

Civil fees review

A public consultation paper

September 2012

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Foreword

The Government is consulting on proposed changes to fees for court and tribunal services in the civil jurisdiction.

People initiating action in the civil court and tribunal system can be seeking personal gain – for example, a financial settlement – rather than something that will benefit the general public. People seeking these private benefits are asked to contribute a proportion of the cost of the service, so that the burden doesn't fall entirely on the taxpayer.

However, the civil court and tribunals system also has many public benefits, both direct and indirect. It enables people, businesses and public bodies to resolve disputes and to determine and enforce their legal rights in accordance with the law. Through this, it helps maintain social cohesion and economic growth.

The Ministry of Justice (the Ministry) has been asked to develop a framework for fee setting that considers the balance of public and private gain from civil court and tribunal services, and allocates the cost between taxpayers and those accessing the service accordingly. To ensure people can access justice regardless of their personal financial circumstances, there is a robust fee waiver system in place for those who can't afford to pay.

Countries address this question of balance differently. Cost recovery across civil jurisdictions is more than 30 percent in New South Wales and closer to 80 percent in England and Wales. Our proposed changes would involve increasing cost recovery from 15 to 20 percent.

This consultation paper is the result of a review of the role of courts and tribunals in civil proceedings, and the issues and challenges of current fee regimes, which have developed on an ad hoc basis. It suggests a framework that should underpin fee settings, which will set a path for future fee adjustments. Using this framework, it proposes changes to current fees – that some increase and others decrease. It includes the introduction of a fee regime for criminal history checks requested by third parties, and for transcription services.

These proposals aim for principled, consistent and equitable fee setting that continues to provide users with meaningful access to justice. They also aim to structure fees in a manner that is easy to understand, encourages efficiencies and ensures appropriate use of the court and tribunal system.

These proposals set out the Ministry's view about the future direction for civil fees regimes, including some significant changes. I'm particularly interested in feedback about the balance between public and private benefits, the approach to fee setting and the implementation of new fee regimes.

I encourage the public and stakeholders to share their views on these proposals.



Hon Chester Borrows
Minister for Courts

25 September 2012

Executive summary

Overview

1. Civil fees are charges that recover the cost, or a proportion of the cost, of government-provided services delivered in a civil jurisdiction. They range from fees for court hearings to charges for the provision of information. Civil fees were last comprehensively reviewed between 2001 and 2003. Over recent years fees have been introduced in an ad hoc manner without reference to an overarching policy.
2. Other than by a GST increase in 2010 and an adjustment by the Consumers Price Index in 2011, most fees have not changed since 2004, and some have not changed since their introduction in the 1990s. In September 2011 the Government agreed that a first-principles review of civil fees (the review) was needed to deliver a principled, consistent and equitable approach to setting fees.
3. The review sought to:
 - ensure access to justice in the setting of fees
 - determine appropriate cost recovery
 - create incentives for the appropriate use of the civil justice system
 - establish a firm set of principles to guide the setting of civil justice fees
 - ensure that fees across the wider justice sector are set on a principled, consistent and equitable basis.
4. The review covered civil fees for courts of general jurisdiction (the District Courts, High Court, Court of Appeal and Supreme Court); specialist courts (the Employment Court, Environment Court and Māori Land Court) and the 21 tribunals which the Ministry administers and which are in scope of the review.¹ It also addressed requests for criminal history information held by the Ministry and court proceedings transcription services, for which there are currently no fees.

Policy framework and application

5. The Ministry has developed a framework to guide the setting of civil fees. The framework draws on existing guides and sources² and proposes a set of questions as relevant for setting fees in civil jurisdictions. These questions, along with general findings and proposals, are set out in the following table.

¹ These are: Accident Compensation Appeal Authority, Accident Compensation Appeals (District Court Registry), Copyright Tribunal, Customs Appeal Authority, Disputes tribunals, Human Rights Review Tribunal, Immigration Advisers Complaints and Disciplinary Tribunal, Immigration and Protection Tribunal, International Education Appeal Authority, Lawyers and Conveyancers Disciplinary Tribunal, Legal Aid Tribunal, Legal Complaints Review Officer, Licensing Authority of Secondhand Dealers and Pawnbrokers, Motor Vehicle Disputes Tribunal, Private Security Personnel Licensing Authority, Real Estate Agents Disciplinary Tribunal, Review Authority (legal aid), Social Security Appeal Authority, Student Allowance Appeal Authority, Taxation Review Authority, and Trans-Tasman Occupations Tribunal.

² The Treasury, *Guidelines for setting charges in the public sector* (December 2002); Office of the Controller and Auditor-General, *Charging fees for public sector goods and services* (June 2008); reports of the Regulations Review Committee relating to complaints about court fees; principles for court fee setting agreed by Cabinet in 2001; previous civil fee reviews; and international fee-setting practices.

Policy question	General findings
Is it appropriate to charge fees?	<p>Courts and tribunals generate public and private benefits. The total cost of these bodies is therefore most appropriately shared by taxpayers and users.</p> <p>Courts: The Ministry considers it appropriate to charge fees in the civil jurisdictions of all courts, as all generate some private (as well as public) benefits. An appropriate balance of taxpayer/user funding needs to be struck on a court by court basis.</p> <p>Tribunals: The Ministry considers that for 15 out of the 21 tribunals, it is appropriate to charge fees (ie, in the 10 that already charge fees and in five that currently do not), because of the private benefits they generate.</p> <p>For six tribunals³ it is not appropriate to charge fees because public benefits are considered to be of paramount importance.</p>
What is the cost of delivering the service?	<p>The total cost of running each court (civil jurisdiction) and tribunal was calculated for the 2010/11 financial year⁴ (2010/11), including all relevant departmental and non-departmental costs.</p>
How should the costs be apportioned between taxpayers and users?	<p>The extent of taxpayer and user responsibility for cost should vary according to the balance of public and private benefits generated by a particular service or jurisdiction. To gauge overall proportions of taxpayer/user contribution, a cost recovery percentage was calculated by considering total revenue as a percentage of total cost for 2010/11 for each jurisdiction. Cost recovery in tribunals is complex because of funding arrangements and industry levies.</p> <p>Courts: The Ministry considers that current cost recovery rates for the Supreme Court, Court of Appeal and Māori Land Court are about right, due to the high public benefits of these courts, and the unique statutory role of the Māori Land Court.</p> <p>The Ministry considers that cost recovery levels in the District Courts, High Court, Environment Court and Employment Court are currently too low. The following issues have been identified:</p> <ul style="list-style-type: none"> • Some services are provided to users and some applications are filed by users for no fee. • Fees do not reflect the registry or judicial effort involved with an application or stage of court process. • Fees do not reflect the private benefit associated with an application. <p>Accordingly, it is proposed that for each court, fees be increased, introduced or adjusted. In some instances, it is proposed that fees be reduced to appropriately reflect the court resources required for the associated application or service.</p> <p>Tribunals: Of the tribunals which currently charge fees, cost recovery is considered too low in three: the Disputes tribunals, the Immigration and Protection Tribunal (immigration jurisdiction) and the Legal Complaints Review Officer. The Ministry proposes fee increases in these tribunals.</p> <p>Of the tribunals which do not currently charge fees, it is considered appropriate that</p>

³ International Education Appeal Authority, Legal Aid Tribunal, Social Security Appeal Authority, Student Allowance Appeal Authority, Immigration Advisers Complaints, and Disciplinary Tribunal and Review Authority (legal aid providers).

⁴ 1 July 2010 – 30 June 2011

Policy question	General findings
	<p>users should make a contribution, through a modest filing fee of \$30, in the following four (because of the private benefits they generate and to encourage efficient use of the tribunal system):</p> <ul style="list-style-type: none"> • Accident Compensation Appeal Authority • Accident Compensation Appeals (District Court Registry) • Human Rights Review Tribunal • Real Estate Agents Disciplinary Tribunal. <p>A new \$600 fee is proposed for applications relating to commercial licensing disputes in the Copyright Tribunal.</p> <p>Cost recovery in the remaining tribunals, which charge fees, is considered appropriate.</p>
<p>Who should pay fees? Should the cost be able to be reallocated?</p>	<p>Courts: For all courts it is appropriate that the user of a service pays a fee in advance – at the outset of a proceeding and for the different stages of a proceeding. In most instances, the relevant user will be the applicant, plaintiff, appellant or initiator. For all courts, judges have discretion to award costs to parties to proceedings. In some instances, it will be appropriate for a party joining proceedings or another non-party (eg, a person searching a court record) to pay fees.</p> <p>Tribunals: For all tribunals for which it is appropriate to charge a fee, the user of the service (eg, the applicant, claimant or appellant) should pay the fee at the outset of a proceeding. For most tribunals it is not appropriate for a judicial officer to have the discretion to reallocate costs, including fees, between parties, because tribunals generally have simpler processes and lower costs.</p>
<p>What safeguards are there to protect access to justice?</p>	<p>The current arrangements and access to justice mechanisms are considered to be appropriate; for example, fee waiver provisions and orders for costs. The Ministry considers that fee waiver provisions should be introduced for the Employment Court, to render it consistent with all other courts.</p>
<p>How should fees be structured to ensure simplicity, fairness and efficiency?</p>	<p>Fee systems should be structured so that they are simple and predictable, administratively inexpensive and simple to collect, encourage appropriate use of the justice system, avoid imposing barriers to access and are as fair as possible.</p> <p>Courts: It is proposed that a multiple fee structure be retained for the District Courts, High Court, Court of Appeal, Supreme Court and Employment Court. It is proposed that a multiple fee system be introduced for the Environment Court (comprising application fees, possible mediation fees, interlocutory fees and hearing fees).</p> <p>It is proposed that a single fee structure (ie, a single filing fee with no interlocutory or hearing fees) be retained for the Māori Land Court, which has a unique statutory purpose to fulfil.</p> <p>Tribunals: A single fee structure is considered appropriate because most cases are likely to proceed through the same steps.</p> <p>Court proposals: The following proposals are intended to enhance simplicity, fairness and efficiency:</p> <ul style="list-style-type: none"> • A new hearing fees regime is proposed for the District Courts, High Court and Court of Appeal, whereby hearing fees are paid in advance and refunded where cases settle in advance of the scheduled hearing date. • Fees for the following should be rationalised: search of the formal court

Policy question	General findings
	<p>record; access to a document on a court file; supply of a copy of a judgment or court document; sealing any order or judgment; and for additional services (such as provision of audio visual links).</p> <ul style="list-style-type: none"> For the High Court, it is proposed that all fees should be set out in a single set of regulations and concession rate proceedings should be defined in the fee schedule (in the High Court Fees Regulations). Fee schedules should be inserted or redrafted in the relevant regulations for the Environment Court, Employment Court and Māori Land Court. <p>Set fees in whole dollars: For courts and tribunals, it is proposed that all fees are rounded or set in whole dollar amounts.</p>
Implement and monitor fees transparently	<p>The current review of civil fees and consultation process is intended to ensure transparency and accountability in fee setting.</p> <p>The Ministry intends to continue to pursue efficiencies in delivering court and tribunal services and conduct periodic reviews of the fees (three- to five-yearly).</p>

Fee proposals

- New fees, fee increases and fee adjustments (including rounding fees) are proposed for the following jurisdictions: District Courts, High Court, Court of Appeal, Supreme Court, Employment Court, Environment Court, Māori Land Court and 14 of the tribunals.
- New fees are proposed for criminal history checks carried out by the Ministry and for transcription services in all courts and tribunals.
- All proposed fees are GST inclusive.

Estimated impact on cost recovery

- The estimated impact of the fee proposals on cost recovery compared with cost recovery for 2010/11 is set out in the table below for each of the courts. Cost recovery estimations are based on the assumption that cost and case volumes will remain the same as they were in 2010/11. Estimations cannot take into account the impact on revenue of fluctuations in case volumes and variations in the proportion of fees waived or not collected for other reasons.

Jurisdiction	Cost recovery – 2010/11	Proposed cost recovery ⁵
District Courts	24%	33%
High Court	22%	37%
Court of Appeal	13%	15%
Supreme Court	0.4%	0.5%
Employment Court	1.5%	4.6%
Environment Court	1.9%	5.5%
Māori Land Court	less than 1%	1%

Next steps

- Feedback on the proposals in this consultation paper will be considered after the end of the submissions period – **Friday, 2 November 2012**. Your submissions will help to shape the final proposals for Government consideration. If the Government decides to make any changes to civil fees, it will look at starting to implement those changes in the first half of **2013**.

⁵ Proposed cost recovery rates for the District Courts, High Court, Court of Appeal, Supreme Court and Disputes tribunals include revenue gained from Consumer Price Index increases in 2011.

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How to have your say

Make a submission

11. This consultation paper seeks your views on the setting of civil fees. Your feedback will help to shape the final proposals for Government consideration.
12. We encourage you to give your views on the questions and proposals set out in this paper, and to provide any other comments you may have about the matters discussed. To assist you with your response, a feedback document accompanies this paper with questions and space to provide comments. You do not have to use this document to make a submission.
13. You do not have to answer the questions on every issue if you feel you do not have adequate knowledge which enables you to comment. If you wish to raise further issues not covered in this paper, please take the opportunity to do so.
14. The closing date for submissions is **Friday, 2 November 2012**.

Please send your submission by email to: civilfeesreview@justice.govt.nz

Or by mail to:

Civil Fees Review
Ministry of Justice
DX SX10088
Wellington

What will happen to your submission

15. Your submission will be kept by the Ministry of Justice and will become public information. This means that a member of the public may request a copy of your submission from the Ministry under the Official Information Act 1982.
16. Please tell us if there is any part of your submission (including your name) that you do not want to be released.
17. If you do not want all or part of your submission to be released, please tell us which parts and the reasons why. Your views will be taken into account in deciding:
 - whether to withhold or release any information requested under the Official Information Act
 - if, and how, to refer to your submission in any subsequent paper which may be prepared by the Ministry.

Privacy

18. The Privacy Act 1993 governs how the Ministry collects, holds, uses and discloses personal information provided in your submission. You have the right to access and correct this personal information.

Overview

Introduction

19. The cost of a government-provided service needs to be met in some manner, whether by taxpayers generally, users, people who benefit from the service, or those whose actions give rise to the need for the service. Civil fees are charges that recover the cost, or a proportion of the cost, of government-provided services delivered in a civil jurisdiction. They range from fees for court hearings to charges for the provision of information.
20. Civil fees were last comprehensively reviewed between 2001 and 2003. Over recent years fees have been introduced in an ad hoc manner without reference to an overarching policy.⁶
21. Other than by a GST increase in 2010 and an adjustment by the Consumers Price Index (CPI) in 2011,⁷ most fees have not changed since 2004. Some have not changed since their introduction in the 1990s. Fee levels have not kept pace with changes in the cost of delivering civil justice services, and in some jurisdictions the proportion of the cost that is met by the taxpayer has increased, at the expense of government spending elsewhere.
22. Because civil fees have not been comprehensively reviewed since 2003:
 - some fees do not appropriately reflect the levels of private and public benefit associated with the services for which they are charged
 - some fee levels do not reflect the judicial or registry resources required for the application or service
 - some services are provided without charging a fee, regardless of the levels of private and public benefit
 - some fee schedules are difficult to understand, contain redundant fees or do not comprise a complete set of fees for a particular jurisdiction.
23. This situation creates unfairness between users, and between users and taxpayers.

Objective

24. In September 2011 the Government agreed that a first-principles review of civil fees (the review) was needed to deliver a principled, consistent and equitable approach to setting fees. It was agreed that the review would look at civil fees for all courts and tribunals for which the Ministry of Justice provides support services.
25. The review sought to:
 - ensure access to justice in the setting of fees

⁶ A history of fee setting is set out at [Appendix 1](#).

⁷ The CPI adjustments (effective from 1 July 2011) increased fees by a maximum of 18.2 percent if fees had not been increased since 1 July 2004, or a lower amount if fees had been adjusted more recently. The CPI adjustments were not applied to the fees of specialist courts.

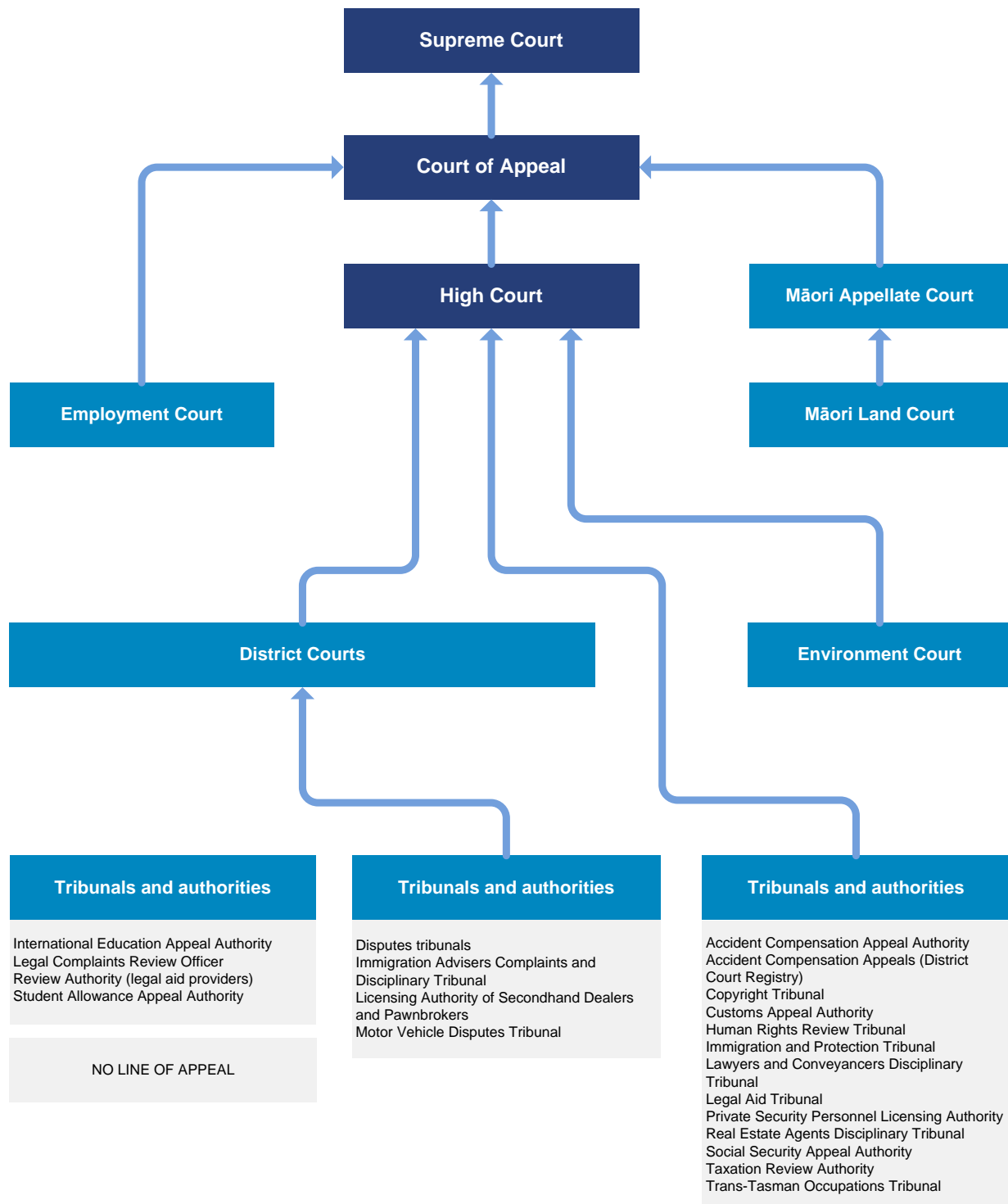
- determine appropriate cost recovery (this is likely to vary across different jurisdictions and different sorts of proceedings within jurisdictions)
- create incentives for the appropriate use of the civil justice system
- establish a firm set of principles to guide the setting of civil justice fees
- ensure that fees across the wider justice sector are set on a principled, consistent and equitable basis.

Scope

26. The review covered civil fees across the wider justice sector. This includes fees for:
 - courts of general jurisdiction (the District Courts, High Court, Court of Appeal and Supreme Court)
 - specialist courts (the Employment Court, Environment Court, and Māori Land Court)
 - the 21 tribunals which the Ministry administers and which are in scope of the review⁸
 - requests for criminal history information held by the Ministry.
27. There are two areas of work that are not the direct focus of this consultation paper but interact with it: the work on legal aid sustainability and the Family Court review. Information about both these areas of work can be found at [Appendix 2](#).
28. There are some jurisdictions and services that are not included in the review, or have been removed from its scope for certain reasons. These are set out at [Appendix 3](#).
29. The diagram on the following page illustrates the jurisdictions in scope of the review in terms of the current appeal lines.

⁸ For the purpose of this paper the term 'tribunal' is used to describe the 21 quasi-judicial adjudicative bodies that are supported by the Tribunals Unit of the Ministry of Justice, whether they be authorities, tribunals, committees or review officers.

Court and tribunal system



NOTE: Tribunals listed are those administered by the Ministry of Justice

Approach to review

30. In developing this consultation paper, the Ministry first developed a framework to guide the setting of civil fees. The framework draws on:
 - guidelines for setting charges in the public sector⁹
 - reports of the Regulations Review Committee relating to complaints about court fees¹⁰
 - principles for court fee setting agreed by Cabinet in 2001
 - previous civil fee reviews
 - international fee setting practices.
31. The nature of each court and tribunal was then assessed. This involved identifying each jurisdiction's purpose, special characteristics, typical users, current fee settings and funding structure, previous fee adjustments, availability of fee waivers and refunds, cost, case volumes and workload trends.
32. The draft framework was then applied to each jurisdiction in order to develop the fee proposals set out in this paper. All fees (current and proposed) set out in this paper include GST.
33. For each jurisdiction, financial information (cost and revenue) for the 2010/11 financial year¹¹ was used for the purposes of calculating a base cost recovery against which to estimate the impact of fee proposals on cost recovery. Cost recovery estimations are therefore based on the assumption that cost and case volumes will remain the same as they were in 2010/11.
34. Estimations cannot take into account the impact on revenue of fluctuations in case volumes and variations in the proportion of fees waived or not collected for other reasons. In addition, it is not possible to predict how the introduction of new fees and increase of current fees might affect case volumes, and therefore fee revenue.

Next steps

35. Feedback on the proposals in this consultation paper will be considered after the end of the submissions period. Your submissions will help to shape the final proposals for Government consideration. If the Government decides to make any changes to civil fees, it will look at starting to implement those changes in the first half of **2013**.
36. The policy and proposals developed as a result of the review are intended to establish the basis for regular fee adjustments and a shift to greater cost recovery for judicial services. Greater cost-recovery needs to be balanced with accessible justice, and improving the efficiency and effectiveness of the court and tribunal services. Your views on the pathway forward are sought in the section '[Implement and monitor fees transparently](#)'.

⁹ The Treasury, *Guidelines for setting charges in the public sector* (December 2002); Office of the Controller and Auditor-General, *Charging fees for public sector goods and services* (June 2008).

¹⁰ Including: Regulations Review Committee, *Investigation into the Disputes Tribunals Amendment Rules 1997 and the Disputes Tribunals Amendment Rules 1998* I.16L (August 1998); *Investigation and complaints relating to civil court fees regulations* I.16M (June 2002); *Investigation and complaint about civil courts fees regulations 2004* I.16 H (February 2005); *Complaint regarding the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2009 (SR 2009/73): Interim report* I.16C (December 2009); *Complaint regarding the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2009 (SR 2009/73)* I.16M (October 2011).

¹¹ 1 July 2010 – 30 June 2011. In this paper, expressions such as '2010/11' refer to the financial year.

Structure of this paper

Part	What this part covers	You should read this section if:
<u>Role of courts and tribunals</u>	A discussion about the public and private benefits of courts and tribunals (see <u>diagram of the court and tribunal system</u>).	You are interested in the general context for setting civil fees.
<u>Framework</u>	A diagram of the questions and steps relevant to the setting of civil fees.	You want a simple visual representation of the policy framework.
<u>Policy discussion and application</u>	A discussion or explanation of the policy questions posed and the way in which the Ministry has applied the policy questions to courts and tribunals.	<p>You are interested in the policy approach to civil fee setting, including who should pay fees, what level of cost fees should cover, how cost should be apportioned between taxpayers and users, safeguards to protect access to justice, how fees should be structured and the way in which fees should be monitored and reviewed in the future.</p> <p>You are also interested in the way this approach has been applied in an overall manner to courts and tribunals, and what general issues are raised or conclusions reached.</p>
<u>Court fee proposals</u>	<p>Sections which set out (for each of the seven courts):</p> <ul style="list-style-type: none"> • a brief description of the jurisdiction • links to current fee schedules or regulations • cost and revenue for 2010/11 • a table summarising fee proposals • detail about the proposals • the estimated impact of proposals on cost recovery. 	You have an interest in a particular court and the proposed fees for that court.
<u>Tribunal fee proposals</u>	An overview of tribunals, general conclusions about fee proposals, tables setting out fee proposals for each tribunal and specific information for each tribunal.	You have an interest in tribunals or a particular tribunal and the proposed tribunal fees.
<u>Other services fee proposals</u>	Fee proposals for criminal history checks and court proceedings transcription services.	You are interested in fee proposals for criminal history checks or transcription services.
<u>Appendices</u>	Additional information relevant to the review or current civil fee schedules.	You are interested in more detail on fees than is included in the main body of the paper.

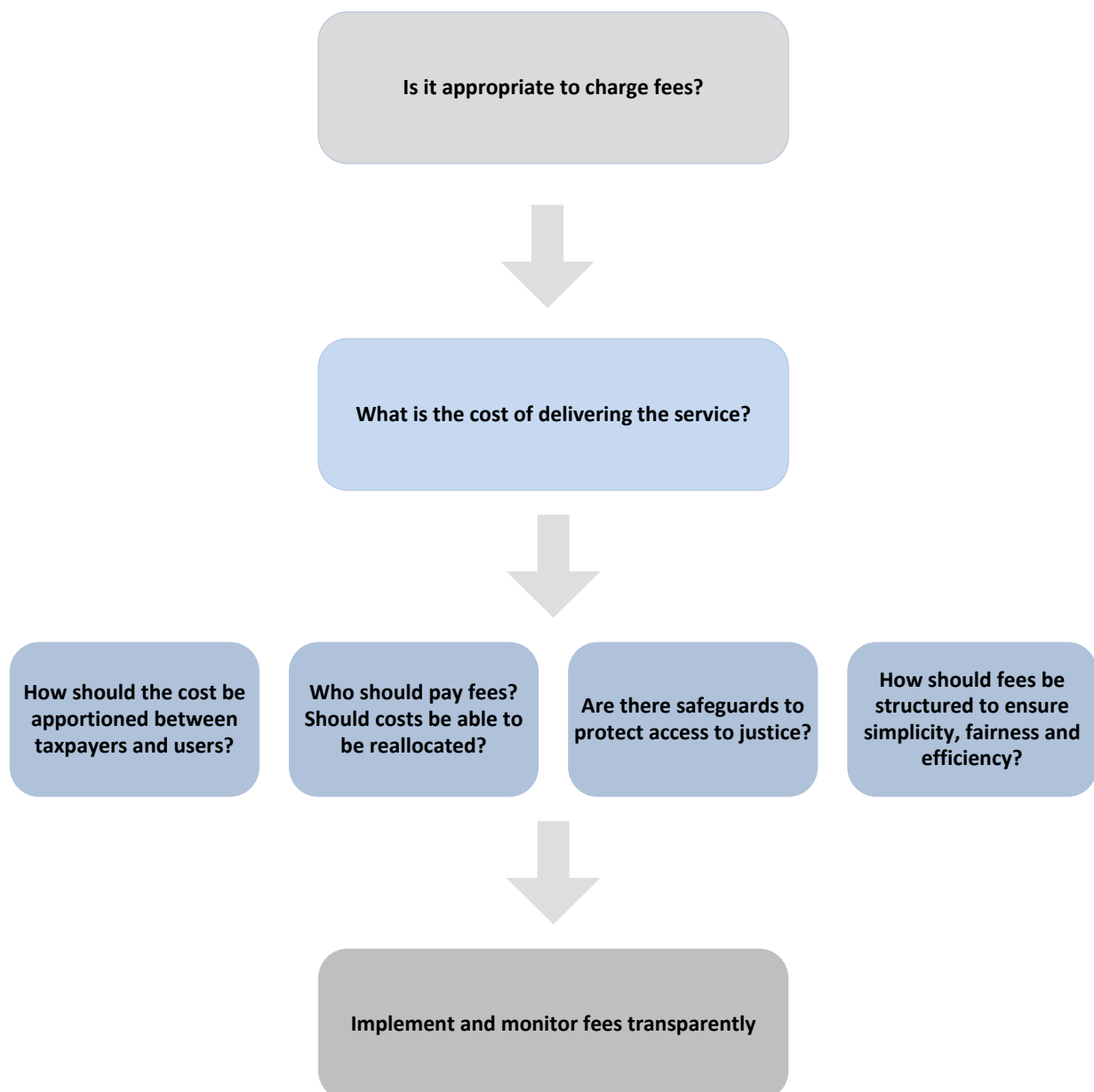
Role of courts and tribunals

37. Courts and tribunals are essential to a fair and democratic society. In their civil jurisdictions, they serve a number of private and public functions which help maintain social cohesion and economic growth.
38. Courts and tribunals enable people, businesses and public bodies to resolve disputes and to determine and enforce their legal rights in accordance with the law. They have a unique ability to perform this role. They have coercive powers to ensure that people comply with their orders.
39. Courts and tribunals generate both public and private benefits. People who access them are generally seeking a private gain. Individual actions of courts and tribunals are undertaken at the request of parties to a case and the outcome of those actions, such as the impartial resolution of a dispute or enforcement of an order, is generally of greatest interest and benefit to those parties.
40. Public benefits also flow from the existence and operation of courts and tribunals. Courts and tribunals are integral to New Zealand's system of government. They are a part of the system of checks and balances that helps to protect against the misuse of government power and to ensure that executive government is held accountable for its actions.
41. Courts and tribunals also help to maintain public confidence in the effectiveness of the law. Their decisions demonstrate that legal rights and responsibilities have meaning and can be peacefully enforced. Confidence in the effectiveness of the law encourages people to enter legal relationships with others. Courts and tribunals facilitate investment and innovation by providing certainty and confidence regarding contracts. They reduce the risks of economic decisions by enforcing property rights and checking misuses of state and monopoly power. This gives businesses the confidence to enter into agreements, make investments and take risks.
42. Courts and tribunals also play an important role in interpreting and developing the law. Their decisions clarify the nature of people's rights and duties where the law is new or unclear, and thereby provide guidance about appropriate standards of behaviour. They create a 'shadow' that enables people to reliably determine what a court or tribunal decision would likely be in a particular case. This helps prevent disputes developing, as people are able to modify their behaviour to comply with the law. It also assists in the private settlement of any dispute that does arise. Decisions provide a framework for settlements, and the mere potential to access a court or tribunal can encourage reluctant parties to reach agreement.
43. There is also public benefit in the characteristics that distinguish tribunals from courts. Many tribunals are established with the purpose of enabling more accessible, simple, speedy, cost-effective and specialist justice than may be available through the courts. Other tribunals generate mostly private benefits, such as those which mainly exist to regulate various professions and occupations.

Framework

Steps to setting fees

44. The following questions and steps are proposed as a framework for setting fees in civil jurisdictions.



Policy discussion and application

Is it appropriate to charge fees?

Courts and tribunals generate public and private benefits. The total cost of these bodies is therefore most appropriately shared by taxpayers and users. There may, however, be times when fees will not be appropriate; for example, where there is a special policy objective that would not be achieved if fees were imposed. Any fee that is imposed on users must have legal authority.

45. In their civil jurisdiction, courts and tribunals generate significant public benefits. It is therefore generally appropriate that general taxation meets the cost, or some proportion of the cost, of these bodies. This ensures that people who might otherwise be deterred by cost can choose to bring cases, and the flow of public benefits is maintained. As a general principle, users should contribute to meeting a service's cost where they gain some element of private benefit from it; for example, the resolution of a private contractual dispute.
46. It is not appropriate to charge fees where a body fulfils a special policy objective, and that objective might not be met if fees were charged (eg, a body designed to assist vulnerable people).

Application

COURTS

47. The Ministry considers it appropriate to charge fees in the civil jurisdictions of all courts, as all generate some private benefits. It is not appropriate to pursue total cost recovery from users because all courts generate public benefits across the different jurisdictions and various case types within those jurisdictions. An appropriate balance of taxpayer/user funding therefore needs to be struck on a court by court basis.

TRIBUNALS

48. The 21 tribunals within the scope of the review (refer to the '[Court and tribunal system](#)' diagram) have a wide range of purposes and functions, in terms of the technical and specialist areas for which they are established.
49. For 15 out of the 21 tribunals, the Ministry considers it is appropriate to charge fees (ie, the 10 that already charge fees and five that currently do not).¹²
50. In six tribunals, the Ministry considers it is not appropriate to charge fees, for the following reasons:

¹² In the Real Estate Agents Disciplinary Tribunal and Immigration and Protection Tribunal, the Ministry considers it appropriate to charge fees for certain applications only.

- The following four tribunals serve a special policy objective that might not be met if fees were charged, and the public benefits generated by these bodies are considered to be of paramount importance:
 - International Education Appeal Authority
 - Legal Aid Tribunal
 - Social Security Appeal Authority
 - Student Allowance Appeal Authority.
- The Immigration Advisers Complaints and Disciplinary Tribunal has a specific funding arrangement which precludes the introduction of fees.
- For conflict of interest reasons, fees should not be introduced in the Review Authority (legal aid providers), which reviews decisions made by the Secretary for Justice on the approval of lawyers to be legal aid providers.

What is the cost of delivering the service?

All costs associated with the relevant proceedings or services of a court or tribunal should be included when calculating the base cost of the service or jurisdiction. For courts and tribunals, this includes non-departmental costs, such as judicial costs. Non-relevant costs should be excluded.

51. The total cost incurred in operating a court, tribunal or other service should be identified to calculate the base cost of a civil jurisdiction or service. The following cost categories provide an appropriate starting base for calculating the base cost:
 - departmental (Ministry) cost, covering the support services provided to courts and tribunals by the Ministry of Justice; these include personnel, operating, rent, rates, depreciation, capital expenditure¹³ and overhead costs
 - non-departmental (Crown) cost, covering:
 - judicial costs, including remuneration, and travel and other allowances, paid to the judiciary and other judicial officers
 - costs of specialist services and advice ordered by courts and tribunals to assist in the conduct of the proceedings.
52. All relevant direct and indirect costs (departmental and non-departmental) should be included in calculating the total cost. Direct costs include costs incurred directly by the relevant business units through their everyday operational activities, such as court staff remuneration. Indirect costs are allocated overheads and other shared services, such as those relating to information and communications technology and the National Transcription Service.
53. While direct costs can easily be attributed to specific services or proceedings, many indirect costs can only be apportioned on a pro-rata basis using certain assumptions. For example, in courts in which both civil and criminal cases are heard, the costs associated with judges may need to be allocated between the civil and criminal jurisdictions based on sitting hours or case types.

¹³ Capital expenditure should be recovered by means of depreciation, which spreads the cost of acquiring or improving a fixed asset over the life of the asset.

54. The cost of functions not directly relevant to civil proceedings should be excluded from the estimate of relevant cost. This is because the user does not directly benefit from these functions, and therefore should not be required to pay a fee that helps to meet their cost. This process may involve:
- excluding the cost of any criminal proceedings undertaken in the jurisdiction
 - excluding the cost of duties outside the specific jurisdiction, such as those of a judge assigned to serve elsewhere
 - apportioning costs between concurrently held jurisdictions (eg, Māori Land Court judges divide their time between adjudicating in that Court and the Māori Appellate Court, and presiding over Waitangi Tribunal proceedings).

Application

55. The total cost of running each court (civil jurisdiction) and tribunal was identified for 2010/11 and is referred to in the relevant fee proposal sections of this paper.

How should cost be apportioned between taxpayers and users?

The proportion of costs recovered through fees should vary according to the balance of public and private benefits generated by the relevant type of proceeding or service.

56. The extent of taxpayer and user responsibility for cost should vary according to the balance of public and private benefits generated by a particular service. Calculating the balance of benefits associated with a particular service or jurisdiction is difficult, because of the intangible nature of many of the benefits, and determining the balance of benefits associated with a service is not an exact exercise.

OVERSEAS JURISDICTIONS

57. In similar jurisdictions overseas, the proportion of civil costs that must be met by users varies significantly. England and Wales have determined that civil proceedings generate benefits that are overwhelmingly private. They consider civil courts to be principally concerned with resolving private disputes between individuals or companies, and taxpayers should not provide general support for resolution of these disputes. They therefore pursue a policy of full-cost pricing, whereby fees are generally set at levels calculated to cover the full cost of proceedings. Fee waivers are available to people who would have difficulty paying. Approximately 80 percent of the cost of running civil and family courts is recovered through court fees.¹⁴ Note, however, that the extent of private funding is less than 80 percent, because in England and Wales legal aid grants cover court fees (such that the fees are in effect met by taxpayers).

¹⁴ The remaining costs are met by the taxpayer and comprise potential fee income foregone through fee remissions and the cost of providing services where fees are set below full cost levels. See: UK Ministry of Justice, *Why we charge court fees* (2011), available at the [UK Ministry of Justice website](#). More recently, the UK Government indicated that it is considering increasing the proportion of total costs recovered (towards 95 percent of total costs). See: *Fees in the High Court and Court of Appeal Civil Division: Consultation Paper*, released 15 November 2011, available at the [UK Ministry of Justice website](#).

58. By contrast, the user contribution in Australian jurisdictions is significantly lower, and the taxpayer contribution higher. In 2009/10, the average proportion of the cost recovered from users ranged between approximately 2 and 35 percent across different levels of court.¹⁵

RELEVANT CONSIDERATIONS

59. The following considerations are relevant when determining the balance of benefits of a particular proceeding or court:
- **The nature of interests involved in proceedings.** For example, there will generally be significant public benefits associated with proceedings which enable people to obtain a review of a government decision that has adversely affected them.
 - **The position of jurisdiction in which proceedings are brought.** On the whole, proceedings in appellate jurisdictions generate greater public benefit than first instance proceedings, as higher courts generally set more authoritative precedents and determine significant cases.
 - **The extent to which the type of proceeding creates precedent.** Precedents assist the private settlement of disputes by giving people guidance about the way the law would likely be applied if their dispute were litigated. They also allow some disputes to be avoided in the first place, because people are able to behave in ways consistent with the law.
 - **The availability of alternatives to proceeding.** The availability of legitimate and effective alternative methods of resolving a matter will also affect the benefits associated with a proceeding.

Application

60. To gauge overall proportions of taxpayer/user contribution, a cost recovery percentage was calculated by considering total revenue as a percentage of total cost for 2010/11 for each jurisdiction. This overall percentage is a useful indication of whether current cost recovery in each jurisdiction appropriately reflects the general balance of public/private benefits within a jurisdiction.

SUPREME COURT, COURT OF APPEAL, MĀORI LAND COURT

61. The Ministry considers that current cost recovery for the Supreme Court (0.4%) and Court of Appeal (12.5%) are at about the right levels.
62. As the highest court in New Zealand, the Supreme Court has great constitutional importance; leave requirements mean that a proposed appeal must meet certain criteria, such as public importance or general commercial significance. The Court of Appeal supervises, through appeal, the judgments of the High Court and Employment Court and for most cases it will in effect be the final appellate court.
63. Both courts, therefore, have a key role in developing legal principles and maintaining consistency in the application of the law.
64. Cost recovery in the Māori Land Court is less than 1 percent. The Court, as a special jurisdiction, generates high public benefits and fulfils a unique statutory purpose under Te Ture Whenua Māori Act 1993, to assist Māori landowners to promote the retention, use, development and

¹⁵ Australia, Productivity Commission, *Report on government services*, 2011. Available figures do not cover all civil courts or proceedings, and some jurisdictions do not distinguish between civil and criminal fees. There is significant variation in recovery rates between different courts, and between the Commonwealth, states and territories. Ministers from these jurisdictions have agreed to develop options for a harmonised approach to greater cost recovery. See: *Standing Committee of Attorneys-General Communiqué* (5 and 6 November 2009), available at: www.scag.gov.au

control of Māori land. Accordingly, the Ministry considers that the current level of cost recovery, while low, is appropriate.

DISTRICT COURTS, HIGH COURT, ENVIRONMENT COURT, EMPLOYMENT COURT

65. The Ministry considers that cost recovery levels in the District Courts (24%), High Court (22%), Environment Court (2%) and Employment Court (1.5%) are currently too low. Fee setting should take into account the private benefits which these courts provide, specifically:
 - the resolution of private disputes and the ability to obtain authoritative determinations of rights and responsibilities
 - the ability to pursue remedies, orders and reviews of decisions
 - the enforcement of an order made by a court or tribunal through the District Courts, commonly involving commercial contracts and debt recovery.
66. Specifically, the following issues have been identified:
 - Some services are provided to users for no fee.
 - Some applications are filed by users for no fee.
 - Fees do not reflect the registry or judicial effort involved with an application or stage of court process.
 - Fees do not reflect the private benefit associated with an application.
67. In light of these issues, it is proposed that fees be increased, introduced or adjusted where appropriate, for each court.
68. In some instances, it is proposed that fees be reduced to appropriately reflect the court resources required for the associated application or service.

TRIBUNALS

69. Of the tribunals which currently charge fees, cost recovery is considered too low in three (because of the level of private benefits generated): the Disputes tribunals, the Immigration and Protection Tribunal (immigration jurisdiction) and the Legal Complaints Review Officer. The Ministry proposes fee increases in these tribunals.
70. Of the tribunals which do not currently charge fees, it is considered appropriate that users should make a contribution through fees in the following four (because of the private benefits they generate and to encourage efficient use of the tribunal system):
 - Accident Compensation Appeal Authority
 - Accident Compensation Appeals (District Court Registry)
 - Human Rights Review Tribunal
 - Real Estate Agents Disciplinary Tribunal.
71. The Ministry proposes a modest filing fee for these tribunals.
72. A new \$600 fee is proposed for applications relating to licensing disputes in the Copyright Tribunal, to reflect the high private benefit of these types of applications.
73. Cost recovery rates for the remaining tribunals which charge fees are considered appropriate.

Who should pay fees? Should costs be able to be reallocated?

The user of a service should pay any fee. Courts should have discretion to reallocate costs between parties.

74. A range of different parties could be charged fees for a government-provided service. In practice, the user of a service will usually be the most appropriate party to charge, because they are responsible, in the first instance, for generating the work and cost of the service.

Application

COURTS

75. For all courts, it is appropriate that the user of a service pays a fee in advance – at the outset of a proceeding and for the different stages of a proceeding – because the administrative cost of collecting a fee is likely to be lowest if the user is required to pay fees at the outset of a proceeding. In most instances, the relevant user will be the applicant, plaintiff, appellant or initiator.
76. In some instances, it will be appropriate for a party joining proceedings or another non-party (eg, a person searching a court record) to pay fees. In some courts, it is proposed that hearing fees be paid by each party to proceedings (eg, claimant and counterclaimant), allocated according to the estimated time required by each party to the hearing.
77. For all courts, judges have discretion to award costs to parties to proceedings. This enables a judge to require an unsuccessful party to contribute towards costs incurred by the successful party, including court fees. In the case of debt recovery proceedings in the District Courts, the filing fee is added to the judgment debt and recovered by the applicant (the judgment creditor).

TRIBUNALS

78. For all tribunals for which it is appropriate to charge a fee, the user of the service (eg, the applicant, claimant or appellant) should pay the fee at the outset of a proceeding.
79. For most tribunals it is not appropriate for a judicial officer to have the discretion to reallocate costs, including fees, between parties, because the tribunals generally have simpler processes and lower costs.

Are there safeguards to protect access to justice?

Fees should not preclude or introduce significant impediments to people's ability to access a court or tribunal. Where safeguards to protect access to justice are required, these can be provided by waivers, concession rate fees or exemptions. A judicial officer should have a power to review a registrar's decision not to waive a fee.

80. Accessible justice is integral to the democratic legitimacy of New Zealand's system of government. Equality under the law requires that legal rights are available to all and can be enforced. Access to justice has a number of components. It includes access to:
- legal information
 - legal advice
 - less formal dispute resolution mechanisms
 - tribunals and courts.
81. In many cases, access to legal information or advice will be sufficient. For some disputes, the use of less formal resolution mechanisms, such as mediation or arbitration, may be preferred by parties. There are, however, some disputes where the parties will choose to proceed to a court or tribunal because only those bodies have the powers to compel parties to resolve the dispute.
82. Fees are not in themselves incompatible with a right of access to justice. They can prompt prospective users to take account of the cost involved in providing court or tribunal services, and to consider whether they wish to initiate or continue a proceeding or seek an alternative means for resolution. However, if fees bar or introduce significant impediments to access they may breach the right to access. A fee is likely to constitute a significant impediment if prospective applicants are prevented from commencing or continuing a meritorious claim that they would have pursued if the fee were not in effect.
83. Determining whether a particular fee constitutes a significant impediment therefore depends on the nature of a jurisdiction and its users. The following factors should be taken into account in determining whether a fee is prescribed, and the level at which it is set or proposed:
- **The likely users of the jurisdiction.** Those likely to use particular services may be known, or may be predictable. Knowledge about them and their financial resources should inform fee setting.
 - **The accessibility of alternative means of resolution.** Where a matter can only be determined by a court or tribunal and alternative means of resolution are not available, the size of any fee may need to be limited.

Application

84. The current arrangements and access to justice mechanisms are considered to be appropriate. Examples include:
- fee waiver provisions (for all courts except the Employment Court – see '[Fee waivers](#)' below)
 - orders for costs
 - legal aid (which is available for civil cases)
 - the District Courts Rules 2009, which provide for the encouragement of parties to resolve their disputes without involvement of the judiciary, thereby saving time and financial cost for applicants
 - the Ministry of Justice website, which provides information and forms for self-represented litigants using the civil jurisdiction of the District Courts (see www.justice.govt.nz/civil)
 - court fees in the District Courts which are added to judgment debts and recovered by the applicant when the debt is satisfied
 - concession rate proceedings in the High Court (proposed to be set at 50% of the fee for other proceedings)

- the Environmental Legal Assistance Fund (administered by the Ministry for the Environment), which provides non-profit groups with financial assistance to prepare, mediate and/or present resource management cases of high public interest to the Environment Court and other courts
- the Māori Land Court Special Aid Fund (administered by the Chief Registrar of the Māori Land Court), a discretionary fund that provides applicants with financial assistance for reasonable legal costs or reasonable out-of-pocket expenses incurred in preparing and/or presenting cases to the Māori Land Court and the Māori Appellate Court
- the mediation service in the Environment Court.

FEE WAIVERS

85. Currently there are no fee waiver provisions in the Employment Court. The Ministry considers that fee waiver provisions should be introduced for the Employment Court, to render it consistent with all other courts.
86. For all jurisdictions, fee waivers should continue to be monitored effectively.

How should fees be structured to ensure simplicity, fairness and efficiency?

A fee system should be simple, fair and efficient. A single fee is more likely to achieve these objectives for proceedings that do not involve many different steps and choices. A multiple fee is more likely to be appropriate for cases that follow different paths through a process. Fees should be payable in advance, where possible. Specific fees should be based on average cost pricing.

87. Fee systems should be structured so that they:
 - are simple and predictable for users
 - are administratively inexpensive and simple to collect
 - do not encourage the unnecessary taking or continuation of cases (and therefore encourage appropriate use of the court and tribunal system)
 - avoid imposing barriers to access
 - are as fair as possible – parties to simple cases that can be disposed of quickly should pay lower fees than parties to complex and longer cases, as they are likely to use fewer court resources.
88. These criteria should be balanced when deciding whether a jurisdiction should have a single or multiple fee system. Fees can be structured so that a single (filing) fee covers the cost of a number of different steps in a court or tribunal process, or that separate fees are charged for each step in a process (eg, filing, interlocutory and hearing fees).
89. A multiple fee system is likely to encourage access, as the whole cost of a proceeding does not have to be paid at the outset of a case. It enables users to demonstrate their intention to use the coercive power of the court without necessarily incurring the total cost of a full hearing. It is also fair in situations in which cases follow different paths through a process; this is because those with simple cases, and those who choose not to pursue a case through to a determination, only pay for the services they use and do not subsidise those with more lengthy and complex cases.

90. On the other hand, a single fee system is fair where all, or almost all, cases are likely to go through the same steps. This is because there is limited risk of users subsidising other, lengthier cases, as most cases will require a similar quantum of court resources.
91. Specific fees should be based on average cost pricing, by which all costs are averaged over the number of users of the service.
92. Fees should, as far as possible, be payable in advance to reduce the cost of collection of unpaid fees and the chances of fee evasion. Efficient payment methods could be examined; for example, online payment, or staged payments for major proceedings.

Application

COURTS – FEE SYSTEM

93. All seven courts within the scope of the review are multi-dimensional jurisdictions dealing with more complex cases and processes than those dealt with by tribunals. This means that there are more stages in a court process and therefore more points at which a case can dispose. Accordingly, different cases will require varying amounts of court time and resources. For these reasons, a multiple fee structure is likely to be more equitable between court users, because fees are aligned with the stages within a court process.
94. It is proposed that a multiple fee structure be retained for the District Courts, High Court, Court of Appeal, Supreme Court and Employment Court. It is proposed that a multiple fee system be introduced for the Environment Court, comprising application fees, possible mediation fees, interlocutory fees and hearing fees.
95. It is proposed that a single fee structure be retained for the Māori Land Court, which has a unique statutory purpose to fulfil. This is to maintain accessibility to the Court and support the special policy objective of Te Ture Whenua Māori Act 1993 to assist Māori landowners to promote the retention, use, development and control of Māori land.

COURTS – COLLECTION OF HEARING FEES

96. The Ministry has identified that, in the District Courts, High Court and Court of Appeal, the collection of hearing fees on a daily basis once a hearing has commenced can be difficult to administer. This results in a loss of revenue for the courts and creates unfairness between users.
97. A new regime for these courts is proposed to:
 - provide for fairness between users of these courts by ensuring hearing fees are paid in advance of the hearing
 - encourage early resolution by encouraging parties to carefully consider, at the time hearing fees are due, whether it is necessary to continue to a hearing
 - encourage more efficient use of court and judicial time, as court time may be allocated to other cases
 - provide for ease of administration.
98. The proposed regime would be designed to provide for the prepayment of hearing fees and a refund system for situations where cases settle prior to the scheduled hearing date.

COURTS – MISCELLANEOUS FEES

99. The following table sets out fee proposals to enhance administrative efficiency and predictability for users, by simplifying fees for administrative services and, where appropriate, making them consistent across jurisdictions. Proposed fees are set at levels that reflect the private benefit of, and court resources required, for the service. They are not applicable to the Māori Land Court.

Proposed service/ jurisdiction	Sealing any order or judgment	Supply of a copy of judgment	Issue of certificate (judgment, order, other document)	Access to a document on a court file	Search of the formal court record	Supply of a copy of a court document other than a judgment
District Courts	Set fee at \$50 (currently \$48.30 and \$30.20)	Set single fee of \$10 for hard or electronic copy (currently per page fee)	Set fee at \$50 (currently \$36.30 and \$42.30)	Set fee at \$50 (currently \$25.56)	Set fee at \$20 for the first name or case plus \$5 for every additional name or case searched (currently \$25.56)	Set fee per page (currently 'actual and reasonable')
High Court		Set single fee of \$30 (currently per page fee)	Not applicable			
Court of Appeal			Not applicable	Not applicable	Not applicable	
Supreme Court			Not applicable	Not applicable	Not applicable	
Employment Court	Not applicable	Set single fee at \$10 for hard or electronic copy (currently no provision)	Set fee at \$20	Not applicable	Not applicable	Not applicable
Environment Court	Not applicable	Set single fee at \$10 for hard or electronic copy (currently no provision)	Not applicable	Not applicable	Not applicable	Not applicable

SPECIFIC PROPOSALS FOR HIGH COURT

100. It is proposed that all fees payable in the High Court should be set out in a single set of regulations (the High Court Fees Regulations), rather than various sets, as at present. The following regulations would consequently be repealed:

- regulation 17 of the Trustee Company (Fee) Regulations 1997
- regulation 17 of the Public Trust Regulations 2002
- regulation 5 of the Māori Trustee Regulations 2009
- rule 26 of the Jury Rules 1990
- Admiralty (Fees) Order 1997
- Property Law (Mortgagees' Sales Forms and Fees) Regulations 2007
- Rating (Fees) Regulations 1997
- Administration (Fee) Regulations 1997
- Sheriffs' (Fees) Regulations 1988.

101. Fees related to the following types of proceedings should be brought together, under single item numbers:

- probate applications
- law practitioners' admissions

- bankruptcy.

102. Additionally, the Ministry recommends the following proposals:

- Concession rate proceedings should be defined in the fee schedule (not just the fees regulations).
- The fee exceptions for sealing a judgment or other document (including ‘an order made in interlocutory proceedings’) should be removed.
- A single fee should be set for sealing all documents (orders, judgments, duplicates for probate or letters of administration).

SPECIALIST COURTS – INSERT OR REDRAFT FEE SCHEDULE

103. For the Environment Court, it is proposed that a fee schedule that clearly sets out all fees (including for the different types of appeals and proceedings for which a filing fee is payable) be included in the Resource Management (Forms, Fees and Procedure) Regulations 2003. Currently regulation 35 (‘Filing fee’) cross-references to sections of the Resource Management Act 1991 (RMA) and does not define ‘other proceedings’.
104. For the Employment Court, it is proposed that the fee schedule in the Employment Court Regulations 2000 be redrafted to describe application types for which a fee is payable, and be clearly numbered.
105. For the Māori Land Court, it is proposed that the fee schedule in the Māori Land Court Regulations 1993 be redrafted to clearly set out and describe the different types of applications for which a fee is payable.

TRIBUNALS – FEE SYSTEM

106. For tribunals, a single fee structure (ie, a single filing fee with no interlocutory or hearing fees) is considered appropriate because most cases are likely to proceed through the same steps and therefore require a similar level of tribunal resources. Such a fee structure is efficient and administratively simple.

COURTS AND TRIBUNALS – SET FEES IN WHOLE DOLLARS

107. Currently many fees are set in dollars and cents, inclusive of GST. It is proposed to set all fees (whether being adjusted or introduced) in whole dollar amounts, inclusive of GST, in order to simplify payment for both users and court staff.

Implement and monitor fees transparently

Fee setting requires transparent processes for identifying costs and revenue. It also requires regular reviews.

108. There should be transparency and accountability in the setting of civil fees. Transparency and accountability are currently promoted through methods such as:
- **Public consultation before major changes to fees are introduced.** This enables the public to understand and comment on these practices, and to provide relevant information to those who set fees.
 - **The regulation-making process.** Fees regulations are made by the Governor-General in Council, after approval through Cabinet processes. The regulations are then examined by Parliament’s Regulations Review Committee.

- **The monitoring of data relating to civil fees.** This includes fees revenue, the cost of civil justice services, filings and waivers.
- **Cost-effective provision of the services for which fees are charged.** Users often have limited alternatives to court or tribunal proceedings. The Ministry should seek to ensure that fees contribute to the delivery of services at the level necessary to meet community and government objectives.

109. Factors that affect the level at which fees are set change over time. Good practice guides for setting fees in the public sector recommend that comprehensive reviews be undertaken every three years.¹⁶ Comprehensive reviews ensure fee systems remain principled, consistent and equitable. Such reviews could examine matters such as changes in the cost of providing a civil justice service, the number of people using the service and the composition of the user group.

Application

110. The current review of civil fees and consultation process is intended to ensure transparency and accountability in fee setting.
111. The policy and proposals developed as a result of the review allow for a shift to greater cost recovery for justice services. Greater cost-recovery will continue to be balanced with maintaining an accessible justice system, and improving the efficiency and effectiveness of the court and tribunal services.
112. Accordingly, the Ministry intends to:
- continue to pursue efficiencies in delivering court and tribunal services
 - conduct periodic reviews of the fees to assess whether fees reflect actual cost, or a proportion of the action cost of a particular service or application (three- to five-yearly).

What do you think?

Topic	Tell us your views	
Steps to setting fees	1	Do you agree with the framework for setting fees in civil jurisdictions? Please state reasons for your answer.
	2	Are there any other considerations which you think are relevant to fee setting in civil jurisdictions?
Is it appropriate to charge fees?	3	For which courts and tribunals is it not appropriate to charge fees and why?
Cost of delivering service	4	For the purpose of calculating cost recovery, what sorts of costs should be included in the total cost of delivering a service or jurisdiction?
Cost allocation	5	In which jurisdictions should a judicial officer have the ability to award costs against an unsuccessful party?
Access to justice	6	Do current arrangements and mechanisms, such as fee waivers and cost awards, protect access to justice? Please state reasons for your answer.
Implement and monitor fees transparently	7	How should fees be reviewed, and how frequently?

¹⁶ The Treasury, [Guidelines for setting charges in the public sector](#) (December 2002); Office of the Controller and Auditor-General, [Charging fees for public sector goods and services](#) (June 2008).

District Courts fee proposals

Overview

Civil dispute resolution jurisdiction

113. Over 60 percent of the District Courts' work in the civil dispute resolution jurisdiction is debt recovery. The other main case categories are credit contracts, contract disputes, consumer contracts, fair trading, disputes between neighbours, and rates. Of the cases disposed in 2011/12, 96.5 percent were undefended and only 3.5 percent defended.
114. New business in the civil jurisdiction of District Courts has been steadily declining over the last few years. In the 2009/10 financial year there were 22,446 new claims filed in the District Courts; 20,644 in 2010/11 and 17,978 in 2011/12.¹⁷

Civil enforcement jurisdiction

115. The District Courts also play a role in enforcing judgments or orders. Where a plaintiff obtains a judgment or order in his or her favour (either in a District Court or another jurisdiction such as the Tenancy Tribunal or a Disputes tribunal), the defendant is expected to voluntarily comply with the judgment or order; for example, by paying a debt. If the defendant does not comply, the plaintiff may make a civil enforcement application to the District Court to have the judgment or order enforced.
116. In civil enforcement matters, the plaintiff is described as a 'judgment creditor' and the defendant as a 'judgment debtor'.
117. The two methods of civil enforcement are:
 - direct remedies against land or property; for example, the seizure and sale of the judgment debtor's property in order to pay a debt
 - mandatory deductions from the judgment debtor's wages or benefit to pay a debt in instalments, for example those imposed through attachment orders.¹⁸
118. There were 43,315 civil enforcement applications filed in the District Courts in 2010/11 and 42,094 in 2011/12. Approximately 60 percent of all civil enforcement applications are in relation to judgments or orders made in the District Courts. The other applications are in relation to judgments or orders from jurisdictions other than the District Courts, most of these being from the Disputes tribunals and Tenancy Tribunal.
119. The civil enforcement regime is administered separately within the Ministry of Justice, by the Collections Unit.

CHANGES TO CIVIL ENFORCEMENT REGIME

120. The Courts and Criminal Matters Bill, passed in July 2011, made a range of statutory amendments to streamline the enforcement of civil debts in the District Courts. Changes will

¹⁷ New claims include: notices of claim, general proceedings, originating applications and appeals.

¹⁸ An attachment order is a court order requiring the employer of a judgment debtor to deduct money from the debtor's salary, wages or benefit to be paid directly to a judgment creditor in payment of a court judgment or order.

make the regime quicker and simpler to administer, and more cost effective for both the judgment creditor and judgment debtor.

Current fees

121. A number of regulations and orders, pursuant to five statutes, provide for fees in the civil jurisdiction of the District Courts (see the links below):

- [District Courts Fees Regulations 2009](#) (Schedule)
- [Land Valuation Proceedings Fees Regulations 1991](#) (Schedule)
- [Admiralty \(Fees\) Order 1997](#)
- [Prostitution \(Operator Certificate\) Regulations 2003](#) (Schedule 2)
- [Auctioneers Regulations 1958](#) (Schedule 2).

Current cost and cost recovery

CIVIL DISPUTE RESOLUTION JURISDICTION

122. The total cost of running the civil dispute resolution jurisdiction of the District Courts in 2010/11 was **\$14.8 million**.
123. Total fee revenue received by the District Courts (civil dispute resolution) in 2010/11 was **\$3.9 million**. This represents approximately **26 percent** of the total cost of running the Courts' civil dispute resolution jurisdiction.

CIVIL ENFORCEMENT JURISDICTION

124. The total cost of running the civil enforcement jurisdiction of the District Courts in 2010/11 was **\$8.5 million**.
125. Total fee revenue received by the District Courts (civil enforcement) in 2010/11 was **\$1.7 million**. This represents approximately **19 percent** of the total cost of running the Courts' civil enforcement jurisdiction.

Fee proposals

Topic	Proposal (District Courts) (all fees GST inclusive)
Commencing a proceeding (other than an interlocutory proceeding)	Increase the filing fee from \$169.20 to \$200.
Counterclaim, statement of defence and counterclaim	Increase the filing fee from \$169.20 to \$200.
Interlocutory application	Increase the filing fee from \$223.50 to \$250. This fee would include: <ul style="list-style-type: none"> • filing an application for summary judgment • filing an affidavit in support of a garnishee summons • filing an application for review of a registrar's decision.
Application for judgment	Increase the fee for applying for judgment on a claim or counterclaim from \$48.30 to \$90. This fee would include sealing.

Topic	Proposal (District Courts) (all fees GST inclusive)
Land valuation proceedings	<p>Increase the filing fee from \$26.60 to \$50.</p> <p>Hearing fees would apply to land valuation proceedings.</p>
Application of the District Courts Fees Regulations 2009	<p>Amend the District Courts Fees Regulations to apply to 'civil proceedings in the court'.</p> <p>The following statutes would be excluded from the fee regime: the Harassment Act 1977, Criminal Proceeds (Recovery) Act 2009, Immigration Act 2009 and Accident Compensation Act 2001.</p>
Hearing fees regime	<p>Introduce a new hearing fees regime with the following features:</p> <ul style="list-style-type: none"> • Prepayment of hearing fees would be required no later than 10 working days after the issuing of the notice of fixture by the Court based on the parties' estimate of hearing time required. • The following refund regime would apply if cases were settled prior to the hearing: <ul style="list-style-type: none"> ○ 100% refund on 16 or more working days' notice ○ 50% refund on 6–15 working days' notice ○ 25% refund on 1–5 working days' notice • The registrar would have the ability to vacate the fixture if the fee were not paid, in which case a further case management conference before a judge would be scheduled. • Where the duration of hearing time was under-estimated, fees for each additional half day would be payable.
Issue of certificate of judgment or order	<p>Increase the fee from \$36.30 to \$50.</p>
Sealing fee	<p>Increase the fee for sealing the original copy of any document (excluding sealing in respect of an application for judgment) from \$48.30 to \$50.</p>
Search of the formal court record	<p>Adjust the fee from \$25.56 to \$20 for the first name or case plus \$5 for every additional name or case searched as part of the same application.</p>
Access to court documents	<p>Increase the fee from \$25.56 to \$50.</p>
Copies of judgments and documents	<p>Adjust fees. In place of charging for judgments according to their number of pages, and for other documents on an actual and reasonable basis, charge:</p> <ul style="list-style-type: none"> • \$10 per judgment – whether in paper or electronic form • for other documents: <ul style="list-style-type: none"> ○ paper: <ul style="list-style-type: none"> ▪ A4 size, black & white: 40 cents per page ▪ A4 size, colour: 80 cents per page ▪ A3 size, black & white: 80 cents per page ▪ A3 size, colour: \$1.60 per page ○ electronic: 20 cents per page.
Application for a financial assessment hearing	<p>Increase the fee (currently for an 'examination hearing') from \$108.80 to \$180.</p>

Topic	Proposal (District Courts) (all fees GST inclusive)
Application for an attachment order (agreed)	Introduce a fee of \$30.
Application for an attachment order (unilateral)	Introduce a fee of \$50.
Filing a financial statement	Introduce a fee of \$65.
Application for an oral financial assessment	Introduce a fee of \$80.
Warrant of execution	Increase the fee from \$66.50 to \$200.
Filing a possession order	Introduce a fee of \$200.
Personal service by a bailiff	Introduce a fee of \$50.
Filing a new address for service/execution	Introduce a fee of \$50.
Application to vary, suspend or discharge an attachment order	Remove the current fee of \$223.50 (no fee would apply for this application).
Application for contempt procedures	Increase the fee from \$223.50 to \$250.
Application for an order that a witness or party be examined (rule 3.24 or rule 15.3)	Increase the fee from \$175.20 or \$163.10 to \$180.
Retrieval of files from archives	Introduce a fee of \$50.
Additional services	Enable registrars to charge for additional services (such as audio visual links [AVL] when not required by the Court), on an actual and reasonable basis.

Detail on proposals

Filing fees for civil dispute resolution jurisdiction

126. In order to reflect the private benefit and registry resources required to process the following applications, it is proposed that fees be increased, as follows:

- fee for filing commencing a proceeding (other than an interlocutory application): \$200 (currently \$169.20)
- fee for filing a counterclaim, statement of defence (together with) counterclaim: \$200 (currently \$169.20)
- fee for filing an interlocutory application (including an application for summary judgment): \$250 (currently \$223.50)

- fee for filing a land valuation application: \$50 (currently \$26.50).

Application for judgment

127. Currently the fee for applying for judgment is payable as part of the sealing fee and is \$48.30. An application for judgment on a claim or a counterclaim (using form 6A or 6CCA) requires registry time to process and make a decision on. Sometimes judicial time is required.
128. It is proposed that this fee for applying for judgment on a claim or counterclaim be set at \$90. This fee would include sealing.

Land valuation proceedings

129. Currently, hearing fees do not apply to land valuation proceedings. These proceedings require a District Court judge and two other presiding officers and are therefore costly to run. Accordingly, it is proposed that hearing fees apply to these proceedings.

Application of the District Courts Fees Regulations

130. Regulation 3(1) of the District Courts Fees Regulations 2009 states:

These regulations apply to—

- (a) any civil proceedings taken in a District Court under the District Courts Act 1947; and
 - (b) any proceedings under section 357 of the Property Law Act 2007...
131. Other than to proceedings under the District Courts Act 1947 and the Property Law Act 2007, the regulations do not apply to proceedings under any other enactment “unless the enactment otherwise provides” (regulation 3(2)). Currently, only the Admiralty (Fees) Order 1997 provides for the application of the District Courts Fees Regulations to admiralty proceedings.
 132. Where, under legislation or regulations other than the District Courts Act, Property Law Act or Admiralty (Fees) Order, a dispute falls within the jurisdiction of the District Courts, no fee can be charged. Because of this legislative anomaly, there is no ability to charge fees for applications in relation to appeals, unit title disputes, limited licences in cases of suspension, variation of licences, impounding of motor vehicles and removal orders under the Local Government Act 2002.
 133. It is proposed that, similar to regulation 4 of the High Court Fees Regulations, the District Courts Fees Regulations provide for the regulations to apply to ‘civil proceedings in the court’, except for specified proceedings for which it is not appropriate to charge fees because access to justice may be compromised or because there is a special policy objective which may not be achieved if fees were introduced. Excluded proceedings would be those brought under: the Harassment Act 1977, Criminal Proceeds (Recovery) Act 2009, Immigration Act 2009 or Accident Compensation Act 2001.

Hearing fees regime

134. The current regime is difficult to administer. A regime with the following features is proposed:
 - All hearing fees would be required to be paid within 10 working days after the issuing of the notice of fixture by the Court based on the parties’ estimate of hearing time required.
 - Where the duration of hearing time was under-estimated, fees for each additional half day would be payable.
 - The registrar would have the ability to vacate the fixture if the fee were not paid, in which case a further case management conference before a judge would be scheduled.
 - The following refund regime would apply if cases were settled prior to the hearing:

- 100% refund on 16 or more working days' notice
- 50% refund on 6–15 working days' notice
- 25% refund on 1–5 working days' notice.

New applications for financial assessments and attachment orders (civil enforcement)

135. Amendments to the District Courts Act 1947 made by the Courts and Criminal Matters Bill will provide for an expanded set of civil enforcement processes designed to be simple and cost effective. The associated applications are described below along with proposed fees. Fees are set at levels which reflect the likely amount of registry work required.

- **Financial assessment hearing:** This application replaces the current order for examination: an application filed by a judgment creditor asking the Court to assess the judgment debtor's financial means. The registrar may then make orders and directions (such as an attachment order) in order to resolve the debt. The proposed fee is \$180. However, this fee would be reduced to \$130 if the proposal to impose the new fee for personal service by a bailiff¹⁹ (\$50) is introduced.
- **Application for an attachment order (agreed):** A judgment creditor or a judgment debtor can file the details of an attachment order, which they have agreed at a hearing. The registrar will then make the attachment order. The proposed fee is \$30.
- **Application for an attachment order (unilateral):** A judgment creditor or a judgment debtor can apply to the Court for an attachment order to enforce a judgment or order for payment of money. The registrar can then make the attachment order. The proposed fee is \$50.
- **Filing a financial statement:** A judgment creditor or judgment debtor will be able to file a financial statement²⁰ to enable the Court to assess the ability of the judgment debtor to pay a debt. The registrar may then make orders and directions (such as an attachment order) to determine the most appropriate means of resolving the debt. The proposed fee is \$65.
- **Application for an oral financial assessment:** A judgment creditor will be able to apply to the Court to obtain financial information from a judgment debtor about his or her ability to pay a debt. This may be conducted informally in person or by telephone. If the judgment debtor does not provide the necessary financial information the registrar would have the ability to issue a summons to a hearing, served by a bailiff. If necessary, a warrant for arrest would also be able to be issued. The proposed fee is \$80.

Fee for warrants to seize property, or recover chattels or land

136. The current fee for a warrant of execution²¹ is \$66.50. Warrants are expensive to execute as they incur various costs such as travel costs of one or more bailiffs, discussions with the creditor and debtor (and possibly also an auctioneer and third party claimant) about seized property, compliance with health and safety legislation, and checking whether there are any registered securities against the property to which the warrant relates.

¹⁹ A bailiff is an officer of a District Court who serves summonses and orders, and executes warrants issued by the Court.

²⁰ A financial statement sets out information as to a judgment debtor's assets and liabilities, and income and expenditure for the preceding 52 weeks.

²¹ A warrant of execution enables the seizure of property or chattels (depending on the warrant being executed) to satisfy a civil court judgment or order. A warrant of execution includes a warrant to seize property, warrant for the recovery of land, warrant for the recovery of specific chattels and warrant to seize property for the value of specific chattels.

137. Accordingly, it is proposed that the fee for a warrant to seize property and warrant to recover specific chattels or land be set at \$200.
138. There is no fee for an application for a warrant to seize property for the value of specific chattels. This warrant is issued free of charge if the property has not been able to be recovered through the execution of a warrant to recover specific chattels.

New fee for enforcing a possession order obtained in the Tenancy Tribunal

139. Currently, a landlord can file a possession order free of charge to evict a tenant from his or her property. Possession orders are enforced as a warrant for the recovery of land and are expensive to execute. A single \$200 fee is proposed for this service, notwithstanding that more than one warrant may be issued in relation to the enforcement of a possession order. This fee would be consistent with the fee for a warrant for the recovery of land (see above).

New fee for personal service by a bailiff

140. Currently:
 - all post-judgment applications requiring personal service can only be carried out by a bailiff
 - there is no separate fee for personal service by a bailiff (eg, for serving a summons for an examination hearing); the cost is built into the application fee charged.
141. Under the proposed new regime, a creditor will have the option of either personally serving a summons on a debtor or requesting a bailiff to serve a summons on a debtor (to attend a financial assessment hearing or contempt of enforcement proceedings²²).
142. If the creditor elects to have a bailiff serve a summons on a debtor, it is proposed that the creditor will be charged a separate service fee and it will be added to the judgment debt. It is proposed that this fee be set at \$50.
143. If the creditor elects to personally serve a summons on a debtor, it is proposed that the creditor will be able to seek to have his or her expenses relating to the service (up to \$50) added to the judgment debt.
144. If the creditor is unable to serve a summons on a debtor, because, for example, the debtor has moved, he or she will be required to pay a fee for filing a new address (see below). A bailiff would then attempt to serve the summons on the debtor, or where appropriate, execute a warrant for arrest.

Fee for filing a new address for service/execution

145. Currently, where a judgment creditor does not maintain or update a debtor's contact details, a bailiff may be required to make numerous visits to an address or addresses that have long been vacated or never occupied by the judgment debtor.

²² Contempt proceedings may currently be exercised when, after an examination hearing, the Court is satisfied a debtor has sufficient means to pay a debt but refuses to do so and all other methods of enforcing a judgment have been unsuccessful. In these circumstances the creditor may apply to the Court for an order that the debtor perform community work for up to 200 hours. Under the proposed new regime, contempt procedures will be available if, after any of the new applications (filing of financial statement, financial assessment hearing, etc) have been exercised, the Court is satisfied a debtor has sufficient means to pay a debt but refuses to do so and all other methods of enforcing a judgment have been unsuccessful. In addition to sentencing a debtor to perform community work, a judge will be able to make a full range of orders and directions (such as an attachment order) in order to resolve the debt.

146. Under the new regime, where personal service by a bailiff is required in circumstances where a debtor's address has changed, it is proposed to introduce a fee of \$50 for the filing (by a creditor) of a new address. This would be equivalent to the proposed fee for personal service by a bailiff to an existing address. Only one 'new address' fee will be able to be added to the judgment debt per enforcement proceeding.

Fee for a general interlocutory application in civil enforcement proceedings

147. Similarly to the interlocutory applications made in dispute resolution proceedings, interlocutory applications in relation to civil enforcement proceedings usually require a supporting affidavit to be filed with the application. This requires deliberation by a judge or registrar, either on the papers or requiring hearing time before a judge. It is proposed that the fee for an interlocutory application be increased from \$223.50 to \$250, consistent with the dispute resolution jurisdiction of the District Court. The general interlocutory fee will also apply to the following:
- application for an interim charging order or final charging order²³
 - filing an affidavit in support of a garnishee summons²⁴
 - application for review of a registrar's decision.²⁵

Changing an existing attachment order

148. Varying, suspending or discharging an attachment order is treated as an interlocutory application, with an associated fee of \$223.50. However, such an application only requires a simple administrative process to be undertaken by the registrar.
149. It is proposed that no fee be charged for this type of interlocutory application, in order to make the process more efficient and (in most cases) complete the payment of a debt without incurring further fees. In addition, because the Court will have the ability under the new regime to make an attachment order without a formal assessment of a debtor's financial means, it is important that there be an equally simple and less formal process for varying such orders.

Contempt of enforcement proceedings

150. A fee of \$250 for an application in relation to a contempt proceeding is proposed. This is the same as the fee proposed for general interlocutory applications in the District Court (\$250). However, this fee would be reduced to \$200 if the proposal to impose a new fee (\$50) for personal service by a bailiff is introduced (see the section '[New fee for personal service by a bailiff](#)' above).

²³ A judgment creditor may apply to the Court for a charging order on any land or asset held by a judgment debtor. The charging order has the effect of preventing the disposal of the property until the creditor has the opportunity to seize or sell it in satisfaction of the debt. If charged against land, the order must be registered against the appropriate title. If the land is not seized or sold within two years of registration, the order is deemed discharged. A charging order may be enforced by sale of the property but this can only be done by removing the judgment into the High Court.

²⁴ A garnishee summons may be issued by the Court to a sub-debtor (a person who owes money to a judgment debtor) to attend a hearing, where a garnishee proceeding is commenced by a judgment creditor. At the hearing, the judge may issue a garnishee order for the sub-debtor to pay money directly to the judgment creditor.

²⁵ An application for review of a registrar's decision enables an affected party to ask a District Court judge to review a decision made by a registrar relating to some aspects of the financial assessment and attachment order procedures. The judge can confirm, change or cancel the registrar's decision.

Order that any party be examined

151. It is proposed that the fee for filing an application under rule 15.3 of the District Courts Rules 2009 for an order that any party be examined be increased to \$180, to align with the fee proposed for filing an application under rule 3.24 of the District Courts Rules 2009 for an order that a witness be examined. These applications are similar and the proposed fee reflects the similar judicial and registry time required for each.

Retrieval of files from archives

152. No fee is currently payable in any court for the retrieval of files from archives, although staff time is needed to identify a file and make the arrangements, and courier fees are incurred by the court. A \$50 fee is proposed to recoup some of the cost of this activity. The same fee is proposed for the High Court, Court of Appeal and the Supreme Court. This would be in addition to the search fee.

Additional services

153. It is proposed to introduce the charging of actual and reasonable costs when courts are asked to provide additional services, such as providing AVL for parties when not required by the Court.

Impact of proposals on cost recovery

Civil dispute resolution jurisdiction

154. It is anticipated that, if all the proposed changes were adopted, cost recovery in the civil dispute resolution jurisdiction of the District Courts would be approximately **36 percent**.

Civil enforcement jurisdiction

155. It is anticipated that, if all the proposed changes were adopted, cost recovery in the civil enforcement jurisdiction of the District Courts would be approximately **27 percent**.
156. However, because the changes to civil enforcement procedure are expected to result in a reduction in operational costs, cost recovery may be greater than 27 percent.

What do you think?

Topic	Tell us your views	
Cost apportionment	8	What is the appropriate apportionment of costs between taxpayers and users in the District Courts?
Hearing fees regime	9	Do you agree with the proposal to introduce a prepayment system for hearing fees in the District Courts? Please state reasons for your answer.
Civil enforcement fees	10	Do you agree with the fee proposals for the new District Courts civil enforcement regime? Please state reasons for your answer.
Other fee proposals	11	Do you have any other comments on specific fee proposals?
Fair, simple and efficient fee system	12	Do you think that the proposed fee system for the District Courts is fair and simple? Please state reasons for your answer.
	13	Do you think that the proposed fee system for the District Courts will encourage efficient use of the District Courts? Please state reasons for your answer.

High Court fee proposals

Overview

157. The High Court hears the more serious criminal and civil cases as well as appeals from lower courts and tribunals. The civil jurisdiction accounts for approximately 60 percent of the Court's overall workload. Around 27,000 substantive civil applications are made each year. The eight major types of civil applications in the High Court are:

- general proceedings – cases in which people or organisations seek resolution of a dispute or the recovery of money
- judicial reviews of the actions of a government or private administrative body
- originating applications – requests for an order or direction from the Court in relation to a proceeding that is not commenced by notice of proceeding and statement of claim
- appeals
- bankruptcies/company liquidations
- law practitioners' admissions
- probate applications (the largest volume – approximately 16,000 annually).

Current fees

158. A number of regulations and orders, pursuant to eight statutes, provide for fees in the civil jurisdiction of the High Court (see the links below):

- [High Court Fees Regulations 2001](#) (Schedule)
- [Sheriffs' Fees Regulations 1988](#) (Schedule)
- [Rating \(Fees\) Regulations 1997](#)
- [Admiralty \(Fees\) Order 1997](#)
- [Property Law \(Mortgagees' Sales Forms and Fees\) Regulations 2007](#)
- [Trustee Companies \(Fees\) Regulations 1997](#)
- [Administration \(Fee\) Regulations 1997](#)
- [Public Trust Regulations 2002](#)
- [Māori Trustee Regulations 2009](#)
- [Jury Rules 1990](#).

Current cost and cost recovery

159. The total cost of running the civil jurisdiction of the High Court in 2010/11 was **\$37.5 million**.

160. Total fee revenue received by the High Court in 2010/11 was **\$8.3 million**. This represents approximately **22 percent** of the total cost of running the Court's civil jurisdiction.

Fee proposals

Topic	Proposal (High Court) (all fees GST inclusive)
Concession rate proceedings	<p>Increase fees for concession rate proceedings as follows:</p> <ul style="list-style-type: none"> • filing an originating document from \$483.40 to \$675 • filing a counterclaim, or statement of defence and counterclaim (where both are included in one document) from \$483.40 to \$675 • filing an interlocutory application from \$241.70 to \$250 • hearing fee per half day from \$604.20 to \$800.
Commencing a proceeding/filing a counterclaim	<p>Increase the fee from \$1,329.20 to \$1,350 for:</p> <ul style="list-style-type: none"> • filing any proceeding commenced by a statement of claim • filing a counterclaim or statement of defence together with a counterclaim.
Probate	<p>Increase the fee for filing an application for probate or letters of administration (including sealing the order) from \$90.60 to \$200.</p> <p>Increase the fee for filing an election to administer from \$12.10 or \$10.22 to \$50.</p> <p>Increase the fee for filing an interlocutory application in relation to probate from \$78 to \$250.</p> <p>Increase the fee for sealing or resealing exemplifications or duplicates of letters of administration or grant of probate from \$24.20 to \$50.</p> <p>Increase the fee for issuing a certificate of administration from \$18.10 to \$50.</p> <p>Increase the fee for searching or inspecting a document or court file relating to an application for a grant of administration or a deceased person's estate for each file searched or inspected from \$40.89 to \$50.</p> <p>Introduce a \$20 fee for searching or inspecting a document or court file relating to an application for a grant of administration or a deceased person's estate for a copy of a will.</p>
Interlocutory application	<p>Replace the current single interlocutory application fee with separate fees for an interlocutory application on notice and an interlocutory application without notice as follows:</p> <ul style="list-style-type: none"> • reduce the fee from \$725 to \$250 for filing an interlocutory application without notice for a proceeding other than a concession rate proceeding and other than in relation to probate • increase the fee from \$241.70 to \$250 for filing an interlocutory application for a concession rate proceeding (regardless of whether the application is made on notice or without notice) • reduce the fee from \$725 to \$500 for filing an interlocutory application on notice for a proceeding other than a concession rate proceeding. <p>Apply hearing fees to interlocutory proceedings from the first day of hearing.</p>
Sale of property	<p>Introduce a fee of \$500 when a registrar carries out a forced sale.</p>
Bankruptcy notice	<p>Introduce a fee of \$200.</p>

Topic	Proposal (High Court) (all fees GST inclusive)
Hearing fees	<p>Increase hearing fees as follows:</p> <ul style="list-style-type: none"> from \$1,570.90 to \$1,600 (per half day) for all proceedings other than concession rate from \$604.20 to \$800 (per half day) for all concession rate proceedings. <p>Hearing fees would be applicable (unless otherwise provided for) in respect of the hearing of every proceeding, including judicial settlement conferences.</p>
Hearing fees regime Substantive applications for: general proceedings, judicial reviews, appeals and probate applications (in solemn form)	<p>Introduce a hearing fees regime with the following features:</p> <ul style="list-style-type: none"> The setting down fee would be revoked. Prepayment of hearing fees would be required no later than 10 working days after the issuing of the notice of fixture by the Court. The fee amount would be based on the parties' estimate of hearing time required. The registrar would have the ability to vacate the fixture if the fee were not paid, in which case a further case management conference before a judge would be scheduled. Where the duration of hearing time was under-estimated, fees for each additional half day would be payable. The plaintiff in the claim and the plaintiff in the counterclaim would prepay hearing fees for the total estimated hearing time, but would be refunded after the hearing for hearing time that did not relate to their claim or counterclaim. The following refund regime would apply if cases were settled prior to the hearing: <ul style="list-style-type: none"> 100% refund (less the first day's hearing fee) on 21 or more working days' notice 75% refund on 16–20 working days' notice 50% refund on 6–15 working days' notice 25% refund on 1–5 working days' notice.
Hearing fees regime All interlocutory applications and substantive applications for: originating applications, bankruptcy proceedings, and company liquidations	<p>Introduce a hearing fees regime with the following features:</p> <ul style="list-style-type: none"> The setting down fee would be revoked. All hearing fees would be required to be paid no later than three working days before the hearing. The fee amount would be based on the parties' estimate of hearing time required. The registrar would have the ability to vacate the fixture if the fee were not paid. If the hearing is set down to take place within three days from the date of filing then a hearing fee (for one day's hearing) would be payable at the time of filing. Where the duration of hearing time was under-estimated, fees for each additional half day would be payable. There would be no refund if the hearing was vacated prior to the scheduled date.
Judicial settlement conference	<p>Introduce a hearing fee per half day or part half day of \$800 for concession rate proceedings and \$1,600 for all other proceedings.</p>
Access to court	<p>Increase the fee from \$25.56 to \$50.</p>

Topic	Proposal (High Court) (all fees GST inclusive)
documents	
Copies of judgments and documents	<p>Adjust fees. In place of charging for judgments according to their number of pages, and for other documents on an actual and reasonable basis, charge:</p> <ul style="list-style-type: none"> • \$30 per judgment – whether in paper or electronic form • for other documents: <ul style="list-style-type: none"> ○ paper: <ul style="list-style-type: none"> ▪ A4 size, black & white: 40 cents per page ▪ A4 size, colour: 80 cents per page ▪ A3 size, black & white: 80 cents per page ▪ A3 size, colour: \$1.60 per page ○ electronic: 20 cents per page.
Retrieval of files from archives	Introduce a fee of \$50.
Search of the formal court record	Adjust the fee from \$25.56 to \$20 for the first name or case plus \$5 for every additional name or case searched as part of the same application.
Sealing	<p>Increase the fee from \$48.30 to \$50 for sealing all document types.</p> <p>Remove the exceptions for paying a fee for the sealing of orders from the schedule to the High Court Fees Regulations. The sealing fee would be payable for sealing an interlocutory order. The sealing fee for a probate/letters of administration or an order for admission as a barrister and solicitor would be explicitly included in the filing fee.</p>
Issuing a registrar's certificate or a certified copy of a document	Increase the fee from \$42.30 to \$50 for issuing a certified copy of any document (that is part of the court file or formal court record) or any registrar's certificate.
Jury fees	<p>Increase the fee payable in advance to the registrar by a party to a civil case in which a jury is required, for:</p> <ul style="list-style-type: none"> • the first day or part day: from \$800 to \$1,000 • each subsequent day: from \$400 to \$500.
Attendance before a registrar or examination of witness by a registrar	Increase the fee from \$441.10 to \$600.
Commissioner to take affidavits	Increase the fee for appointment of a commissioner to take affidavits from \$320.20 to \$500.
Admiralty fees	<p>Increase the fee for filing:</p> <ul style="list-style-type: none"> • an application for a warrant for arrest from \$1,111.70 to \$1,500 • a request for a commission for the appraisal and sale of any property from \$1,087.50 to \$2,000. <p>Introduce a registrar's fee of \$500 for the sale of any property.</p>

Topic	Proposal (High Court) (all fees GST inclusive)
Mortgagee sale	<p>Increase the fee payable:</p> <ul style="list-style-type: none"> by the vendor mortgagee to the registrar under the Property Law Act 2007 from \$1,306.90 to \$1,500 by the vendor mortgagee to the registrar under the Property Law Act 2007 from \$326.70 to \$500 (minimum commission) and from \$15,247.10 to \$20,000 (maximum commission).
Rating sale	<p>Increase the fee:</p> <ul style="list-style-type: none"> in respect of an application to enforce a judgment for rates under the Local Government (Rating) Act 2002 from \$175.20 to \$300 for the sale or lease of a rating unit under the Local Government (Rating) Act 2002 from \$646.50 to \$800. <p>Introduce a registrar's fee of \$500 for the sale of any property.</p>
Enforcement processes	<p>Increase the fee for:</p> <ul style="list-style-type: none"> the issue of an attachment order or a charging order without leave from \$48.30 (current fee for sealing the original copy of any judgment, order, rule etc) to \$200 the issue of a sale order, a possession order, an arrest order for failure to comply with a court order, a sequestration order or an arrest order for an absconding debtor from \$1,111.70 to \$1,500. <p>Introduce a registrar's fee of \$500 for the sale of any property pursuant to a sale order.</p>
Additional services	<p>Enable registrars to charge for additional services (such as AVL when not required by the Court), on an actual and reasonable basis.</p>
Proposals to ensure clarity	<p>Specify which proceedings are 'concession rate proceedings' in the fee schedule.</p> <p>Consolidate fees with a common theme: law practitioners; bankruptcy; and probate/administration.</p> <p>Clarify sealing fees and set a single \$50 fee for sealing a document or issuing a certified copy of any document or any registrar's certificate.</p> <p>Remove the exceptions to the fee for sealing a judgment or other document (including 'an order made in interlocutory proceedings').</p> <p>Consolidate all fees into one set of High Court Fees Regulations and repeal the following regulations:</p> <ul style="list-style-type: none"> regulation 17 of the Trustee Company (Fee) Regulations 1997 regulation 17 of the Public Trust Regulations 2002 regulation 5 of the Māori Trustee Regulations 2009 rule 26 of the Jury Rules 1990 Admiralty (Fees) Order 1997 Property Law (Mortgagees' Sales Forms and Fees) Regulations 2007 Rating (Fees) Regulations 1997 and Administration (Fee) Regulations 1997;

Topic	Proposal (High Court) (all fees GST inclusive)
	<ul style="list-style-type: none"> Sheriffs' (Fees) Regulations 1988.

Detail on proposals

Concession rate proceedings

161. Concession rate proceedings are those proceedings for which there are no, or limited, alternatives to court action, or which involve a high degree of public benefit, or which incur lower average cost than other types of applications. Given these factors, the Ministry considers it appropriate that these proceedings attract lower fees than those of other proceedings.
162. 'Concession rate proceeding' is defined in regulation 3 of the High Court Fees Regulations 2001 as any of the following proceedings:
 - (a) an appeal to the court under any enactment; or
 - (b) an application for review under Part 1 of the Judicature Amendment Act 1972 (judicial review procedure); or
 - (c) a proceeding to which Part 18 of the High Court Rules applies (applications in equity and under certain statutes); or
 - (d) an originating application to which Part 19 of the High Court Rules applies (originating applications); or
 - (e) an application to which Part 30 of the High Court Rules applies (judicial review); or
 - (f) an application to put a company into liquidation to which Part 31 of the High Court Rules applies.
163. It is not proposed to alter the above definition of concession rate proceedings. However, it is proposed to adjust the differential between the full rate and concession rate fees for filing the originating document, any interlocutory applications, and hearing fees.
164. Currently the concession rate fees are between 30 and 40 percent of the full fee. As concession rate proceedings constitute a significant proportion of the work effort and resources of the courts (ie, staff, judges and facilities), it is proposed to raise the differential to 50 percent.

Commencing proceedings/filing a counterclaim

165. In order to reflect the private benefit of – and registry resources required to process – any proceeding commenced by filing a statement of claim, it is proposed that the fee be increased from \$1,329.20 to \$1,350.
166. The proposed fee of \$1,350 would also apply for filing a counterclaim or filing a statement of defence together with a counterclaim.

Probate

167. Fee amounts should reflect both judicial or registry effort involved and degree of private benefit.
168. Probate applications account for an estimated 10 percent of the High Court's workload and, accordingly, a significant amount of the Court's resources are devoted to processing them. Processing probate applications requires a degree of specialist expertise.
169. The current fee for an application for probate, at \$90.60, is significantly less than the \$211.50 fee for the dissolution of a marriage in the Family Court. However, the process for a probate application is more complex and resource intensive than the process for dissolution of a marriage, and the consequences of an error can be more significant.

170. A fee of \$200 for a probate application is proposed. This fee would include the sealing of the order. The increased fee would not represent full cost recovery but would better recognise both the work involved and the fact that the benefits resulting from this service are largely private.
171. The following probate-related fees are proposed to reflect the registry effort involved and private benefit of these services, and to align with other fee proposals:
- filing an election to administer: increase the fee from \$10.22 (Public Trust Regulations 2002) and \$12.10 (Trustee Companies [Fees] Regulations 1997), to \$50
 - filing an interlocutory application in relation to probate: increase the fee from \$78 to \$250
 - sealing or resealing exemplifications or duplicates of letters of administration or grant of probate: increase the fee from \$24.20 to \$50
 - issuing certificate of administration: increase the fee from \$18.10 to \$50
 - searching or inspecting a document or court file relating to an application for a grant of administration or a deceased person's estate for each file searched or inspected: increase the fee from \$40.89 to \$50
 - searching or inspecting a document or court file relating to an application for a grant of administration or a deceased person's estate for a copy of a will alone: introduce a fee of \$20 (currently no fee).

Interlocutory applications – revised regime

172. There is currently one fee for an interlocutory application, whether it is on notice or without notice. An interlocutory application without notice generally takes minimal time to deal with and does not require court time or appearances. Conversely, an interlocutory application on notice often involves significant judicial and registry time and one or more court appearances may be required.
173. It is proposed that separate fees be introduced for an interlocutory application on notice and an interlocutory application without notice.
174. It is further proposed that interlocutory fees be adjusted to better recognise the amount of registry and judicial effort involved in dealing with them. Accordingly, the proposed fees are:
- \$250 (currently \$725) for filing an interlocutory application without notice for a proceeding other than a concession rate proceeding
 - \$250 (currently \$241.70) for filing an interlocutory application for a concession rate proceeding (regardless of whether the application is made on notice or without notice)
 - \$500 (currently \$725) for filing an interlocutory application on notice for a proceeding other than a concession rate proceeding.
175. Previously, hearing fees were not charged for interlocutory hearings which took one day or less. This appears to have been an oversight arising from the fact that, while the first day of hearing is covered by the setting down fee for substantive applications, no setting down fee is payable in respect of interlocutory applications. It is proposed that fees for interlocutory hearings be brought in line with those for substantive hearings.

Fees on the sale of property

176. The forced sale of property and post-sale accounting can take up a significant amount of a registrar's time. It is technical work which calls for a high degree of expertise. The current fee does not compensate for the amount of work and time involved. It is proposed, therefore, that a fee of \$500 be introduced when a registrar carries out a forced sale. (Also see [Other services – proposed fee changes below](#).)

Fee for filing a request for issue of a bankruptcy notice

177. A fee for this application was contained in an amendment to the Insolvency Regulations 1970, but the Insolvency Act 2006 repealed the principal regulations. This means that, since commencement of the Insolvency Act in December 2007, no fee has been charged. Reintroduction is proposed to recognise the effort involved in processing such applications and to rectify the unintentional revoking of the fee. It is proposed this fee be set at \$200.

Hearing fees regime

178. The current hearing fees regime is difficult to administer. Proposed new regimes are set out below, for two groups of application types. For both regimes, the setting down fee would be revoked, and hearing fees would be increased as follows:

- from \$1,570.90 to \$1,600 (per half day) for all proceedings other than concession rate
- from \$604.20 to \$800 (per half day) for all concession rate proceedings
- hearing fees would be applicable (unless otherwise provided for) in respect of the hearing of every proceeding, including judicial settlement conferences.

SUBSTANTIVE APPLICATIONS IN RESPECT OF: GENERAL PROCEEDINGS, JUDICIAL REVIEWS, APPEALS AND PROBATE (IN SOLEMN FORM)

179. A regime with the following features is proposed:

- All hearing fees would be required to be paid no later than 10 days after the issuing of the notice of fixture by the Court. The fee would be based on the parties' estimate of hearing time required. There would be provision for the registrar to vacate the fixture if the fee were not paid, in which case a further case management conference before a judge would be scheduled.
- Where the duration of hearing time was under-estimated, fees for each additional half day would be payable.
- The current unfairness with respect to the payment of fees for hearing of a claim and counterclaim would be removed. Currently, the plaintiff in the claim is responsible for the hearing fees, even if most of the evidence relates to the counterclaim. Under the proposed system, both the plaintiff in the claim and the plaintiff in the counterclaim would prepay hearing fees for the total estimated hearing time, but would be refunded after the hearing for hearing time that did not relate to their claim or counterclaim.
- The following refund regime would apply if cases were settled prior to the hearing:
 - 100% refund (less the first day's hearing fee) on 21 or more working days' notice
 - 75% refund on 16–20 working days' notice
 - 50% refund on 6–15 working days' notice
 - 25% refund on 1–5 working days' notice.

INTERLOCUTORY APPLICATIONS AND SUBSTANTIVE APPLICATIONS IN RESPECT OF: ORIGINATING APPLICATIONS, BANKRUPTCY PROCEEDINGS AND COMPANY LIQUIDATIONS

180. A regime with the following features is proposed:

- All hearing fees would be required to be paid no later than three days before the hearing. The fee would be based on the parties' estimate of hearing time required. There would be provision for the registrar to vacate the fixture if the fee were not paid.
- If, due to urgency, the hearing is set down to take place within three days from the date of filing, then a hearing fee (for one day's hearing) would be payable at the time of filing.

- Where the duration of hearing time was under-estimated, fees for each additional half day would be payable.
- There would be no refund available if the hearing was vacated prior to the scheduled date.

Judicial settlement conferences

181. Judicial settlement conferences take place before a judge or associate judge and generally take from a half day to a day. A member of registry staff is often required to attend. Previously, hearing fees have not been charged for judicial settlement conferences. However, because judicial settlement conferences (if they result in settlement) do not provide the same public benefit as a judgment following a hearing held in open court, it is reasonable to expect court users to make a contribution towards the judicial and registry time involved. Consequently, it is proposed that hearing fees (see [‘Hearing fees regime’](#) above) apply to judicial conferences.²⁶

Copies of judgments

182. In most cases, judgments of the High Court are published online and are available free of charge. Where a copy is requested from a court registry it is proposed that current fees be adjusted. In place of charging for judgments according to their number of pages, it is proposed that the copies of judgments are sold for a flat rate of \$30, irrespective of their size. The same fee is proposed for the Court of Appeal and the Supreme Court.

Retrieval of files from archives

183. No fee is currently payable in any court for the retrieval of files from archives, although staff time is needed to identify a file and make the arrangements, and courier fees are incurred. A \$50 fee is proposed to recoup some of the cost of this activity. The same fee is proposed for the High Court, Court of Appeal and Supreme Court. This would be in addition to the fee for accessing the court file.

Sealing fees

184. It is proposed that the exceptions for paying a fee for the sealing of orders be removed from the schedule to the High Court Fees Regulations. A sealing fee would be payable for sealing an interlocutory order. Fees for sealing a probate/letters of administration or an order for admission as a barrister and solicitor would be explicitly included in the filing fee.

Jury fees

185. The following increases to the fees payable to the registrar by a party to a civil case in which a jury is required are proposed to better recognise the actual costs of running a jury trial:
- fee for the first day or part day: from \$800 to \$1000
 - fee for each subsequent day: from \$400 to \$500.
186. Jury fees are contained in rule 26 of the Jury Rules 1990. As this is a fee payable to the High Court, it is proposed that it be set in the High Court Fees Regulations, rather than the Jury Rules. It is also proposed that prepayment of the fees be required for consistency with the prepayment of hearing fees.

Other services – proposed fee changes

187. In order to reflect the private benefit and registry resources required to process the following applications, it is proposed that fees be increased, as follows:

²⁶ Approximately 330 judicial settlement conferences are held each year.

- attendance before a registrar or examination of a witness by a registrar: from \$441.10 to \$600
- appointment of a commissioner to take affidavits: from \$320.20 to \$500
- admiralty fees:
 - an application for a warrant for arrest: from \$1,111.70 to \$1,500
 - a request for a commission for the appraisal and sale of any property: from \$1,087.50 to \$2,000
- mortgagee sales:
 - by the vendor mortgagee to the registrar under the Property Law Act 2007: from \$1,306.90 to \$1,500
 - by the vendor mortgagee to the registrar under the Property Law Act 2007 (minimum and maximum commission): from \$326.70 to \$500 and from \$15,247.10 to \$20,000
- rating sales:
 - in respect of an application to enforce a judgment for rates under the Local Government (Rating) Act 2002: from \$175.20 to \$300
 - for the sale or lease of a rating unit under the Local Government (Rating) Act 2002: from \$646.50 to \$800
- enforcement processes:
 - issue of an attachment order or a charging order without leave: from \$48.30 (current fee for sealing the original copy of any judgment, order, rule etc) to \$200
 - issue of a sale order, a possession order, an arrest order for failure to comply with a court order, a sequestration order or an arrest order for an absconding debtor: from \$1,111.70 to \$1,500.

188. It is proposed to introduce a registrar's fee of \$500 for the sale of any property.

189. It is proposed to introduce the charging of actual and reasonable costs when courts are asked to provide additional services, such as providing AVL for parties when not required by the Court.

Impact of proposals on cost recovery

190. It is anticipated that, if all the proposed changes were adopted, cost recovery in the High Court would be approximately **37 percent**.

What do you think?

Topic	Tell us your views	
Cost apportionment	14	What is the appropriate apportionment of costs between taxpayers and users in the High Court?
Hearing fees regime	15	Do you agree with the proposal to introduce a prepayment system for hearing fees in the High Court? Please state reasons for your answer.
Concession rate proceedings	16	Do you agree with the proposal to increase concession rate fees to 50 percent of the full fee? Please state reasons for your answer.

Topic	Tell us your views	
Probate	17	Do you agree with the proposal to increase the fee for probate to \$200? Please state reasons for your answer.
Interlocutory fee regime	18	Do you agree with the proposed High Court interlocutory fee regime? Please state reasons for your answer.
Other fee proposals	19	Do you have any other comments on specific fee proposals?
Fair, simple and efficient fee system	20	Do you think that the proposed fee system for the High Court is fair and simple? Please state reasons for your answer.
	21	Do you think that the proposed fee system for the High Court will encourage efficient use of the Court? Please state reasons for your answer.

Court of Appeal fee proposals

Overview

191. The Court of Appeal hears appeals from civil and criminal matters heard in the High Court, and serious criminal matters heard in the District Courts. Matters appealed to the High Court from District Courts and certain tribunals can be taken to the Court of Appeal with leave, if a second appeal is warranted. The Court may also grant leave to hear appeals against pre-trial rulings in criminal cases and appeals on questions of law from the Employment Court.
192. Each year the Court of Appeal receives around 800 appeals from the lower courts. Approximately 35 percent of the Court of Appeal's workload is in the civil jurisdiction and the remainder is in the criminal jurisdiction.
193. The Court of Appeal is located in Wellington but sittings are also held regularly in Auckland and occasionally in Christchurch. The Court consists of the President of the Court of Appeal and nine other judges. Judges sit as a permanent court of three and occasionally as a 'full court' of five and in 'divisions' comprising one permanent Court of Appeal judge and two High Court judges.

Current fees

194. Fees regulations, pursuant to the Judicature Act 1908, provide for fees in the civil jurisdiction of the Court of Appeal (see the link below):
 - [Court of Appeal Fees Regulations 2001](#) (Schedule).

Current cost and cost recovery

195. The total cost of running the civil jurisdiction of the Court of Appeal in 2010/11 was **\$4.1 million**.
196. Total fee revenue received by the Court of Appeal in 2010/11 was **\$0.52 million**. This amount represents approximately **13 percent** of the total cost of running the Court's civil jurisdiction.

Fee proposals

Topic	Proposal (Court of Appeal) (all fees GST inclusive)
Hearing fees regime	<p>Introduce a new hearing fees regime with the following features:</p> <ul style="list-style-type: none"> • Prepayment of hearing fees would be required no later than 10 working days after the issuing of the notice of fixture by the Court based on the parties' estimate of hearing time required. • The registrar would have the ability to vacate the fixture if the fee were not paid. • Where the duration of hearing time was under-estimated, fees for each additional half day would be payable. • The following refund regime would apply if cases were settled prior to the hearing: <ul style="list-style-type: none"> ○ 100% refund (less the first day's hearing fee) on 21 or more working

Topic	Proposal (Court of Appeal) (all fees GST inclusive)
	<p>days' notice</p> <ul style="list-style-type: none"> ○ 75% refund on 16–20 working days' notice ○ 50% refund on 6–15 working days' notice ○ 25% refund on 1–5 working days' notice <ul style="list-style-type: none"> • The setting down fee would be revoked. <p>The hearing fee would be increased from \$1329.20 to \$1350 per half day.</p>
Access to a document on a court file	Increase the fee from \$25.56 to \$50.
Copies of judgments and documents	<p>Adjust fees. In place of charging for judgments according to their number of pages, and for other documents on an actual and reasonable basis, charge:</p> <ul style="list-style-type: none"> • \$30 per judgment – whether in paper or electronic form • for other documents: <ul style="list-style-type: none"> ○ paper: <ul style="list-style-type: none"> ▪ A4 size, black & white: 40 cents per page ▪ A4 size, colour: 80 cents per page ▪ A3 size, black & white: 80 cents per page ▪ A3 size, colour: \$1.60 per page ○ electronic: 20 cents per page.
Retrieval of files from archives	Introduce a \$50 fee.
Search of the formal court record	Adjust the fee from \$25.56 to \$20 for the first name or case plus \$5 for every additional name or case searched as part of the same application.
Sealing any order or judgment	Increase the fee from \$30.20 to \$50.
Additional services	Enable registrars to charge for additional services (such as AVL when not required by the Court), on an actual and reasonable basis.

Detail on proposals

Hearing fees regime

197. The current regime is difficult to administer. A regime with the following features is proposed:

- The setting down fee would be revoked.
- All hearing fees would be required to be paid within 10 working days of the allocation of the hearing date based on the parties' estimate of hearing time required.
- Where the duration of hearing time was under-estimated, fees for each additional half day would be payable.
- The registrar would have the ability to vacate the fixture if the applicable hearing fees were not paid by the due date.
- The following refund regime would apply if cases were settled prior to the hearing:
 - 100% refund (less the first day's hearing fee) on 21 or more working days' notice

- 75% refund on 16–20 working days' notice
- 50% refund on 6–15 working days' notice
- 25% refund on 1–5 working days' notice.

Copies of judgments

198. In most cases, judgments of the Court of Appeal are published online and are available free of charge. Where a copy is requested from a court registry it is proposed that current fees be adjusted. In place of charging for judgments according to their number of pages, it is proposed that the copies of judgments are sold for a flat rate of \$30, irrespective of their size. The same fee is proposed for the High Court, Court of Appeal and Supreme Court.

Retrieval of files from archives

199. No fee is currently payable in any court for the retrieval of files from archives, although staff time is needed to identify a file and make the arrangements, and courier fees are incurred. A \$50 fee is proposed to recoup some of the cost of this activity. The same fee is proposed for the High Court, Court of Appeal and Supreme Court. This would be in addition to the fee for accessing the court file.

Additional services

200. It is proposed to introduce the charging of actual and reasonable costs when courts are asked to provide additional services, such as providing AVL for parties when not required by the Court.

Impact of proposals on cost recovery

201. It is anticipated that, if all the proposed changes were adopted, cost recovery in the Court of Appeal would be approximately **15 percent**.

What do you think?

Topic	Tell us your views	
Cost apportionment	22	What is the appropriate apportionment of costs between taxpayers and users in the Court of Appeal?
Hearing fees regime	23	Do you agree with the proposal to introduce a prepayment system for hearing fees in the Court of Appeal? Please state reasons for your answer.
Other fee proposals	24	Do you have any other comments on specific fee proposals?
Fair, simple and efficient fee system	25	Do you think that the proposed fee system for the Court of Appeal is fair and simple? Please state reasons for your answer.
	26	Do you think that the proposed fee system for the Court of Appeal will encourage efficient use of the Court? Please state reasons for your answer.

Supreme Court fee proposals

Overview

202. The Supreme Court is New Zealand's final court of appeal, established by the Supreme Court Act 2003. An appeal to the Supreme Court can be heard only with the leave of the Court, which may be granted if the Court is satisfied that it is necessary in the interests of justice. Each year the Court receives 100–150 applications for leave to appeal, and hears and determines around 30 substantive appeals. Approximately 55 percent of the Court's workload is in the civil jurisdiction and the remainder is in the criminal jurisdiction.
203. The Supreme Court sits in Wellington. Under the Supreme Court Act the constitution of the Court is the Chief Justice and not fewer than four, nor more than five, other judges. The current number of judges (including the Chief Justice) is five.

Current fees

204. Fees regulations, pursuant to the Supreme Court Act 2003, provide for fees in the civil jurisdiction of the Supreme Court (see the link below):
- [Supreme Court Fees Regulations 2003](#) (Schedule).

Current cost and cost recovery

205. The total cost of running the civil jurisdiction of the Supreme Court in 2010/11 was **\$9.9 million**.
206. Total fee revenue received by the Supreme Court in 2010/11 was **\$0.037 million**. This represents approximately **0.4 percent** of the total cost of running the Court's civil jurisdiction.

Fee proposals

Topic	Proposal (Supreme Court) (all fees GST inclusive)
Interlocutory application	Introduce a fee of \$400.
Copies of judgments and documents	Adjust fees. In place of charging for judgments according to their number of pages, and for other documents on an actual and reasonable basis, charge: <ul style="list-style-type: none"> • \$30 per judgment – whether in paper or electronic form • for other documents: <ul style="list-style-type: none"> ○ paper: <ul style="list-style-type: none"> ▪ A4 size, black & white: 40 cents per page ▪ A4 size, colour: 80 cents per page ▪ A3 size, black & white: 80 cents per page ▪ A3 size, colour: \$1.60 per page ○ electronic: 20 cents per page.
Recall of a judgment	Introduce a fee of \$800 for the recall of a judgment, with provision for the fee to be refunded if the recall is granted.

Topic	Proposal (Supreme Court) (all fees GST inclusive)
Retrieval of files from archives	Introduce a \$50 fee.
Sealing any order or judgment	Increase the fee from \$30.20 to \$50.
Additional services	Enable registrars to charge for additional services (such as AVL when not required by the Court), on an actual and reasonable basis.

Detail on proposals

Interlocutory applications

207. The user currently does not pay for an interlocutory application; for example, an application for directions or an application for leave to intervene. A fee is justified on the basis of the registry effort involved. A fee lower than that charged for an application for leave to appeal would recognise that less judicial time is involved.

Copies of judgments

208. In most cases, judgments of the Supreme Court are published online and are available free of charge. Where a copy is requested from a court registry it is proposed that current fees be adjusted. In place of charging for judgments according to their number of pages, it is proposed that the copies of judgments are sold for a flat rate of \$30, irrespective of their size. The same fee is proposed for the High Court and the Court of Appeal.

Recall of a judgment

209. The user pays no fee for an application for the recall of a judgment. A fee is justified on the basis of the registry and judicial effort involved. It is proposed that there should be provision for the fee to be refunded if the recall is granted.

Retrieval of files from archives

210. No fee is currently payable in any court for the retrieval of files from archives, although staff time is needed to identify a file and make the arrangements, and courier fees are incurred. A \$50 fee is proposed to recoup some of the cost of this activity. The same fee is proposed for the High Court, Court of Appeal and Supreme Court. This would be in addition to the fee for accessing the court file.

Additional services

211. It is proposed to introduce the charging of actual and reasonable costs when courts are asked to provide additional services, such as providing AVL for parties when not required by the Court.

Impact of proposals on cost recovery

212. It is anticipated that, if all the proposed changes were adopted, cost recovery in the Supreme Court would be approximately **0.5 percent**.

What do you think?

Topic	Tell us your views	
Cost apportionment	27	What is the appropriate apportionment of costs between taxpayers and users in the Supreme Court?
Interlocutory application	28	Do you agree with the proposal to introduce a \$400 fee for interlocutory applications in the Supreme Court? Please state reasons for your answer.
Recall of a judgment	29	Do you agree with the proposal to introduce an \$800 fee for the recall of a judgment in the Supreme Court? Please state reasons for your answer.
Other fee proposals	30	Do you have any other comments on specific fee proposals?
Fair, simple and efficient fee system	31	Do you think that the proposed fee system for the Supreme Court is fair and simple? Please state reasons for your answer.
	32	Do you think that the proposed fee system for the Supreme Court will encourage efficient use of the Court? Please state reasons for your answer.

Employment Court fee proposals

Overview

- 213. The Employment Court has jurisdiction under the Employment Relations Act 2000 to hear and determine all matters relating to employment disputes, either in the first instance or, more commonly, as challenges to determinations of the Employment Relations Authority (ERA).
- 214. The Employment Relations Act promotes resolution of problems in an employment relationship by the parties themselves. Only a small proportion of employment disputes require judicial intervention.²⁷ Most employment relationship disputes are resolved in the workplace, either through mediation (around 5000 per year) or in the ERA (900 determinations per year).
- 215. The Court has five permanent judges, headed by a Chief Judge.
- 216. Between 175 and 260 applications have been filed each year for the past five years (including the 2011/12 year). Applications filed in the Court fall into two main categories:
 - challenges to determinations of the ERA
 - other applications, which include those pertaining to penalties for a breach of the Employment Relations Act, strikes, lockouts, injunctions, judicial review, and compliance orders.
- 217. The main users of the Court are employees, employers, unions and employer organisations.

Current fees

- 218. Regulations, pursuant to the Employment Relations Act 2000, provide for fees in the Employment Court (see the link below):
 - [Employment Court Regulations 2000](#) (Schedule 3).²⁸

Current cost and cost recovery

- 219. The total cost of running the Employment Court in 2010/11 was **\$3.3 million**.
- 220. Total fee revenue for the Employment Court in 2010/11 was **\$0.049 million**. This represents approximately **1.5 percent** of the total cost of running the Court.

²⁷ Ninety-six percent of all mediations were resolved without referral to the ERA or the Employment Court in the year to June 2011. See: *Department of Labour Annual Report 2010/11* on the [Ministry of Business, Innovation and Employment website](#).

²⁸ Actual fees charged in the Employment Court differ from those in the regulations, as some of the fee amounts listed in the schedule do not include the 2010 GST increase. See the [Employment Court website](#) for a correct list of fees payable in the Employment Court.

Fee proposals

Topic	Proposal (Employment Court) (all fees GST inclusive)
Complex application	<p>Increase the fee from \$306.67 to \$600.</p> <p>This application type would be in respect of proceedings set out in regulation 8 of the Employment Court Regulations 2000 (except for compliance orders) and rehearings.</p>
Standard application	<p>Increase the fee from \$204.44 to \$500.</p> <p>This application type would be in respect of challenges to determinations of the ERA, challenges regarding dismissal of vexatious proceedings, removing proceedings to the Employment Court and compliance orders.</p>
Interlocutory application	<p>Increase the fee from \$102.22 to \$200.</p> <p>Interlocutory applications would include those in respect of discovery (including challenges to objection to disclosure and verification orders), amended pleadings (unless directed by a judge), counterclaims, leave to extend time for filing a challenge, objection to the Court's jurisdiction, security for costs, strike-out, stay of proceedings, leave to serve a statement of claim on an overseas party and parties joining proceedings.</p>
Hearing fees	<p>Increase the fee from \$245.45 to \$350 for a half day or part thereof.</p> <p>Introduce hearing fees for substantive applications which would apply from the first day.</p> <p>Introduce hearing fees for interlocutory applications which would apply from the second day.</p> <p>Introduce provisions to allow hearing fees to be allocated between parties to proceedings for an estimated proportion of the hearing time each requires.</p>
Fee waiver	<p>Introduce fee waiver provisions consistent with those set out in section 100A(1)(d) of the Judicature Act 1908 and provide criteria for waiving fees in the Employment Court Regulations 2009.</p>
Copies of judgments	<p>Introduce a fee of \$10 for supply of a judgment (whether a paper or electronic copy).</p>
Issue of a certificate of judgment	<p>Introduce a fee of \$20.</p>
Redraft fee schedule	<p>Insert a new fee schedule in the regulations.</p>

Detail on proposals

Complex and substantive application fees

221. Application fees should reflect judicial or registry effort involved and the degree of private benefit.
222. It is proposed that applications relating to substantive proceedings should retain two levels of fees:

- There should be a higher fee for applications of greater complexity which are likely to require more judicial resources. These are generally applications for proceedings heard in the first instance (rather than on appeal from the ERA) and include rehearings and all other proceedings specified in regulation 8 of the Employment Court Regulations 2000. However, applications for compliance orders (under regulation 8(1)(e)) should be removed from this category, as these applications are generally not as complex as others. It is proposed that this fee be increased from \$306.67 to \$600.
- A standard fee should apply for applications on appeal from the ERA or those which are generally more straightforward. These include applications in relation to challenges to determinations of the ERA, challenges in respect of dismissal of vexatious proceedings, removing proceedings to the Employment Court and compliance orders. It is proposed that this fee be increased from \$204.44 to \$500. An application for leave to serve a statement of claim on an overseas party, which currently attracts the \$204.44 filing fee, should be treated as an interlocutory application.

223. The proposed application fees are similar to those proposed for the Environment Court.

Interlocutory application fees

224. Interlocutory applications take registry and often judicial time to address. It is proposed the fee for these applications be set at \$200. This fee would apply to the current interlocutory applications for which fees are payable (ie, challenge to objection to disclosure and application for a verification order) as well as to the interlocutory applications set out in the following paragraph.

Interlocutory applications that do not currently attract a filing fee

225. It is proposed that the interlocutory application fee (\$200) be applicable for the following applications, for which there are currently no fees:

- amended pleadings (unless directed by a judge)
- counterclaims
- discovery (other than the current two applications for which a fee applies)²⁹
- leave to extend time for filing a challenge
- objection to the Court's jurisdiction
- security for costs
- strike-out
- stay of proceedings
- party wishing to join proceedings.

226. It is proposed that these interlocutory applications be included in the fee schedule.

Hearing fees

227. The current hearing fee of \$250.45 does not adequately reflect the associated court costs. It is proposed that the hearing fee be aligned with the proposed hearing fee for the Environment Court and accordingly set at \$350 per half day.

²⁹ See clauses 5 and 6 of [Schedule 3](#) of the Employment Court Regulations 2000.

HEARING FEES SHOULD APPLY TO FIRST DAY

- 228. Hearing fees are currently only applicable after the first day. All other courts (for which hearing fees apply) charge fees for the first day of hearing (which is sometimes included in a 'setting down' fee).
- 229. It is proposed that hearing fees for substantive matters should apply from the first day of hearings in the Employment Court.

HEARING FEES FOR INTERLOCUTORY APPLICATIONS

- 230. Most interlocutory matters are straightforward, quick to dispose of and heard on the papers, by teleconference or in chambers. Therefore, these applications tend to be disposed of in a half day or less.
- 231. Where interlocutory matters take longer than a day to hear and are heard in court, it is proposed that hearing fees apply from the second day onwards. This is consistent with the District Courts, in which hearing fees are only applicable for interlocutory matters after the first day.

PARTIES TO PROCEEDINGS RESPONSIBLE FOR HEARING FEES ON A PROPORTIONAL BASIS

- 232. Currently, the plaintiff is responsible for payment of hearing fees. Often both parties to proceedings utilise an equal amount of court time in hearings, or sometimes the defendant may utilise more hearing time than the applicant, despite not being liable for any hearing fees.
- 233. It is proposed that provision be made to allow hearing fees to be fairly allocated between parties to proceedings for an estimated proportion of the hearing time each requires.

Fee waivers

- 234. In order to ensure that, if increased, fees would not cause a barrier to use of the Court, it is proposed that fee waiver provisions be introduced. It is proposed that such provisions be consistent with those set out in section 100A(1)(d) of the Judicature Act 1908. This amendment would empower registrars to waive fees and would require an amendment to the Employment Relations Act 2000.
- 235. Criteria for waiving fees would be provided for in the Employment Court Regulations 2000, consistent with those set out for waiving fees in the District Courts, in the District Courts Fees Regulations 2009 (see [regulation 5](#)).

Certificate of judgment and supply of judgment

- 236. There is currently no provision for a fee for the issue of a certificate of judgment (regulation 70). It is proposed that a \$20 fee for this service be introduced. The proposed fee for a similar service in the District Courts and the High Court is \$50.
- 237. There is also no provision in the regulations for the Court to charge a fee for the supply of a judgment. It is proposed that a \$10 fee for this service be introduced, consistent with the fee proposed for the same service in the District Courts. This fee would apply whether a paper copy or electronic copy of a judgment were provided. However, it is not anticipated that many people would require a judgment to be sent from the Court electronically, as most Employment Court decisions are available online.

Impact of proposals on cost recovery

- 238. It is anticipated that, if all the proposed changes were adopted, cost recovery in the Employment Court would be approximately **4.6 percent**.

What do you think?

Topic		Tell us your views
Cost apportionment	33	What is the appropriate apportionment of costs between taxpayers and users in the Employment Court?
Filing fees	34	Do you agree with the proposed fees for filing substantive and interlocutory applications in the Employment Court? Please state reasons for your answer.
Hearing fees	35	Do you agree with the proposed hearing fee regime for the Employment Court? Please state reasons for your answer.
Other fee proposals	36	Do you have any other comments on specific fee proposals?
Access to justice	37	Should fee waiver provisions be introduced for the Employment Court? Please state reasons for your answer.
Fair, simple and efficient fee system	38	Do you think that the proposed fee system for the Employment Court is fair and simple? Please state reasons for your answer
	39	Do you think that the proposed fee system for the Employment Court will encourage efficient use of the Court? Please state reasons for your answer.

Environment Court fee proposals

Overview

- 239. The Environment Court is a specialist court which primarily deals with environmental matters brought before it under the Resource Management Act 1991 (RMA), but also hears issues under a range of other statutes.
- 240. The Court deals with a variety of cases that fall into three main categories: appeals, direct referrals, and enforcement matters and other applications. Appeals, which can relate to resource consents and proposed district and regional plans and policy statements, comprise approximately 80 percent of the Court's work.
- 241. Direct referrals are those matters heard by the Court in the first instance (rather than on appeal from a territorial or regional council), and also include those referred to the Court by the Minister for the Environment if a matter is considered to be of national significance.
- 242. The main users of the Court are local authorities, corporate entities, small businesses, and property owners. Community and environmental groups participate in the Court on issues that have a strong public interest component. Other members of the public also use the Court, as either individuals or groups.
- 243. The number of applications has been decreasing over the past five years: from 1140 in 2007/08 to 499 for 2011/12.

Current fees

- 244. Regulations, pursuant to the Resource Management Act 1991, provide for fees in the Environment Court (see the link below):
 - [Resource Management \(Forms, Fees and Procedure\) Regulations 2003](#).³⁰

Current cost and cost recovery

- 245. The total cost of running the Environment Court in 2010/11 was **\$10.7 million**.
- 246. Total fee revenue received by the Environment Court in 2010/11 was **\$0.2 million**. This represents approximately **2 percent** of the total cost of running the Court.

³⁰ Actual fees charged in the Environment Court differ from those in the Regulations, as the fee amounts do not include the 2010 GST increase. See the [Environment Court website](#) for a correct list of fees payable in the Environment Court.

Fee proposals

Topic	Proposal (Environment Court) (all fees GST inclusive)
Application for regulation 35(2) 'other proceedings'	Increase the fee from \$56.22 to \$250.
Appeal proceedings	Increase the filing fee from \$511.11 to either: <ul style="list-style-type: none"> • \$600 (option 1, if there is no separate mediation fee); or • \$520 (option 2, if a separate mediation fee is introduced).
Matters referred directly to the Court	Increase the filing fee from \$56.22 to \$600.
Mediation	Introduce a fee of \$100 if option 2 as described above for filing appeal proceedings is preferred. If option 1 is preferred there will be no mediation fee as it will be absorbed in the appeal application fee.
Interlocutory application	Introduce a fee of \$200 for the following interlocutory applications: <ul style="list-style-type: none"> • s116 Application for consent to commence • s278(3) Application for witness summons • s278(3) Application for production of documents • s279(4) Application to strike out • Application for security for costs • s325 Application for stay of abatement notice.
Party wishing to join proceeding	Introduce a fee of \$100 (exclude charging any person joining who was an original submitter to a direct referral matter).
Hearing	Introduce a fee of \$350 per half day, to be paid by the initiator of proceedings or each initiator if there is more than one, for an estimated proportion of the hearing time each requires. Hearing fees for substantive applications would apply from the first day. Hearing fees for interlocutory applications would apply from the second day.
Cost recovery for a direct referral	Introduce a regime with the following features: <ul style="list-style-type: none"> • The registrar of the Court would be empowered to require an applicant to pay to the Crown the actual and reasonable costs incurred by the Crown in a direct referral process. • The Crown would be required, if requested by an applicant, to provide an estimate of the costs likely to be recovered. • When ordering costs, the registrar would be required to have regard to the following criteria: <ul style="list-style-type: none"> ○ The sole purpose would be to recover the reasonable costs incurred in respect of the matter to which the costs relate. ○ The applicant should be required to pay for costs only to the extent

Topic	Proposal (Environment Court) (all fees GST inclusive)
	<p>that the benefit of the actions of the Crown to which the costs relate were obtained by the applicant (as distinct from the community as a whole).</p> <ul style="list-style-type: none"> An applicant would have the ability to have a requirement to pay costs reviewed by a judge of the Court.
Copies of judgments	Introduce a fee of \$10 for the supply of a judgment (whether a paper or electronic copy).
Fee schedule	Insert a fee schedule into the fees regulations.

Detail on proposals

Application fee for other proceedings

247. The filing fee for ‘other proceedings’ (regulation 35(2) of the Resource Management [Forms, Fees and Procedure] Regulations 2003) is set at the relatively low level of \$56.22. It has remained unchanged for 22 years and consequently is significantly less than other comparative fees. These applications are in respect of declarations, enforcement or interim enforcement orders, appeals against abatement notices, general notices of motion, and appeals and applications under statutes other than the RMA. Some proceedings are more complex and resource intensive than others, but in general they are less resource intensive than appeal proceedings. There are likely to be fewer parties to proceedings, which are often not mediated and take less time to dispose.
248. Application fees should reflect judicial or registry effort involved and the degree of private benefit. Regulation 35(2) proceedings warrant a comparatively lower fee than appeals. A fee of \$250 is proposed, which better reflects the court staff and judicial time utilised for these applications.

Application fee for appeals

249. Appeals relating to district and regional plans and policy statements, and resource consents, generally take a significant proportion of court time, notwithstanding that most do not proceed to a hearing. Appeal applications are generally resource intensive; most go through a mediation process and many utilise court services such as judicial conferences and chambers hearings. The current \$511.11 appeal application fee, therefore, represents only a fraction of the cost associated with managing such a case.
250. Fee proposals, depending on whether a mediation fee is introduced (see ‘[Mediation fee](#)’ below), are as follows:
- option 1: \$600 (if no separate mediation fee is introduced); or
 - option 2: \$520 (if a separate mediation fee is introduced).

Application fee for direct referrals

251. For the purposes of filing an application, direct referrals are classified as ‘other proceedings’ (regulation 35(2)) and therefore only attract the lower application fee (currently \$56.22).
252. The level of complexity, numerous issues and number of parties involved with direct referrals mean these types of proceedings take time to resolve and are resource intensive. Often they are in the Court because they are controversial matters that are very likely to have been appealed if

they were considered by a council in the first instance. It is not appropriate that they are classified as ‘other proceedings’, which are generally matters with a higher public interest component. It is proposed that the filing fee for direct referrals be aligned with that of appeals (see ‘[Application fee for appeals](#)’ above) and set at \$600.

253. Given the complexity and therefore considerable cost of direct referral proceedings (which has the potential to run into the hundreds of thousands of dollars), consideration was given to setting the filing fee for a direct referral application at a much higher level – say, \$10,000. Such a high fee could be justified as a proportion of the actual costs of the proceeding which could then be set off against the costs recoverable from the applicant by the Court for the benefit of the Crown at the conclusion of the proceedings. This proposal is not preferred, however, as it is considered it would be fairer and more straightforward to calculate and recover costs at the conclusion of proceedings.

Mediation fee

254. A significant aspect of the Court’s work is facilitating mediations between disputing parties. This service is included in the application fee, though there is no obligation for parties to attend mediation. Introducing a mediation fee would ensure that only those using mediation contribute to the cost of the service. For example, a modest fee for mediation of \$100 could be set, to be paid by the initiator of an appeal. The fee could apply for each mediation event, or for all mediation events related to the same proceedings.
255. A fee regime which includes a separate mediation fee may be fair in the sense that it ensures that only those parties who use mediation contribute to the cost of the service. On the other hand, it could discourage parties from attending mediation altogether.
256. If a mediation fee were introduced, it is proposed that this be set at \$100, in order to ensure the service is kept accessible for court users.
257. Accordingly, it is proposed to introduce either:
- option 1: no mediation fee but a higher appeal filing fee; or
 - option 2: a \$100 mediation fee with a lower appeal filing fee.
258. If option 2 is adopted, the mediation fee would apply to all mediations, including those for direct referrals and applications other than appeals such as enforcement orders.

MINISTRY’S PREFERRED OPTION

259. The Ministry of Justice and the Ministry for the Environment prefer option 1: a fee structure which builds a small portion of the cost of mediation into the application fee. This option encourages parties to continue to utilise the mediation service to resolve their case expediently and cheaply, or to explore issues early and reduce court time later.
260. The Ministry of Business, Innovation and Employment runs a similar free mediation service for employment disputes under the Employment Relations Act 2000 so that parties have an opportunity to resolve matters early and not progress to the Employment Relations Authority and Employment Court.
261. While the initiator of an appeal may agree to and pay for mediation, that does not compel a respondent to attend mediation. For this reason, a fee structure which incentivises applicants to attempt mediation in the first instance is preferred.

Interlocutory application fee

262. The Court does not currently charge a fee for filing an interlocutory application. Some interlocutory applications require judicial time and a formal decision, and may involve a hearing, and it is considered appropriate that the applicant should pay a filing fee for those applications.

Some interlocutory applications do not require judicial time, or require only minimal judicial time and staff processing, and a fee is not proposed for those applications. The following interlocutory applications could attract a filing fee:

- s116 Application for consent to commence
- s278(3) Application for witness summons
- s278(3) Application for production of documents
- s279(4) Application to strike out
- Application for security for costs
- s325 Application for stay of abatement notice.

263. A fee of \$200 is proposed for filing an interlocutory application in respect of the above matters.

Party to proceedings fee

264. At present, those people who become a party to proceedings under section 274 of the RMA do not pay a fee.³¹ Over the last three years, the average total party count per year was 2732. Parties to proceedings may appear and call evidence, potentially requiring increased amounts of time and resources being given to a hearing. It is proposed that a fee to become a party to proceedings be introduced. This fee should not be set so high as to act as a barrier to public participation, as this would be contrary to the aim of the RMA. Fee waiver provisions would apply.

265. A fee of \$100 is proposed to join proceedings. This fee would not apply to a person who submitted on an application at council level, and subsequently chose to join the proceeding in the Court following a direct referral of the application by the council and the applicant. This is because such a submitter would not have had to pay a fee at a consent authority hearing, so it would be unfair to charge him or her to appear before the Court.

Hearing fee

266. At present there is no hearing fee. Hearings in the Environment Court are costly to run. In addition to standard operating costs for circuit hearings, the Court incurs costs relating to travel, accommodation, venue hire and providing a transcription service. Under the current fee structure, hearings are heavily subsidised by the taxpayer and in many cases participants such as developers have the potential to gain substantial economic benefits from the process. On the other hand some appeals have a strong public interest component so it is important that access to justice is maintained. While there is no hearing fee in the Environment Court, by comparison, in the District Court the current hearing fee (for a half day) is \$906.30 and in the High Court, \$604.20 (concessionary rate) or \$1,570.90 (full rate).

267. Taking into account the public benefit of the Environment Court, a hearing fee of \$350 per half day is proposed. This fee would be payable in advance, by the initiator of proceedings or each initiator if there is more than one, for an estimated proportion of the hearing time each requires.

Hearing fees for interlocutory applications

268. Where interlocutory matters take longer than a day to hear and are heard in court, it is proposed that hearing fees apply from the second day onwards. This is consistent with the District Courts, in which hearing fees are only applicable for interlocutory matters after the first day.

³¹ Under [section 274](#), the following persons may be a party to any proceedings before the Environment Court: the Minister, a local authority, the Attorney-General representing a relevant aspect of the public interest, a person who has an interest in the proceedings that is greater than the interest that the general public has, and a person who makes a submission (about the subject matter of the proceedings).

Cost recovery for direct referrals

269. The current mechanism for collecting costs from applicants in direct referral proceedings is through an application on behalf of the Crown under section 285 of the RMA ('Awarding costs'). Although there is a presumption that the costs will be awarded against the applicant, whether costs and expenses are ordered and how much is awarded is at the discretion of the presiding judge.
270. It is proposed that a more efficient regime for collecting costs from direct referral applicants be introduced. The regime would provide for the following:
- The registrar of the Court would be empowered to require an applicant to pay to the Crown the actual and reasonable costs incurred by the Crown in a direct referral process.
 - The Crown would be required, if requested by an applicant, to provide an estimate of the costs likely to be recovered.
 - When ordering costs, the registrar would be required to have regard to the following criteria:
 - The sole purpose is to recover the reasonable costs incurred in respect of the matter to which the costs relate.
 - The applicant should be required to pay for costs only to the extent that the benefit of the actions of the Crown to which the costs relate is obtained by the applicant as distinct from the community as a whole.
 - An applicant would have the ability to have a requirement to pay costs reviewed by a judge of the Court.
271. This proposal would require amendment to the RMA.

Supply of judgment

272. At present there is no provision in the regulations for the Court to charge fees for the supply of judgments – the Court utilises the District Courts Fees Regulations to charge fees.
273. A new clause is proposed for the [Resource Management \(Forms, Fees and Procedure\) Regulations 2003](#), to provide for a \$10 fee in respect of supplying judgments, consistent with the fee proposed for the same service in the District Courts. This fee would apply for a hard copy or an electronic copy of a judgment.

Impact of proposals on cost recovery

274. It is anticipated that, if all the proposed changes were adopted, cost recovery would be approximately **5.5 percent**.
275. This estimate does not include possible costs recovered through the proposed cost recovery provisions for direct referrals, if adopted.

What do you think?

Topic	Tell us your views	
Cost apportionment	40	What is the appropriate apportionment of costs between taxpayers and users in the Environment Court?
Fee structure	41	Do you think a single or multiple fee system is appropriate for the Environment Court? Please state reasons for your answer.
'Other proceedings'	42	Do you agree with the proposed \$250 fee for 'other proceedings' (regulation 35(2)) in the Environment Court? Please state reasons for your answer.
Mediation fee	43	Do you agree with the proposal to introduce a \$100 fee for mediation for the Environment Court? Please state reasons for your answer.
Interlocutory application	44	Do you agree with the proposed \$200 fee for interlocutory applications? Please state reasons for your answer.
Party wishing to join proceeding	45	Do you agree with the proposed \$100 fee for a party wishing to join a proceeding in the Environment Court? Please state reasons for your answer.
Hearing fee	46	Do you agree with the proposed hearing fee regime for the Environment Court? Please state reasons for your answer.
Direct referral	47	Do you agree with the proposed filing fee and cost recovery regime for direct referrals in the Environment Court? Please state reasons for your answer.
Other fee proposals	48	Do you have any other comments on specific fee proposals?
Fair, simple and efficient fee system	49	Do you think that the proposed fee system is fair and simple? Please state reasons for your answer.
	50	Do you think that the proposed fee system will encourage efficient use of the Court? Please state reasons for your answer.

Māori Land Court and Māori Appellate Court fee proposals

Overview

276. The Māori Land Court (MLC) and Māori Appellate Court (MAC) continue as courts of record established by Te Ture Whenua Māori Act 1993 (TTWMA). They deal primarily with matters brought before them under TTWMA, but also hear issues under a range of other statutes.
277. Under TTWMA, the primary objective of the MLC is to promote and assist in the retention of Māori land and general land owned by Māori and to promote and assist in the effective use, management, and development of Māori land and general land owned by Māori, by or on behalf of the owners of that land.
278. The MLC and MAC have exclusive jurisdiction in respect of Māori customary land, Māori freehold land and general land owned by Māori.
279. They deal with a variety of applications which fall into nine main categories: succession applications, alienations, title improvement, trust-related applications, applications to the Chief Judge and appeals to the MAC, taiapure fisheries, Māori incorporations, applications under specific rules or regulations and other miscellaneous types of applications.
280. Applications which relate to succession comprise approximately 40 percent of the MLC's workload. Successions are normally straightforward matters heard by the MLC in the first instance (rather than on appeal to the MAC) to determine the beneficiaries and transfer the interests of any deceased with interests in Māori land.
281. The main users of the MLC and MAC are individual Māori land owners, trusts and Māori incorporations.
282. New business in the MLC has remained steady, averaging approximately 5600 applications per annum over the last four years, including 2011/12.

Current fees

283. Fees regulations, pursuant to Te Ture Whenua Māori Act 1993, provide for fees in the MLC and MAC (see the link below):

- [Māori Land Court Fees Regulations 1993](#) (Schedule).³²

Current cost and cost recovery

284. The total cost of running the MLC and MAC in 2010/11 was **\$24.9 million**.
285. Total fee revenue received by the MLC and MAC in 2010/11 was **\$0.16 million**. This represents less than **1 percent** of the total cost of running the courts.

³² Actual fees charged in the Māori Land Court differ from those in the regulations, as the fee amounts listed in the schedule do not include the 2010 GST increase.

Fee proposals

Topic	Proposal (MLC and MAC) (all fees GST inclusive)
Succession, trust and general registry activity application	Reduce the fee from \$62.30 to \$60.
Civil dispute resolution, title and complex application	Increase the fee from \$124.70 to \$200.
Appeal application to the Māori Appellate Court	Increase the fee from \$124.70 to \$550.
Administrative proceedings application	Introduce a fee of \$20.
Fee schedule	Insert a new fee schedule in the regulations.

Detail on proposals

Application fee for succession, trust and general registry activities

286. Succession, trust and registry-related applications are fundamental to meeting the principles of TTWMA as well as the MLC's ability to maintain its role as a court of record. Although private benefit is sought by those who submit these applications, the applications themselves promote the retention and utilisation of land and provide an important contribution to the upkeep of the court record which, in turn, provides public benefit in respect of those who seek assistance from the Court.
287. It is proposed that the fee for an application relating to a succession or trust and general registry activities (ie, record upkeep) be adjusted to \$60, by rounding down the existing fee of \$62.30.

Application fee for civil, title and complex applications

288. Court-assisted civil dispute resolution, title improvement and other complex applications are generally resource intensive and utilise a significant proportion of court staff resources and court hearing time. The current \$124.70 application fee represents only a fraction of the cost associated with managing such cases. Such cases are also of a higher private benefit than those applications relating to the land registry function of the MLC.
289. It is proposed that the fee for an application seeking Court-assisted civil dispute, resolution, or title improvement, and other complex applications, be increased to \$200 to provide improved recognition of the cost associated with managing and hearing such cases.

Application fee for appeals to the Māori Appellate Court

290. Appeal applications are resource intensive and utilise a significant proportion of court staff resources and court hearing time. The current \$124.70 appeal application fee represents only a fraction of the cost associated with preparing and managing such cases. Such cases are also of a higher private benefit than other applications, as they often relate to commercial or individuals' disputes.
291. It is proposed that this fee be increased to \$550, to provide improved recognition of the judicial and registry cost associated with such cases. The proposed fee is in alignment with the other specialist courts, namely the Employment Court and the Environment Court.

Application fee for administrative proceedings (noting, charitable purposes, discharge, review and status)

292. Many applications – such as those seeking noting of records, approval for charitable purposes, discharge of responsibilities, review of a trust, and status or administrative assistance from the MLC – attract either a nominal fee or no fee at all. These applications are not generally resource intensive in nature but do have costs associated with their administration.
293. It is proposed that a fee of \$20 be charged to provide improved recognition of the cost associated with administering these applications.

Impact of proposals on cost recovery

294. It is anticipated that, if all the proposed changes were adopted, cost recovery would be approximately **1 percent**.

What do you think?

Topic	Tell us your views	
Cost apportionment	51	What is the appropriate apportionment of costs between taxpayers and users in the Māori Land Court?
Appeal application	52	Do you agree with the proposal to increase the fee for an appeal application (to the Māori Appellate Court) to \$550? Please state reasons for your answer.
Other fee proposals	53	Do you have any other comments on specific fee proposals?
Fair, simple and efficient fee system	54	Do you think that the proposed fee system for the Māori Land Court is fair and simple? Please state reasons for your answer.
	55	Do you think that the proposed fee system for the Māori Land Court will encourage efficient use of the court? Please state reasons for your answer.

Tribunals fee proposals

Overview

295. Tribunals are designed to differ from courts. They are generally less formal than courts and their processes are usually simpler and speedier. To remain accessible, they often have low fees or no fees.
296. Tribunals provide specialist expertise within a particular industry and serve a variety of functions. For example, they:
- make first instance decisions in relation to disputes between citizens or between citizens and the State
 - review or hear appeals from administrative decisions
 - deal with occupational discipline, regulation and licensing.
297. Jurisdictional information on each of the tribunals in scope of the review, including typical users, current fees and caseloads, is set out below.
298. Unlike courts, some tribunals are wholly or partially funded by industry levies.³³ Fee proposals have taken into account the level of funding these tribunals receive from levies.

Proposals

299. In accordance with the policy framework, the Ministry proposes:
- fee increases in three tribunals (Disputes tribunals, Immigration and Protection Tribunal and Legal Complaints Review Officer) and one fee decrease³⁴ to better reflect the private benefits generated by the tribunals or a specific application type within a tribunal
 - the introduction of a \$600 fee for applications in relation to licensing disputes in the Copyright Tribunal, to reflect the high private benefit of this type of proceeding
 - the introduction of a \$30 fee in four tribunals (Accident Compensation Appeal Authority, Accident Compensation Appeals [District Courts Registry], Copyright Tribunal, Human Rights Review Tribunal, Real Estate Agents Disciplinary Tribunal), to encourage efficient use of the tribunal system and as a contribution to services in reflection of the private benefits generated
 - the rounding of fees to the nearest \$10 amount for all other tribunals in which fees are charged but not set in whole dollars.

³³ The following tribunals receive funding from industry levies: Accident Compensation Appeal Authority, Accident Compensation Appeals (District Court Registry), Immigration Advisers Complaints and Disciplinary Tribunal, Legal Complaints Review Officer, Motor Vehicle Disputes Tribunal and Real Estate Agents Disciplinary Tribunal.

³⁴ In the Disputes tribunals, some claims will receive a fee decrease from \$60.40 to \$45. These are claims valued over \$1,000 and less than \$2,000, which fall within the current middle claim band ('\$1,000 or more but less than \$5,000') and attract the fee of \$60.40. Under the proposal to change the claim bands, claims of this value would fall within the proposed bottom band ('less than \$2,000') and attract the proposed fee for this band of \$45.

300. These fee proposals and current fees are set out in the tables below. No fee changes or fee introductions are proposed in the remaining tribunals, either because fees are already set in whole dollars or for reasons set out in the section '[Is it appropriate to charge fees?](#)'.

Fee adjustments

Tribunal	Application type	Proposed fee (GST inclusive)	Current fee (GST inclusive)
Disputes tribunals	Claim up to \$1,999	\$45	\$36.30 or \$60.40
	Claim between \$2,000 and \$4,999	\$90	\$60.40
	Claim between \$5,000 and \$20,000	\$180	\$120.80
Immigration and Protection Tribunal	Appeal concerning a residence class visa or liability for deportation	\$700	\$550
Legal Complaints Review Officer	Application for review	\$50	\$30.67

Introduction of new fees

Tribunal	Application type	Proposed fee (GST inclusive)	Current fee (GST inclusive)
Accident Compensation Appeal Authority	Appeal	\$30	No fee
Accident Compensation Appeals (District Court Registry)	Appeal	\$30	No fee
Copyright Tribunal	Licensing dispute	\$600	No fee
Human Rights Review Tribunal	Claim	\$30	No fee
Real Estate Agents Disciplinary Tribunal	Appeal and review only	\$30	No fee

Rounding of existing fees

Tribunal	Application type	Proposed fee (GST inclusive)	Current fee (GST inclusive)
Customs Appeal Authority	Appeal	\$410	\$408.89
Lawyers and Conveyancers Disciplinary Tribunal	Appeal and other applications	\$320	\$316.70
Licensing Authority of Secondhand Dealers and Pawnbrokers	Licence application	\$410	\$413.80
	Certificate application or addition of a director	\$180	\$177.30
Motor Vehicle Disputes Tribunal	Dispute	\$50	\$51.11
Taxation Review Authority	Claim	\$410	\$408.89

Tribunal	Application type	Proposed fee (GST inclusive)	Current fee (GST inclusive)
Trans-Tasman Occupations Tribunal	Review	\$600	\$604.20

Tribunals information

301. Current and estimated cost recovery percentages have not been included in this section because they are complicated by specific funding arrangements and industry levies, a portion of which fund some tribunals.

Accident Compensation Appeal Authority

302. The Accident Compensation Appeal Authority is an appellate tribunal which hears appeals against decisions of the Accident Compensation Corporation (ACC), made under the Accident Compensation Act 1972 and the Accident Compensation Act 1982. These Acts have been repealed, but transitional provisions in the Accident Compensation Act 2001 preserve appeal rights.

303. The main users of the Authority are individual ACC clients who have received from ACC a decision on their entitlements that they consider not to be in their favour. There are currently no fees.

304. The number of appeal applications has remained steady, averaging approximately 10 applications per annum over the last four years (including 2011/12).

Accident Compensation Appeals (District Court Registry)

305. The Accident Compensation Appeals District Court Registry (the AC appeal body) is an appellate arm of the District Courts which hears appeals against decisions made by statutory reviewers who review ACC decisions under the Accident Compensation Act 2001.

306. The main users of the AC appeal body are individuals who have received a statutory reviewer's decision on entitlements that they consider not to be in their favour. Other users are the ACC, businesses and self-employed people who have received a levy decision that they consider not to be in their favour, and employers who dispute work-related personal injury claims by their employees. There are currently no fees.

307. There were 896 appeals filed in 2010/11 and 783 in 2011/12.

Copyright Tribunal

308. The Copyright Tribunal hears appeals concerning licensing scheme disputes and Internet file-sharing infringements under the Copyright Act 1994.

309. Licensing scheme disputes are commercial disputes pertaining to annual licensing fees for commercial use of copyright protected material. There have been 23 disputes lodged since the establishment of the Tribunal in 1963. There are currently no fees for these applications.

310. Applications in respect of Internet file-sharing infringements may be made by copyright owners who consider an Internet user has infringed their copyright via a file-sharing network. There is a \$200 fee for lodging these types of applications. The Tribunal can order a person to reimburse a copyright owner for the cost of the filing fee if they are found to have infringed copyright. There were no cases filed in the Tribunal in the 2010/11 and 2011/12 years.

Customs Appeal Authority

- 311. The Customs Appeal Authority hears appeals against the decisions, rulings, determinations or directions of the Chief Executive of the New Zealand Customs Service under the Customs and Excise Act 1996. The registrar of the Authority is empowered to waive a fee on application by the appellant, and the Authority may apportion costs between parties as it thinks fit.
- 312. The main users of the Authority are people entering New Zealand, exporters and importers. There is a \$408.89 fee for filing an appeal in the Authority.
- 313. On average, 12 appeals were filed per annum over the last three years (including 2011/12).

Disputes tribunals

- 314. Disputes tribunals provide a quick, inexpensive and informal forum to help resolve a wide range of factual civil disputes. Cases are claims that are founded on either contract or quasi-contract for a declaration about the liability of those in dispute, or claims in tort about the destruction or loss of property, damage to property or the recovery of any property.
- 315. A claim before a Disputes tribunal can be for an amount up to \$15,000 or, if both parties agree, up to \$20,000. Claims are heard under the Disputes Tribunals Act 1988.
- 316. The main users of the tribunals are individuals and businesses. There are currently three fees, depending on the value of the claim: \$36.30 (claim less than \$1,000), \$60.40 (claim between \$1,000 and \$4,999) and \$120.80 (claim between \$5,000 and \$20,000).
- 317. The number of cases filed in the tribunals has decreased over the last three years, from 20,419 in 2009/2010 to 15,954 in 2011/12.

Human Rights Review Tribunal

- 318. The Human Rights Review Tribunal hears claims involving human rights, privacy and the Code of Patients' Rights.³⁵ It hears cases brought under the Human Rights Act 1993, Privacy Act 1993 and Health and Disability Commissioner Act 1994.
- 319. The main users of the Tribunal are members of the public, the Human Rights Commissioner, the Privacy Commissioner and the Health and Disability Commissioner. There are currently no fees.
- 320. On average, 45 claims were filed in the Tribunal per annum over the last four years (including 2011/12).

Immigration Advisers Complaints and Disciplinary Tribunal

- 321. The Immigration Advisers Complaints and Disciplinary Tribunal hears complaints referred to it by the registrar of the Immigration Advisers Authority, and appeals against decisions made by the Authority under the Immigration Advisers Licensing Act 2007.
- 322. The main users of the Tribunal are the registrar of the Authority and people licensed to undertake work as immigration advisers. There are currently no fees.
- 323. The Tribunal was established in 2010 and 29 cases were filed in 2010/11. The number of cases filed in 2011/12 increased to 62.

Immigration and Protection Tribunal

- 324. The Immigration and Protection Tribunal hears appeals against decisions relating to residence visas, a person's status as a refugee or a protected person, and liability for deportation under the Immigration Act 2009.

³⁵ See [Health and Disability Commissioner \(Code of Health and Disability Services Consumers' Rights\) Regulations 1996](#).

325. The main users of the Tribunal are people seeking refugee status, and residents and refugees appealing against deportation or the removal of their status as protected persons. There is a \$550 fee for filing an appeal in respect of residence class visas and liability deportation. There are no fees in respect of refugee and protection status appeals.
326. The Tribunal was established in 2010 and 1152 cases were filed in 2010/11.³⁶ The number of cases filed increased to 1398 in 2011/12.

International Education Appeal Authority

327. The International Education Appeal Authority hears complaints from international students about the care, advice or services they receive from education providers or a provider's agent, and determines whether there has been a breach of the Code of Practice for Pastoral Care of International Students (which is published under the Education Act 1989).
328. The main users of the Authority are international students living and studying in New Zealand who are dissatisfied with the care, advice or services they receive from their education provider or the provider's agent. There are currently no fees.
329. There were 66 complaints received by the Authority in 2011/12.

Lawyers and Conveyancers Disciplinary Tribunal

330. The Lawyers and Conveyancers Disciplinary Tribunal hears disciplinary charges against lawyers and conveyancing practitioners, appeals and administrative applications under the Lawyers and Conveyancers Act 2006.
331. The main users of the Tribunal are New Zealand Law Society standards committees, lawyers and people licensed to undertake conveyancing work. There is a \$316.70 filing fee.
332. On average, 22 cases were filed in the Tribunal per annum from 2008/09 to 2010/11. There were 31 cases filed in 2011/12.

Legal Aid Tribunal

333. The Legal Aid Tribunal reviews the Legal Services Commissioner's decisions about grants of legal aid under the Legal Services Act 2011.
334. The main users of the Tribunal are members of the public who wish to have a decision of the Commissioner reviewed. There are currently no fees.
335. The Tribunal was established in 2011. There were 154 cases filed in the Tribunal in 2011/12.

Legal Complaints Review Officer

336. The Legal Complaints Review Officer's primary function is to review decisions of the standards committees of the New Zealand Law Society and New Zealand Society of Conveyancers, which hear complaints about legal and conveyancing practitioners under the Lawyers and Conveyancers Act 2006.
337. The main users of the Review Officer are the New Zealand Law Society and the New Zealand Society of Conveyancers. Any person who has been granted permission by either of these two bodies or by the Review Officer may also bring a case for review. There is a \$30.67 fee for filing an application for review.
338. There were 296 applications for review filed in 2010/11 and 299 filed in 2011/12.

³⁶ This includes cases inherited from the former review bodies.

Licensing Authority of Secondhand Dealers and Pawnbrokers

- 339. The Licensing Authority of Secondhand Dealers and Pawnbrokers maintains the licensing and certification regime for secondhand dealers and pawnbrokers. It also hears police complaints against licence and certificate holders under the Secondhand Dealers and Pawnbrokers Act 2004.
- 340. The main users of the Authority are companies or individuals who trade, or seek to trade, as secondhand dealers and pawnbrokers. There are currently two fees: \$431.80 (licence applications) and \$177.30 (for additional director or for certificate).
- 341. There were 1437 applications received by the Authority in 2010/11 and 1324 in 2011/12.

Motor Vehicle Disputes Tribunal

- 342. The Motor Vehicle Disputes Tribunal hears claims relating to motor vehicle sales, where a motor vehicle trader is involved, under the Motor Vehicle Sales Act 2003.
- 343. The main users of the Tribunal are individuals and businesses who seek a speedy dispute resolution decision. There is a \$51.11 fee for lodging an application.
- 344. There were 275 applications received by the Tribunal in 2010/11 and 219 in 2011/12.

Private Security Personnel Licensing Authority

- 345. The Private Security Personnel Licensing Authority administers the licensing regime for companies and individuals working in the security industry and as private investigators, and hears complaints against licensees and certificate holders under the Private Security Personnel and Private Investigators Act 2010.
- 346. The main users of the Authority are individuals and companies seeking licences or certificates of approval to work in the security industry. Fees range from \$17 to \$725 (eg, for licences and certificates of approval).
- 347. The Authority was established in 2011. There were 8733 applications received by the Authority in 2011/12.

Real Estate Agents Disciplinary Tribunal

- 348. The Real Estate Agents Disciplinary Tribunal hears charges against licensees, appeals against disciplinary determinations issued by Complaints Assessment Committees, and review applications relating to real estate licences under the Real Estate Agents Act 2008.
- 349. The main users of the Tribunal are Complaints Assessment Committees and real estate licensees. There are currently no fees.
- 350. There were 134 cases filed in the Tribunal in 2010/11 and 106 in 2011/12.

Review Authority (legal aid providers)

- 351. The Review Authority reviews decisions by the Secretary for Justice relating to a person's authority to provide legal aid services or specified legal services under the Legal Services Act 2011.
- 352. The main users of the Authority are legal aid providers who wish to have a decision of the Secretary for Justice reviewed. There are currently no fees.
- 353. The Authority was established in 2011. There were 14 cases filed in the Authority 2011/12.

Social Security Appeal Authority

- 354. The Social Security Appeal Authority hears appeals against decisions of the Secretary of the Ministry of Social Development which have been confirmed or varied by a Benefits Review Committee under the Social Security Act 1964. The Authority also hears appeals against decisions of the Secretary for War Pensions in respect of veterans' pensions and related matters.
- 355. The main users of the Authority are beneficiaries challenging decisions made about their benefits, and war veterans challenging decisions about their pensions. There are currently no fees.
- 356. There were 192 appeals filed in the Authority in 2010/11 and 142 in 2011/12.

Student Allowance Appeal Authority

- 357. The Student Allowance Appeal Authority hears appeals against decisions of the Secretary of the Ministry of Social Development regarding student allowances, awards and grants under the Education Act 1989.
- 358. The main users of the Authority are tertiary students appealing against decisions made by the Ministry of Social Development.
- 359. On average, 10 appeals were filed in the Authority per annum over the last four years (including 2011/12).

Taxation Review Authority

- 360. The Taxation Review Authority hears objections to tax assessments and decisions of the Commissioner of Inland Revenue under the Taxation Review Authorities Act 1994.
- 361. The main users of the Authority are individuals and businesses seeking to challenge tax assessments, or who object to decisions or determinations by the Commissioner. There is a \$408.89 fee for lodging an application.
- 362. On average, 59 cases were filed in the Authority per annum from 2008/09 to 2010/11. There were 27 cases filed in 2011/12.

Trans-Tasman Occupations Tribunal

- 363. The Trans-Tasman Occupations Tribunal reviews decisions of an occupational registration authority to impose conditions on a registration, postpone the granting of a registration or refuse to register a person who is registered in Australia as practising an occupation, under the Trans-Tasman Mutual Recognition Act 1997.
- 364. The main users of the Tribunal are persons who are registered in Australia for an occupation, and who have applied for registration in New Zealand for the local equivalent of that occupation. There is a \$604.20 fee for applying for a review.
- 365. There have been two cases filed in the Tribunal in the last four years with no new cases lodged in 2010/11 or 2011/12.

What do you think?

Topic	Tell us your views	
Disputes tribunals	56	Do you agree with the proposed fees for the Disputes tribunals? Please state reasons for your answer.
Immigration and Protection Tribunal	57	Do you agree with the proposal to increase the fee for an appeal to the Immigration and Protection tribunal (residence class visa or liability for deportation) to \$700? Please state reasons for your answer.
Legal Complaints Review Officer	58	Do you agree with the proposal to increase the fee for an application to the Legal Complaints Review Officer to \$50? Please state reasons for your answer.
\$30 filing fee	59	Do you think a filing fee should be introduced for any or all of the following tribunals: Accident Compensation Appeal Authority, Accident Compensation Appeals (District Court Registry), Human Rights Review Tribunal and Real Estate Agents Disciplinary Tribunal? Do you agree with the proposed \$30.00 fee?
Copyright Tribunal	60	Should a fee for licensing scheme disputes in the Copyright Tribunal be introduced? Do you agree with the proposed \$600.00 fee??
Fair, simple and efficient fee system	61	Do you think that the proposed fee systems for tribunals are fair and simple and will encourage efficiency? Please state reasons for your answer.

Other services fee proposals

Criminal history checks

366. Criminal history checks are carried out by the Ministry of Justice's Criminal Records Unit, which was set up to respond to information requests seeking a copy of a person's criminal record. The right of an individual to access personal information held by an agency about themselves was established under the Privacy Act 1993 (the Act).
367. Requests for criminal history information are made under principle 6 and principle 11(d) of the Act. Requesters fall into three categories:
- individuals who seek to obtain a copy of their personal criminal history, under principle 6 of the Act (approximately 15 percent of requests per annum)
 - third parties who have been authorised by the individual to release the information to the third party, under principle 11(d) of the Act – such requests are primarily for employment recruitment (approximately 70 percent of requests per annum)
 - government departments which are either required by legislation to check an individual's criminal history, or who have been authorised by the individual to release the information to the government department, under principle 11(d) of the Act – such requests are primarily for employment recruitment (approximately 15 percent of requests per annum).
368. The number of requests for criminal history information has steadily increased since the mid-1990s (when there were approximately 13,000 requests per annum) to over 400,000 requests in 2011/12.
369. Proposed fees are set to recover the costs of the criminal history checking service to third parties and government departments on an actual and reasonable basis. It is not proposed to introduce a fee for individuals who request criminal history information, because the Act explicitly prohibits a fee being charged when individuals request personal information about themselves.

Proposals

370. The following table outlines fee proposals.

Topic	Proposal (criminal history checks)
Individual information request	No fee.

Topic	Proposal (criminal history checks)
Manual request by third party or government department	<p>It is proposed that any third party or government department (requester) be charged:</p> <ul style="list-style-type: none"> • no fee if submitting fewer than 24 requests per annum • \$1,850 for submitting between 25 and 999 requests per annum • \$3,800 for submitting 1000 or more requests per annum. <p>Annual fees would be invoiced following the calendar year's request activity.</p>
Request made via electronic interface	<p>It is proposed that, when a request is made via electronic interface:</p> <ul style="list-style-type: none"> • no fee be charged when an exact match is achieved • \$4 be charged when an exact match is not achieved (ie, a near-match result). <p>This proposal would apply to any third party or government department, but not to any person requesting their own information.</p>
Request for priority service	<p>Introduce an annual service fee of \$10,000 for third parties and government departments who seek a higher priority service (ie, a three- to five-day response). It is proposed that this fee would be in addition to any per-request or annual fee (for the number of actual requests made).</p>

What do you think?

Topic	Tell us your views	
Proposed fees	62	Do you agree with the proposed fees for criminal history checks? Please state reasons for your answer.
Fair, simple and efficient fee system	63	Do you think that the proposed fee system for criminal history checks is fair and simple and will encourage efficiency? Please state reasons for your answer.

Transcription services

371. During civil hearings in courts and tribunals, evidence is recorded for the court or tribunal record. This ensures a record is kept and assists the presiding judge or judicial officer(s) in making their judgment.
372. In many courts and tribunals a transcription of evidence is produced for the judge or judicial officer. Transcriptions can be produced during the hearing (contemporaneously) or after the hearing (non-contemporaneously).
373. When a transcription is produced for the judge or judicial officer, no fee is payable and copies are often provided to parties or their representatives.
374. It is proposed that a fee be introduced for the service whenever a party to a case (or their representative) requests a transcription be made, and the presiding judge or judicial officer approves. The fee would only be payable when the transcript is not already being produced for the judge or judicial officer.

375. The private benefit of this service should be reflected in a fee covering actual and reasonable costs.

Proposals

376. The following table outlines proposals to introduce new fees.

Type	Proposed fee (GST inclusive)
Non-contemporaneous transcription	\$5 per page
Contemporaneous transcription	\$10 per page
Copy of audio record (on compact disc or by email)	No fee

What do you think?

Topic	Tell us your views	
Proposed fees	64	Do you agree with the proposed fees for court and tribunal transcriptions? Please state reasons for your answer.
Fair, simple and efficient fee system	65	Do you think that the proposed fee system for transcription services is fair and simple and will encourage efficiency? Please state reasons for your answer.

Glossary

Terms used in this consultation paper

Affidavit	A written statement sworn on oath.
Alienation application	An application seeking confirmation of the transfer of Māori land or interests in Māori land by way of sale or long-term lease; or the noting of mortgages, leases, charges or other encumbrances or the variation, transfer, or discharge of such documents in the records of the Māori Land Court.
Applicant	A person making an application to a court or tribunal.
Attachment order	A court order requiring the employer of a judgment debtor to deduct money from the debtor's salary, wages or benefit to be paid directly to a judgment creditor in payment of a court judgment or order.
Audio visual link (AVL)	The facilities that enable audio and visual communication between participants at any proceeding, when some of the participants are not physically present at the hearing.
Bailiff	An officer of the District Court, who serves summonses and orders, and executes warrants issued by the Court.
Bankruptcy notice	A notice served by a judgment creditor on a debtor, requiring the payment of debt or giving security for the amount owing, within a certain period.
Charging order	A court order that may be obtained against the judgment debtor's estate, title or interest in land, shares or other chattels. The charging order prevents the debtor dealing with or disposing of the property until the judgment debt is paid in full.
Civil fee	A charge that recovers the cost, or a proportion of the cost, of a government-provided service delivered in a civil jurisdiction.
Concession rate	A reduced fee that is charged in the High Court for categories of proceedings for which there are no, or limited, alternatives to court action, or which involve a high degree of public benefit, or which incur lower average cost than other types of applications.
Counterclaim	A claim brought in response to an existing claim, which is included in the same proceeding.
Direct referral	Matter heard by the Environment Court in the first instance (rather than on appeal from a territorial or regional council), including any matter referred to the Court by the Minister for the Environment because it is considered to be of national significance.
Fee waiver	Discretionary cancellation of a fee where a person is unable to afford to pay it, or the proceeding concerns a matter of public interest that is unlikely to otherwise proceed.
Filing	The lodging of documents in a court.
Financial assessment hearing	A court hearing in which a judgment debtor is questioned about their financial circumstances for the purposes of assessing their ability to pay a judgment debt.
Financial statement	A statement setting out information on the judgment debtor's assets and liabilities, and income and expenditure for the preceding 52 weeks.
Garnishee proceeding	A proceeding in which a judgment creditor can obtain a court order that enables the seizure of money that is due or accruing to a judgment debtor by a third party. A garnishee order requires the third party to make payment directly to the judgment creditor.

Hearing	The appearance of a case before a court.
Interim injunction	A temporary order requiring a person to do, or stop doing, a certain act, pending the outcome of the main hearing of a case.
Interlocutory application	An application to the court, in any proceeding or intended proceeding, for an order or a direction relating to a matter of procedure or for some relief secondary to that claimed in a pleading.
Judgment debt	A debt that is due under a court judgment or order for the payment of money.
Judgment debtor	A party against whom a court judgment or order has been obtained ordering them to pay a sum of money which remains unpaid.
Judgment creditor	A party who has a court judgment or order made in their favour for the payment of a sum of money which remains unpaid.
Judicial settlement conference	A meeting of parties convened by a judge, in which parties to a proceeding may negotiate the settlement of a claim or issue.
Leave to appeal	Permission of a court to commence appeal proceedings.
Possession order	An order made in the Tenancy Tribunal granting possession of residential property to a party. A possession order becomes known as a warrant for the recovery of land once it is filed in a District Court for enforcement. This warrant enables a bailiff or constable to return possession of the property to the party named in the possession order.
Probate	A process confirming that a will is the last valid will of the deceased and the executor's right to administer the estate.
Recall of a judgment	Reconsideration of a judgment by a judge, before a formal record of the judgment is drawn up and sealed.
Registrar	A person responsible for the administration of a court or registry. A registrar also has limited judicial functions.
Statement of defence	A document filed and served by a person against whom a proceeding is brought, who plans to defend the proceeding.
Succession application	An application relating to successions to the estate of a deceased person with Māori land interests and determinations as to the successors of the estate, including making provision for any whāngai of the deceased.
Taiapure fisheries application	An application to the Māori Land Court to exercise its jurisdiction under the Māori Fisheries Act 2004, or Māori Commercial Aquiculture Claims Settlement Act 2004, or to appoint a judge to recommend the establishment of a taiapure-local fisheries and customary fishing area under the Fisheries Act 1996.
Title application	An application relating to changes in the title to Māori land, including partitions (sub-divisions), amalgamation of titles, aggregation of ownership, roadways, easements and occupation.
Tort	A civil wrong, other than a breach of contract, for which judicial proceedings can be brought by one party against another.
Warrant of execution	A generic term that refers to a type of warrant that enables a bailiff or constable to demand the immediate payment of a court judgment or order for the payment of money. Where payment is not made the bailiff or constable can seize property, goods or chattels (depending on the type of warrant being executed) of the judgment debtor to satisfy the judgment debt.

Appendix 1 – History of fee setting

Court fees

INTRODUCTION

1. Court fees have been a feature of New Zealand's court system from the country's earliest days.

STAGE I REVIEW

2. In October 2000 the Department for Courts issued a discussion paper which identified the problems with the structure and level of court fees:

The current basis for cost recovery is essentially ad hoc and has evolved over many years without any principled framework. Rates of recovery vary between parts of the civil jurisdiction, ranging from token payments to a substantial part of the costs of some services. The result is a complex mosaic of charges, with no consistent link between costs and fees.³⁷

3. In May 2001 Cabinet agreed to the following six principles to guide fee setting in civil courts:
 - overall cost sharing
 - variable ratios of taxpayer/user funding for specific services
 - protection of access to justice
 - average cost pricing
 - operational efficiency
 - judicial discretion.
4. The Department for Courts' analysis and advice was informed by formal guidelines issued by the Auditor-General in 1989, the Treasury in 1998 and the Regulations Review Committee in 1989, and advice from economists and the Department's costings.
5. With effect from 1 October 2001, civil court fees for the Court of Appeal, High Court, District Courts and Disputes tribunals were amended. Most fees were increased, some by very substantial amounts. The Government agreed that no more than 50 percent of the cost of any jurisdiction should be charged to users. It also agreed to introduce new provisions to allow registrars to waive fees in cases of hardship and for 'public interest' cases, and to empower judges to review any decision declining a waiver.
6. The New Zealand Law Society and the New Zealand Bar Association lodged separate complaints about the fee increases with Parliament's Regulations Review Committee. The complaints were "largely based on the premise that the fees set by the regulations impede access to the courts".³⁸

³⁷ Department for Courts, *Equitable fees in civil courts* (2000), p8.

³⁸ Regulations Review Committee, *Report on investigation and complaints relating to civil court fees regulations* (2002), p5.

7. The Committee examined the complaints closely, hearing from the complainants and from the Department for Courts, as well as taking advice from the Audit Office. The Committee considered it was too soon to conclude the fee increases were impeding access to the courts.
8. The Committee accepted that the fees were a diligent best estimate, and recommended the Government take account of matters raised in its report during the proposed second stage of the review of court fees. The Committee also identified the need for the Treasury guidelines to be revised to provide guidance for setting fees that are below full cost recovery and include a public good element.

STAGE II REVIEW

9. For the second stage of the fees review, the Government established a working party chaired by Mr Bob Henare CNZM and comprising representatives of the legal profession and the community.
10. This review re-assessed the 2001 fee changes, in light of improved cost information and the agreed principles. The cost information was developed using an activity-based costing model, supported by careful mapping of court processes.
11. The Government also extended the review to the Family Court, Environment Court and Māori Land Court, and to specialist tribunals. A consultation paper was issued in May 2003.
12. On 1 July 2004 fees for civil proceedings in the Supreme Court, Court of Appeal, High Court, District Courts, Family Court and Customs Appeal Authority were amended. Key changes included increases in a range of fees in the High Court and District Courts, a wider concession rate category for certain proceedings in the High Court, and the inclusion of legally aided parties in the list of those eligible for a fee waiver. Proposals to increase fees in the Family Court, Environment Court,³⁹ Māori Land Court and several specialist tribunals were not implemented.
13. The Regulations Review Committee initiated an investigation into the fee increases, and also received a further complaint from the New Zealand Law Society and the New Zealand Bar Association. The complainants argued that the further increases compounded their earlier concern about access to the courts.
14. The Committee accepted the view of the complainants, “that access to the courts is a constitutional right and is among the objects and intentions of the empowering statutes. Whether the fees are set at such a level that they impede access to the courts has been a difficult matter to determine”.⁴⁰
15. The Committee also accepted that people ought to make some contribution, in the form of fees, to the cost incurred by the State in operating the civil court system. The Committee noted that “[s]tatistical evidence ... shows a general downward trend in the use of the court system but does not indicate why this has occurred”.⁴¹ While the working party had taken as its starting point Cabinet’s six principles, the Committee considered the cost recovery targets of 50 percent in the High Court and District Courts led to inflexibility in the review of court fees. It meant that the review’s focus was not on whether the fees were set at a level that would allow access to justice.

³⁹ In March 2004, Cabinet originally agreed to increase fees in the Environment Court, with a view to recovering 25 percent of the cost of case processing.

⁴⁰ Regulations Review Committee, *Report on investigation and complaints relating to civil court fees regulations 2004* (2005), p39.

⁴¹ *Ibid*

16. In response, the Government expressed its commitment to ensuring that court fees are charged according to a principled and consistent framework that recognises both the public and private benefits derived from use of the civil courts and that ensures people's access to justice is not seriously affected. The Government undertook to review the regulations, taking into account the Committee's concerns.

2006 REVIEW

17. In 2006 the Government established a review of fees regulations after consulting the New Zealand Law Society.⁴² Any recommendations for change were required to be consistent with Cabinet's six principles, and the 50 percent cost recovery target for civil proceedings in the High Court and District Courts.
18. The review consisted of three streams: an international review; analysis of the use of New Zealand civil courts; and a case study of debt recovery through the courts by small- and medium-sized enterprises.
19. The review concluded that the increases to the District Courts filing fee and filing fees in ordinary cases of debt recovery – the latter accounted for approximately 65 percent of the District Courts' workload – have not had a significant detrimental effect on the right of access to the courts.
20. The New Zealand Law Society raised a number of concerns during the review. It considered the policy of a 50 percent recovery rate was unprincipled and arbitrary, and imposed an ever-increasing cost recovery burden on a decreasing number of litigants.
21. The Ministry of Justice proposed a number of actions to ensure that the civil fee structure remains sustainable and well balanced. These actions included improved monitoring of information on court filings, updating the Law Society every two years, and reviewing fees regularly. Due to other work priorities, these actions were not implemented. The Ministry and the judiciary have, however, undertaken a number of projects to improve court processes to the benefit of court users.

SUBSEQUENT DEVELOPMENTS

22. In subsequent years court fees were adjusted for the following reasons:
 - **To correct anomalies.** In 2009, amendments to the fees reduced or removed prescribed fees for certain interlocutory proceedings, as the existing fees were either unfair in the circumstances or disproportionate compared with the work involved for the court.
 - **To establish a standard fee for accessing court records.** In 2009 the Rules Committee promoted a series of amendments to the rules of both the High Court and District Courts, for both civil and criminal proceedings. These new rules adopted a standard approach to the procedures for accessing court records, distinguishing between current and past proceedings.
 - **As a result of the GST increase from 12.5 percent to 15 percent, effective from 1 October 2010.**
 - **To adjust by changes in the Consumer Price Index (CPI), effective from 1 July 2011.** This increased fees by a maximum of 18.2 percent if fees had not been increased since 1 July 2004, or a lower amount if fees had been adjusted more recently. Twenty-one sets of amendments were made covering courts, tribunals and other services administered by the Ministry of Justice.

⁴² Ministry of Justice, *Review of the regulations that set civil court fees* (2006).

23. The District Courts Rules 2009 removed some complexity in filing or responding to a civil claim, and were expected to result in the earlier resolution of disputes. While the fees were unchanged, it was estimated that total revenue would decline as a consequence of the changes.
24. In 2009 the Government increased the filing fee from \$55 to \$500 for commencing appeal or inquiry proceedings in the Environment Court.⁴³ The Regulations Review Committee received three complaints about the increase. After hearing evidence from the complainants and from government officials, the Committee issued an interim report in December 2009. Following consideration of a further report from officials and responses from the complainants, it issued a final report in October 2011.
25. The Committee was unable to determine whether the new filing fee was having a deterrent effect on access to the Environment Court. The Committee was satisfied with the progress the Government was making on implementing the recommendations from the interim report, and suggested further monitoring and reporting on the filing fee and its effect in the next few years. The Committee also encouraged the complainants to resubmit their complaint if they came across new evidence that the filing fee was significantly deterring people from lodging appeals.

Tribunal fees

26. Tribunal fees have generally been set on an ad hoc basis, without reference to a particular policy framework. The principal exception is the Disputes tribunals. Tribunal fees were increased in 1998, critically reviewed by the Regulations Review Committee, and amended in 2001 and 2004. These reviews applied the developing policy framework used for court fees. In 2004 the fees for the Customs Appeal Authority were similarly reviewed and amended.
27. In 2010 the Ministry of Justice assumed full responsibility for administrative support services for the new Immigration and Protection Tribunal. For some parts of the Tribunal's jurisdiction, notably appeal applications for refugee status, it is not appropriate to charge fees. For other appeals and reviews, fees are appropriate. The Ministry undertook a full costing exercise and, where fees are applicable, they represent a reduction on the fees that previously applied.

⁴³ The Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2009. The \$55 fee was established in 1988.

Appendix 2 – Related reviews

Legal aid review

1. In April 2011, in response to the rapid growth in legal aid expenditure, the Minister of Justice announced a package of proposals to reduce expenditure on legal aid by \$138 million over four years. The Legal Assistance (Sustainability) Amendment Bill proposes changes to legal services paid for by the Crown. It was introduced into the House in August 2011 and was referred to the Justice and Electoral Committee.
2. In February 2012 the Bill's consideration by the Committee was deferred at the request of the Minister of Justice, Hon Judith Collins, until the completion of the Family Court review, as many of the changes in the Bill relate to family matters.
3. The Minister will be making legal aid announcements shortly.

Family Court review

4. In April 2011 the Government directed the Ministry of Justice to undertake a review of the Family Court.
5. In September 2011 the Ministry of Justice released a public consultation paper seeking views on the issues facing the Court and how they might be addressed. The paper sought the public's views on the circumstances in which court fees should be charged in the Family Court. The submission period closed in late February 2012.
6. A set of reforms aimed at making the Family Court more efficient and focused on the needs of children and vulnerable people were announced in August 2012 by the Minister of Justice.
7. The proposals aim to respond to concerns that the Family Court:
 - is not able to focus enough on the most serious cases
 - has processes that are difficult to understand
 - has seen its costs greatly increase in recent years.
8. The reforms largely focus on Care of Children Act 2004 matters, which include standard issues such as where parents cannot agree about day-to-day care and contact arrangements. They also include important changes to other areas of the Family Court's jurisdiction, such as relationship property proceedings. The most significant proposal is to establish an out-of-court Family Dispute Resolution (FDR) service. This service will help people to resolve their parenting disputes more quickly and without the expense of court proceedings.
9. The Minister of Justice will introduce a Bill in late 2012.

Appendix 3 – Out of scope

Particular policy intent

WAITANGI TRIBUNAL, VICTIMS' SPECIAL CLAIMS TRIBUNAL, CRIMINAL JUSTICE ASSISTANCE REIMBURSEMENT SCHEME

1. It would be inappropriate to introduce fees for these bodies as the intent of these jurisdictions is solely to provide access to justice.

Area subject to broader policy reform

LIQUOR LICENSING AUTHORITY AND SALE OF LIQUOR REGULATIONS

2. In the context of significant reforms of liquor laws, Cabinet has agreed that there will be full cost recovery from fees. Work on setting fees is now underway.

AUCTIONEERS FEES AND REGULATIONS

3. Amendments to the Auctioneers Act 1928 and licensing process are included in the Consumer Law Reform Bill. Following the passage of this Bill, the Auctioneers Fees Regulations will be revoked and new cost recovery regulations related to the cost of licensing an auctioneer will be made.

Involvement of other government department

ADULT ADOPTION FEES, MARRIAGE CERTIFICATE FEES

4. The Department of Internal Affairs (DIA) issues adoption certificates (along with birth certificates), and marriage and civil union certificates, and therefore has the policy expertise for this area. Policy considerations for setting these fees are likely to be different from those relating to courts and tribunals and it is appropriate for DIA to lead work on reviewing these fees with input from the Ministry of Justice on fee setting.

FILMS, VIDEOS AND PUBLICATION FEES

5. The Office of Film and Literature Classification is responsible for classifying publications that may need to be restricted or banned in New Zealand. DIA is the monitoring agency of the Office, and also has a role to make sure the censorship legislation is enforced.
6. DIA has the policy and financial expertise pertaining to the Office, which has a bearing on fee setting. In conjunction with the Office, DIA will lead work on reviewing the Office's fees with input from the Ministry of Justice on fee setting.

TENANCY TRIBUNAL

7. The Tenancy Tribunal hears disputes between landlords and tenants, and unit title disputes. Fees are charged to users of the Tribunal and are administered and collected by the Ministry of Business, Innovation and Employment (MoBIE). MoBIE provides funding to the Ministry of Justice annually to assist with the running of the Tribunal.
8. MoBIE has the policy expertise pertaining to the Tribunal and it is appropriate for MoBIE to lead work on reviewing these fees with input from the Ministry of Justice on fee setting.

WEATHERTIGHT HOMES TRIBUNAL

9. The Weathertight Homes Tribunal hears claims concerning leaky homes brought under the Weathertight Homes Resolution Services Act 2006. Fees are administered and collected by MoBIE.
10. MoBIE has the policy expertise pertaining to the Tribunal and it is appropriate for MoBIE to lead work on reviewing these fees with input from the Ministry of Justice on fee setting.

Fees relating to constitutional processes

ELECTORAL FEES

11. Electoral fees relate to the supply of rolls and electoral information. The Electoral Enrolment Centre is responsible for compiling and maintaining the electoral rolls for New Zealand. The Centre is a self-contained business unit of New Zealand Post Ltd, under contract to the Minister of Justice.
12. Policy considerations for setting electoral fees are likely to be different from those relating to courts and tribunals. It is appropriate that a review of fees should take place in the context of broader electoral reform.

CITIZENS INITIATED REFERENDUM FEE

13. A referendum can be called as a result of a successful petition under the Citizens Initiated Referenda Act 1993, if 10 percent of enrolled electors sign a petition calling for a referendum.
14. Policy considerations for setting the fee for a citizens-initiated referendum are likely to be different from those relating to courts and tribunals. A review of the fee may take place at a later date.

Other reasons

ABORTION SUPERVISORY COMMITTEE

15. The Abortion Supervisory Committee reviews applications for institutions to have an abortion licence, and applications for licence renewal. Any adjustment to fees should be considered in the broader context of abortion law.

BIRDLINGS FLAT LAND TITLE COMMISSIONER

16. The role of the Birdlings Flat Land Title Commissioner has been completed. It is proposed that the relevant legislation be repealed.