Casey Costello \(20 December 2025\) New plan to tackle organized crime.](#)

¹⁵ [Hon Paul Goldsmith \(9 November 2025\) Action plan to address methamphetamine related harm.](#)

operational expertise and knowledge of confidential law enforcement policies and procedures.

47. On the broader question of the appropriateness of Customs' use of visual trespass surveillance, we have relied on the large body of work and consultation undertaken during earlier processes, including:
- a. the development of the Search and Surveillance Bill,¹⁶
 - b. the 2010 Select Committee process on the Search and Surveillance Bill,^{17 18} and
 - c. the 2017 joint Ministry of Justice and Law Commission review of the Act.¹⁹

Summary of previous stakeholder views

48. VTS and interception were originally treated the same way as other forms of surveillance in the Search and Surveillance Bill (as introduced in 2009). At Select Committee, stakeholders expressed concern about VTS capability being extended to non-Police agencies. Stakeholders were concerned that non-Police agencies may not have the training and experience needed to run surveillance operations, and that the installation of VTS devices risks the safety of enforcement officers.²⁰
49. Select Committee responded by restricting the use of VTS to investigating serious and specified offending, and that it can only be carried out by Police and approved agencies. The Select Committee established this approval process as it considered that Customs and DIA investigate the right type of offending but should be required to demonstrate their technical capability, and policies and procedures before being empowered to carry out VTS.²¹
50. In 2017, stakeholder submissions on the joint review of the Act reinforced the view that the approval process is an appropriate approach.²²

Section 2: Assessing options to address the policy problem

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

51. The following criteria will be used to compare the option to the status quo:
- a. **Effectiveness and efficiency:** the extent to which the option enables effective and efficient law enforcement.
 - b. **Appropriateness:** the extent to which the proposal aligns with the intent of the Search and Surveillance Act 2012, which limits the use of VTS.
 - c. **Implementation:** the extent to which Customs has the technical capability, policies, and procedures to undertake VTS safely.
 - d. **Consistency:** the extent to which the option is consistent with human rights values, privacy principles, and private property rights.

¹⁶ [NZLC R97.](#)

¹⁷ [Summary Departmental Report \(2010\) Search and Surveillance Bill](#)

¹⁸ [Departmental Report for the Justice and Electoral Committee \(2010\) Search and Surveillance Bill](#)

¹⁹ [NZLC R141.](#)

²⁰ [Departmental Report for the Justice and Electoral Committee \(2010\) Search and Surveillance Bill, p. 46 - 48](#)

²¹ [Search and Surveillance Bill 45-2 \(2009\) Government Bill Commentary](#)

²² [NZLC R141, p 141.](#)

What scope will options be considered within?

52. The scope of options is limited to what may be achieved using the regulatory lever provided at section 50(2) of the Act. Therefore, the options are to either maintain the status quo or enable Customs to undertake VTS.
53. We acknowledge that there could be non-regulatory changes such as operational adjustments that may reduce or prevent delays associated with the current arrangements. However, non-regulatory options would not address the underlying concern about Customs' ability to use the most appropriate surveillance tools for investigations when operating alone, which undermines its ability to collect the strongest evidence for prosecutions.
54. Non-regulatory options would not resolve the resource constraints experienced by both Customs and Police and would likely only result in minimal efficiency (time and resource) gains.

What options are being considered?

Option One – Status Quo

55. The Status Quo maintains the existing VTS arrangement.
56. Customs cannot undertake VTS. Where VTS is required, Customs is limited to supporting Police in joint operations. While it can undertake several elements of a joint operation, it requires Police to apply for the surveillance device warrant and undertake VTS.

Option Two – Enable Customs to undertake VTS

57. Option Two consists of enabling Customs to undertake VTS, by an Order in Council under the Act.
58. Under this option, Customs would be required to comply with the existing requirements and restrictions on VTS as a part of the surveillance device regime under the Act.
59. Under the Act, a Customs officer could apply to a Judge in the District or High Court for a surveillance device warrant to undertake VTS. An application can only be made if relation to offending punishable by 7 or more years imprisonment, or certain specified offending.
60. In addition to the Act's requirements, Customs operational polices would necessarily restrict the use of VTS to Customs officers within the Customs Technical Unit (CTU) who have received specialised training and authorisation (including physical fitness and tactics training) to undertake the activity.
61. Joint operations between Customs and Police would continue to occur, where appropriate. Customs officers would undertake a training course delivered by Police on covert operator safety.

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

	Option One – Status Quo	Option Two – Enable Customs to do VTS
Effectiveness and efficiency	0	+ The option would enable Customs to undertake faster and more seamless operations to effectively fulfil its law enforcement functions.
Appropriateness	0	+ The option aligns with the intent of the Act, which limits the use of VTS. Customs investigates a range of suspected serious and specified offending, which meets the threshold established in the Act, and where VTS may be considered a proportionate tool.
Implementation	0	0 / - Police assessed that Customs has the technical capability, policies, and procedures implement the option safely. No significant implementation is required. There is a possible safety risk for Customs officers, which could increase if Police are not present. However, Police are satisfied that Customs can undertake VTS safely.
Consistency	0	0 The proposal engages human rights values, privacy, and property rights, but we consider impacts are reasonable and on balance with law enforcement objectives.
Overall assessment	0	+ The option meets the objectives.

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

Option 2 will best address the problem and meet the objectives

62. Enabling Customs to carry out VTS will strengthen its existing investigatory toolkit. It will empower Customs to use the most appropriate surveillance tools when investigating serious drug crime (potentially also objectionable material), which will enable it to obtain stronger evidence for its prosecutions.
63. Customs anticipates that the proposal offers many downstream benefits. It will prevent social harm through disrupting the supply of prohibited goods, such as drugs, into New Zealand. This will also protect New Zealand's reputation through successful prosecutions and will enhance Customs' ongoing operational intelligence.
64. Option 2 will support more efficient operations by reducing the risk of delays and pressure on resources. It will allow Customs to independently apply for a surveillance device warrant to undertake VTS, and independently carry out VTS alongside other necessary and important technical work.
65. Police advise that it expects some minor resourcing benefits, because Police would not always be needed to undertake VTS and apply for the associated warrant to carry out the activity. That resource could be allocated to other priority frontline duties. For joint operations, Customs expects that Police would continue to be the lead agency and apply for the warrants, though both agencies may carry out the VTS.
66. Customs cannot provide specific estimates of anticipated volume of VTS use because its use is driven by operational intelligence and investigatory requirements. However, based on previous reporting, we expect the proposal would not substantially increase the volume of surveillance device warrants applications going to Judges. The existing total volume of surveillance device warrants applications going to Judges for VTS is already low.

Customs is an appropriate agency to carry out VTS

67. Customs is an appropriate agency to undertake VTS because it investigates serious offending that meets the penalty threshold established for VTS in the Act (where the use of VTS is limited to offending punishable by 7 or more years in prison or specified serious drug offending).
68. Customs' appropriateness to undertake VTS aligns with original intent of the Act, which restricts the use of VTS to investigations of serious or specified crime. This is so that any intrusions on privacy or property, and impacts on rights, are reasonable and proportionate to the severity of the possible offending and harm.

Customs has the technical capability, and policies and procedures to carry out VTS safely

69. The Ministry of Justice does not hold the expertise to assess Customs VTS capability and suitability to undertake VTS safely. The Act anticipated this, and therefore requires that the Minister consult with the Minister of Police. Police has the technical knowledge and expertise to endorse Customs' VTS capability, policies, and procedures. It regularly works with Customs on joint operations, so it has an awareness of Customs' existing surveillance capability.
70. The Minister of Justice consulted the Minister of Police about whether it is appropriate for Customs to carry out VTS, and whether it has the technical capability, and the policies and procedures in place to carry out the activity safely. The Minister of Police advised that

Police support this proposal because it considers Customs meets the statutory requirements under the Act.

71. A letter confirming the Minister of Police's support for this proposal followed a workshop between Police and Customs, where Police was satisfied as to:
- a. why it is necessary for Customs to be able to undertake VTS independently,
 - b. that Customs has the technical capability to undertake VTS independently, and
 - c. that Customs has the policies and procedures in place, so that surveillance can be carried out in the manner that ensures the safety of the people involved in the VTS.
72. Police advise that Customs has the technical capability to undertake VTS safely. Through its joint operations Police has observed Customs' personnel and equipment capability, and its ability to execute technical functions needed for VTS. Police is satisfied that Customs has the required knowledge of the relevant legislation and the technical skills needed.
73. Police also advise that Customs has the necessary policies and procedures in place to do it safely. Customs supplied Police with documents to support the request, which Police endorsed. The documents covered requirements for operational planning, risk assessment, authorisation and oversight, and technical skills. We also received the documents and we are of the view that these were appropriate for Police to use in making their assessment (noting that we do not have the technical expertise to fully consider the documents).
74. A central element of the statutory test is whether Customs can undertake VTS in a manner that ensure the safety of those involved. The installation and removal of surveillance devices may put Customs officers in unsafe situations, particularly where the installation involves trespass to premises where crime may be occurring. Accordingly, Customs officers are also trained in officer safety and tactics. Customs officers in the CTU receive specialised training on covert tracking device installation.
75. Customs' safety mitigation strategies are designed bespoke to operational requirements and this information is restricted for safety purposes. Customs policies and procedures demonstrate the additional planning, communications, and sign-out requirements established for VTS, in alignment with the increased safety risk. The procedures were designed in conjunction with Police, and Police assessed the procedures as meeting the statutory requirement. If operational planning and threat assessment identifies a significant safety risk, Customs seek Police support. If Police are unavailable, Customs do not carry out the operation.
76. Police previously signalled its support for Customs to undertake VTS in 2022, when a similar process was commenced.²³ Due to the time passed, Police conducted work to reconfirm its position.

There are established safeguards to protect against unreasonable impacts on rights

77. The proposal engages the right to be secure against unreasonable search or seizure in section 21 of the New Zealand Bill of Rights Act 1990 (NZ BORA). The right is engaged in the same way, and to the same extent, by the existing Police power to undertake VTS.

²³ However, the work stalled due to resourcing reprioritization in line with other Government priorities.

78. The Act has safeguards, applicable to Customs, which protect against unreasonable search and seizure (including the requirements in the surveillance device warrant regime discussed below). Customs also has established policies and procedures in place, endorsed by Police, to protect that right (also discussed below).
79. While other less intrusive methods of surveillance are effective, VTS specifically enables law enforcement to obtain higher quality evidence of offending to address serious crime. High quality evidence is crucial to disrupt criminal activity and ultimately address serious crime.
80. The proposed power may also impact on the right to privacy²⁴ and private property of those under surveillance, or those whose property or goods are under surveillance. Again, these rights are engaged in the same way, and to the same extent, as the existing Police power to undertake VTS.
81. The Act provides safeguards to ensure the use of surveillance powers are reasonable, and to minimise impacts on privacy. The purpose of the Act is to provide settings that recognise the importance of human rights values and privacy.²⁵
82. In the specific case of VTS, the surveillance device warrant regime imposes a range of restrictions to safeguard against impacts on privacy and property, including:
 - a. judicial decision making on whether to issue a surveillance device warrant for visual trespass surveillance,
 - b. further judicial discretion to impose certain conditions on the warrant, and²⁶
 - c. limits on who can use VTS, and for what purpose, to safeguard against unreasonable use.^{27 28}
83. The Law Commission considers that maintenance of judicial decision-making powers, with respect to VTS surveillance device warrants, is appropriate.²⁹ Judges have the expertise and training required to scrutinise warrant applications, and in doing so, balance the rights and interests of the public.
84. The warrantless use of VTS in urgent or emergency situations³⁰ may have a greater impact on rights because Judges are not required to scrutinise a warrant application.³¹ The impact on rights is reasonable insofar as it is restricted to serious crime with high-harm. The power includes a judicial reporting requirement for oversight purposes. Customs also has a robust internal approvals authorisation framework, which officers are required to follow when a warrantless power is needed.

²⁴ Which is included in the International Covenant on Civil and Political Rights.

²⁵ [Section 5\(b\), Search and Surveillance Act 2012.](#)

²⁶ [Section 53, Search and Surveillance Act 2012.](#)

²⁷ [Sections 45, Search and Surveillance Act 2012.](#)

²⁸ [Sections 54, Search and Surveillance Act 2012.](#)

²⁹ [NZLC R141, p. 145.](#)

³⁰ [Section 48, Search and Surveillance Act 2012.](#)

³¹ Research suggests that Māori experience increased warrantless searches. [Leonard, C., Sanaei, N., Hynds, A., & Leonard, J. \(2024\). Evidence Report 2: Analysis of complaint data. Understanding Policing Delivery. Ihi Research.](#)

85. Customs has established operational policies and procedures³² in place to ensure that surveillance device warrants are executed the least intrusive way possible, to limit impacts on privacy and private property, including:
- a. tradecraft and operating procedures (e.g. camera positioning and timing of device installations) to ensure the impact on privacy, private property, and third parties as minimal as possible,
 - b. robust internal oversight, authorisation frameworks, and training requirements that demonstrate the higher level of scrutiny required for VTS,³³
 - c. risk mitigation and governance processes, which limit unintended consequences to the public, consistent with Police processes,
 - d. a duty of care for property, ensuring that it is returned to its original condition on completion of the surveillance,
 - e. restrictions over monitoring and reviewing surveillance imagery, and procedures governing the retention and disposal of the surveillance information (including raw data), in compliance with legislative requirements.
86. In light of the safeguards, and the overarching objective to address serious crime, we consider that Customs has the necessary safeguards in place to ensure that the power is not unreasonably intrusive.

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

87. 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			
Customs	One off – minimal implementation cost Ongoing – minimal	Low	Medium
Police	Nil expected cost	N/A	High
Justice / Courts	Nil expected cost	N/A	High

³² Customs provided high level detail on the privacy risk mitigation strategies. Specific strategies are designed bespoke to operational requirements and access to the more detailed strategies restricted for safety purposes.

³³ Currently, all of Customs surveillance device warrant applications are reviewed internally prior to being authorised at the courts. Applications are reviewed by the Chief Customs Officers in the Customs Investigations Unit and the Customs Legal Operations Team. VTS operations will have the same, if not higher, level of internal review depending on certain factors.

People and property under surveillance (suspects and property owners)	Ongoing –privacy or property intrusion	Low	Medium
Public	Ongoing –privacy or property intrusion	Low	Medium
Total monetised costs	N/A	N/A	N/A
Non-monetised costs	<i>One-off / ongoing</i>	<i>Low</i>	<i>Medium-high</i>
Additional benefits of the preferred option compared to taking no action			
Customs	Ongoing – efficient and effective operations	High	Medium
Police	Ongoing – freed up resources for the Police priorities	Low	High
Justice / Courts	Ongoing – alignment with core legislation	Low	High
People and property under surveillance (suspects and property owners)	Ongoing – effective law enforcement may prevent harm to private property from criminal activity	High	Medium
Public	Ongoing – effective law enforcement, disrupting crime, reducing harm	High	Medium
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	<i>Ongoing</i>	<i>Medium-high</i>	<i>Medium-high</i>

Section 3: Delivering an option

How will the proposal be implemented?

88. An Order in Council under the Search and Surveillance Act 2012 is required to give effect to the proposal.

Operational changes to implement the proposal

89. Customs will be responsible for implementing any operational changes required to give effect to the proposal. It advises that no significant implementation uplift is required.
90. The proposal is an extension of existing enforcement powers and practice. Customs has the administrative capability required, including experience with device warrant applications and reporting processes. The Customs Technical Unit (CTU) has established expertise in installing tracking devices and non-trespass covert CCTV equipment. Extending the existing capability to visual trespass is not a significant shift.
91. Customs advises that only officers within the CTU who meet the training requirements would be authorised to undertake VTS. Requirements include health and safety tests and technical training, developed in conjunction with Police. Customs officers will undertake

a training course on covert operator safety. Police advises that it will have an ongoing support role for Customs, as required.

92. The training and compliance requirements will be communicated with Customs officers through its operational policy documents.
93. The proposal is expected to have low operational impact for the Ministry of Justice. Implementation actions would include notifying Judges, and updating existing internal knowledge bases, to clarify that Customs may apply for surveillance device warrants to carry out VTS.

Funding

94. Customs does not expect to incur significant cost to operationalise the proposal. It has already procured the equipment required to undertake the VTS, and it has established a procurement roadmap to meet any future needs. Any additional cost can be met from within Customs' baseline.
95. Customs does not anticipate additional training costs. Training would be delivered on an agency-to-agency basis using existing resources and arrangements.

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

96. The Ministry is responsible for administering the Act. Customs is required by the Act to report on its investigation and enforcement activities through its annual reporting, which also provides the opportunity to raise any concerns or risks associated with the process.
97. Customs advises that all its visual surveillance activity is logged, and that this practice will extend to VTS. Any issues, including operational compromises or other unintended consequences will be recorded through its standard internal reporting, and escalated to senior management as required. Customs' Legal Operations team will remain engaged across all its surveillance device warrant activity, including VTS, to provide ongoing legal oversight and address any emerging issues.
98. The Ministry will continue to work with Customs and Police to monitor the effectiveness and outcomes of the new capability, and will work with Customs, Police, and the Courts to advise of any unintended consequences of the Order.
99. If issues are identified following commencement of the Order, the Ministry may record the issues within its internal Regulatory Issues Register. The Register allows unassessed issues with legislation administered by the Ministry to be flagged and recorded centrally.