Civil Fees Review

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Justice. It provides an analysis of options for setting civil fees. The proposed framework delivers on the commitment by the Government in September 2011 to carry out a comprehensive review of civil fees to ensure they are set on a principled, consistent and equitable basis.

The options are constrained by legislation. The scope of the empowering provisions and any constraints or limitations must be identified before setting fees. The Crown cannot levy a tax without the explicit authority of Parliament; therefore a fee can only recover, at most, the cost of a service provided. In most instances setting court and tribunal fees to fully recover costs will not be appropriate because of access to justice considerations. These points and other comments on fee-setting have been made by the Regulations Review Committee in the context of scrutinising fee regulations and have informed the development of fee-setting options.

Most of the key gaps and assumptions that impact on the analysis arise from the limitations of the financial information relied on to calculate costs. Some costs were difficult to identify or had not been collated in a meaningful manner, for example the costs of many of the tribunals are grouped under a single output activity. In most instances, it was not possible to calculate the cost associated with a particular service for which a fee is charged. Calculating the average cost of a case within a jurisdiction is problematic because different applications require varying amounts of court time and resources depending on how complicated they are and when they dispose. There are discrepancies between the Ministry's financial information for fee revenue and case volumes supplied by the jurisdictions. In order to estimate cost recovery percentages the assumption was made that the costs of running the courts and tribunals and volumes of cases would remain the same as the 2011/12 year. Because of their intangible nature, it is difficult to objectively quantify the public and private benefits in courts and tribunals for the purpose of setting fees.

Because of time and resource constraints, no review of the fee waiver provisions has been carried out and therefore no analysis has been carried out on the way in which fee waiver provisions are assisting access to justice. Where fees are proposed to be increased on the basis that the taxpayer is bearing a higher proportion of costs than is appropriate, this will increase costs on businesses and local authorities. The changes to the fees will not impair private property rights, market competition or the incentives on businesses to innovate or invest.

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Status quo

Civil fees

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 court charges for the provision of information. The Ministry of Justice (the Ministry) administers approximately 190 individual civil fees in courts and tribunals. Fees are currently charged in all courts and some of the tribunals administered by the Ministry.

Civil fees were last comprehensively reviewed between 2001 and 2003. Other than a GST increase in 2010 and an adjustment in line with the Consumers Price Index in 2011, most fees have not changed since 2004. The 2011 CPI adjustment did not apply to fees in specialist courts.

First principles review

In 2011, the Government agreed to a first principles review of civil fees in the courts, tribunals and certain other services for which the Ministry provides administrative support services [DOM (11) 15/2 refers]. Jurisdictions in scope of the review are the courts of general jurisdiction (District Courts, High Court, Court of Appeal and Supreme Court), specialist courts (Employment Court, Environment Court, and Māori Land Court) and 21 tribunals administered by the Ministry. Fees for these jurisdictions are set by the Government under 31 sets of regulations. Of these 31 sets of regulations, 22 are administered by the Ministry and nine sets of regulations containing civil fees are administered by other government agencies[1]. The table in **Appendix 1** sets out all courts and tribunals in scope of the review, and the department with responsibility for the empowering legislation.

Setting fees according to public/private benefits

Courts (civil jurisdictions) and tribunals generate both public and private benefits. The total cost of these bodies should generally be shared by taxpayers and users. There may, however, be times when fees will not be appropriate; for example, where there is a human rights issue or social policy that would not be achieved if fees were imposed. User contribution to the cost of tribunals and the civil jurisdictions of courts is through fees, though a few tribunals are also funded by industry levies.

Access to justice

Access to justice is an important constitutional principle, found in the objects and intentions of empowering statutes and key constitutional documents such as the New Zealand Bill of Rights Act 1990.

Access to justice comprises many aspects, for example access to legal information, advice or mediation services, as well as the use of courts and tribunals and the ability to

[1] These departments are: the Ministry of Business, Innovation and Employment, the Ministry for the Environment, Te Puni Kōkiri, the New Zealand Customs Service and the Inland Revenue Department

engage legal advocacy services. Fee setting is only one component in maintaining an accessible civil justice system. People who use courts and tribunals generally face costs such as legal fees (likely to be considerably higher than civil fees) and opportunity costs, such as taking time out from work to pursue a claim.

Fees are not in themselves incompatible with a right of access to justice. They can 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. 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 proceedings that they would have pursued if the fee were not in effect.

Determining whether a particular fee constitutes a significant impediment therefore depends on the nature of a jurisdiction and its users. The following factors should therefore influence whether a fee is prescribed, and the level at which it is set:

- *The 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. For example, the users of the Social Security Appeal Authority are beneficiaries, who are unlikely to be able to afford fees.

- *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.

Where safeguards to protect access to justice are required, these can be provided in the form of fee waivers, concession rate fees, or fee exemptions.

Problem definition

Decreased cost recovery

Due to rising costs and a lack of regular and comprehensive fee reviews, fee revenue has fallen as a percentage of total expenditure for delivering civil justice services. The government has continued to absorb these costs, which are partly due to increased remuneration and property costs. Increased costs may also be due to changes in court and tribunal services, such as the increasing use of pre-trial judicial conferences. In some jurisdictions, case volumes have dropped, resulting in a drop in fee revenue. Many costs are fixed and do not decrease as a result of reductions in case volumes. In the specialist courts, some fees have not been adjusted since they were set over 20 years ago.

The following table sets out approximate cost recovery levels for the 2011/12 year compared with the cost recovery levels for the 1999/2000 year, for four key civil jurisdictions:

Jurisdiction	Cost recovery (1999/2000)	Cost recovery (2011/12)
District Courts	36%	22%
High Court	24%	23%
Court of Appeal	7%	14%
Disputes Tribunals	22%	8%
Total fee revenue/total cost of civil jurisdictions	**27%**	**20%**

For the 2011/12 year, overall cost recovery from fees and levies (i.e. revenue as a percentage of expenditure, including departmental and non-departmental costs) across all the civil jurisdictions of courts and tribunals administered by the Ministry was approximately 14 percent. This percentage includes all tribunals in which no fees are charged, the Supreme Court (which generates less than 1% cost recovery) and specialist courts (which generate less than 2% cost recovery each).

Overseas, there is a wide range of cost recovery rates in civil jurisdictions. In Europe, recent data demonstrates cost recovery ranges from 0.9 percent (Sweden) to 80 percent (England and Wales[2]). In Australia, average cost recovery ranges between approximately two and 35 percent across different levels of civil courts. However, cost recovery percentages for overseas jurisdictions should be treated as indicative only, as it is not possible to examine all relevant variables, such as which costs are included.

Fees not set on a principled, consistent and equitable basis

Due to a drafting anomaly in the District Courts Fee Regulations, it is not possible to charge fees for many applications in the District Courts, for example 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. These and other services in courts and tribunals are provided free to the public and many fees do not reflect the appropriate level of private benefit to the user. As a consequence, taxpayers are currently bearing more of the overall cost of delivering civil justice services than is appropriate.

Fees not structured to ensure simplicity, fairness and efficiency

Some fee schedules are unclear, contain redundant fees or are not comprehensive. Some fees are difficult to administer and collect, for example hearing fees in the District Courts, High Court and Court of Appeal.

[2] 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).

Fees do not create incentives for the appropriate use of the civil justice system

There is anecdotal evidence of inappropriate use of the court and tribunal system, due to no or low fees. For example, there is no fee in the Accident Compensation Appeals (District Courts Registry). As a consequence there are appellants who lodge multiple appeals of questionable merit. In one instance, there were 75 appeals filed by one appellant, in one day. In the Immigration and Protection Tribunal, the recent reduction in the fee to lodge an immigration appeal has contributed to a greater than expected number of appeals. Such consequences create inefficiencies, unfairness between users, and unfairness between users and taxpayers.

Objectives

There are five key objectives for the regulatory changes proposed for civil fees that have been agreed by Cabinet [DOM (11) 15/2 refers]. These objectives are to:

- ensure **access to justice** in the setting of fees;
- determine **appropriate cost recovery**, taking into account the public/private benefit of a civil justice service;
- ensure that fees in civil jurisdictions are set on a **principled, consistent and equitable** basis;
- ensure fees are structured to ensure **simplicity, fairness and efficiency**; and
- create **incentives for the appropriate use** of the civil justice system.

Regulatory impact analysis

Options considered

The exercise of setting fees in relation to court/tribunal expenditure is complex and involves the consideration of constitutional issues, legislative authority, ensuring access to justice is protected, fiscal constraints faced by the government, rising court and tribunal costs and the appropriate use of fee revenue. There is a tension between the public benefits courts and tribunals provide to society as a whole and the private benefits to individual users of court and tribunal services; and there are different perspectives on the way in which public and private benefits are characterised.

Because of these myriad - and at times conflicting - factors, it is challenging to set fees in a consistent and systematic manner across all courts and tribunals. Consequently, a wide range of permutations for setting civil fees is possible when balancing the various relevant considerations, resulting in a range of different cost recoveries. Four options have been assessed:

- **Option 1**: Maintain the status quo;
- **Option 2A**: Comprehensive approach and minimal change to existing fees;

- **Option 2B**: Comprehensive approach and set fees according to what is reasonable; and

- **Option 2C**: Comprehensive approach and set fees according to cost recovery targets for each jurisdiction.

Under option 1 (maintain the status quo) fee structures and fee schedules would remain as they are and therefore cost recovery would remain unchanged. The other three options (2A, 2B and 2C) entail a comprehensive assessment of all jurisdictions to assess all fee-related matters. All three options include amending fee-related provisions to ensure simplicity and consistency across jurisdictions. However, fee levels for each option would be set using different methodologies, as representative of the many different approaches possible across a wide spectrum.

These sub-options result in different cost recoveries as follows:

- no material change to overall current cost recovery (2A);

- moderate increase to overall cost recovery based on individual fee assessments (2B); and

- increased overall cost recovery based on targets for each jurisdiction (2C).

All options are discussed and assessed against the objectives below and summarised in the table at **Appendix 2**.

Option 1 – Maintain the status quo

Under this option, cost recovery across courts (civil jurisdiction) and tribunals is likely to remain at the relatively low level of 14 percent overall (approximate cost recovery from fees for the 2011/12 year). This equates to approximately $20.4m in fee revenue per annum. Cost recovery may drop even lower, if costs for delivering civil justice services continue to rise (see table on page 4).

Analysis against objectives

Under the status quo, fees would not increase, and the courts and tribunals would remain accessible, as many fees would remain relatively low. For example, in the Environment Court, the fee for "other proceedings" (i.e. applications which are not appeals) - $56.20 - has not been materially increased for 22 years. Most fees in the Employment Court have remained substantially unchanged since 1997. Some court and tribunal services are provided at no cost to users. For example, it is free to file a number of applications in the District Courts (e.g. appeals, unit title disputes, and variation of licences) or to have a judgment recalled in the Supreme Court. Therefore, under the status quo access to justice would be relatively high.

Under this option, the cost recovery for each jurisdiction (or for a service within a jurisdiction), may not be appropriate. For example, probate applications in the High Court account for an estimated 10 percent of the Court's workload and, accordingly, a significant amount of the Court's resources are devoted to processing them. The fee for

an application for probate ($90.60) represents only a small proportion of the Court's costs and does not recognise the specialist expertise and private benefit of processing these applications.

At a broad level, the overall cost recovery in the Employment Court (1.5%) and Environment Court (2%) is very low and does not reflect the private benefits generated by these courts.

Conversely, some fees are too high in terms of the court resources used and the private benefit in relation to the service. For example, in the Court of Appeal, it costs the same amount to file an interlocutory application as it does to file a substantive application ($1,087.50). This is inequitable, because the fee is too high in terms of the actual cost of managing each type of application and inconsistent with the levels in other higher courts.

Under the status quo fees in civil jurisdictions would not be set on a principled, consistent and equitable basis because fee anomalies and inconsistencies between jurisdictions would remain.

Currently fees are not structured to ensure simplicity, fairness and efficiency because existing issues would remain unaddressed. For example hearing fees would continue to be difficult to collect in the District Courts, High Court and Court of Appeal and fee regulations for the specialist courts would remain unclear.

There would be no adjustments made to ensure fee systems and individual fees create incentives for the appropriate use of the civil justice system. For example, whether a single or multiple fee system is appropriate for a particular jurisdiction or whether a fee is high enough to deter frivolous or vexatious applications.

Retaining the status quo is largely inconsistent with the objectives of the civil fees review and therefore this option is not preferred.

Option 2 – Comprehensive approach to setting fees

Common elements to all sub-options

Under this option, all jurisdictions would be examined to assess whether it is appropriate to charge fees and to determine appropriate fee structures. All fee-related provisions would be amended to ensure simplicity and consistency across jurisdictions. Accordingly, under option 2:

- Fee waiver provisions would be made consistent across courts (i.e. fee waivers would be introduced in the Employment Court and fee waiver criteria would be prescribed in regulations to facilitate better administration of fee waiver applications in the Environment Court);

- A new hearing fees regime would be introduced for the District Courts, High Court and Court of Appeal, whereby hearing fees would be made payable in advance and refunded where cases settle in advance of the scheduled hearing date;

- Fees would be retained in the 11 tribunals that currently charge fees and a $30 fee would be introduced in three tribunals (which currently have no fees)[3] on the basis they all generate some private benefits and to encourage efficient use of the tribunal system;

- Fee schedules in regulations would be redrafted, fee anomalies addressed, redundant fees revoked and all fees set in whole dollar amounts; and

- District Courts Fees Regulations would be redrafted to provide the ability to charge fees for certain applications that are currently filed for free in the District Courts.

Fee levels

Under option 2, all fees would be adjusted in accordance with relevant Treasury and Auditor-General guidelines[4], as set out at **Appendix 3**. Three sub-options – 2A, 2B and 2C – which include the common elements are considered below.

Option 2A – Comprehensive approach and minimal change to existing fees

Under this option, emphasis would be placed on courts and tribunals as a separate branch of Government, which should be substantially funded through general taxation. Just as it is unreasonable to expect many of the costs of the executive or legislative branches of government to be met through user-pay fees (e.g. a meeting with a local Member of Parliament), it can be seen as inappropriate for the judiciary to be mainly funded through user-pay fees. Nevertheless, like some executive activities (e.g. providing passports or marriage licences) courts and tribunals provide a direct private benefit to users and it is reasonable to expect that they bear a modest portion of the general cost of the litigation.

Accordingly, fees would not be materially increased, but existing fees rounded up or down to the nearest $5. Overall cost recovery across courts (civil jurisdiction) and tribunals would remain at the relatively low level of 14 percent (based on current case volumes and assuming costs remain the same as 2011/12). Taxpayer contribution would therefore be approximately 86 percent, in recognition that courts and tribunals should be substantially funded from general governmental revenue sources, enabling them to fulfil their constitutional role.

Analysis against objectives

Access to justice

Under this option fees would remain at current levels, and courts and tribunals would be accessible, as the value of many fees has been eroded by inflation and there are some

[3] Accident Compensation Appeal Authority, Accident Compensation Appeals (District Court Registry) and Real Estate Agents Disciplinary Tribunal.

[4] 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).

court or tribunal services provided for no fee. In general, access to justice would therefore be relatively high under this option.

Appropriate cost recovery

The cost recovery for each jurisdiction (or for a service within a jurisdiction) in terms of private/public benefits may not be appropriate, because no assessment would be made on a fee by fee basis. Although overall cost recovery would remain low, there may be instances where a particular service is of high private benefit (such as probate applications in High Court and civil enforcement applications in the District Courts) and the associated fee should be proportionally higher vis a vis the cost. There may also be instances where fees are too high as a proportion of the cost of the service, and rounding these fees would be unfair. An example is the current fee for an interlocutory application without notice in the High Court ($725) which is very high, given the minimal time required to manage such an application, and may be at risk of over-recovering costs.

Principled, consistent and equitable

This option provides for consistency insofar as standardising fee waiver provisions between courts. It is neither principled nor equitable, however, because no assessment of fees or services would be made on a fee by fee basis.

Simple, fair and efficient

This option would largely ensure simplicity and efficiency in setting fees, for example by setting fees in whole dollar amounts, redrafting fee schedules, improving the collection of hearing fees in some courts and introducing a multiple fee system in the Environment Court. However, fairness is not achieved where services remain free or current fees do not represent an appropriate contribution for a particular service or application.

Create incentives for appropriate use

There would be some incentives created for the appropriate use of the civil justice system, for example through the introduction of a $30 fee in three tribunals. However, in other instances the rounding of existing fees would not create appropriate incentives. In the Environment Court for example, the current single fee system does not encourage the early resolution of disputes, because after the initial filing fee there are no further fees to incentivise parties to consider whether to continue a case.

Option 2A does not represent a truly first principles approach to fee setting and is not preferred.

Option 2B: Comprehensive approach and set fees set according to what is reasonable

Under this option, it is recognised that setting fees in terms of a public/private ratio is problematic because of the intangible nature of the benefits in a jurisdiction. Instead, it proposes that fees are set on a fee by fee basis, according to what is reasonable for a particular service and will not present a barrier to access. This approach takes into account consistency between jurisdictions, the private and public benefit of the service or

application, factors unique to a service or jurisdiction, typical users, administrative impact, when fees were last increased and the cumulative effect of fee increases. In essence, this is a "bottom up" approach to fee setting.

Under this option, the estimated cost recovery from a proposed fee for a particular application or service would be calculated to assess whether it broadly reflects the private benefits of the application or service. If the cost recovery from fees cannot be calculated for an application (for example because it is not possible to calculate the cost of the application), the estimated cost recovery from all fees within a jurisdiction would be calculated to assess whether the overall taxpayer support in that jurisdiction is broadly appropriate in terms of the public benefits. Cost recovery would therefore be a factor, rather than a driver, in setting fees.

The following factors are considered relevant when considering the public/private benefits vis a vis cost recovery, in terms of a particular proceeding or jurisdiction:

- *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 the 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. 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.

Some examples of the way in which fees might be set under option 2B are as follows:

- *District Court*: Decrease the fee for an application to vary an attachment order from $223 to $0 to encourage efficient use of court, because under the existing regime it is cheaper to file a new application than amend an existing one.

- *High Court:* Introduce fee of $640 for judicial settlement conference (currently free) to contribute to the cost of a service which requires court and judicial time and is generally only of benefit to the parties. One-off fee is administratively simple.

- *Immigration and Protection Tribunal:* Increase filing fee for immigration appeals from $550 to $700 to reflect the private benefit of this service and to encourage appropriate use of the tribunal.

The table at **Appendix 4** sets out a more comprehensive group of proposed fee adjustments to demonstrate the approach to fee setting under option 2B. It also includes

the estimated cost recoveries which would be achieved through fee adjustments (taking into account proposed fees which are not included in the table).

Under this option overall cost recovery would increase from 14 percent to approximately 17 percent for all courts (civil jurisdictions) and tribunals within scope of the review. This is based on the assumptions that case volumes do not decrease as a result of fee increases and that costs remain the same as 2011/12.

Analysis against objectives

Access to justice

This option ensures access to justice, because it specifically assesses each fee, in relation to the associated service or application, according to what is reasonable and will not present a barrier to access. Fee setting under option 2B also takes into account the cumulative effect of fee increases and the likely users of a jurisdiction. For example, in the Employment Court, users (for example employees who have lost their jobs) are not likely to be able to afford fees set at levels similar to those of the courts of general jurisdiction.

Appropriate cost recovery

Where appropriate, fees would be increased to reflect registry and/or judicial time, taking into account private benefit of a service. Some fees would be decreased because they are too high in relation to court resources and are at risk of over recovering. Where there is a special policy objective, fees would be kept low, for example in the Māori Land Court.

Under fee proposals, the estimated cost recovery of a jurisdiction would be calculated to assess whether the overall taxpayer support of a court or tribunal service is appropriate in a broad sense, in terms of the public benefits of the jurisdiction. Because fees would be set in accordance with affordability and reasonableness, case volumes would be likely to remain the same (i.e. not be driven down) and therefore cost recovery estimates would remain reasonably accurate.

Principled, consistent and equitable

Under this option, fees would be set on a principled, consistent and equitable basis, because they ensure that a fair contribution is made by the user, balanced against the need to keep the civil justice system accessible. Where possible, fees and fee provisions would be set to be consistent between jurisdictions; for example by standardising fee waiver provisions between courts and setting the interlocutory fee in the Court of Appeal and Supreme Court at the same level.

Simple, fair and efficient

This option would meet the objective of structuring fees to ensure simplicity, fairness and efficiency, for example by setting fees in whole dollar amounts, redrafting fee schedules, improving the collection of hearing fees in some courts and introducing a multiple fee system in the Environment Court.

Create incentives for appropriate use

Option 2B would create incentives for the appropriate use of the civil justice system, for example through the introduction of a $30 fee in three tribunals and an increase to the filing fee for immigration appeals in the Immigration and Protection Tribunal.

Under option 2B, proposed fees are likely to strike the right balance between supporting access and encouraging appropriate use of the civil justice system; therefore 2B is the Ministry's preferred option.

Option 2C – Comprehensive approach and set fees according to cost recovery targets for each jurisdiction

Under option 2C, the overall private benefits of a jurisdiction or service within a jurisdiction would be the principle driver in setting fees. Fees would be increased in accordance with a formula:

Private benefits of court A (as % of total private and public benefits) = fee revenue in court A (as % of cost)

For example, if the overall private benefits of a jurisdiction costing $1 million per year were determined to be 30 percent, then a cost recovery target of 30 percent would be set, i.e. fee revenue totalling $300,000 would be sought. Alternatively, where costs can be calculated for a particular application within a jurisdiction, the appropriate private benefit and associated cost recovery for that application would be assessed and determined.

This option recognises that courts (and in some cases, tribunals) now carry out additional services beyond the traditional adversarial adjudicatory role. For example, courts now frequently offer mediation services, pre-trial conferences or administrative and procedural assistance to applicants, for no charge beyond the initial application fee. These additional services add to the cumulative cost of court and tribunal processes and are largely of private benefit to the parties to the dispute. As a result, many cases settle before they reach hearing or before a judgement is issued. Such cases do not contribute to the interpretation and development of the law through the establishment of precedents and therefore to the creation of the "shadow of the law" that enables people to reliably determine what a court or tribunal decision would likely be in a particular case.

The factors on page 10 would be considered when setting cost recovery targets for a particular proceeding or jurisdiction. Some examples of the way in which those factors would be applied to set cost recovery targets under option 2C are as follows:

- *Supreme Court (civil jurisdiction): 5 percent cost recovery.* Low cost recovery due to very high public benefit and constitutional importance of the Court. The Supreme Court is the final court of appeal and maintains overall coherence in the legal system by correcting decisions of lower courts, clarifying and developing the law and establishing important legal precedents. In most cases there are no alternatives to resolving an appeal in the Supreme Court.

- *District Courts (civil jurisdiction): 50 percent cost recovery*. High cost recovery due to large degree of private benefits of District Courts, for example the resolution of commercial contracts and enforcement of contractual obligations or property rights and enforcement of judgments. There are some alternatives to resolving a dispute through the District Courts, for example arbitration or mediation, or in some cases, using a Disputes Tribunal.

- *Disputes Tribunal: 20 percent cost recovery*. Low - medium cost recovery reflects the reasonably high public benefit of the tribunals: to ensure the public have easy access to a professional, low cost and speedy dispute resolution forum. There are few alternatives to resolving these types of disputes through the Disputes Tribunals.

Example cost recovery targets under option 2C for all courts and two tribunals, including the above examples, are set out in the table at **Appendix 5.** In essence, this is a "top down" approach to fee setting.

Under the example cost recovery targets in Appendix 5, overall cost recovery would increase from 14 percent to approximately 27 percent for all courts (civil jurisdictions) and tribunals within scope of the review. This equates to approximately $37.4m in fee revenue. This is based on the assumptions that case volumes do not decrease as a result of fee increases and that costs remain the same as 2011/12.

Analysis against objectives

Access to justice

Fee increases based on cost recovery targets (depending on what the target is) could pose barriers to access. For instance, increased filing fees in the Employment Court and Māori Land Court, to meet the example cost recovery targets (see Appendix 5) are highly unlikely to be affordable to a typical user ($2,000 for the Employment Court and $1,400 for the Māori Land Court), and users may also be required to pay interlocutory and hearing fees in Employment Court (which would also need to be substantially increased to meet cost recovery targets). In the Environment Court, many users, such as community groups, small businesses, property owners and councils are also unlikely to be able to afford a $3,500 filing fee and additional fees such as a $2,500 half day hearing fee.

Increases to tribunal fees to meet the example cost recovery targets (such as fees ranging from $100 – $300 in the Disputes Tribunals and a $3,170 fee in the Taxation Review Authority) may deter users, thereby undermining the main purpose of tribunals, to provide simple and accessible dispute resolution forums.

Many, if not most fees under the option 2C examples are likely present a barrier for those who do not meet fee waiver criteria, particularly because of the cumulative cost of bringing a case. For example, achieving a 5 percent cost recovery in the Supreme Court would necessitate a $17,000 fee for filing a notice of appeal and a $17,000 fee for determination of a hearing date; these fees are likely to be prohibitive to most court users.

Appropriate cost recovery

While cost recovery targets may appear logical on a theoretical basis (in terms of public/private benefits), in reality the approach is blunt, and is likely to be unfeasible. Increased fees based on cost recovery targets are likely to deter many users and drive use of the court and tribunal system down, resulting in a decrease in fee revenue but not a decrease in costs, which are largely fixed. In addition, successful fee waiver applications are likely to increase, also resulting in decreased fee revenue. Fees would therefore need to be increased further in order to achieve cost recovery targets, putting an increased burden on an ever-decreasing number of court and tribunal users.

Some fees may result in an over-recovery of costs, where for example the cost of a stage in proceedings is low compared with the fee for that stage. For example judicial time on civil proceedings in the District Courts is minimal. An increased fee of $300 for filing an initial document in a District Court (to achieve an overall cost recovery of 50%) may be high in relation to the work for that service, which only involves a small amount of registry time. Setting the fee for an agreed attachment order in the District Courts at $50 may also result in over-recovery of the operational costs for this particular service. Over-recovery of costs is contrary to fee-setting guidelines.

Principled, consistent and equitable

This option provides for consistency insofar as standardising fee waiver provisions between courts. It is not equitable because no assessment of fees and services would be made on a fee by fee basis. Consequently, the approach is inflexible and not likely to achieve the right balance between fair contribution and the need to keep the civil justice system accessible.

Simple, fair and efficient

This option would meet the objective of structuring fees to ensure simplicity, for example by setting fees in whole dollar amounts, redrafting fee schedules, improving the collection of hearing fees in some courts and introducing a multiple fee system in the Environment Court. It may not achieve fairness and efficiency, however, because increased fees to achieve cost recovery targets may result in barriers to access, decreased case volumes and under-utilisation of the civil justice system.

Create incentives for appropriate use

Fee introductions in three tribunals are likely to create incentives for the appropriate use of the civil justice system.[5]

By increasing fees to meet cost recovery targets, option 2C gives greater weight to the private benefits associated with litigation and the desirability of incentives for appropriate use of court and tribunal services than the other options. Higher fees prompt prospective users to take account of the costs involved in accessing court or tribunal services, and to

[5] These are the Accident Compensation Appeal Authority, Accident Compensation Appeals (District Court Registry) and Real Estate Agents Disciplinary Tribunal.

consider whether they wish to initiate or continue a proceeding or seek an alternative means for resolution.

However, the fee increases will not create incentives for the appropriate use of the civil justice system if they act as a barrier to access and discourage people with legitimate disputes from bringing claims.

For the above reasons, option 2C is not preferred.

Consultation

The following agencies were consulted on the proposals: the Treasury, Ministry for the Environment, Te Puni Kōkiri, Ministry of Business, Innovation and Employment, Inland Revenue Department, Accident Compensation Corporation, Department of Internal Affairs and NZ Customs Service.

A public consultation document was released in September 2012 for a six-week period. Information was sent to approximately 800 stakeholders with a link to the consultation document and inviting submissions. The Judiciary were advised about the consultation document and the submissions process, and encouraged to submit on the proposals. The consultation paper sought the public's views on a policy framework for fee setting and changes to fees and fee regulations (including new fee regimes, fee increases and fee adjustments). Fee proposals in the consultation paper were arrived at in accordance with the methodology proposed under option 2B of this Regulatory Impact Statement.

Fifty-seven submissions were received in response to the consultation paper from businesses, community groups, legal professionals, unions, interest groups, industry organisations, individuals and government agencies. Submissions were also received from the Chief Justice, Justice Arnold (Acting President of the Court of Appeal), Employment Court bench, Environment Court bench, Māori Land Court bench, Principal Disputes Referee and the Human Rights Review Tribunal chairperson.

While some submitters expressed broad agreement with the proposed policy framework for setting fees, various views were expressed by submitters on particular aspects of the framework. Many submitters considered that the framework should place greater emphasis on access to justice. In general, the judiciary consider the cost of civil justice services should overwhelmingly fall on the government (and therefore taxpayers), because of the significant public benefits of an accessible justice system.

There were mixed views on the proposed fee changes. In response to submissions, a few fee proposals were adjusted (for example the proposed hearing fee regime for three courts) or dropped (for example the proposal to introduce a fee in the Human Rights Review Tribunal).

Conclusions and recommendations

The exercise of setting civil fees is complex and involves balancing a variety of factors. Consequently, a wide range of fee options is possible.

Setting fees in terms of an exact taxpayer/user apportionment based on a public/private ratio is problematic because it is difficult to objectively quantify the overall private benefits of a jurisdiction. Furthermore, cost recovery varies from year to year due to a wide range of variables, including fluctuating case loads and numbers of fees waived. Attempting to set appropriate cost recovery targets for tribunals is complicated because of particular funding arrangements and levies.

The Ministry's preferred approach - option 2B - is twofold:

- To assess all jurisdictions on a first principles basis to determine whether it is appropriate to charge fees, to identify appropriate fee structures and to ensure all fee-related provisions are drafted to be simple, fair and consistent across jurisdictions; and

- To set fee levels on a fee by fee basis, according to what is reasonable and will not be a barrier to access.

This is a practical "bottom up" approach, which takes into consideration all relevant factors within a jurisdiction. Fee-setting under this option would not render cost recovery as irrelevant in setting fees. The cost recovery of a jurisdiction is an important indicator in terms of whether the overall taxpayer support of a court or tribunal service is appropriate in a broad sense. But aligning cost recovery with a largely intangible balance of public/private benefits may be less helpful. In many cases, fees under this option would be rounded only, to reflect that the current fee is already "about right", for that service.

If the preferred option is implemented, the fee proposals will increase overall cost recovery in the civil jurisdiction from about 14 percent to 17 percent, an increase of approximately $4.1 million per year.

Implementation

For 14 jurisdictions (including the District Courts, High Court, Court of Appeal and Supreme Court), fee changes may be effected through amendments to, and revocations of, 24 regulations without the need to amend statutes. The majority of amended or new fees will take effect from 1 July 2013.

The commencement of civil enforcement fees in the District Courts is likely to be later in 2013, as they are dependent on changes to the District Courts Rules to align with amendments to the civil enforcement regime (made by way of the District Courts Amendment Act 2011).

Amendments to statutes are necessary in order to in order to allow for the introduction of fees in four tribunals[6]. In order to introduce or increase fees in the Employment Court and Environment Court, amendments to statutes are also necessary, to introduce fee waiver provisions and to make fee waiver provisions consistent across courts.

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[6] Accident Compensation Appeal Authority, Accident Compensation Appeals (District Courts Registry), Real Estate Disciplinary Tribunal and Copyright Tribunal (licensing schemes).

Further statute amendments are required in order to allow for the implementation of fee-related proposals relating to the District Courts, High Court, Court of Appeal and Supreme Court.

Legislative amendments could be made through new courts legislation being drafted as a result of the review of the Judicature Act 1908 and through legislation changes for the purpose of enhancing courts and tribunals services. Consequential amendments to eight regulations and the introduction of two new sets of fees regulations will be required. Fees and fee-related changes in these regulations are expected to be implemented in 2014.

Changes to fees will require modifications to court operational systems, training materials, forms and websites. These modifications will be made by the Ministry, prior to the implementation of fee changes. Training will be provided to Court staff to ensure they are well prepared to understand, administer and explain the new fees and fee regimes to court and tribunal users.

Changes to existing fees and the introduction of new fees will be made available on the Ministry's website, and printed copies will be circulated to key stakeholders, such as the New Zealand Law Society and Community Law Centres. Information will also be distributed through courts and tribunals affected by the fee changes.

Implementation risks

If the fee proposals are implemented there may be media coverage, particularly in relation to the perceived impact of fee increases on access to justice. Clear communication to the public about the extent and rationale for fee increases may mitigate this risk.

Monitoring, evaluation and review

The Ministry will continue to monitor data related to fees, such as filing volumes and waivers, in order to assess any impact that changes to fees may have on case volumes. The Ministry established a new fee waiver database at the end of 2012 that will assist in this exercise. It is recommended that an assessment of fee waivers across jurisdictions is undertaken later in 2013, once the database has been in operation for over six months.

The fee regulations may be subject to scrutiny by Parliament's Regulations Review Committee.

In order to ensure the fees are maintained at an appropriate level in the future, comprehensive reviews should be undertaken every ten years with Consumer Price Index adjustments undertaken every three years between the reviews. This will help to ensure fees keep pace with changing cost pressures and minimise the impact of larger, less frequent, fee changes and will only require amendments to regulations, orders in council and rules as necessary.

Appendix 1

Court and tribunals and department which administers empowering legislation

No.	Jurisdiction	Administering department of empowering legislation
Courts		
1	Supreme Court	Ministry of Justice
2	Court of Appeal	Ministry of Justice
3	High Court	Ministry of Justice
4	District Courts	Ministry of Justice
5	Employment Court	Ministry of Business, Innovation and Employment
6	Environment Court	Ministry for the Environment
7	Māori Land Court	Te Puni Kōkiri
Tribunals		
8	Disputes Tribunals	Ministry of Justice
9	Accident Compensation Appeal Authority*	Ministry of Business, Innovation and Employment
10	Accident Compensation Appeals (District Court Registry) *	Ministry of Business, Innovation and Employment
11	Copyright Tribunal	Ministry of Business, Innovation and Employment
12	Customs Appeal Authority	New Zealand Customs Service
13	Human Rights Review Tribunal*	Ministry of Justice
14	Immigration Advisers Complaints and Disciplinary Tribunal*	Ministry of Business, Innovation and Employment
15	Immigration and Protection Tribunal	Ministry of Business, Innovation and Employment
16	International Education Appeal Authority*	Ministry of Education
17	Lawyers and Conveyancers Disciplinary Tribunal	Ministry of Justice
18	Legal Aid Tribunal*	Ministry of Justice
19	Legal Complaints Review Officer	Ministry of Justice
20	Licensing Authority of Secondhand Dealers and Pawnbrokers	Ministry of Justice
21	Motor Vehicle Disputes Tribunal	Ministry of Business, Innovation and Employment
22	Private Security Personnel Licensing Authority	Ministry of Justice
23	Real Estate Agents Disciplinary Tribunal*	Ministry of Justice
24	Review Authority (legal aid)*	Ministry of Justice
25	Social Security Appeal Authority*	Ministry of Social Development
26	Student Allowance Appeal Authority*	Ministry of Education
27	Taxation Review Authority	Inland Revenue Department
28	Trans-Tasman Occupations Tribunal	Ministry of Business, Innovation and Employment

* These tribunals currently have no fees.

Appendix 2

Regulatory Impact analysis

Objectives	Ensure **access to justice** in the setting of fees	Determine **appropriate cost recovery**, in terms of public/private benefits	Ensure fees are set on a **principled, consistent and equitable** basis	Fees are structured to ensure **simplicity, fairness and efficiency**	Create **incentives for the appropriate use** of the civil justice system
Option 1 Status quo	Yes, civil justice system would remain accessible in so far as many fees would remain relatively low.	No, overall cost recovery for civil jurisdictions is too low. For a few services, cost recovery is too high.	No, fee anomalies and are inconsistencies between jurisdictions would remain.	No, some fees are difficult to collect. Many fee provisions are unclear, contain redundant fees and anomalies. Fees not set in whole dollar amounts.	No, in some instances no fees or low fees encourage inappropriate use.
Option 2A Comprehensive approach and round existing fees	Yes, civil justice system would remain accessible in so far as many fees would remain relatively low.	No, overall cost recovery for civil jurisdictions is too low. For a few services, cost recovery is too high.	No, only provides for consistency insofar as standardising fee provisions (e.g. fee waivers) between courts. Fee setting not equitable or principled because does not consider appropriate cost recovery or all areas where new fees required.	Fees amended to ensure simplicity and efficiency. Some fees not set to ensure fairness e.g. some services remain free to users or fee levels represent an inappropriate contribution of cost.	Yes, there would be some incentives created through the introduction of some new fees.
Option 2B Comprehensive approach and set fees according to what is	Yes - consideration given to access to justice as fees are assessed individually and the	Yes - cost recovery assessed for whole jurisdiction in terms of overall private benefits	Yes, all fees amended to be principled, consistent and equitable to ensure a fair fee is paid by the	Yes, all fees amended to ensure simplicity, fairness and efficiency.	Yes, fees set to provide incentives for the appropriate use of courts and tribunals.

Objectives	Ensure **access to justice** in the setting of fees	Determine **appropriate cost recovery**, in terms of public/private benefits	Ensure fees are set on a **principled, consistent and equitable** basis	Fees are structured to ensure **simplicity, fairness and efficiency**	Create **incentives for the appropriate use** of the civil justice system
reasonable	cumulative effect of fee increases taken into account.	but unable to cost individual services in all instances.	user whilst maintaining an accessible justice system.		
Option 2C Comprehensive approach and set fees according to cost recovery targets for each jurisdiction	No - likely to adversely impact on access to justice because no assessment whether individual fees or cumulative increases may act as barrier to access.	Could be considered appropriate in theoretical sense. But approach blunt: increased fees could deter many users, resulting in decreased use of the court and tribunal system and therefore decreased cost recovery. Approach may result in over-recovery of costs in some instances.	No – only provides for consistency insofar as standardising fee provisions (e.g. fee waivers) between courts. Fee setting not equitable or principled because main objective is achieving cost recovery target.	Yes, all fees amended to ensure simplicity, fairness and efficiency.	Some incentives for the appropriate use of the courts and tribunals but likely to be disincentives if increased fees act as a barrier.

Appendix 3

Factors relevant to fee setting: Treasury and Auditor-General guidelines

1. Charges may be set at lower than full cost recovery due to wider policy considerations, such as the object and intentions of empowering legislation, where there are social benefits or access to justice purposes.

2. The fees set for civil court proceedings are an example of charging less than full cost-recovery because of policy considerations. These fees are not set to recover all of the relevant costs because to do so is likely to inappropriately limit access to justice.

3. A public entity must have legal authority to charge a fee for the goods or services that it is legally obliged to provide. That is, an Act of Parliament, which includes an empowering provision which authorises the entity of Governor-General to set the amount of a fee through regulation.

4. In general, the statutory authority to charge a fee will not extend to allowing over-recovery.

5. Public entities have a responsibility to understand and monitor their costs in order to ensure that they are operating efficiently and achieving value for money. A crucial factor in measuring efficiency is having an accurate understanding of the costs – both direct and indirect – of the goods or services being provided.

6. Courts and tribunals, as public entities, are accountable to Parliament and the public by ensuring processes for identifying costs and setting fees are transparent: for example through consulting the public about new fee regimes before they are introduced.

Appendix 4

Proposed fee adjustments under option 2B

Jurisdiction (& estimated cost recovery)	Fee type	Current fee	Proposed fee	Increase/ decrease	Rationale
District Courts (26%)	Filing fee - originating document	$169.20	$200	+18%	Requires registry time.
	Filing application for judgment in form 6A or 6CCA	$48.30	$90	+86%	Requires registry and sometimes judicial time to determine.
	Hearing fee per half day	$906.30	$900	-1%	Current fee is reasonable for the service.
	Notice of pursuit of claim or counter claim	$906.30	$900	-1%	Current fee is reasonable for the service.
	Filing an attachment order (unilateral)	$96.70	$50	-48%	Reflects new streamlined processes for enforcing judgments.
	Application to vary, suspend or discharge an attachment order	$223.50	$0	-100%	Encourages efficient use of court system because under previous regime, it was cheaper to file a new application rather than amend an existing one.
	Application for a warrant to seize property or for the recovery of land or specific chattels	$66.50	$200	+201%	Fee better reflects the costs associated with executing warrants.
	Filing a (Tenancy Tribunal) possession order	No Fee	$200	New Fee	Fee is aligned with warrant to recover land and reflects the costs associated with this service.
High Court (29%)	Filing originating document, Counter claim or statement of defence - Concession rate	$483.40	$540	+12%	Concession rate proceedings filing fee set at 40% of standard rate to reflect they require less court resources or they are public in nature.

Jurisdiction (& estimated cost recovery)	Fee type	Current fee	Proposed fee	Increase/ decrease	Rationale
	Filing originating document, Counter claim or statement of defence - standard rate	$1,329.20	$1,350.00	+2%	Fee already about right for the service.
	Judicial settlement conference - Concession rate	No Fee	$640	New Fee	One off fee is administratively simple and contributes to the cost of a service which requires court and judicial time.
	Hearing fee standard rate	$1,570.90	$1,600	+2%	Existing fee about right.
	Hearing fee - Concession rate	$604.20	$640	+6%	Fee set at 40 percent of standard rate to reflect proceedings generally require less court resources and they are public in nature.
	Interlocutory application – On notice	$725.00	$500	-31%	Fees better reflects court resources required for these applications and addresses risk that current fee may be over-recovering.
	Or, Without notice		$200	-72%	
	Probate application	$90.60	$200	+121%	Fee better reflects both registry effort and private benefit of these applications.
Court of Appeal (12%)	Leave to appeal	$1,087.50	$1,100	+1%	Fee about right in terms of private benefit.
	Filing interlocutory application	$1,087.50	$400	-63%	Proposed fee a better reflection of cost of service & private benefit and aligns with Supreme Court.
Supreme Court (0.5%)	Leave to appeal	$1,087.50	$1,100	+1%	Fee about right in terms of private benefit.
	Interlocutory application	No Fee	$400	New Fee	Fee will apply to recall of judgment and is aligned with Court of Appeal.

Jurisdiction (& estimated cost recovery)	Fee type	Current fee	Proposed fee	Increase/ decrease	Rationale
Employment Court (5%)	Filing substantive application	$204.44 or $306.67	$500	+145% & +63%	One fee is administratively simple and reflects work, time and private benefit of application.
	Filing interlocutory application	$102.22 (applies to 2 application types)	$150 (applies to 15 application types)	+47%	Fee is better reflection of court resources, for example a judge is often involved in interlocutory matters.
	Hearing fee per half day	$250.45 (applies from second day)	$350 (applies from first day)	+40%	Fee better reflects court cost, aligns with the Environment Court and applies from the first day of hearings, therefore is consistent with other courts.
Environment Court (5%)	Filing an appeal application	$511.11	$600	+17%	Fee takes into account mediation costs rather than having a separate mediation fee.
	Filing other proceedings application	$56.22	$250	+345%	Increase in fee because fee has remained unchanged for 24 years and is better reflection of court time and cost.
	Party to proceedings fee	No Fee	$100	New Fee	New fee to recognise the potential cost and time that parties can add to court proceedings.
	Filing an interlocutory application	No Fee	$200	New Fee	New fee to ensure consistency with other courts and recognise that fees should be aligned with stages in court process.
	Hearing fee from first day	No Fee	$350	New Fee	New fee to ensure consistency with other courts and recognise that fees should be aligned with stages in court process.

Jurisdiction (& estimated cost recovery)	Fee type	Current fee	Proposed fee	Increase/ decrease	Rationale
Māori Land Court (MLC) and Māori Appellate Court (MAC) (1%)	Application for administrative proceedings	$25.00	$20	-20%	Low fees in recognition of unique statutory purpose of MLC and high public benefit of court.
	Application for Succession, Trust & registry activity	$62.30	$60	-4%	
	Civil dispute resolution, title and complex applications	$124.70	$200	+60%	Higher fees in recognition that dispute resolution is resource intensive, with substantial amount of registry and judicial time involved.
	Application for Appeal to the MAC	$124.70	$350	+181%	
Disputes Tribunals (10%)	Claims up to $1,999	$36.30 or $60.40	$45	+24% & -25%	Fees are low in comparison to District Courts (e.g. single fee only) keeping tribunal accessible. The fee structure is equitable between users (fee bands are relative to the range of the claim amount) and lowest fee applies to an expanded band of claim benefitting a bigger group of users at the lower end of claims.
	Claims $2000-$4,999	$60.40	$90	+49%	
	Claims $5,000-$20,000	$120.80	$180	+49%	
Accident Compensation Appeal Authority (levies contribute to cost recovery)	Notice of Appeal	No Fee	$30	New Fee	Fee is not prohibitive but will encourage appropriate use of these tribunals.
Accident Compensation Appeals District Court Registry (levies contribute to cost recovery)	Notice of Appeal	No Fee	$30	New Fee	
Real Estate Agents Disciplinary Tribunal	Appeals and reviews	No Fee	$30	New Fee	Fee is not prohibitive and will encourage appropriate use of tribunal.

Jurisdiction (& estimated cost recovery)	Fee type	Current fee	Proposed fee	Increase/ decrease	Rationale
Immigration and Protection Tribunal	Appeal for residence class visa or liability for deportation	$550	$700	+27%	Fee recognises private benefit of application and encourages appropriate use of tribunal.

Appendix 5

Proposed cost recovery percentages under option 2C

Jurisdiction & cost recovery target	Rationale
Courts of general jurisdiction (cost recovery for civil jurisdiction only)	
Supreme Court (5%)	Low cost recovery due to very high public benefit and constitutional importance of the Court. The Supreme Court is the final court of appeal and maintains overall coherence in the legal system by correcting decisions of lower courts, clarifying and developing the law and establishing important legal precedents. In most cases there are no alternatives to resolving an appeal in the Supreme Court.
Court of Appeal (20%)	Low to medium cost recovery due to high public benefit. The Court of Appeal has a key role in developing legal principles and maintaining consistency in the application of the law. For most cases it will, in effect, be the final appellate court. There are no alternatives to resolving an appeal in the Court of Appeal.
High Court (40%)	Medium to high cost recovery due to mix of private and public benefits. Taxpayer support should be greater in High Court than District Courts but lower than Court of Appeal and Supreme Court. 40 percent takes into account lower fees for concession rate proceedings[7] (which make up over half of all applications filed in the High Court) and higher fees for standard rate proceedings. Probate applications would be calculated separately and accorded a 70 percent cost recovery rate. There are some alternatives to resolving a dispute through the High Court, e.g. arbitration.
District Courts (dispute resolution and civil enforcement) (50%)	High cost recovery due to large degree of private benefits of District Courts e.g. resolution of commercial contracts and enforcement of contractual obligations or property rights and enforcement of judgments. There are some alternatives to resolving a dispute through the District Courts, e.g. arbitration or mediation, or in some cases, using a Disputes tribunal.
Specialist Courts	
Environment Court (30%)	Medium cost recovery between Court of Appeal and High Court. This cost recovery reflects the precedent setting value of the Environment Court and importance of encouraging public participation in the Court, but also takes into account the private benefits to users (e.g. developers) and the importance of encouraging users to use Court resources appropriately. There are some alternatives to resolving a dispute through the Environment Court (e.g. arbitration or private mediation).
Employment Court (20%)	Low to medium cost recovery on a par with the Court of Appeal, because Employment Court generates high public benefits; for example some cases involve novel, significant or intractable issues, and resolution of these types of cases

[7] Judicial reviews, originating applications, civil appeals, bankruptcy proceedings and company liquidations are considered concession rate proceedings under the High Court Fees Regulations. They attract lower fees because: there are no, or limited, alternatives to court action; or the type of application typically involves a high degree of public benefit; or the type of application incurs lower average costs than other applications.

Jurisdiction & cost recovery target	Rationale
	produces valuable precedent. Some cases are removed to the Court by the ERA because, for example, they raise important questions of law. There are some alternatives to resolving a dispute through the Employment Court (e.g. arbitration or private mediation). Fee setting needs to take into account the significant private dispute-settling benefits of the Court.
Māori Land Court (5%)	Low cost recovery reflects the primary objective of the Māori Land Court (MLC) under Te Ture Whenua Māori Act 1993: 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. The MLC is a court of record and has a large administrative function. For this reason, there are no alternatives to using the Māori Land Court for users.
Tribunals	
Disputes tribunals (20%)	Low - medium cost recovery reflects the reasonably high public benefit of the tribunals: to ensure the public have easy access to a professional, low cost and speedy dispute resolution forum. There are few alternatives to resolving these types of disputes through the Disputes tribunals.
Taxation Review Authority (30%)	Medium cost recovery takes into account that claims before the Authority (objections to tax assessments and decisions by the Commissioner of Inland Revenue) are essentially with private disputes, but the Authority also has an administrative review function which ensures public accountability.