

Appendix three: Regulatory Impact Statement

Civil fees: CPI adjustment

Regulatory Impact Statement

Agency Disclosure Statement


This Regulatory Impact Statement has been prepared by the Ministry of Justice.

It provides an analysis of options to increase civil and tribunal fees to address cost pressures faced by the Ministry of Justice in providing court and tribunal services and to ensure that parties contribute an appropriate amount towards those services.

The analysis identifies cost pressures faced by the Ministry in continuing to provide court services efficiently. It focuses on short term policy options relating to a CPI adjustment. The options are guided by government documents setting out the principles that public agencies must follow when setting fees, principles to promote fairer access to the courts, and the Regulations Review Committee's approach to the scrutiny of fee regulations.

We have consulted with relevant government departments. The options are intended to be the first stage of a wider review into civil fees. The Ministry will undertake public consultation as part of the proposed wider review.

The proposal to increase fees does not introduce new regulations. It will have a relatively minor impact on users of civil courts and tribunals, including private individuals and businesses. Increasing the fees will not impair private property rights, market competition, or the incentives on businesses to innovate and invest. The proposal does not override fundamental common law principles.


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Status quo and problem definition

Status quo

Fees for courts and tribunals are set under 35 sets of regulations. Of these 35 sets of regulations, only 24 are both set and administered by the Ministry, for example, District Courts Fees Regulations 1999 and Second-hand Dealers and Pawnbrokers Regulations 2005. Ten sets of regulations are set by other government agencies and administered by the Ministry of Justice. For example the Environment Court is administered by the Ministry of Justice but the court fees are set by the Ministry for the Environment in regulations under the Resource Management Act 1991.

Since the 1980s successive governments have directed officials to review court fees, generally with the objective of ensuring court users make an appropriate contribution towards the costs of these services. The last comprehensive review was in 2001-2003. The review developed a set of six principles to promote fairer access to courts, more efficient use of court services, and equitable levels of cost recovery in the civil courts.¹ Following this review, some of the fees for civil proceedings in the Court of Appeal, High Court and District Courts increased in July 2004.

The fee increases resulted in complaints, particularly from the legal profession, to Parliament's Regulation Review Committee. In its 2005 report to Parliament, the Committee recommended that the Government review the regulations that set the court fees to determine whether the fee levels were detrimental to access to justice.

The Ministry's 2006 report in response noted that the fee increases had not had a significant detrimental impact on the right of access to the courts. The Ministry also proposed to systematically review fees, taking into account agreed cost-recovery levels, Consumer Price Index movements and changes in input costs and volumes in civil courts. The review of court fees has not been undertaken due to higher work priorities. The Ministry has made some changes which have improved the situation for court users. These include guidelines for fee waivers, adjustments to individual fees where anomalies have been identified, and standardisation of fees for accessing court records.

Since the 2004 fee increases, some civil court fees have increased, but this has been done on an ad hoc basis.

Problem definition

Over the last six years the government has absorbed rising costs of delivering court services. In 2009/2010 Vote Courts departmental expenditure totalled \$402 million compared to \$267 million in 2004/2005. Vote Courts includes expenditure relating to Collections, Higher Courts, District Courts, and the Specialist Jurisdictions. The reasons for increased expenditure include a combination of cost increases such as to remuneration and property as well as increases in demand for court and tribunal services.

The Ministry obtains some revenue from filing fees. Filing fees revenue increased from \$19 million in 2004/2005 to \$29 million in 2009/2010 due to fee increases following the 2001-2003 review, as well as the introduction of new fees and growth in the number of cases. Overall,

¹ The principles are overall cost sharing, variable ratios of taxpayer/user funding for specific services, protection of access to justice, average cost pricing, operational efficiency and judicial discretion.

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fee revenue has fallen as a percentage of total expenditure. Within existing baselines, the Ministry can no longer absorb the increasing costs of delivering court and tribunal services and meet other fiscal pressures.

The current fees are not in line with the principles developed as part of the last comprehensive review to ensure a sustainable and well-balanced fee structure, focussing on overall cost sharing, proportionate cost-recovery of services, and operational efficiency of the courts. Further, as mentioned above, in its 2006 report to the Regulations Review Committee, the Ministry of Justice noted its intention of carrying out regular reviews of the fees, taking into account Consumer Price Index movements among other factors.

Objectives

The objectives of this reform are to increase civil fees to address cost pressures faced by the Ministry in providing court services, and to ensure that fees are in line with the principles developed by the 2001-2003 review, including protection of access to justice and proportionate cost-recovery of services.

Regulatory impact analysis

The following options to increase fees in line with the CPI have been considered:

Option 1 – Consumer Price Index adjustment to fees from 1 July 2004 (or a more recent date if the particular fee was set more recently) for all courts and tribunals for which the Ministry sets the fees

This is the Ministry's preferred option.

This option would allow for a straight forward Consumer Price Index adjustment to meet rising cost pressures within the justice sector. Fees would be adjusted from 1 July 2004 (when the last comprehensive civil fees review outcome was implemented) or from a later date if the fees were revised more recently. The maximum CPI adjustment for fees from 1 July 2004 to 31 December 2010 is 18.2 percent. This option will accrue estimated additional revenue of \$2.970 million per year, assuming no changes to volumes over time. The table below sets out examples of the fee increases.

High Court Fees	Current fee (rounded)	New fee with proposed CPI adjustment (rounded)	Percentage increase
Filing fee	\$1120.00	\$1330.00	18.2%
Setting down fee	\$2660.00	\$3140.00	18.2%
Half day hearing fee	\$1330.00	\$1570.00	18.2%
Total	\$5110.00	\$6040.00	18.2%

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District Fees	Court	Current fee (rounded)	New fee with proposed CPI adjustment (rounded)	Percentage increase
Filing fee		\$140.00	\$170.00	18.2%
Notice of pursuit of claim		\$770.00	\$910.00	18.2%
Hearing fee		\$770.00	\$910.00	18.2%
Total		\$1680.00	\$1990.00	18.2%

The changes will affect court users, including individuals and businesses. A low number of people may be deterred from commencing litigation. Registrars can waive fees where payment would cause hardship and concession rates may apply where the litigation involves "public interest" proceedings. Some civil litigants may also be eligible for a grant of legal aid.

The 2006 Ministry report following the review into fee increases in 2004 concluded that they had not had a significant detrimental effect on the right of access to the courts. The report noted a reduction in volumes of a small number of applications but found that court fees were a minor component of the total cost of litigation, which included the time and effort expended by litigants themselves and lawyers' fees. The report concluded that it is these costs which generally determine whether it is economic to use the courts, not the fees in isolation. The report also noted that concession rate proceedings in the High Court accounted for a substantial proportion of cases and, together with fee waivers and legal aid, contributed to preserving access to the courts.

Option 2 - Adjust the top ten of the highest revenue earning civil fees with the current Consumer Price Index, from when the fees were last set

This option is not preferred.

Seventy five percent of the revenue earned by the Ministry from filing fees is from ten civil court fees, for example, fees for commencing proceedings in the District Court or High Court. Increasing only these fees would focus work on the areas where most revenue is collected. It would result in about \$2 million additional revenue per year.

This option would affect District and High Court users and people seeking dissolution of a marriage or civil union in the Family Court. It would not affect users of tribunals. As the fees for commencing proceedings would increase, a low number of people may be deterred from commencing litigation.

This option is not preferred as it could potentially create inequities both within and across jurisdictions and also be perceived as arbitrary. For example, the fee for filing one particular type of interlocutory application in the High Court would increase but no other interlocutory fees in the High Court or District Court would change.

Option 3 - Maintain status quo

This option is not preferred.

It would be inconsistent with the principles developed in the 2001/2003 review if the increasing costs of delivering court services for civil proceedings were to continue to be absorbed solely by the taxpayers. If there were no increase in fees the Ministry would be required to meet the

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cost pressures by finding savings elsewhere, which could have greater negative impacts on court users, for example, delays in court hearings. Furthermore, if an adjustment in line with CPI movements is not made at this stage, larger increases may be required as a result of the broader review of civil fees.

Option 4 – Other option considered

The Ministry of Justice administers several courts and tribunals whose fees are set by another government agency. For example, the Department of Labour sets fees for the Immigration and Protection Tribunal; the Department of Building and Housing sets fees for the Tenancy Tribunal and the Weathertight Homes Tribunal; and the Māori Land Court fees are set by Te Puni Kōkiri. It would result in about \$120,000 additional revenue per year.

This option would affect users of the other courts and tribunals. As for the previous options, a low number of people may be deterred from commencing litigation; however, this risk would be mitigated by the waivers and concession rates available.

Under this option more substantial consultation with fee-setting departments would be required before the fees for the respective courts and tribunals could be increased. This work could not be completed within current timeframe for setting the budget for 2011/12. The Ministry considers that this stream of work should be undertaken as part of a subsequent comprehensive review of civil fees. Further policy work and consultation with a range of government departments would form part of this review.

Consultation

The Ministry consulted with the following government agencies on the preferred option: Treasury, Crown Law Office, Police, Ministry of the Environment, Department of Corrections, Te Puni Kōkiri, Department of Labour, Inland Revenue Department, Department of Building and Housing, Ministry of Economic Development, Ministry of Social Development, Accident Compensation Corporation, Ministry of Woman's Affairs, NZ Customs Service, Ministry of Consumer Affairs, Land Information New Zealand and the Department of Internal Affairs. The Department of the Prime Minister and Cabinet has been informed.

Due to time pressures, it has not been possible to conduct public consultation on the fee increases in line with Consumer Price Index movements. The Courts Executive Council has been advised that some form of fee increase is being considered. The proposed increases are intended to be the first stage of a review of court fees. The second stage will involve a first principles review and the Ministry intends to consult widely at that stage, including with the public, the legal profession and the judiciary.

Conclusions and recommendations

Civil fees must be set at rates which both provide incentives for the efficient use of court services and ensure that costs are not a significant deterrent in achieving access to justice goals. The fees have not been comprehensively adjusted since 2004. With rising costs, the present fee levels do not reflect the principle that users and taxpayers should share the cost of court services consistent with the respective benefits provided by the court system. The revenue generated from increasing civil fees in line with Consumer Price Index movements, from 1 July 2004 to 31 December 2010, will contribute to meeting the rising costs of providing court services.

Implementation

The proposed option will be implemented by amendment to schedules to the various regulations under which the court fees are set.

Monitoring, evaluation and review

This policy initiative is the first part of a proposed two-stage project. The proposed second stage will involve a first principles review of civil fees. The feasibility of implementing regular reviews and/or regular adjustments of civil fees may be considered as part of that review. The fee regulations will also be subject to scrutiny by Parliament's Regulations Review Committee.