

Stage 2 Cost Recovery Impact Statement

Increase to fees in courts and tribunals

Agency Disclosure Statement

This Cost Recovery Impact Statement (CRIS) has been prepared by the Ministry of Justice (the Ministry).

It considers a proposal to increase fees paid to various courts and tribunals by users to reflect the increasing costs of providing those court and tribunal services. These services are mostly paid for by the Crown, with a small amount of cost recovery coming from user fees.

The proposal to increase fees is part of proposed initiatives submitted for Budget 2024. This CRIS considers: making a Consumers Price Index (CPI) adjustment increase for most civil courts and tribunals; and making a 10 per cent increase for other courts where there are higher public interest considerations. Both increases would be effective from 1 July 2024.

The Ministry initially considered making a CPI adjustment in most civil courts and tribunals, and excluding some jurisdictions where there are higher public interest considerations (for example, criminal jurisdictions and the Family Court). The decision was to proceed with a proposal that includes increases for these other jurisdictions, but with a comparatively lower increase than a full CPI adjustment, to reflect this higher public interest.

Analysis has been based on policy principles for charging fees that were set in 2012 as part of a review of fees. These principles were widely consulted on at that time with key stakeholders, including the judiciary. The proposal has been assessed against the cost recovery objectives of effectiveness, simplicity and equity.

This CRIS has been developed under significant time, data and resource constraints due to Budget timing and sensitivity. The Ministry has not been able to consult with key stakeholders and the public. Limited engagement with the judiciary and other agencies impacted by the changes (Inland Revenue, Ministry for the Environment, Ministry of Housing and Urban Development, Ministry of Business, Innovation and Employment, the New Zealand Customs Service, and Te Puni Kōkiri) has been undertaken. This means that the full potential impact on users of the courts and tribunal services has not been completely analysed.

The lack of consultation increases the risk of stakeholder and public opposition to the changes, including from the judiciary, the New Zealand Law Society, and the New Zealand Bar Association. The Ministry is developing a communications plan to support implementation and mitigate this risk; this will include meeting with legal professional groups, relevant agencies, and the judiciary.

The Ministry has modelled possible scenarios based on assumptions. Detailed work to understand the costs within courts and tribunals was developed in 2012 and 2016 and due to time and resource constraints this data has been used to support forecasting. The Ministry has factored in assumptions for modelling relating to reduction in filing (by 5 per cent) and an increase in fee waivers (by 8 to 10 per cent) for civil jurisdictions. The lack of opportunity to consult means these assumptions have not been tested. These assumptions have not been used for other jurisdictions because the recommended fees increase is much lower and therefore the Ministry has assumed less likelihood of behavioural change.

Demographic information related to age, ethnicity, location, or occupation is not collected or recorded by the court and tribunal system. This means that the Ministry could not model if the proposed changes would have a greater impact on a particular group in society, although it is expected that lower socio-economic groups will be more impacted.

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11 April 2024

Executive summary

This CRIS evaluates the proposal to increase fees in courts and tribunals to support cost recovery.

An adequately funded and well-run court and tribunal system is foundational to our democracy. The system provides important public and private benefits for citizens. New Zealand's courts and tribunals are mostly funded by the Crown, but also have a cost recovery element in the form of fees that users of the system pay. This recognises the private benefits citizens may achieve through the courts and tribunals.

These fees have not been comprehensively reviewed since 2012, when the Ministry of Justice (the Ministry) undertook a first principles review (the 2012 Fees Review). At that time, fees were increased in line with a new fees setting framework agreed by Cabinet following extensive stakeholder engagement, including with the judiciary. Despite the recommendation in the fees framework that fees amounts should be reconsidered on a regular basis and updated in line with inflation, no inflation related fees increases have been made since 1 July 2013.

In the meantime, costs for the delivery of courts and tribunal services have increased by 41 per cent over the last ten years. This is due to factors such as inflation, higher costs of property and staff remuneration, as well as more demand for services.

The Ministry considers that the principles for cost recovery, as set out by the 2012 Fees Review, remain appropriate. For example, one such principle that remains relevant is that the mixture of public and private benefits accrued in courts and tribunals means that the total cost of these bodies should generally be shared between taxpayers and users.

For most *civil jurisdictions*, the Ministry proposes a Consumers Price Index (CPI) adjusted increase (from the date of the last increase in 2013) to a range of tribunals, the Civil District and High Courts, Court of Appeal, and Supreme Court, with effect from 1 July 2024. A general inflation calculation shows a 30 per cent CPI increase from 2013 to 2023. In civil jurisdictions users are more likely to pursue cases for private or commercial benefit, such as a fiscal benefit, rather than public benefit. In accordance with the 2012 Fees Review framework, the Ministry considers it is appropriate that users continue to meet a reasonable proportion of the cost of courts and tribunals services.

For *other jurisdictions*, the Ministry proposes a smaller 10 per cent increase to fees in the Criminal District and High Courts, Family Court, Environment Court, Employment Court, and Māori Land Court, with effect from 1 July 2024. The implications for access to justice are greater in these jurisdictions due to their relative higher public benefits, the characteristics of the users and people impacted by the decisions who are often vulnerable, and the lack of alternative avenues for resolving the matter. Therefore, while some consideration should be given to how much the user pays, more weight has been given to the public benefit than the private benefit when assessing fees increases. The Ministry considers making a smaller 10 per cent increase strikes the right balance between recognising the increasing costs of courts and tribunals, the principles of the 2012 Fees Review, and ensuring access to justice.

The expected increase in revenue generated across the forecast period (2024/25 to 2028/29) following CPI adjustment for civil jurisdictions' fees amounts is \$27.642 million. The expected revenue increase following a 10 per cent adjustment for other jurisdiction fees amounts to \$2.384 million. This totals a \$30.026 million increase in revenue overall. Revenue from increasing fees has been modelled based on the average increase for each jurisdiction, factoring in assumptions about possible behavioural changes (the possible reduction in filings and an increase in waived fees for civil jurisdictions, less so for other jurisdictions).

Implementation costs have also been subtracted from the increase in civil jurisdictions' revenue.

While a fee increase could be expected to have a greater impact on lower socio-economic groups, factors such as the use of legal aid and fee waivers can mitigate the impact (refer to impact analysis section for further detail).

Status quo

New Zealand's court and tribunal services enable people and businesses to have trust and confidence in institutions and thereby participate in our society and economy knowing that laws and contracts can be enforced. The court and tribunal system provides certainty about how business and private relationships can operate, which is critical to maintaining a cohesive society, encouraging investment, and upholding the rule of law. It also provides an important check on executive power.

The court and tribunal system also provides private benefits to those using them, particularly in terms of resolving legal disputes between parties.

However, to provide these important private and public benefits the court and tribunal services must be adequately funded and fiscally sustainable. Partial cost recovery through user fees is a key means of enabling this. The 2012 Fees Review framework developed by the Ministry recognises that courts and tribunals generate public and private benefits and that the total cost of these bodies is therefore most appropriately shared by taxpayers and users.

Courts and tribunals are funded through a mix of Crown and user-pays funding

The Ministry is responsible for the operation of New Zealand's courts and tribunals:

- *Senior Courts:* Supreme Court, Court of Appeal, civil and criminal jurisdictions of the High Court;
- *District Court:* civil and criminal jurisdictions of the District Court, and the Family Court;
- *Specialist Courts:* the Employment Court, Environment Court, and Māori Land Court; and
- *Tribunals:* including the Disputes Tribunal, the Tenancy Tribunal, and the Human Rights Review Tribunal, amongst others.

For the most part, the cost of operating these courts and tribunals services is reliant on Crown funding; however, costs are also partially recovered by user fees and other settings, such as industry levies for particular tribunals.

Cost recovery in some form across all jurisdictions is well-established and has been in place for many years. This approach reflects the public and private benefits that courts and tribunals generate, and as such, it is appropriate that the total cost of these bodies is shared by taxpayers and users.

Fees for courts and tribunals are set under Regulations

Fees for courts and tribunals are set through regulations made in accordance with the respective empowering legislation. These fees provide cost recovery for filing, hearing and scheduling. The Ministry administers the majority of regulations for court and tribunal fees.

However, some tribunals' fee regulations are administered by other agencies under the relevant portfolio. For example, fees for the Māori Land Court are set under the Māori Land Court Fees Regulations 2013, which are administered by Te Puni Kōkiri as part of the Māori Development portfolio. Other portfolios where this occurs include Commerce & Consumer Affairs, Customs, Environment, Housing, Revenue, and Workplace Relations and Safety.

A list of the relevant regulations and administering agencies considered in this CRIS is attached as Appendix A.

Problem Definition

Fees rates are inadequate and most have not been reviewed since 2012

Most fees rates were last reviewed in 2012 (the 2012 Fees Review) when the Ministry of Justice considered how fees were set for the District Courts, High Court, Court of Appeal, and Supreme Court, as well as the specialist courts (Employment, Environment and Māori Land Courts) and 21 tribunals administered by the Ministry. The 2012 Fees Review considered how fees can be set on a principled basis and in a way that ensures access to justice. It also considered how it could establish appropriate cost recovery, create incentives for appropriate use of the civil justice system, and ensure cost structures were as efficient as they could be.

The Review saw changes to fees that were estimated to increase overall cost recovery across all jurisdictions from 14 per cent to 17 per cent, meaning that the Crown would provide for 83 per cent of total costs.

It also resulted in Cabinet agreement to a policy framework and fees setting framework designed to support future fees setting proposals [CAB(12) 24/4 refers]. This framework recognised that public and private benefits are generated by the courts and tribunal system and therefore the total cost of administering these bodies is most appropriately shared by taxpayers and users. Cabinet agreed that CPI reviews should be undertaken every three years and comprehensive reviews should be undertaken every ten years. This was not implemented. No inflation related fees increases have been made since 1 July 2013.

Costs for delivering court and tribunal services have increased 41 per cent since 2013

Over the last 10 years, the costs to deliver courts and tribunal services has increased by 41 per cent from \$459.495 million Vote Courts Departmental Expenditure in 2013/14 to \$646.420 million in 2022/23. This includes departmental expenditure related to the Collection and Enforcement of Fines and Civil Debts Services, District Court Services, Senior Courts Services (previously Higher Courts Services), and Specialist Courts, tribunals and other authorities' services.

The increase in expenditure is a result of inflationary pressures, wage increases, and cost of infrastructure including modern technology and property improvements. For example, investment has supported improved technology at the Disputes Tribunal, with over 70 per cent of hearings now being heard or recorded remotely via Microsoft Teams or a device. This

provides better access to justice outcomes by giving users freedom of where they can access the Tribunal's services. There are also initiatives underway at the District Court to remove the need for physical filing and instead rely on an electronic file within an existing application. Costs are generally increasing in the Senior Courts because cases are becoming longer and more complex than they were 10 years ago, due to factors such as events within cases, for example, case management conferences. To accommodate this, the High Court is now scheduling criminal trials 18 to 24 months away with cases already being scheduled for 2026 at this time, compared to 12 months away several years ago.

While costs have increased, settings to recover the costs of courts and tribunal services have not been updated on a routine basis. Although some individual courts' fees have been adjusted, or new fees introduced, there has been no systematic increase to court fees since July 2013.

An increase to fees, while small, could help meet the increased costs for delivering services

The amount of revenue the Crown receives from fees is small. In 2022/23 fees for services only represented 6.4 per cent of Vote Courts Expenditure compared to 8.4 per cent in 2014/15. This falls well below the 17 per cent sought from the 2012 Fees Review which reflected the public and private benefits principle of sharing the cost between the Crown and users.

Under the Treasury and Office of the Auditor-General principles for setting public sector charges, the Crown provides funding for a service only where it is considered that the public benefit from the service and there is not a clearly attributable benefit to individual users or a defined group. Treasury guidelines further note there is a strong case for recovering the costs of a private good from those who benefit from it.

An increase in tribunal and courts fees would support meeting the increased costs of delivering these services and provide a pathway towards achieving the 17 per cent goal.

Two sets of jurisdictions have been considered for fees increases

The Ministry of Justice has considered two sets of jurisdictions for fees increases:

- *Civil jurisdiction:* District Court, High Court, Court of Appeal, Supreme Court, and relevant tribunals; and
- *Other jurisdictions:* criminal, family jurisdiction of the District Court, Māori Land Court and Māori Appellate Court, Employment Court, and Environment Court.

In civil jurisdictions users are more likely to pursue cases for private or commercial benefit, potentially a fiscal benefit, rather than a public benefit. Individual actions of courts and tribunals are undertaken at the request of parties to a case. While there are overarching public benefits (such as ensuring rule of law and sometimes resolving unsettled areas of law), the outcomes of those legal actions, such as the impartial resolution of a dispute or the enforcement of an order, are generally of greatest interest and benefit to those parties. Common users of the civil court system are banks, corporates, developers, councils, unions, financial institutions and debt collectors, and individuals seeking resolution of a civil matter. In accordance with the 2012 Fees Review framework, the Ministry considers it is appropriate that users continue to meet a reasonable proportion of the cost of courts and tribunals services.

However, we note that fees apply equally to both complainants and defendants, neither who would necessarily choose to be before the courts at all.

In the other jurisdictions, the implications for access to justice are greater in respect to increasing fees due to the relative higher public benefits of these jurisdictions, the characteristics of the users or those impacted by the decision (for example, those who are vulnerable), and the lack of alternative avenues for resolving the matter. There may be less fiscal benefit for the parties involved. Therefore, while some consideration should be given to how much the user pays, more weight has been given to the public benefits achieved rather than the private when assessing potential fees increases.

We have therefore weighted the private benefits more heavily for the civil jurisdiction than other jurisdictions, when considering the principles and objectives for cost recovery (below).

Cost Recovery Principles and Objectives

The 2012 Fees Review framework provides a good basis for considering how fees should be set in future. These were developed with input from key stakeholders, including the judiciary. As such, the Ministry considers that these remain relevant and should be retained.

The established policy principles set for charging fees in courts and tribunals are¹:

- the cost of court and tribunals services should be shared between taxpayers and users to broadly reflect public and private benefits of the service;
- all relevant direct and indirect costs (both departmental and non-departmental) should be included in the base cost of a service;
- fees should not be set at levels that preclude or significantly impede applicants commencing or continuing a meritorious claim. Fee waivers, concession rate fees, or exemptions may be appropriate to protect access to justice;
- the user of a service should pay any fee, and judicial officers should have discretion to reallocate costs between parties;
- fees should be structured simply, fairly, and efficiently; and
- there should be consultation on major fee changes, and periodic fees reviews.

Due to the limited timeframe in developing this CRIS, the proposals discussed do not represent a first principles review which would result in a more fundamental reset of fees to reflect the actual costs involved in administering court and tribunal services. Because of this more limited scope, the proposed increases to fees have been evaluated against the following objectives (based on guidance from the Treasury and Office of the Auditor-General around cost recovery):

- *Effectiveness*: Are resources allocated in a way that contributes to the outcomes being sought by the activity? Is the level of funding fit for purpose? Does it enable the cost recovered activity to be delivered to a level of quality that is appropriate for the circumstances?

¹ The Fee Framework established in 2012 is included in full in an appendix to this CRIS.

- *Simplicity*: Is the cost recovery regime straightforward and understandable to relevant stakeholders?
- *Equity*: Have the impacts of the proposed or existing cost recovery regime been identified? Will stakeholders be treated equitably? Have impacts over time been identified?

Proposal for fees increases

To mitigate the problem of increasing costs in the delivery of courts and tribunals services, this CRIS considers:

- an inflation adjustment, based on the Consumers Price Index (CPI) (by a general inflation calculator this increased 30 per cent in the ten year period), for most of the civil jurisdictions of the courts and the tribunals; and
- an increase for other jurisdictions with higher public benefits at a lower rate of 10 per cent.

CPI-adjusted fees for most civil jurisdictions of courts and tribunals

An adjustment to take into account inflation that has occurred in the period since a fee in a court or tribunal was last increased is the simplest and most transparent way of mitigating increased Ministry costs. For most fees, the last increase was on 1 July 2013.

This CRIS proposes a CPI increase so that fee levels are increased in real (inflation-adjusted) terms to deliver services. Ensuring that cost recovery has not been unduly eroded by inflation is important to ensure that the provision of court and tribunal services remains fiscally sustainable.

This would address cost pressures without changing the underlying principles which were agreed to during the 2012 Fees Review and which guided how fees have been set. No systematic fee increases have taken place since the 2012 Fees Review. This is despite a recommendation in the framework that fees should be reconsidered on a regular basis and updated in line with inflation. The adjustment would bring the fees back into line with the public/private benefit ratio that was considered appropriate in 2012.

As a guide, the Reserve Bank of New Zealand inflation calculator shows that, according to a general CPI calculation, what cost \$1.00 in July 2013 (Q3) would have cost \$1.30 in 2023 (Q4). This represents a total percentage change of 30 per cent.

Calculated on when the specific fee was last changed, a CPI increase is proposed for the following jurisdictions, and would result in the following changes:

- fees in the High Court's civil jurisdiction will increase by 30 per cent;
- fees in the District Court's civil jurisdiction will increase by between 28.30 per cent to 30 per cent;
- fees in the Supreme Court will increase by 30 per cent;
- fees in relevant tribunals will increase by between 20.60 per cent (CPI increase to a fee set in October 2019) to 67 per cent (CPI increase to a fee set in December 2003).

There are over 150 individual fees in the relevant regulations falling under these jurisdictions. Appendix B, Table 1 shows a sample of individual fees changes that would occur under the relevant CPI adjustment.

A summary of the estimated net revenue (\$m) from the changes to fees is set out in Table 1.

Table 1: Estimated additional net revenue (\$m) for civil jurisdictions of courts and tribunals

Revenue category	2024/25	2025/26	2026/27	2027/28	2028/29 & outyears
<i>District Court Civil</i>	0.890	1.071	1.253	1.434	1.615
<i>High Court Civil</i>	0.627	0.884	1.141	1.398	1.655
<i>Court of Appeal</i>	-0.182	-0.167	-0.152	-0.137	-0.122
<i>Supreme Court</i>	-0.045	-0.044	-0.043	-0.043	-0.042
<i>Tribunals (excluding Disputes Tribunal and Tenancy Tribunal)</i>	2.007	2.22	2.441	2.659	2.876
<i>Disputes Tribunal</i>	0.286	0.319	0.353	0.386	0.419
<i>Tenancy Tribunal</i>	0.567	0.628	0.689	0.751	0.812

The estimates incorporate assumptions about behavioural change following the proposed CPI increase, including a 5 per cent reduction in filing, and 8 to 10 per cent increase in fee waivers. These factors mean that for certain low volume jurisdictions such as the appellate courts, the CPI adjustment will result in negative revenue for these specific courts over this period.

Following the proposed increases to fees, the modelling shows that the changes would provide a total additional net revenue of \$27.642 million across 2024/25 to 2028/29.

The forecast revenue generation per year (\$m) for Vote Justice and Vote Building and Construction (included because of the Tenancy Tribunal) from the proposed CPI adjustment to the civil jurisdictions is set out in Table 2.

Table 2: Forecast additional total revenue (\$m) per year for Vote Justice and Vote Building and Construction

Financial year					Total revenue
2024/25	2025/26	2026/27	2027/28	2028/29 and outyears	
3.571	4.869	5.635	6.401	7.166	27.642

Due to the distribution of costs across jurisdictions, anticipated implementation costs are deducted from the total revenue. This additional revenue assumes that further CPI adjustments of 3 per cent are made every year.

Evaluation against the objectives

In developing and considering this proposal, the Ministry evaluated it against the following objectives:

- *Effectiveness*: the vast majority of fees have not increased since 2013. An increase in fees in line with inflation changes (through CPI) will support more fiscally sustainable court and tribunal services. It will also enable a move towards the 17 per cent goal for user funding of court and tribunal services.
- *Simplicity*: the CPI is a measure of inflation for New Zealand households. It is a well-known public benchmark for recording the changes in the price of goods and services. While it will be easy to understand for most stakeholders, a communications approach will support Budget 2024 announcements to ensure this information is widely communicated and understood.
- *Equity*: the increase will adjust for inflation in the period since most fees were last updated in 2013. All users will be required to pay the new fees. Given the nature of civil proceedings often resulting in a private benefit, the impact is not likely to be large particularly considering the overall cost of pursuing actions in the courts and tribunals. Fees are just one cost and users often weigh up the cost of legal fees and opportunity cost of time in assessing whether to file an action. For those users with more limited means whereby increased fees could potentially create a barrier to civil proceedings, fee waivers and access to legal aid are still available if they meet eligibility requirements. See impact analysis section for more information.

10 per cent fee increase for other jurisdictions with higher public benefit

The 2012 Fees Review outlined that determining whether a particular fee constitutes a significant impediment to access to justice depends on the nature of a jurisdiction and its users. The following factors should influence whether a fee is prescribed, and the level at which it is set:

- *Likely users of the jurisdiction*: the individuals or entities who are 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 if alternative means of resolution are not available, the size of any fee may need to be limited.

The Ministry has identified that some jurisdictions have features that require different policy considerations when setting fees. The jurisdictions with these features are the:

- criminal jurisdictions of all the courts;
- family jurisdiction of the District Court;
- Environment Court;
- Employment Court; and

- Māori Land Court.

There are three key reasons for differentiating these jurisdictions.

First, many of these jurisdictions have a higher degree of public benefit. For example:

- Family Court proceedings relate to sensitive and personal matters about the wellbeing of families and children. The Court's decisions and the process of engaging with the Court can have long-lasting impacts on people's lives.
- Environment Court proceedings deal with matters involving regional and district plans, which often involve matters of high public interest.

Second, people accessing some of these jurisdictions are more likely to be from vulnerable populations where larger increases in fees could have significant impacts on access to justice. Parties in Family Court proceedings include a large proportion of legally aided people, who could qualify for a fee waiver.²

Third, some jurisdictions lack alternative avenues, such as alternative dispute resolution. These include the Māori Land Court and the Environment Court. The lack of alternatives means that it is more desirable to restrict fees increases.

Most fees in these jurisdictions were last updated in 2013 following the 2012 Fees Review.³ Some have been updated again more recently. For example, the filing fees for the Environment Court were last amended in 2017.

The Ministry initially considered no fees increase to these jurisdictions. However, an increase was considered necessary due to the increased cost in providing services, because of the time since many of the fees for these jurisdictions last increased, and the subsequent rate of inflation in that period.

In recognition of the reasons to differentiate these jurisdictions, a lower 10 per cent increase, rather than significantly higher increases from a full CPI adjustment, was considered.

This CRIS proposes a lower 10 per cent increase in these jurisdictions since the fees were last set, to come into effect from 1 July 2024.

There are over 100 individual fees in the relevant regulations falling under these jurisdictions. Appendix B, Table 2 shows a sample of fees changes that would occur under the proposed smaller 10 per cent option, compared with a straight CPI adjustment.

A summary of the estimated additional net revenue (\$m) for the changes to fees in these jurisdictions is set out in Table 3.

² Figures of Family Court applications and Family Legal Aid Grants show a minimum of 15 per cent of Family Court proceedings feature a legally aided party. This is likely to be higher in reality, as one legal aid grant will often cover multiple applications.

³ The Family Court fees were updated in 2011 and 2012, so were not updated again following the 2012 Fees Review.

Table 3: Estimated additional net revenue (\$m) for jurisdictions with higher public benefit from a 10 per cent increase

Revenue category	2024/25	2025/26	2026/27	2027/28	2028/29
<i>Environment Court</i>	0.016	0.021	0.026	0.030	0.035
<i>Employment Court</i>	0.008	0.010	0.012	0.015	0.017
<i>Family (District Court)</i>	0.243	0.316	0.389	0.462	0.535
<i>Criminal (District Court)</i>	0.011	0.014	0.017	0.021	0.024
<i>Māori Land Court</i>	0.020	0.026	0.032	0.038	0.044

This modelling does not factor in any behavioural change following the proposed increase, such as reduction in filing or increases in fee waivers, or estimated implementation costs. This is because of the time constraints in developing the CRIS and because the proposed increase to other jurisdictions fees is lower and the Ministry has therefore assumed less likelihood of behavioural change. The revenue categories in the criminal jurisdictions of the High Court, Court of Appeal and Supreme Court are not included because the level of revenue is negligible.

Following the proposed increases to fees, the modelling shows that the changes would provide a total additional net revenue of \$2.384 million across 2024/25 to 2028/29. The forecast revenue generation per year (\$m) for Vote Justice from the proposed 10 per cent increase to the identified jurisdictions is set out in Table 4.

Table 4: Forecast additional total revenue (\$m) per year for Vote Justice

Financial year					Total revenue
2024/25	2025/26	2026/27	2027/28	2028/29 and outyears	
0.298	0.387	0.477	0.566	0.655	2.384

This revenue assumes that further CPI adjustments of 3 per cent are made every year.

Evaluation against the objectives

In developing and considering this proposal, the Ministry evaluated it against the following objectives:

- *Effectiveness*: most fees have not increased since 2013. An increase in fees in line with inflation changes (through CPI, not recommended) or through a smaller 10 per cent increase (recommended) will support more fiscally sustainable court and tribunal services. It will also enable a move towards the 17 per cent goal for user funding of court and tribunal services.

- *Simplicity*: the CPI is a measure of inflation for New Zealand households. It is a well-known public benchmark for recording the changes in the price of goods and services. The recommended 10 per cent increase provides a simple framework for changing fees. While both options will be easy to understand for most stakeholders, a communications approach will support Budget 2024 announcements to ensure this information is widely communicated and understood.
- *Equity*: the increase will take account of the time since most fees were last updated in 2013. All users will be required to pay the new fees. For those users with more limited means, fee waivers and access to legal aid are still available if they meet eligibility requirements. The recommended option for increasing fees by 10 per cent rather than CPI acknowledges that there is a higher public benefit from these jurisdictions, the characteristics of the potential users, and the lack of alternative avenues. If fees are increased in line with CPI, then there is a risk that some users may find it more difficult or not be able to access relevant courts and tribunals, compared with users for civil jurisdictions.

Impact analysis

The proposal to increase fees in courts and tribunals will impact those who use the services. An increase in fees will make the process more expensive and as fees are usually required to be paid upfront it may be difficult for some people, particularly those from lower socio-economic backgrounds, to pay them.

Fee setting is only one component in maintaining an accessible civil justice system and is not incompatible with the right of access to justice. However, if fees bar or introduce significant impediments to access they may undermine the right to access. A fee is likely to constitute a significant impediment if prospective applicants are prevented from commencing or continuing proceedings that they would have pursued if the fees were not in effect.

Three tribunals last had increases before 2013, meaning the CPI adjustment is greater. These are the Private Security Personnel Licensing Authority (33.4 per cent increase, last increased in 2011), the Tenancy Tribunal (33.4 per cent increase, last increased in 2011), and the Motor Vehicles Disputes Tribunal (67 per cent, last increased in 2003). There will be a greater impact on those users of these outliers that have larger monetary increases. For example, the fee for filing an application for a company licence in the Private Security Personnel Licensing Authority will increase by \$242 to \$967.

These issues are mitigated by:

- *Cost of fees compared to the overall cost of proceedings*: people who use courts and tribunals generally face high costs. In 2006, the Ministry of Justice found that fees increases in 2004 did not have a significant detrimental impact on the right of access to the courts. Court fees were considered to be a minor component of the total cost of litigation compared to the costs of lawyers' fees and the time and effort required by litigants themselves. These factors were what was generally used to determine the economy of using the courts. In addition, fees may prompt prospective users to take account of the costs 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.
- *Actual cost of fees*: most fees in tribunals are currently set at a range of between \$20 (in the Tenancy Tribunal) to \$725 (for Private Security Personnel Licensing Authority).

Overall, the proposed increases are not large in dollar value. For example, the fee for the Tenancy Tribunal will increase from \$20.44 to \$27 (33.4 per cent increase).

- *Recommending a lower 10 per cent increase to fees of other jurisdictions:* given the importance of access to justice for those matters, a smaller 10 per cent increase will not have as much of an impact compared to the CPI increase proposed for civil jurisdictions;
- *Use of fee waivers:* which may be granted independently at the discretion of Deputy Registrars where a participant in a proceeding is experiencing financial hardship, such as being on the benefit or living off superannuation, or if the case is deemed to be in the public interest, such as where the outcome would affect or benefit a group of people or clarifies legal issues for the wider community. The Ministry is not proposing changes to fee waivers – this would require a more comprehensive review which is outside the scope of this proposal; and
- *Use of legal aid:* if a user meets the eligibility requirements.

Consultation

Policy development for the proposed CPI adjustment to civil fees began in February 2024. Cabinet decisions were required by early April for proposals to come into effect from 1 July 2024. These time constraints, alongside the proposals being budget sensitive, has reduced capacity for consultation with the public and key stakeholders.

In September 2012 Cabinet agreed to release a consultation paper, *Civil fees review*, for public consultation [CAB (12) 34/4]. The consultation paper proposed a policy framework for setting civil fees and fee changes, including fee increases, some decreases, changes to fee regimes and fee rounding. This is referred to as the 2012 Fees Review framework in this CRIS.

At that time, information was sent to approximately 800 stakeholders with a link to the consultation document and inviting submissions. The judiciary was advised about the consultation document and the submissions process and encouraged to submit on the proposals.

Fifty-seven submissions were received with a range of views on the proposed policy framework and fee changes. While some submitters broadly agreed with the policy framework for setting fees, a variety of views were expressed on specific aspects. Many submitters considered that the framework should place greater emphasis on ensuring access to justice. The judiciary generally considered the cost of civil justice services should overwhelmingly fall on the government, because of the significant public benefits of an accessible justice system.

Conclusions and recommendations

The selected proposals are to introduce:

- a Consumers Price Index (CPI) inflation adjustment to civil jurisdictions fees in a range of tribunals, the Civil District and High Courts, Court of Appeal, and the Supreme Court, with effect from 1 July 2024; and
- a lower 10 per cent increase to fees in other jurisdictions, including the Criminal District and High Courts, Family Court, Environment Court, Employment Court, and Māori Land Court, with effect from 1 July 2024.

Implementation plan

Changes to 25 separate sets of regulations will be required to increase in courts and tribunals. This will be achieved through separate Orders in Council, to come into effect on 1 July 2024.

Changes will be required to relevant Ministry ICT systems used in the filing of court applications, alongside updates to processing systems, forms, and publications, to reflect the civil fees increase.

A communications approach will support Budget 2024 announcements to ensure this information is widely communicated and understood.

Monitoring and evaluation

The Ministry will monitor the fees revenue generated by the proposed increase in fees to evaluate if it achieves the aims set out in this CRIS. Monitoring will also be undertaken on the number of fees waivers applied for and granted.

Review

The final Cabinet paper from the 2012 Fees Review stated that in future, CPI reviews should be undertaken every three years and comprehensive reviews should be undertaken even ten years. This has not been implemented.

The Ministry recognises the value of more regular updates to fees in line with CPI, rather than more abrupt increases at longer intervals. Noting this, the Ministry will consider more frequent CPI updates to the fees regulations and could also explore introducing statutory provision for automatic CPI updates in relevant primary legislation in future.

Appendix A: Regulations in scope of this CRIS, by administering agency

	Regulation	Agency responsible (Portfolio)	Court / Tribunal
1.	Customs and Excise Regulations 1996	New Zealand Customs Service (Customs)	Customs Appeal Authority
2.	Taxation Review Authorities Regulations 1998	Inland Revenue (Revenue)	Taxation Review Authority
3.	Resource Management (Forms, Fees, and Procedure) Regulations 2003	Ministry for the Environment (Environment)	Environment Court
4.	Māori Land Court Fees Regulations 2013	Te Puni Kōkiri (Māori Development)	Māori Land Court
5.	Residential Tenancies (Fees) Regulations 1998	Ministry of Housing and Urban Development (Housing)	Tenancy Tribunal
6.	Motor Vehicle Sales Regulations 2003	Ministry of Business, Innovation and Employment (Commerce and Consumer Affairs)	Motor Vehicles Disputes Tribunal
7.	Copyright (Infringing File Sharing) Regulations 2011	Ministry of Business, Innovation and Employment (Commerce and Consumer Affairs)	Copyright Tribunal
8.	Employment Court Regulations 2000	Ministry of Business, Innovation and Employment (Workplace Relations and Safety)	Employment Court
9.	Supreme Court Fees Regulations 2003	Ministry of Justice (Justice)	Supreme Court
10.	Supreme Court (Criminal Fees) Regulations 2013	Ministry of Justice (Justice)	Supreme Court
11.	Court of Appeal Fees Regulations 2001	Ministry of Justice (Justice)	Court of Appeal
12.	Court of Appeal (Criminal Fees Regulations) 2013	Ministry of Justice (Justice)	Court of Appeal
13.	High Court Fees Regulations 2013	Ministry of Justice (Justice)	High Court
14.	District Courts and High Court (Criminal Fees) Regulations 2013	Ministry of Justice (Justice)	District Court and High Court
15.	District Court Fees Regulations 2009	Ministry of Justice (Justice)	District Court and Land Valuation Tribunal

	Regulation	Agency responsible (Portfolio)	Court / Tribunal
16.	Family Court Fees Regulations 2009	Ministry of Justice (Justice)	Family Court
17.	Disputes Tribunal Rules 1989	Ministry of Justice (Justice)	Disputes Tribunal
18.	Immigration and Protection Tribunal Regulations 2010	Ministry of Justice (Justice)	Immigration and Protection Tribunal
19.	Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations 2008	Ministry of Justice (Justice)	Lawyers and Conveyancers Disciplinary Tribunal
20.	Lawyers and Conveyancers Act (Legal Complaints Review Officer) Form and Fee Regulations 2008	Ministry of Justice (Justice)	Legal Complaints Review Officer
21.	Private Security Personnel and Private Investigators (Fees) Regulations 2011	Ministry of Justice (Justice)	Private Security Personnel Licensing Authority
22.	Prostitution (Operators Certificate) Regulations 2003	Ministry of Justice (Justice)	Registrar of the District Court
23.	Real Estate Agents (Complaints and Discipline) Regulations 2009	Ministry of Justice (Justice)	Real Estate Agents Disciplinary Tribunal
24.	Sale and Supply of Alcohol (Fees) Regulations 2013	Ministry of Justice (Justice)	Alcohol Regulatory and Licensing Authority
25.	Secondhand Dealers and Pawnbrokers Regulations 2005	Ministry of Justice (Justice)	Licensing Authority of Secondhand Dealers and Pawnbrokers

Appendix B: Samples of fees increases by jurisdiction

Table 1: Small sample of fee increases for most civil jurisdictions of courts and tribunals (indicative only)

Jurisdiction	Fee description	Current fee	CPI % increase	Proposed increase
Supreme Court	Filing an application for leave to appeal	\$1,100	30%	\$1,430
Court of Appeal	Filing an application for leave to appeal	\$1,100	30%	\$1,430
High Court	Filing an initiating document for certain types of proceeding (includes judicial review, applications in equity and under statute, originating applications, appeal or cross-appeal)	\$540	30%	\$702
District Court	Filing an initiating document	\$200	30%	\$260
	Filing a statement of defence	\$75	30%	\$98
Disputes Tribunal	Lodging a claim: <ul style="list-style-type: none"> • under \$2,000 • more then \$2,000 but less than \$5,000 • \$5,000 or more 	\$45	30%	\$59
		\$90		\$117
		\$180		\$234
Immigration and Protection Tribunal	Applications for appeal (residence class visa, deportation)	\$700	30%	\$910
Lawyers and Conveyancers	Appeals or applications to Disciplinary Tribunal	\$320	30%	\$416
Private Security Personnel and Private Investigators	Application for licence for an individual	\$600 (\$510 if lodged electronically)	33.4%	\$800 (\$680)
Prostitution Operators	Application for brothel operator's certificate	\$250	30%	\$325
Real Estate Agents	Appeal a decision to the Real Estate Agents Disciplinary Tribunal	\$30	20.6%	\$36
Sale and Supply of Alcohol	Appeal to Alcohol and Regulatory Licensing Authority	\$450 (excl GST)	29.9%	\$584.35 (excl GST)
Secondhand Dealers and Pawnbrokers	Application for individual licence	\$410	28.7%	\$528
Customs Appeal Authority	Fee for Notice of Appeal	\$410	30%	\$533
Taxation Review Authority	Fee for Notice of claim under s10	\$410	30%	\$533
Tenancy Tribunal	Application fee under s2	\$20.44	33.4%	\$27
Motor Vehicles Disputes Tribunal	Fee for commencing proceedings	\$43.48 (excl GST)	67%	\$73.04 (excl GST)
Copyright Tribunal	Fee for application to enforce a file-sharing infringement under s8	\$200	32.8%	\$266

Table 2: Small sample of fees increases for jurisdictions with higher public benefit (indicative only)

Jurisdiction	Fee description	Current fee	Fee if full CPI % increase	Proposed 10% increase
Family Court	Application filing fee e.g. for a parenting order	\$220	\$289.99 31.8%	\$242
	Application filing fee e.g. declaration on respective shares in relationship property	\$700	\$922.69 31.8%	\$770
Criminal (District Courts and High Court)	Applying to reduce a driving disqualification	\$150	\$194.89 29.9%	\$165
	Copying a judgment relating to a criminal proceeding	\$30	\$38.98 29.9%	\$33
Environment Court	Filing a notice of appeal	\$600	\$751.72 25.3%	\$660
	Commencing any other proceeding	\$250	\$313.22 25.3%	\$275
Employment Court	Statement of claim in form 1AA	\$177.78 (excl GST)	\$272.69 34.7%	\$195.65 (excl GST)
	Application for special leave to remove proceedings to Employment Court	\$177.78 (excl GST)	\$354.75 77.4%	\$195.65 (excl GST)
Māori Land Court	Filing an application for vesting land on change of ownership and declaring land as Māori freehold land	\$200	\$261.70 30.8%	\$220
	Filing an application regarding succession to an occupation order, and various other orders relating to succession	\$60	\$78.48 30.8%	\$66

Appendix C: Fee Setting Framework 2012

<p>Is it appropriate to charge fees in courts and tribunals?</p>	<p>Courts and tribunals generate public and private benefits. The total cost of these bodies is therefore most appropriately shared by taxpayers and users. Fees may not be appropriate where there is a special policy objective that would not be progressed if fees were imposed. Any fee that is imposed on users must have legal authority.</p>
<p>If a fee is to be charged, are safeguards required to protect access to justice?</p>	<p>Fees should not bar 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.</p>
<p>Who should pay fees?</p>	<p>The user of a service should pay any fee. Court and tribunals should have discretion to reallocate costs between parties.</p>
<p>How should the costs of a proceeding be apportioned between taxpayers and users?</p>	<p>Variable ratios of recovery are appropriate and should be determined following consideration of the balance of public and private benefits generated by the relevant type of proceeding.</p>
<p>What specific costs should fees cover?</p>	<p>All costs associated with the relevant proceedings or services of the court or tribunal should be covered. This includes non-departmental costs, such as judicial costs. Non-relevant costs must be excluded.</p>
<p>How should fees be structured?</p>	<p>A fee system should be efficient, equitable, and simple. 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.</p>
<p>How should fees be implemented?</p>	<p>Fee setting requires transparent processes for identifying costs and revenue. It also requires regular reviews.</p>