



TRIBUNALS AND STATUTORY AUTHORITIES: FEES REVIEW

R E P O R T

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JANUARY 2005

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SUMMARY/RECOMMENDATIONS

SUMMARY

1. This report arises out of a request from the Minister of Courts for a review of the remuneration of a number of judicial and statutory officers for whom administrative support is provided by the Special Jurisdictions Group of the Ministry of Justice.
2. The independent reviewer was asked to provide a report which outlined:
 - recommended changes (if any) to remuneration levels
 - a recommended process for future review.
3. There is considerable dissatisfaction amongst the relevant judicial and statutory officers with the level of their fees and the processes used for fee setting and review. The reviewer has assessed as substantially justified the essence of the criticisms made.
4. Outside the scope of this review, but the subject of a separate exercise, are the associated terms and conditions of engagement for judicial and statutory officers. Concerns exist about the perceived inconsistency and unfairness between others in related positions (in other parts of the Justice system and in health, education and the public service agencies) in conditions such as subsidised superannuation and allowances.
5. There is a widespread view that the Cabinet Fees Framework and how it is applied does not cater adequately for the particular nature of judicial officers. Dissatisfaction with their experience to date, and the absence of a regular review process, has resulted in many judicial and statutory officers seeking transfer in “coverage” to the Remuneration Authority. The reviewer has concluded that the elements of the processes of the Remuneration Authority that judicial and statutory officers consider attractive could be replicated by the development of similar arrangements with the Ministry of Justice.
6. Many of the individuals covered by the review derive their sole income, or a substantial part of it, from their judicial or statutory role. The arrangements around remuneration need to be sufficiently responsive to this reality, as well as to those whose duties occupy only a few days per year.
7. This report is necessarily contained. The recommendations developed on fees fall under three categories:

1. those groups that have been the subject of recent review and for which considerable information exists
 2. those for whom no upward adjustment has been made for a considerable period and for whom the evidence exists to justify a change
 3. those for whom a change may, or may not, be justified but for whom the reviewer did not have sufficient material to form a definitive view.
8. For those groups where a considered view has not been able to be formed, it is recommended a full examination occur through the recommended regular review process.
 9. Underpinned by the goals of consistency and fairness, the report focuses on:
 - proposing changes that are most likely to attract broad support
 - providing some immediate amelioration of certain apparent deficiencies in current fee levels, and
 - simultaneously putting into place a robust and durable process for systematic and regular review, involving a consistent approach, and effective communication.
 10. Although it is recommended that some increases take place immediately (1 January 2005), for the practical reasons of budget planning and provisions, it is proposed these be paid at the start of the 2005/06 financial year and take effect from 1 January. While it is recognised that “back-dating” is discouraged under the Fees Framework, the reviewer considers the goals of the review would not be met by further delaying justified adjustments especially for those whose fees have remained static for considerable time, or who were advised that earlier adjustments were interim only. Similarly, although expedience may lead to the conclusion not to adjust certain rates in excess of 10%, (and thereby not create an “exception”), it is considered that current inequities justify larger increases in some cases.
 11. The reviewer proposes continued coverage under the Cabinet Fees Framework, for most groupings, albeit with some changes to placement within the Framework. This recognises the centrality the Framework occupies in the Government’s fee setting process and reflects the view that the Framework does not impede what most officers are seeking. It is also proposed that consideration be given to establish under the Cabinet Fees Framework a new category of “Judicial Officers”.
 12. Establishing a unified tribunal Framework, as promoted by the Law Commission and others, requires a momentum and coherence of approach across the whole State Sector, not just for those bodies administered by the Ministry of Justice. In the context of this exercise, however, it is considered that, in the immediate term, energy could most usefully be found on:
 - adjusting the rates of remuneration as recommended

- establishing and staffing a distinct unit within the Ministry of Justice responsible for all matters associated with the engagement and administration of all judicial and statutory officers and, as appropriate, discharging a “duty of care” to them
 - initiating a clear process for regular review and effective communication from here-on-in with judicial and statutory officers.
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RECOMMENDATIONS

Process for Regular Review

- i. That priority be accorded to establishing a regular and transparent review mechanism within the Ministry of Justice, through which input from judicial and statutory officers is invited and the results of which are clearly communicated to them.
- ii. That the Ministry review be timetabled to occur every two years starting in 2006 and to be appropriately sequenced with the State Services Commission’s reviews of the Cabinet Fees Framework. As the next SSC review is scheduled for completion in June 2006, and to enable budget planning, it is recommended that the Ministry’s subsequent review of fees payable be completed in November 2006.
- iii. That a distinct unit be established within the Ministry of Justice to set, administer and review fees (and related conditions), for those judicial and statutory officers currently supported by the Special Jurisdictions Group and the Tribunals Unit and the Office of Legal Counsel, and who continue to be engaged under the Cabinet Fees Framework, or otherwise fall within the responsibility of the Ministry of Justice.
- iv. That it be agreed that personnel numbers needed to run an efficient unit are likely to be greater than those currently in place. Furthermore, care needs to be taken, not only to fill vacuums that exist, but also to avoid potential overlaps with the various branches of the Ministry.
- v. That the processes the Unit follows in communicating with officers on their remuneration reflect certain processes used by the Remuneration Authority, specifically predictability, timeliness and a level of transparency and engagement appropriate to officers appointed under warrant.

- vi. That the General Manager of the Special Jurisdictions Group be designated oversight and liaison responsibilities including with the Tribunals Unit, (which would cease to be directly involved in reappointments and remuneration), the various policy arms of the Ministry and those involved in administering judicial appointments. (For example, the General Manager of the Special Jurisdictions Group would be the catalyst to ensure appropriate consistency with appointments and engagements administered by the Office of Legal Counsel).
- vii. That the fees level and arrangements for each of the 25 groupings covered by this review be considered separately and either adjusted as proposed in this report or confirmed without change.
- viii. That decisions relating to individual statutory and judicial officers arising out of this review be communicated to those affected, along with the intention to:
 - establish and promulgate a clear process and timetable for regular review
 - enable input from those affected into the regular reviews
 - communicate the outcome of each review to those directly affected.

Abortion Supervisory Committee

For the Chair and Members of the Abortion Supervisory Committee:

- i. align the remuneration payable to them with that of the Social Security Appeal Authority (Higher Rate Tribunal) (maximum remuneration \$730 per day for the Chair and \$460 per day for members)
- ii. increase the base for the annualised fee payable to the Chair from \$600 per day to \$700 per day on 1 January 2005, and
- iii. from \$700 per day to \$730 per day on 1 July 2005.

For members of the Abortion Supervisory Committee increase the fee:

- i. from \$370 per day to \$400 per day on 1 January 2005, and
- ii. from \$400 to \$460 per day on 1 July 2005.

For Certifying Consultants:

- i. increase the face-to-face consultation rate from \$87.50 to \$93.75 from 1 January 2005, and
- ii. from \$93.75 to \$135.00 from 1 July 2005
- iii. maintain the “by phone” consultation rate at \$35.00 until its review as part of the new regular review process.

Accident Compensation Appeals Authority

Increase the rate for the Chair of the Authority:

- i. from \$600 per day to \$700 per day from 1 January 2005, and
- ii. from \$700 per day to \$730 per day from 1 July 2005.

Copyright Tribunal

- i. increase the rate for the Chair of the Copyright Tribunal from \$600 per day to \$730 per day from 1 July 2005
- ii. increase the rate for members of the Copyright Tribunal from \$370 per day to \$460 per day from 1 July 2005.

Coroners

Noting:

- the expectations that the new legislation governing Coroners will come into effect no later than 1 July 2006, and
- the possibility that Coroners may transfer to the Remuneration Authority before that date,

decide with respect to salaried Coroners to:

- i. discuss with them the understanding gained by them at the time of their appointment that provision would be made for superannuation and resolve that issue, noting the availability of subsidised superannuation to Ministry of Justice and salaried employees in the Public Service
- ii. increase their salaries effective from 1 January 2005 to reflect movements in the Consumer Price Index and related movements, and adjustments to Ministry of Justice salaries in the \$150,000 range
- iii. give consideration to appropriate backdating
- iv. discuss with the individuals the implications of the Coroners Bill for their engagement, salary and related conditions, and

decide with respect to non salaried Coroners to:

- i. consider making changes to the fees covering them, in advance of their transfer to the ambit of the Remuneration Authority taking into account the issues identified in this report. (Paragraphs 96ff).

Criminal Justice Reimbursement Assessor

- i. that the status quo be maintained for the fee covering the Criminal Justice Reimbursement Assessor pending consideration through the process of first regular review.

Customs Appeal Authority

- i. that the status quo be maintained for the fee covering the Customs Appeal Authority pending consideration through the process of first regular review, or such earlier time as can be justified.

Deportation Review Tribunal

- i. that the daily fee for the Chair of the Deportation Review Tribunal be increased from \$600 to \$700 per day from 1 January 2005, and
- ii. from \$700 per day to \$730 per day from 1 July 2005
- iii. that the daily fee for Members of the Deportations Review Tribunal be increased from \$370 to \$400 per day from 1 January 2005, and
- iv. from \$400 per day to \$460 per day from 1 July 2005.

Disputes Tribunal

- i. that the Disputes Tribunal be reclassified under the Cabinet Fees Framework from a Lower Rate Tribunal to a Higher Rate Tribunal
- ii. that the fee payable to Referees be increased from \$350 per day to \$400 per day from 1 January 2005 and to \$460 per day from 1 July 2005.

Environment Court

- iii. that Environment Court Commissioners be transferred to the ambit of the Remuneration Authority
- iv. that, independently of the timeframe within which a transfer can occur, consideration be given to whether any upward movement to the current level of fees is justified in the interim, noting that the fee has not been adjusted since 2000, and that provision exists within the Fees Framework to do so without seeking an exception.

Human Rights Review Tribunal

- i. that the fee for members of the Human Rights Tribunal increase from \$370 per day to \$400 per day from 1 January 2005, and
- ii. from \$400 per day to \$460 per day from 1 July 2005.

Land Valuation Tribunal

- i. that the fee for members of the Land Valuation Tribunal increase from \$370 per day to \$460 per day from 1 July 2005.

Lay Members of District and New Zealand Law Practitioners Disciplinary Tribunal

- i. that the rate payable to Lay Members of District and New Zealand Law Practitioners Disciplinary Tribunal be increased from \$320 per day to \$350 per day from 1 January 2005.
- ii. that the State Services Commission be asked to examine and address the apparent inconsistencies in fees paid to lay members of disciplinary bodies within the State Sector.

Lay Members of Maori Land Court

- i. that the status quo be maintained for the fee covering the Lay Members of Maori Land Court pending consideration through the process of first regular review.

Lay Observers: District Law Societies

- i. decide in principle to fix the remuneration for Lay Observers of District Law Societies by way of a daily fee (with a pro-rated daily rate)
- ii. that the details be finalised to provide security for the Crown around total expenditure and to establish a new rate from 1 July 2005
- iii. decide, in the interim, to increase the basis for the remuneration for the Auckland based Lay Observers (only) from \$320 per day to \$350 per day from 1 January 2005.

Liquor Licensing Authority

- i. that the basis for the remuneration payable to the member of the Liquor Licensing Authority be increased from an annualised daily fee of \$370 to \$400 from 1 January 2005
- ii. that a decision on a more substantive upward adjustment be made in the context of the first regular review.

Maori Land Court Consultative Committee

- i. that the status quo be maintained for the fee covering the Maori Land Court Consultative Committee pending consideration through the process of first regular review.

Maori Land Court Consultation Forum: Focus Group

- i. that the status quo be maintained for the fee covering the Maori Land Court Consultation Forum: Focus Group pending consideration through the process of first regular review.

Maori Land Court Rules Committee

- i. that the status quo be maintained for the fee covering the Maori Land Court Rules Committee pending consideration through the process of first regular review.

Motor Vehicle Disputes Tribunal

- i. that the fee of \$370 per day payable to assessors of the Motor Vehicle Disputes Tribunal remain pending further consideration during the first regular review.

Social Security Appeal Authority

- i. increase the fee payable to the Chair of the Social Security Appeal Authority from \$600 per day to \$700 per day from 1 January 2005, and
- ii. from \$700 per day to \$730 per day from 1 July 2005
- iii. maintain the fee payable to the Deputy Chair (currently vacant) at \$600 per day until the first regular fee review
- iv. increase the fee payable to members from \$370 per day to \$400 per day on 1 January 2005 and
- v. from \$400 to \$460 per day on 1 July 2005.

Student Allowance Appeal Authority

- i. that the status quo be maintained for the fee covering the Student Allowance Appeal Authority pending consideration through the process of first regular review.

Taxation Review Authority

- i. increase the fee payable to the Chair of the Social Security Appeal Authority from \$600 per day to \$700 per day from 1 January 2005, and
- ii. from \$700 per day to \$730 per day from 1 July 2005.

Tenancy Tribunal

- i. that the Tenancy Tribunal be reclassified from a Lower Rate Tribunal to a Higher Rate Tribunal
- ii. that the fee payable to Adjudicators be increased from \$350 per day to \$400 per day from 1 January 2005 and to \$460 per day from 1 July 2005.

Taiapure – Maori Fisheries Tribunal

- i. that the status quo be maintained for the fee covering the Taiapure – Maori Fisheries Tribunal pending consideration through the process of first regular review, noting that the fees were recently reviewed in 2003.

Trans-Tasman Occupations Tribunal

- i. that the status quo be maintained for the fee covering the Trans-Tasman Occupations Tribunal pending consideration through the process of first regular review.

INTRODUCTION

OBJECTIVES OF THE REVIEW

13. The Minister for Courts requested a review of the remuneration of a number of judicial and statutory officers for whom administrative support is provided by the Special Jurisdictions Group of the Ministry of Justice.
14. The independent review was commissioned by the Ministry to help determine whether or not any changes should be recommended to the Government to the current arrangements for those judicial and statutory officers whose fees are covered by the Cabinet Fees Framework. The goals of consistency and fairness underpinned the review.
15. While the review was not predicated on any particular outcome, the Ministry stated its intention to establish a clear process for future reviews and to make that known.
16. The independent reviewer was asked to provide a report that outlined:
 - recommendations for changes (if any) to remuneration levels
 - a recommended process for future reviews.

OTHER RELATED WORK

17. The Review took place alongside two other exercises undertaken by the Ministry:

Terms and Conditions

18. An assessment is being undertaken of the consistency in the manner in which various terms and conditions of judicial and statutory officers are being applied. These terms and conditions include:
 - setting the levels of fees payable
 - funding of the fees payable
 - meaning of a day
 - time recording
 - register of Members' interests

- method of payment
- taxation treatment
- insurance treatment
- travel time
- terminology
- judges as Tribunal Members
- Environment Commissioners.

Administration Handbook

19. Arising from the resolution of the consistency issues relating to the terms and conditions of various judicial officers, the Ministry's intention is to develop an administrative handbook and make it available to both judicial and statutory officers and administrative staff by 31 July 2005.

GROUPS COVERED BY THE REVIEW

20. The judicial and statutory officers covered by the review fell within twenty five categories as follows:
 1. Abortion Supervisory Committee
 2. Accident Compensation Appeals Authority
 3. Copyright Tribunal
 4. Coroners
 5. Criminal Justice Reimbursement Assessor
 6. Customs Appeal Authority
 7. Deportation Review Tribunal
 8. Disputes Tribunal
 9. Environment Court
 10. Human Rights Review Tribunal
 11. Land Valuation Tribunal
 12. Lay Members of District and New Zealand Law Practitioners Disciplinary Tribunal
 13. Lay Members of Maori Land Court
 14. Lay Observers: District Law Societies
 15. Liquor Licensing Authority
 16. Maori Land Court Consultative Committee
 17. Maori Land Court Consultation Forum: Focus Group
 18. Maori Land Court Rules Committee

19. Motor Vehicle Disputes Tribunal
20. Social Security Appeal Authority
21. Student Allowance Appeal Authority
22. Taxation Review Authority
23. Tenancy Tribunal
24. Taiapure – Maori Fisheries Tribunal
25. Trans-Tasman Occupations Tribunal

(Note: the review covered all judicial officers to whom administrative support is covered by the Special Jurisdictions Unit with the exception of: forensic pathologists, the Pharmacy Authority, the Birdlings Flat Land Titles Commissioner and the Chairperson of the Human Rights Tribunal.)

REVIEW PROCESS

21. In September 2004 the Deputy Secretary of Justice (Operations) advised the relevant individuals of the review and its purpose. On 4 October the reviewer sought input into the review. Specifically sought, was comment from those covered by the review on those aspects of the current arrangements, (process/determinants and level), associated with the fees received that they considered satisfactory, and what they considered needed changing and why.
22. The reviewer confirmed that:
 - the review was being undertaken to determine whether or not any changes to the current arrangements for those judicial and statutory officers whose fees are covered by the Cabinet Fees Framework should be recommended to Government
 - consistency and fairness had been determined as key goals underpinning the review
 - while the review is not predicated on any particular outcome, it is intended that a clear process for future reviews will be established by the Ministry and made known
 - the unique nature of appointments to statutory and judicial officer positions will be respected and the review would not be conducted in a manner that implies the element of negotiation that occurs between employer and employees.
23. Input was received through e-mails, telephone calls, letters and formal submissions from groups and some face-to-face meetings. Some input was also received from judicial and statutory officers not covered by this review. (Certain of it covered matters beyond the scope of this review but relevant to related exercises being carried out by the Ministry. It will be made available to inform that work).
24. Discussion took place with the State Services Commission, the “guardian” of the Cabinet Fees Framework, and Ministry of Justice personnel, and their perspectives were taken into account.
25. Relevant official papers, previous review reports and other reports, (such as the Law Commission’s 2004 report “*Delivering Justice for All*”) were considered. To the extent possible, each group of statutory and judicial officers was examined on its own (as well as in relation to other groups) and account taken of any specific circumstances applying.

26. Each group was considered in relation to its categorisation and placement within the Cabinet Fees Framework. The information base used was that held by the Ministry of Justice and checked against that of the State Services Commission. Differences, where they existed, were reconciled to the satisfaction of both parties with two exceptions: Accident Compensation Appeal Authority and the Student Allowance Appeal Authority. At the time of writing their appropriate classification was under discussion. (The reviewer has recorded the status quo as that shown in the Ministry records.)
27. Some gaps in information relating to particular groups exist, making judgements or suggesting change premature at this stage.
28. In a review report of this type, it is not feasible to detail the wealth of information considered that substantiates certain of the recommendations made. Further detail can be made available readily to the Ministry if required.

CURRENT ARRANGEMENTS

THE CABINET FEES FRAMEWORK

29. The fees and remuneration for those officers for whom administrative support is provided by the Special Jurisdictions Group are commonly established under the “Cabinet Fees Framework”.
30. The fees and remuneration regime is set out as part of the ‘Board Appointment and Induction Guidelines’, although the actual classification and fees payable under the Cabinet Fees Framework are defined in the Cabinet Office Circular CO(03)4, dated 1 July 2003.
31. This Framework covers all statutory, other bodies and committees in which the Crown has an interest, including Tertiary Education Institutions and District Health Boards, Trust Boards, advisory boards and committees, Royal Commissions and Commissions of Enquiry, Statutory Tribunals, individuals appointed as Statutory bodies that are not covered by the Higher Salaries Commission, and subsidiary bodies of Statutory Entities.
32. The purpose of the Framework is to provide a basis for judgement in setting fees that will:
 - ensure a consistent approach to remuneration across all statutory and other Crown bodies
 - contain expenditure of public funds within reasonable limits
 - provide flexibility within clear criteria.
33. The State Sector Remuneration and Fees Team at the State Services Commission provides the administrative oversight of the ‘Cabinet Fees Framework’ fees and remuneration regime for Crown bodies. Details relating to individuals are most commonly held by individual agencies, however, and no one agency holds a comprehensive information base across the state sector. (This adds to the difficulty of ensuring a consistent approach to the remuneration for similar positions in different agencies.)
34. The Framework sets out the factors to be considered in setting fees and in making any adjustment to them. The key elements are as follows:

Factors to be considered in setting fees
35. Ministers and departments are required to ensure that fees reflect:

- the complexity of the functions and the expertise required
- recruitment and retention issues
- the extent to which an individual member needs to insure against personal liability
- the potential risk to reputation
- the degree to which the role is in the public eye
- affordability

balanced by an element of public service and community commitment, the personal contribution and recognition of the intangible benefits to the member.

36. Fees are required to be set on a fair but conservative basis to reflect a discount for the element of the public service involved.
37. Where the fee is paid as an annual rate, it should also reflect the time involved.
38. Members occupying identical positions on the same body are to be paid the same fee rate. The fee rate is varied only to reflect additional responsibility such as those of chairpersons (and deputies and the chairs of a substantial sub-committee where appropriate) who may receive an extra margin for additional responsibilities that go with the role.
39. To secure people with scarce specialist skills it is envisaged a higher fee may be necessary. Such a situation is treated as an exception to the Framework that requires prior consultation with the Minister of State Services by the fee-setting authority (usually the Responsible Minister) and may require consideration by the Cabinet Appointments and Honours Committee.

Changes to Existing Fee Levels

40. Changes to existing fee levels are to be made only if it is necessary to address recruitment and retention problems, or where the current fee levels do not adequately reflect levels of responsibility. Increases in fee levels for existing bodies should be justified in terms of the fees Framework. Ministers' general expectation is that such increases should be modest. This may mean, for example, that increases to reflect levels of responsibility are done incrementally (rather than in one step). Where a proposed increase is substantial, it must be referred to the Responsible Minister and Minister of State Services. Backdating of increases is discouraged.

EXCEPTIONS AND SPECIFIC REGULATION

41. Fees for Coroners are prescribed by specific regulations not via the Cabinet Fees Framework. The two full-time Auckland based coroners are salaried under the provisions of the Coroners

Regulations 1989, while other coroners' fees are set on a schedule of activities based on \$100 per hour (Coroners (Fees) Regulations 1992).

42. In the course of this review frequent mention was made of the fees payable under the Crown Solicitors Regulations 1994. The certified scale of Crown Solicitors Fees is attached as annex 3 to this report.

THE REMUNERATION AUTHORITY

43. The Remuneration Authority, a statutory body, determines salaries, allowances and superannuation rights and obligations of MPs and the Judiciary; the remuneration of specified statutory officers; the remuneration, allowances and expenses payable to the elected members of local authorities; the salary of the Governor-General; and annuities for former governors-General and former Prime Ministers and their surviving spouses.
44. Proposals are under consideration to transfer two groups of officers currently covered by the Cabinet Fees Framework to the ambit of the Remuneration Authority. These are Commissioners of the Environment Court, the possible transfer of whom is the subject of briefing papers being developed by the Ministry of Justice to the Minister for Courts, and Coroners whose transfer is proposed under the Bill currently before the House.

OPERATING OUTSIDE THE FRAMEWORK

45. Subject to agreement being forthcoming, (usually involving the Minister of State Services, Cabinet's Appointments and Honours Committee and Cabinet), provisions exist to enable agreement on fees which constitute as exceptions to the Framework. Detailed justification is generally required before any exception is agreed.

REVIEW OF THE CABINET FEES FRAMEWORK

46. The State Services Commission generally undertakes reviews of the Framework on a two yearly cycle. However, the next review is not scheduled to be completed until around June 2006, (some three years after the previous review).

State Services Commission

- the SSC is charged with protecting the integrity of the Cabinet Fees Framework
- the SSC approaches the issue of remuneration of judicial officers from the perspective of current and actual recruitment and retention difficulties (not predicted or potential)
- the SSC considers increases in the level of fees payable within the range offered by the Cabinet Fees Framework. It also enables examination on a case by case basis of exceptions outside of the range provided by the Framework.

Ministry of Justice

- for its part, the MoJ considers that it has a responsibility to approach the issue from the perspective of enabling:
 - access to justice for users (the public), and
 - fairness for statutory and judicial officers
- the MoJ considers the Cabinet Fees Framework as a tool for the guidance of the responsible Minister (and Cabinet) in the setting of fees
- the MoJ is cognisant of its responsibility to address Ministers' expectations of a consistent and modest approach to public expenditure on fees.

Access to justice for court users

MoJ considers that access to justice for court users can be enhanced by:

- maintaining the integrity of the court system (proactively) by avoiding recruitment and retention difficulties
- maintaining the integrity of the court system (reactively) by remedying recruitment and retention difficulties
- ensuring that sufficient numbers of appropriately qualified persons are available to act as judicial officers.

Fairness for judicial officers

MoJ considers that fairness in the treatment of judicial officers can be enhanced by:

- maintaining a sense of justice and fairness amongst judicial officers by:

- offering like remuneration for like work (parity)
- treating judicial officers consistently with one another (equity)
- commitment to regular reviews and
- remedying anomalies in fees payments (as in the case of some payments recommended for Coroners).

JUDICIAL AND STATUTORY OFFICERS WITHIN THE MINISTRY OF JUSTICE

47. Within the Ministry of Justice a number of sections currently deal with matters associated with the engagement of judicial and statutory officers. These include:
- the Special Jurisdictions Group
 - the Policy and Legal Group, including the Office of Legal Counsel
 - the Tribunals Unit, and
 - the Corporate Affairs Group.
48. Now that the Department of Courts has merged with the Ministry of Justice, work involved in appointments and the administration of officers and the funding required for their engagement all fall within one agency.
49. It is timely, therefore to consider whether the current organisation is best suited to ensuring consistency in view of the fact that the Ministry administers four sets of bodies (not all of which fall within the ambit of the Special Jurisdictions Group):
- i. those whose fees are set by the Remuneration Authority (e.g. The judiciary)
 - ii. those that fall under the Fees and Travelling Allowances Act/Cabinet Fees Framework (e.g. Tribunal members)
 - iii. those covered by Regulations (e.g. Coroners)
 - iv. ad hoc bodies where no statutory basis exists for the payment of members, members of which are generally remunerated according to the Cabinet Fees Framework (e.g. The Legislation Advisory Committee).
50. The collection and updating of information on judicial and statutory officers would appear to be variable. For example, the Office of Legal Counsel which generates advice to the Minister on appointments:
- maintains a database of appointees
 - holds files on each judicial or statutory body and information on the appointment process that has been followed
 - holds variable amounts of information on each appointee.

51. The Office's involvement largely ceases once an appointment is the subject of a Gazette notice. Arrangements for the induction of officers: their on-going support and review of the arrangements covering them, then becomes the responsibility of other parts of the Ministry. (Note the Office will advise the body that is to administer the statutory or judicial officer).

REVIEW FINDINGS

SUMMARY OF KEY AREAS OF CONCERN

52. The reviewer, those covered by the review and officials have pin-pointed key areas of concern as:
- inconsistencies relating to the fixing of the fees payable
 - inconsistencies relating to the methods of funding those fees
 - imperfections in processes associated with reviewing fees, and communicating with statutory and judicial officers about their remuneration and related conditions.

Fixing of Fees

53. Inconsistencies in the fixing of fees and of the level of fees payable to various officers complicates the administration of those payments by the Ministry and the ability to adopt a consistent approach.

The Level of Fee

54. The various agencies/sources involved in the fixing of fees for those covered by the review, (and others), include the following:
- Remuneration Authority
 - Fees and Travelling Allowances Act (Cabinet Fees Framework)
 - specific statutory provision (may or may not be under Cabinet Fees Framework)
 - specific regulations
 - Cabinet decision (may or may not be under Cabinet Fees Framework).
55. The different requirements, which appear to have arisen over time in a somewhat ad hoc way are not generally seen to be based on the systematic application of any particular principles. This has resulted in some Statutory and Judicial Officers who are performing similar duties being paid at different levels.
56. Where fees are currently fixed under the Cabinet Fees Framework, on the recommendation of the Ministry of Justice, and the Ministry is also responsible for the provision of other support services, the potential exists for difficulties to emerge with communication and managing relationships.

57. For example, the relationship between the Judicial and Statutory officers and the Ministry (and the Minister) is not, and should not be seen as, an employee-employer relationship. It is not considered appropriate, therefore, for either party to be placed in the position of having to bargain over the fees to be paid. The quid pro quo for this should be the establishment of a clear process and the consistent application of that process in a manner that is experienced by all parties as having integrity.

Funding of Fees

58. There are inconsistencies in the mechanism through which the fees are funded. For example, funding can be by:
- the Permanent Legislative Authority
 - annual appropriation through Vote: Courts as a Ministry of Justice operating cost or
 - annual appropriation through Vote: Courts as a Crown: Other expense¹.
59. Essentially, these inconsistencies in funding give rise to a number of issues:
- the fact that the remuneration of Judicial Officers is an operating cost for the Ministry means that increases in remuneration are difficult to implement and, generally, need to be the subject of budget bids
 - where the level of remuneration is set by the Remuneration Authority but paid as a Vote: Courts operating cost, the Ministry is exposed to the risk of having to furnish payment to the officers concerned without an increase in Budget. (Note: none of the officers covered by this review fell under the ambit of the Remuneration Authority but it is proposed that some do.)

The Notion of Fairness

60. The Fees Framework incorporates fairness as a factor in setting fees, noting that they should be set on a fair but conservative basis to reflect an element of discount for the element of public service involved.
61. This review has shown that a substantial number of officers covered by it do not consider as fair the level of their fee or the attention paid to them once they have been engaged. The level of long-standing dissatisfaction evident poses a practical problem for the Ministry now, and one that should be addressed expeditiously so that it does not grow.
62. With few exceptions, judicial and statutory officers who contacted the reviewer expressed dissatisfaction:
- with the level of fee received
 - with the process for fee setting and review and associated communication.

¹ This does not apply to Judges who are ex officio members of Tribunals.

63. As Annex 2 shows, the fee arrangements covering officers are complex arising as they do out of an apparent mix of:
- historical decision making (applying both defined rules and pragmatic decisions to reflect particular circumstances)
 - full-time, consistent part-time and short-term or episodic engagements.
64. It should be noted that the adequacy or otherwise of fees cannot sensibly be fully analysed in isolation from total remuneration received, including conditions such as superannuation provision and allowances, and the time it takes to earn that remuneration. Consideration of these matters is the subject of a separate exercise by the Special Jurisdictions Group of the Ministry of Justice.
65. Those interviewed accepted the “public service” nature of the positions meant that fees would/should not be so remunerative as in other parts of the labour market. However, in certain situations they considered that the opportunity cost had become excessive and that it was unrealistic to expect continued service without a revised fee and regular upward adjustments.
66. In discussing their dissatisfaction, specific concerns identified by the officers, which the evidence supported in a number of cases, included:
- a view that the initial fee was set at too low a level
 - the length of time since the level of fee was last reviewed
 - inadequate review outcomes (no increase or increase too low)
 - the increased complexity of the work and inadequate recognition of that
 - recruitment difficulties (depth and breadth of experience to choose from)
 - retention difficulties (actual and impending loss of the more adept)
 - inadequate recognition of the degree of public visibility certain positions entail
 - inadequate recognition of the degree of personal risk certain positions might carry.
67. Some officers urged that they be removed from the ambit of the Cabinet Fees Framework and State Services Commission and Ministry of Justice oversight and responsibility to that of the Remuneration Authority.
68. The advantages identified by the officers in such a shift were:
- fee levels would be set and adjusted in line with movements in the wider labour market
 - fees would be increased to reflect changes in the Consumer Price Index
 - regular reviews would occur with the opportunity to have input and receive feedback on the outcome of the review
 - for those with an historical link to the remuneration and conditions of the judiciary, a greater likelihood of reclaiming “parity”.

69. Recognising the centrality of the Fees Framework to remuneration arrangements for personnel across the state sector, and Governments' commitment to its continuance, the reviewer has focussed on proposing changes for those officers whose fees are administered by the Ministry of Justice that:
- are likely to attract broad support
 - ameliorate certain very apparent deficiencies in current fee levels
 - result in the development and application of a robust and durable process for regular review.

A ROBUST PROCESS OF FEE SETTING AND REVIEW

70. The current processes of fee setting are deficient and atomised. The absence of a regular and transparent review mechanism, through which input from judicial and statutory officers is invited and the results clearly communicated to them in a timely manner is a source of profound and understandable dissatisfaction.
71. There is a need to quickly take the steps to build confidence amongst statutory and judicial officers that the Ministry is “looking after” them.
72. There are difficulties inherent in officials required to deal with statutory and judicial officers on a daily basis, simultaneously being involved in matters associated with their remuneration and potential reappointment.
73. The Cabinet Fees Framework is usually reviewed on a two yearly basis. However, there will be a three year gap between the last review and the next one which is scheduled to take place from April-June 2006.
74. Desirably the Ministry reviews should be aligned to and completed within six months of those carried out by the SSC. This would mean that the first of the regular Ministry reviews of fees payable could sensibly be scheduled for completion in November 2006.
75. There is a strong call for annual reviews but that is not recommended at this stage: the Ministry review needs to be timetabled alongside the SSC’s and aligned with the budget development process. Furthermore, it is clear that a two yearly robust review process would be viewed as a very positive initiative. Three years between reviews is too long, however. The three year period between the last and next SSC review, and the practical timeframe for the next Ministry review following the SSC’s, have been taken into account in the quantum and timing of the fee increases recommended.
76. It is proposed that a distinct unit be established within the Ministry of Justice to set, review and administer fees (and related conditions) for those judicial and statutory officers currently supported by the Special Jurisdictions Group and the Tribunals Unit and who continue to be engaged under the Cabinet Fees Framework. The processes the Unit followed for review would reflect, as appropriate, the processes used by the Remuneration Authority.
77. It is also proposed that, within the Special Jurisdictions Group, that the General Manager be designated oversight and liaison responsibilities including with the Tribunals Unit, (which would

cease to be directly involved in reappointments and remuneration), the various policy arms of the Ministry and those involved in administering judicial appointments. While it is envisaged that much of the day to day work would be carried out within Corporate/Support Services, the liaison would extend beyond the general Manager Finance and Support Services to include the General Managers of District Courts and Higher Courts. The role of the Office of Legal Counsel would remain essentially unchanged but there would be a direct liaison with the Unit.

78. Initially it is recommended that the fees level and arrangements for each of the 25 groupings be considered separately and either confirmed or adjusted. That this is occurring, and the results of that consideration, should be communicated to those affected.
79. Also recommended for early communication is the Ministry's intention to:
 - establish and promulgate a clear process for and a regular timetable for review
 - enable input from those affected into the review
 - communicate the outcome of each review to those directly affected.
80. The following proposals for adjusting (or not) the fees for each group covered by this review were developed on the basis of:
 - contributing to greater consistency and uniformity between Tribunals and associated bodies
 - adherence to the requirements of the Cabinet Fees Framework and alignment to the SSC's review process. It is acknowledged that the level of increase involved for some is generally larger than that commonly sought in one tranche under the Framework and that some exceptions to the Framework are being proposed. That this has been done reflects the perceived need (because of the extent of current inequities) to make a substantial one off adjustment in advance of further consideration through the (to be established) regular review process, recognising that this will not be completed until November 2006. In doing so, a large measure of "public good" is still envisaged in the level of fee. The recommended fees are considered fairer to the individual, to more appropriately reflect current roles and responsibilities, and necessary to ensure the continued engagement of appropriate individuals.
 - sufficient information being available to make an informed recommendation. (A plethora exists for some groups and a dearth for others. Some groups, the Abortion Supervisory Committee, and the Disputes and Tenancy Tribunals, have been the subject of recent and comprehensive review)
 - paying particular attention to those whose fees were last adjusted some years ago
 - to some extent, (but not generally to the extent sought pending full consideration in the first formal review), providing some alignment with relative rates that exist in other sectors and jurisdictions, including the District Court
 - an awareness of relevant policy initiatives and foreshadowed legislative change.

81. The following questions were considered in examining each group
- i. is it appropriately classified under the Cabinet Fees Framework (or the Remuneration Authority)?
 - ii. is the category under the Framework appropriate?
 - iii. is the fee/salary appropriate? If not, how can it most appropriately be adjusted?

Timing of Fee Adjustments

82. For a number of groups a fee increase from 1 January 2005 is proposed in advance of the 2005/06 financial year. It is noted that the Ministry's baseline funding for the 2004/05 year is not such that increases could be readily accommodated. To take account of this, it is proposed that the increases take effect from 1 January 2005 and be paid out from July 2005.
83. Annex 2 outlines the daily fee arrangements applying to statutory and judicial officers covered by this review and other relevant detail.

ABORTION SUPERVISORY COMMITTEE CERTIFYING CONSULTANTS

	Current Remuneration	Maximum Potential	Last Review Movement
Chair	\$31,000 pa Annualised daily fee		1999 (effective 1.1.00)
Members	\$370 per day	\$460 per day	1997 (effective 1.2.98)
Certifying Consultants	\$87.50 per consultation (face-to-face) \$35.00 (by phone)	\$93.75 (face-to-face) \$37.50 (by phone)	1988

84. An independent review of certifying consultants' fees was commissioned by the Ministry and completed by Huria Anders Ltd in February 2003. That review found that:
- the low fee does not compensate for recently increased documentation and informed consent responsibilities
 - the fee paid to Certifying Consultants has fallen well behind the rate at which a doctor's time is charged out for other patients (an average of \$45 per 15 minute consultation for general practitioners and about \$300 per hour for specialists).
85. The low fee was seen as presenting a coming recruitment and retention crisis in that:
- it does not compensate for what is often a demanding, time-consuming and an emotionally draining job practised in an increasingly unsupportive and sometimes hostile environment
 - it discourages new applicants from applying
 - already, parts of New Zealand have no service, and the only assistance that can be provided is to arrange travel to other districts
 - the environment has changed significantly in the past few years with Certifying Consultants experiencing increasing levels of harassment from lobby groups, politicians, the media, medical colleagues and, in some cases, their other patients
 - consultations are now taking longer, as patients are wanting more information and the changing ethnic make-up of New Zealand has resulted in more patients with poor English skills
 - Certifying Consultant fees have not kept pace with the percentage increases received by other statutory officers
 - the fee is not subject to regular review.
86. Huria Anders recommended that a significant one-off increase be made to bring Certifying Consultants fees onto a par with other senior doctors and specialists in the public sector.

87. This review reinforced the Huria Anders findings. With few exceptions, Certifying Consultants criticised the failure to adjust the fee since 1988 and asked that the fee be increased to reflect the 1988 value. One stated that “*the system of paying fees for certifying abortions needs to be looked at openly and transparently rather than just quietly adopting some underground system of monetary disapproval by not adjusting the fee levels.*” The reviewer considers the criticism justified.
88. The recruitment and retention difficulties reported by Huria Anders in 2002 appear to have worsened. Because of a lack of Certifying Consultants, there is now no service in a number of areas (e.g. Wanganui, Tauranga, Palmerston North, Gisborne, Lower Hutt, West Coast, Southland). In others, such as Napier/Hastings where only two Certifying Consultants are available, the service is borderline. Furthermore, problems caused by difficulties in engaging Certifying Consultants with the background to deal appropriately with New Zealand’s racial mix should not be underestimated.
89. Additional factors cited to the reviewer as justification for a substantially increased fee included recognition of:
- the costs involved in running a professional consulting room (around \$250 per 45 minutes)
 - need to compensate for loss of income as some patients elect to change doctor when aware of their Certifying Consultant status
 - failure to attend appointment rate (1 in 10) cannot request payment for unkept appointments
 - considerable nursing administration time spent
 - need to be available on the clinic date for 50 weeks per year.
90. It is noted that the Chair of the Abortion Supervisory Committee has been in the position for seven years and that the position was difficult to fill at that time.

91. **Recommendations**

For the Chair and Members of the Abortion Supervisory Committee:

- i. align the remuneration payable to them with that of the Social Security Appeal Authority (Higher Rate Tribunal) (maximum remuneration \$730 per day for the Chair and \$460 per day for members)
- ii. increase the base for the annualised fee payable to the Chair from \$600 per day to \$700 per day on 1 January 2005, and
- iii. from \$700 per day to \$730 per day on 1 July 2005.

For members of the Abortion Supervisory Committee increase the fee:

- i. from \$370 per day to \$400 per day on 1 January 2005
- ii. from \$400 to \$460 per day on 1 July 2005.

For Certifying Consultants:

- i. increase the face-to-face consultation rate from \$87.50 to \$93.75 from 1 January 2005, and
- ii. from \$93.75 to \$135.00 from 1 July 2005
- iii. maintain the “by phone” consultation rate at \$35.00 until its review as part of the new regular review process.

ACCIDENT COMPENSATION APPEALS AUTHORITY

	Current Remuneration	Maximum Potential	Last Review Movement
Authority (Chair)	\$600 per day	\$730 per day	1997 (effective 1.2.98)

92. There is room within the Framework to increase the rate that has not been adjusted for some six years, to more appropriately remunerate the Chair for the responsibilities discharged, and to align it to that payable to comparable other positions (eg Taxation Review Authority, Social Security Appeal Authority, Abortion Supervisory Committee).

93. **Recommendations**

Increase the rate for the Chair of the Authority:

- i. from \$600 per day to \$700 per day from 1 January 2005, and
- ii. from \$700 per day to \$730 per day from 1 July 2005.

COPYRIGHT TRIBUNAL

	Current Remuneration	Maximum Potential	Last Review Movement
Chair	\$600 per day	\$730 per day	2003
Members	\$370 per day	\$460 per day	1997 (effective 1.3.98)

94. The current rate of \$370 per day for officers likely/required to be an experienced barrister or solicitor should increase. There is room to do so within the Framework to provide a more realistic

degree of recognition of the role and some reflection of the opportunity cost to barristers and solicitors of filling it.

95. **Recommendations**

- i. increase the rate for the chair of the Copyright Tribunal from \$600 per day to \$730 per day from 1 July 2005
- ii. increase the rate for members of the Copyright Tribunal from \$370 per day to \$460 per day from 1 July 2005.

CORONERS

	Current Remuneration	Maximum Potential	Last Review Movement
Salaried Coroners	\$150,000 pa		2001
Other Coroners	Fees specified in Coroners (Fees) Regulations 1992		1997

96. The Coroners Bill, introduced into Parliament on 30 November 2004 foreshadows the entitlement of a Chief Coroner position and the engagement of a smaller number (than at present) of mostly full-time legally qualified coroners. It provides for jurisdiction of the remuneration of Coroners to fall under the Remuneration Authority.
97. As the Bill is unlikely to be enacted for some months, it is considered appropriate to
 - confirm the placement of all coroners under one jurisdiction (the Remuneration Authority or as salaried officers looked after by a dedicated unit in the Ministry of Justice) with consistent terms of engagement
 - review the fees and salary currently paid.
98. There is significant dissatisfaction amongst the fifty eight fee paid Coroners and the two salaried Coroners about their actual remuneration and the time since it was last reviewed.
99. **Coroners (except Salaried Coroners)**
 Coroners view as inadequate both:
 - the level of the base set fees for defined functions, and
 - the hourly rate of \$56.25 for functions which take time beyond the base time allowances.
100. Coroners powers are judicial (not quasi judicial) in nature. Any appeal against the decision of a Coroner is dealt with by application to the High Court.

101. It has been the long-standing position of the Coroners Council that the appropriate rate payable to coroners should equate to the rate payable to senior Crown solicitors (refer Annex 3). Coroners are otherwise in the position where counsel appearing before the Coroner are being remunerated at a higher rate, even if that rate were prescribed under the Legal Services Act, than is currently allowed for under the Coroners (Fees) Regulations.
102. Examples were cited of lengthy inquests where Counsel appointed to assist Coroners are remunerated at senior hourly solicitor rates while the Coroner is paid much less.
103. Other widely held views of Coroners are:
- that there should be some provision for the Coroner to negotiate a rate above the prescribed hourly rate, for dealing with inquests which are complex. This proposition would, in the view of the Coroners' Council, be better met by the payment of rates as for Senior Crown Solicitors
 - the current regulations should be amended to make provision for a Coroner taking evidence on behalf of another Coroner where the taking of such evidence is complicated or extended. Review of the fee of \$80.00 regardless of how long (or how short) it may take to hear such evidence is sought
 - correct the current lack of provision for the payment of remuneration to Coroners who, because they are the Coroner to whom a death must be reported, accept jurisdiction, open an inquest and then transfer that file to another Coroner pursuant to Section 22 of the Act, because that Coroner is in a better position to deal with the file. This occurs regularly in some jurisdictions. By that stage, the Coroner will have received the report, exercised judicial discretion on such issues as the necessity of a post mortem, release of the body, considered whether other forensic tests are called for and provided such direction to the Police and the Pathologists
 - recognise the importance of and increasing educational role of Coroners, which is currently provided "on a gratis basis"
 - the police are required to report certain categories of death forthwith to the coroner. Additionally the reporting of deaths is often made by other persons, particularly medical practitioners. This means the Coroner is on call 24 hours a day, 7 days per week, 365 days of the year. There is no provision in the current regulations for paid leave or superannuation of any sort.
104. For a number of reasons, some consider Coroners should be enabled to charge on an hourly rate.

105. The suggested “reasonable” fee is \$150.00 per hour. (Note: Crown Solicitors receive \$185.00 plus GST per hour and Offenders Legal Aid provide \$130.00 (Scale I), \$140.00 (Scale II) and \$165.00 (Scale III).

106. An alternative suggested is an upward movement in the current fee structure as follows:

Death Notifications	\$80
Enquiries without inquest	\$150
Inquests (>2 hours)	\$400
Inquests (<2 hours)	\$150
Taking of evidence	\$80 (status quo)

107. **Salaried Coroners**

There are two full-time Auckland based salaried Coroners covering the area from Mangawhai in the North to Meremere/Port Waikato in the South, with a population of 1,291,000.

108. Their salary (\$150,000 per annum) has not been reviewed since the positions were established and filled in August 2001. The individuals are appointed by the Governor-General and not permitted to work part-time or undertake any other form of legal practice.

109. The issues of concern here, that the reviewer considers need prompt attention and require direct engagement with the two individuals, are:

- i. discussions on the understanding gained at the time of appointment that provision would be made for superannuation and resolution of that issue, noting the availability of subsidised superannuation to Ministry of Justice employees
- ii. an increase effective from 1 January 2005 to reflect CPI and related movements and adjustments to Ministry of Justice salaries in the \$150,000 range
- iii. consideration to appropriate backdating
- iv. discussion with the individuals on the implications of the Coroners Bill for their engagement, salary and related conditions.

110. **Recommendations**

Noting:

- expectations that the new legislation governing Coroners will come into effect no later than 1 July 2006
- the possibility that Coroners may transfer to the Remuneration Authority before that date.

decide with respect to salaried Coroners to:

- i. discuss with them the understanding gained by them at the time of their appointment that provision would be made for superannuation and resolve that issue noting the availability of subsidised superannuation to Ministry of Justice and other salaried employees in the Public Service
- ii. increase their salaries effective from 1 January 2005 based on the options of reflecting changes in the Consumer Price Index and related movements, or adjustments to Ministry of Justice salaries in the \$150,000 range, or increases provided to District Court Judges (to whose salaries Coroners' salaries were initially pegged)
- iii. give consideration to appropriate backdating
- iv. discuss with the individuals the implications of the Coroners Bill for their engagement, salary and related conditions, and

decide with respect to non salaried Coroners to:

- i. consider making changes to their fees in advance of their transfer to the Remuneration Authority taking into account the issues identified in this report.

CRIMINAL JUSTICE REIMBURSEMENT ASSESSOR

	Current Remuneration	Maximum Potential	Last Review Movement
Assessors	\$600 per day	\$730 per day	1997 (effective 1.2.98)

111. **Recommendation**

- i. that the status quo be maintained for the fee covering the Criminal Justice Reimbursement Assessor pending consideration through the process of first regular review.

CUSTOMS APPEAL AUTHORITY

112. In view of insufficient information no recommendation is made at this stage. However, indications suggest that alignment with other appeal authorities is probably justified.

	Current Remuneration	Maximum Potential	Last Review Movement
Authority (Chair)	\$600 per day	\$730 per day	1997 (effective 1.2.98)

113. **Recommendation**

- i. that the status quo be maintained for the fee covering the Customs Appeal Authority pending consideration through the process of first regular review, or such earlier time as can be justified.

DEPORTATION REVIEW TRIBUNAL

	Current Remuneration	Maximum Potential	Last Review Movement
Chair	\$600 per day	\$730 per day	1997 (effective 1.2.98)
Members	\$370 per day	\$460 per day	1997 (effective 1.2.98)

114. The Deportation Review Tribunal has some similarities with the Coroner Service and with the Abortion Supervisory Committee in that:

- i. it requires an experienced barrister or solicitor as its chair. The role is part-time and likely to be filled by a practising barrister
- ii. appeals against decisions are to the High Court (not the District Court)
- iii. the work is high profile and subject to public criticism.

115. Remuneration paid is substantially less than that to the Chair and members of the Refugee Appeal Authority, (administered by the Department of Labour).

116. Understandings that the rate(s) would be reviewed to approximately reflect the seriousness of the position have not been realised. (The last review was around six years ago.)

117. Other issues on which attention is required relate to the definitions of a day and providing clarity to the Members and Chair on how payments are calculated.

118. **Recommendations**

- i. that the daily fee for the Chair of the Deportation Review Tribunal be increased from \$600 to \$700 per day on 1 January 2005 and
- ii. from \$700 per day to \$730 per day from 1 July 2005

- iii. that the daily fee for Members of the Deportations Review Tribunal be increased from \$370 to \$400 per day from 1 January 2005 and
- iv. from \$400 per day to \$460 per day from 1 July 2005.

DISPUTES TRIBUNAL

	Current Remuneration	Maximum Potential	Last Review Movement
Disputes Referees	\$350 per day	\$350 per day	2003 (effective 1.7.04)

- 119. Under the Cabinet Fees Framework Disputes Tribunal Referees are currently placed within the definition of Members of Lower Rate Tribunals for which the upper limit is a fee of \$350 per day.
- 120. In 2002 a Department for Courts commissioned independent review, undertaken by Huria Anders, recommended a 35% increase in the fees payable to \$420 (and the same to be applied to Tenancy Adjudicators). This resulted in a request from the Department for an exception to pay above the top level of the Fees Framework. The request was declined and the fee was set at \$350 per day.
- 121. At the time both the State Services Commission and Treasury considered there was insufficient evidence to support a case for increased fees based on the “exceptional criteria” of the Framework. The recruitment and retention difficulties that were cited were not regarded as “significant”.
- 122. Huria Anders, at the same time reviewed the fees of Tenancy Adjudicators and reached essentially the same conclusion as they did for the Disputes Tribunal Referees.
- 123. In the course of this review differences in the role/responsibilities of the two positions were identified. These were not considered by the reviewer to be at a level, however, that justifies different treatment and this view would appear to have broad, if not universal, acceptance. (The overall imperative is for a greater degree of consistency in the treatment of judicial and statutory officers, not further variations). However, the way the role has developed has led the reviewer to conclude, by a fine margin, that reclassification to a Higher Rate Tribunal is justified. (This view applies also to Tenancy Adjudicators.)
- 124. A number of individuals hold warrants as both Disputes Tribunal Referees and Tenancy Tribunal Adjudicators. A large number derive their sole income from one or both positions.

125. Disputes Tribunal Referees are very aggrieved by the level of the remuneration their work attracts and by the absence of what they consider a satisfactory process of review. This review found much of their dissatisfaction justified.
126. Material provided to the reviewer summarises their views as follows:
- Disputes Tribunals are different from all other Tribunals in that they are a division of the District Court
 - the Disputes Tribunal is established under the Disputes Tribunals Act 1988 as a separate division of the District Court and an “Inferior Court” (Within the definition in the Inferior Courts Procedure Act 1909)
 - they are the only Tribunal that is a Division of a Court in New Zealand
 - the Disputes Tribunal exercises “judicial power” and its decisions are enforceable as if they were orders of the District Court
 - the Disputes Tribunal has a wider jurisdiction than all other Tribunals, with 43 Acts of Parliament within their jurisdiction
 - referees unlike most, if not all other tribunals, sit alone with no administrative support during hearings
 - referees as Judicial Officers are entitled to the same rights and privileges as members of the Judiciary, in the setting of their level of remuneration
 - by way of clarification Disputes Tribunal Referees are entitled to the right of “Judicial Independence”
 - the present process as prescribed by the Cabinet Fees Framework for Statutory Bodies does not sufficiently recognise the convention of “Judicial Independence” that applies to Disputes Tribunal Referees and the fact that they are a Division of the District Court
 - the current process for the setting and review of Disputes Tribunal Referees per diem has been ad hoc, not transparent and is subject to approval by the State Services Commission who may not have direct communication, or communication with Referees, the Principal Disputes Referee or the Chief District Court Judge
 - there have been only two increases in the per diem paid to Referees in the past 16 years
 - the current per diem in real terms is \$84.00 below what is needed to equate with the per diem received in 1997
 - if the Cabinet Fees Framework is to continue to apply to the fee setting process for Disputes Tribunal Referees, then they should be reclassified either as Chairpersons of a Lower Level Tribunal or as members of a Higher Level Tribunal

- referees are at the maximum fee payable for their current classification. This creates difficulties for any future increase despite the merits of such an increase. The result of the recently completed review is testament to this
- the present process is in breach of the recognised principles of fairness and good faith in remuneration setting

127. The following extract from a letter to the reviewer portrays the concerns expressed by Referees (and their counterparts in the Tenancy Tribunal).

“I have been a Judicial Officer from the inception of the Residential Tenancies Act in 1986 as well as holding a warrant in the Disputes Tribunal for the last 6 years or so. In all that time I recall only two increases in the fees payable; both of \$40.00 gross and both signalled as “interim”. In jurisdictions where “Natural Justice”, fairness and reasonableness are foundation stones, it is difficult to feel that our employers accord much more than lip service to these concepts as well as to good faith bargaining which the Government expects/demands from private sector employers. There seems little understanding, or worse, any willingness to appreciate the responsibilities and demands that go with the territory. Both Tribunals have attracted Judicial Officers of extraordinary dedication who exercise their jurisdictions at a high level of professional competence and determine more than 50% (I believe) of the civil case load. To be so poorly valued is disheartening to say the least.”

“In my opinion the positions should be salaried, (albeit pro rata for part time work) with proper provision for holidays, sick leave, superannuation and regular review with PAYE deducted. Most of the problems stem from the employment “no-mans” land we find ourselves in... we are not employees (but are so for ACC purposes in the Disputes Tribunal) we are not self-employed contractors in the pure sense as there is no competitive edge to offering our services and we operate under a judicial warrant issued by the Governor-General who is not our employer. As Judicial Officers, protocol denies us the opportunity to good faith bargain with the appropriate Minister, and courts have historically not wanted to know if it affects budgets. Until now there has been no reasoned review and one can only hope that...”

“In anyone’s language it is a demanding job and it is inappropriate that we should also have to “enter another arena” in order to obtain a fair and reasonable level of remuneration. Both Tribunals should be subjected to a proper independent and regular review process such as the Higher Salaries Commission or equivalent. The Weather tight Disputes Resolution Service is a classic example of appropriate remuneration when there is a political will to make it happen. A Mediator with that service commands a per diem of \$1,000.00 + GST + expenses with no expectation that more than one dispute is dealt with per day and even longer if necessary.”

128. Most recently, the Ministry’s offered fee for mediators engaged in the Family Mediation pilot has attracted criticism for Disputes Tribunal Referees for its perceived inconsistency in approach to two groups of mediators. (The advertised fee payable for a completed mediation varies between \$465 and \$775 depending on complexity.)

129. While quibbling with some of the detail, the reviewer considers that the criticisms made by Dispute Tribunal Referees are soundly based. Specifically, the reviewer has concluded that:

- a) the Disputes Tribunal is inappropriately classified under the Cabinet Fees Framework and that reclassification as a Higher Level Tribunal is justified
- b) in the interests of a robust service that attracts highly skilled and qualified, as well as committed individuals, the daily fee should be increased in a timely way to the maximum currently permitted
- c) other issues that emerged should be addressed by the work currently being undertaken in the Special Jurisdiction Unit on the terms and conditions of Statutory and Judicial Officers.

130. **Recommendations**

- i. that the Disputes Tribunal be reclassified under the Cabinet Fees Framework from a Lower Rate Tribunal to a Higher Rate Tribunal
- ii. that the fee payable to Referees be increased from \$350 per day to \$400 per day from 1 January 2005 and to \$460 per day from 1 July 2005.

ENVIRONMENT COURT

	Current Remuneration	Maximum Potential	Last Review Movement
Commissioners	\$109,200 or \$81,900 (annualised \$420 daily fee – prorated for some)	\$119,600 (annualised \$460 daily fee)	2000
Deputy Commissioners	\$420 per day	\$460 per day	2000

131. Welcoming the Ministry’s stated objective of introducing consistency/fairness to the fees setting process as between jurisdictions and the commitment to establishing a concrete process for future reviews on a regular basis, the Environment Court Commissioners sought three key outcomes from this review:

- confirmation of a regular review process for Environment Commissioners’ remuneration
- an increase to the current quantum of remuneration paid to Environment Commissioners
- remuneration being set by the Remuneration Authority.

132. The evidence supports the view that:

- Commissioners' duties have become increasingly complex and demanding since the 2000 review of Environment Commissioners' remuneration, not least through on-going changes to the principal legislation: the Resource Management Act 1991. The 1994 amendments to that Act made explicit provision for consideration of the effects of climate change, energy efficiency and renewable energy. (Refer "Remuneration of Environment Commissioner and Liquor Licensing Authority Members", July 2002.) Evidence shows that emerging roles identified in that review have become mainstream and new developments have occurred. For example, it is now expected that Commissioners will assist the Judge write decisions. The Commissioner may sign the decisions they wrote in draft or final form. Commissioners have advised that, in recognition of this role they now receive decision writing training through the Institute of Judicial Studies on the same basis as Judges.
- The workload is both predictable and substantial. The appointments process is competitive and rigorous. (Commissioners consider the role has progressively moved closer to that of a District Court Judge.)

133. Commissioners, through the Court, deal with the effects of the development and use of natural resources. They consider district and regional plans and resource consents for development plans involving significant sums of money and with potentially profound and lasting effects.

134. The Court requires and seeks experienced experts who enjoy a high degree of respect from their professional peers (refer to Section 253, Resource Management Act 1991 for criteria for eligibility of appointment). It is now expected that Commissioners will audit Judge write decisions. The Commissioner may sign the decisions they wrote in draft or final form. Commissioners have advised that, in recognition of this role, they now receive decision writing training through the Institute of Judicial Studies on the same basis as Judges.

135. Furthermore, the documentation considered also makes it clear that transfer to the Higher Salaries Commission/Remuneration Authority has been under active consideration by the Government since 2001. For example, in November 2001, in answer to a question in the House, the then Minister for Courts (Hon Matt Robson) stated "I have considered having Environment Commissioners' remuneration fixed by the Higher Salaries Commission. I have agreed in principle and I have requested officials to consider the policy implications."

136. This would be consistent with arrangements applying to other Commissioners and comparable positions eg the Human Rights Commission, Chair Disputes Tribunal.

137. The reviewer considers there is full justification for this change and recommends that it be effected as a matter of priority.

138. Specific points to note here are:

- since 1966 Commissioners have been members of a Court (not a Tribunal)
- the Environment Court operates as a Court, and is presided over by Environmental Judges (who are also District Court Judges). A hearing panel, by which majority decisions can be made, typically comprises one Judge and two Commissioners
- the Environment Court is an appellate Court. For example, it is a Court of review of decisions made under the Resource Management Act 1991. It is also the appeal authority for proceedings under other environment related legislation such as the Historic Places Act 1993 and the Public Works Act 1987.

139. Less clear is whether an immediate movement in remuneration should also be implemented.

There is no apparent recruitment and retention process but issues of equity and fairness- to both Commissioners and the public purse – should lead to an early consideration of this. It is noted that the Fees Framework provides for a potential remuneration greater than that currently paid, and that movements in the CPI since the review have exceeded 10 per cent.

140. **Recommendations**

- i. that Environment Court Commissioners be transferred to the ambit of the Remuneration Authority
- ii. that, independently of the timeframe within which a transfer can occur, consideration be given to whether any upward movement to the current level of fees is justified in the interim, noting that the fee has not been adjusted since 2000, and that provision exists within the Fees Framework to do so without seeking an exception.

HUMAN RIGHTS REVIEW TRIBUNAL

	Current Remuneration	Maximum Potential	Last Review Movement
Members	\$370 per day	\$460 per day	1997 (effective 1.2.98)

141. The Human Rights Review Tribunal is another Tribunal which hears appeals on a range of different matters, many of which involve quite complex legislation.
142. The reviewer shares the view put by one member that the current remuneration offered does not properly “*reflect the need to have qualified lawyers, academics and social thinkers on the tribunal.*”
143. The financial recompense can be a disincentive to members to allocate time from substantially more remunerative work in the private sector (>\$200 per hour).
144. It is about six years since the current remuneration was reviewed and adjusted and there is provision within the current Framework to increase the fee. The reviewer considers this should be done and in a manner that aligns members’ remuneration with that payable to members of comparable bodies.
145. **Recommendation**
- i. that the fee for members of the Human Rights Tribunal increase from \$370 per day to \$400 per day from 1 January 2005, and
 - ii. from \$400 per day to \$460 per day from 1 July 2005.

LAND VALUATION TRIBUNAL

	Current Remuneration	Maximum Potential	Last Review Movement
Members	\$370 per day	\$460 per day	1997 (effective 1.2.98)

146. Members describe the role as enjoyable but the element of “public good” financial sacrifice unfair. Considerable dissatisfaction is evident amongst Tribunal members concerning:
- the level of fee
 - the length of time since it was last reviewed during which the role is considered to have increased in complexity and in the requirement to assist the District Court Judges formulate a written decision.
147. Senior practising valuers from whose ranks Tribunal members are sought attract an hourly rate of around \$120-\$200 per hour depending on the complexity of the task.
148. There is room within the current Framework to adjust the rate and the reviewer considers there is justification to do so.

149. **Recommendation**

- i. that the fee for members of the Land Valuation Tribunal increase from \$370 per day to \$460 per day from 1 July 2005.

LAY MEMBERS OF DISTRICT AND NEW ZEALAND LAW PRACTITIONERS DISCIPLINARY TRIBUNAL

	Current Remuneration	Maximum Potential	Last Review Movement
	\$320 per day	\$350 per day	1997 (effective 1.2.98)

150. Lay members who communicated with the reviewer:

- expressed satisfaction with the daily flat fee (or half day fee) arrangement
- proposed a fee of \$500 per day noting the fee paid to members of the Medical Practitioners Disciplinary Tribunal
- raised issues relating to allowances and expenses.

151. **Recommendations**

- i. that the rate payable to Lay Members of District and New Zealand Law Practitioners Disciplinary Tribunal should be increased from \$320 per day to \$350 per day from 1 January 2005
- ii. that the State Services Commission be asked to examine the apparent inconsistencies in fees paid to lay members of disciplinary bodies within the State Sector.

LAY MEMBERS OF MAORI LAND COURT

	Current Remuneration	Maximum Potential	Last Review Movement
	Varies	Varies	2003

152. The variable remuneration for these members is currently (somewhat uneasily) set under the Fees Framework. The rate was fairly recently reviewed and there does not appear to be justification for a further movement at this stage.

153. **Recommendation**

- i. That the status quo be maintained for the fee covering the Lay Members of Maori Land Court pending consideration through the process of first regular review.

LAY OBSERVERS: DISTRICT LAW SOCIETIES

	Current Remuneration	Maximum Potential	Last Review Movement
Auckland	\$16,640 (\$320 per day)	\$350 per day	2000
Napier	\$10,650		
Wellington	\$13,330		
Christchurch	\$13,330		
Dunedin	\$8,250		

154. The current remuneration is by way of an annualised daily fee based on a daily rate of \$320 and an estimate of how many complaints are likely to be made.
155. It is not a satisfactory arrangement as the variations in local workloads result in inequities in payments between observers and, arguably, in “overpayments” as well as “underpayments”.
156. The best way of addressing this situation would seem to be to shift from an annualised rate to payment for actual days worked. The difficulty associated with this is in assessing the time that should reasonably be spent on examining a complaint given each one is unique and the process of consideration can extend over many months.

157. **Recommendations**

- i. decide, in principle, to fix the remuneration for Lay Observers of District Law Societies by way of a daily fee (with a pro-rated daily rate)
- ii. that the details be finalised to provide security around total expenditure and to establish a new rate from 1 July 2005, and
- iii. decide, in the interim, to increase the basis for the remuneration for the Auckland based Lay Observers (only) from \$320 per day to \$350 per day from 1 January 2005.

LIQUOR LICENSING AUTHORITY

	Current Remuneration	Maximum Potential	Last Review Movement
Members	\$96,200 (annualised \$370 daily fee)	\$460 daily fee	1997 (effective 1.2.98)

158. The Authority currently operates as a two-person Tribunal with the fees of the one member set as above.

159. The fee has not been reviewed for some six years.

160. The current member (and Chair) was appointed in 2001. The Chair reported in the Authority's Annual Report for June 2004 that:

"For the first time since taking office just over three years ago, we are able to report that the Authority is relatively up to date, both in terms of its current workload, and the reduction of its case backlog. This is a source of considerable satisfaction to all those involved with the efficient running of the Authority. For example a year ago when the report was written there were 293 licence related files and 213 managers' certificate related matters, yet to be dealt with 'on the papers'. This year there are currently 173 outstanding licence related files, and 166 outstanding managers' certificate related matters. This represents a reduction of 40% and 20% respectively."

161. **Recommendations**

- i. that the basis for the remuneration payable to the member of the Liquor Licensing Authority be increased from an annualised daily fee of \$370 to \$400 from 1 January 2005
- ii. that a decision on more substantive upward adjustment be made in the context of the first regular review.

MAORI LAND COURT CONSULTATIVE COMMITTEE

	Current Remuneration	Maximum Potential	Last Review Movement
Non-public servant members	\$250 per day	\$295 per day	2003

162. **Recommendation**

- i. That the status quo be maintained for the fee covering the Maori Land Consultative Committee pending consideration through the process of first regular review.

MAORI LAND COURT CONSULTATION FORUM: FOCUS GROUP

	Current Remuneration	Maximum Potential	Last Review Movement
Non-public servant Focus Group Chair	\$250 per day	\$290 per day	2003
Non-public servant Focus Group members	\$215 per day	\$215 per day	2003

163. **Recommendation**

- i. that the status quo be maintained for the fee covering the Maori Land Court Consultation Forum: Focus Group pending consideration through the process of first regular review.

MAORI LAND COURT RULES COMMITTEE

	Current Remuneration	Maximum Potential	Last Review Movement
Non-public servant members	\$215 per day	\$215 per day	1994

164. **Recommendation**

- i. that the status quo be maintained for the fee covering the Maori Land Court Rules Committee pending consideration through the process of first regular review.

MOTOR VEHICLE DISPUTES TRIBUNAL

	Current Remuneration	Maximum Potential	Last Review Movement
Assessors	\$370 per day	\$460 per day	2003

165. The issues identified by assessors (who are commonly highly qualified mechanics) are:
- i. the current fee of \$370 per day has not changed since 1998
 - ii. reimbursement for expenses (mileage) and clarification around conditions.
166. **Recommendation**
- i. that the fee of \$370 per day payable to assessors of the Motor Vehicle Disputes Tribunal remain pending further consideration during the first regular review.

SOCIAL SECURITY APPEAL AUTHORITY

	Current Remuneration	Maximum Potential	Last Review Movement
Chair	\$600 per day	\$730 per day	1997 (effective 1.2.98)
Deputy Chair	\$600 per day	\$730 per day	
Members	\$370 per day	\$460 per day	1997 (effective 1.2.98)

167. Input from the Social Security Appeal Authority revealed concerns:
- i. about the level of current remuneration in relation to the complexity of the work
 - ii. the time since the last review
 - iii. the fee paid in relation to a requirement to frequently work beyond eight hours
 - iv. that certain favourable conditions seen to apply to salaried personnel do not apply to Authority members and that should be reflected in the fee.
168. The reviewer considers the Authority is appropriately classified under the Fees Framework although there is a suggestion that coverage be with the Remuneration Authority.
169. There is room to adjust the fees within the current maxima and it is considered there is justification for doing so. The volume of work means it would be difficult for the Chair to undertake private (and more remunerative) legal work. If any Chair were to do so it could affect the efficiency of the Authority.

170. **Recommendations**

- i. increase the fee payable to the Chair of the Social Security Appeal Authority from \$600 per day to \$700 per day from 1 January 2005, and
- ii. from \$700 per day to \$730 per day from 1 July 2005
- iii. maintain the fee payable to the Deputy Chair (currently vacant) at \$600 per day until the first regular fee review
- iv. increase the fee payable to members from \$370 per day to \$400 per day on 1 January 2005, and
- v. from \$400 to \$460 per day on 1 July 2005.

STUDENT ALLOWANCE APPEAL AUTHORITY

	Current Remuneration	Maximum Potential	Last Review Movement
Chair	\$430 per day	\$555 per day	2003

171. **Recommendation**

- i. that the status quo be maintained for the fee covering the Student Allowance Appeal Authority pending consideration through the process of the first regular review.

TAXATION REVIEW AUTHORITY

	Current Remuneration	Maximum Potential	Last Review Movement
Chair	\$600 per day	\$730 per day	1997 (effective 1.2.98)

172. Particulars identified for this group were consistency and alignment with other like groups and allowances and related provisions

173. **Recommendation**

- i. increase the fee payable to the Chair of the Taxation Review Authority, (to equal the adjustment recommended to that for the position of Chair of the Social Security Appeal Authority), from \$600 per day to \$700 per day from 1 January 2005, and
- ii. from \$700 per day to \$730 per day from 1 July 2005
- iii. consider the appropriateness of allowances and related provisions as part of the review currently being undertaken by the Special Jurisdictions Group.

	Current Remuneration	Maximum Potential	Last Review Movement
Tenancy Adjudicators	\$350 per day	\$350 per day	2003 (effective 1.7.04)

174. Under the Cabinet Fees Framework, Tenancy Tribunal Adjudicators currently fall within the definition of Members of Lower Rate Tribunals for which the upper limit is a fee of \$350 per day. As stated earlier, the reviewer has concluded that a reclassification is justified (by a fine margin).
175. In 2002 a Department for Courts commissioned independent review undertaken by Huria Anders recommended a 35% increase in the fees payable to \$420 (and the same to be applied to Disputes Tribunal referees). This resulted in a request from the Department for an exception to above the top level of the Fees Framework. The request was declined and the fee was set at \$350 per day.
176. At the time both the State Services Commission and Treasury considered there was insufficient evidence to support a case for increased fees based on the “exceptional criteria” of the Framework. The recruitment and retention difficulties that were cited were not regarded as “significant”
177. The Tenancy Adjudicators provided a significant level of input to the reviewer and expressed a uniform view summarised as follows:
- i. Tenancy Adjudicators’ experience over the last 15 years is that the current arrangements in relation to the process, determination and the level of their sitting fees has been unsatisfactory to the point of being dysfunctional.*
 - ii. The firm and universal opinion of Adjudicators is that the Cabinet Fees Framework for Members of Statutory and other Bodies appointed by the Crown has in the past provided an unacceptable and inappropriate process. In addition it has failed to set appropriate levels for Tenancy Adjudicator sitting fees. The responsibility for reviewing and setting Tribunal member remuneration rates should be transferred to the Remuneration Authority or some similar body in line with current arrangements for the Principal Tenancy Adjudicator.*
 - iii. If the process for setting Tenancy Adjudicator fees is to remain within the Fees Framework for Members of Statutory and other Bodies then the process needs updating. In addition it is the strong submission of Adjudicators that the Tenancy Tribunal should be reclassified as a higher-level Tribunal.*
 - iv. The result of the unsatisfactory nature of the current arrangements in relation to the process, determination and level of Adjudicators’ fees has resulted in major recruitment problems, retention issues in some significant areas and a reduction in goodwill, and drop in morale of existing Adjudicators.*

178. As noted earlier in this report, there are significant similarities in the requirements for, and responsibilities exercised by, Tenancy Adjudicators and Disputes Referees.
179. Section 67(5) of the Residential Tenancies Act 1986 requires that to become an Adjudicator a person must either have the required qualification, or be otherwise capable by reason of “special knowledge or experience of performing and exercising the duties, functions and powers of a Tenancy Adjudicator”. A required qualification is determined to be a practicing certificate as a barrister or solicitor.
180. There are currently 34 Tenancy Adjudicators, in addition to the Principal Tenancy Adjudicator (whose fees are governed by the Remuneration Authority).
181. Of the 34 Adjudicators, 14 currently have the required qualification, i.e.; a practising certificate and a further 7 have law degrees. All Adjudicators have a tertiary qualification.
182. There are currently 8 Tenancy Adjudicators who are also Disputes Referees.
183. Just over half of the current Adjudicators derive either their sole income from their work as Tenancy Adjudicators (and Disputes Referees, or a contribution of Tenancy and Disputes work) or that work is their primary source of income.
184. The Tenancy Tribunal has the power to make decisions. In all cases they must make written decisions together with written reasons. Their orders are enforceable in the same way as District Court orders.
185. The work of the Tenancy Tribunal is having an increasingly high visibility in the public eye and their decisions are frequently open to scrutiny. There is currently a proposal, which has been endorsed by the Minister of Housing, to have all Tenancy Tribunal decisions available online to be searched by members of the public.
186. Tribunal hearings are public hearings with the parties appearing in person.
187. Adjudicators generally sit on their own, i.e.; as an individual rather than as a panel. There are occasions however, in test cases, or where there are jurisdictional issues where two Adjudicators sit together.
188. Tribunal hearings are open hearings and proceeds are recorded. To that extent at least, the Tenancy Tribunal is a Court of record.
189. The Tenancy Tribunal currently deals with approximately 20,000 applications per year heard over between 2,500-3,000 sitting days.

190. The workload of Tenancy Adjudicators has increased significantly since the early 1990's. Not only have the number of cases increased, but cases coming to hearings are increasing in complexity and variety of issues involved.
191. The terms of appointment of 24 Adjudicators come up for renewal from March-May 2006. Current indications are that a number of these, (and, arguably, many of the most suitable), may not seek reappointment unless there is improvement in both remuneration rates and the review process.
192. **Recommendations**
- i. that the Tenancy Tribunal be reclassified from a Lower Rate Tribunal to a Higher Rate Tribunal
 - ii. that the fee payable to Adjudicators be increased from \$350 per day to \$400 per day from 1 January 2005 and to \$460 per day from 1 July 2005

TAIAPURE – MAORI FISHERIES TRIBUNAL

	Current Remuneration	Maximum Potential	Last Review Movement
Non-govt assessors	\$405 per day	\$490 per day	2003

193. **Recommendation**
- i. that the status quo be maintained for the fee covering the Taiapure – Maori Fisheries Tribunal pending consideration through the process of the first regular review.

TRANS-TASMAN OCCUPATIONS TRIBUNAL

	Current Remuneration	Maximum Potential	Last Review Movement
Chair	\$600 per day	\$730 per day	2003
Members	\$370 per day	\$460 per day	1997 (effective 1.2.98)

194. **Recommendation**
- i. that the status quo be maintained for the fee covering the Trans-Tasman Occupations Tribunal pending consideration through the process of the first regular review.

OTHER AREAS FOR ATTENTION/OF CONCERN IDENTIFIED BY THOSE COVERED BY THE REVIEW

195. In the course of this review material was conveyed by judicial and statutory officers, outside the ambit of the review but relevant to related work being carried out by the Ministry of Justice. These spanned requests for clarity/consistency around the definition of a day to requests for an adjustment to a lunch allowance (from \$5.00 per day).
196. As appropriate, this information will be passed on to the Ministry to inform its current work in these areas.

ACKNOWLEDGEMENTS

197. Sincere thanks are recorded to all those who informed and assisted this review:

- the judicial and statutory officers who responded so fully to the request for input and to their senior colleagues
- the staff of the Special Jurisdictions Group who provided ready access to information from a variety of sources, and provided administrative assistance, and who fully respected the nature of an independent review
- staff from other parts of the Ministry of Justice, and from the State Services Commission, for their thoughtful comments.

ANNEX 1: INPUT RECEIVED

Individual and/or group input was received from judicial and statutory officers in the following agencies:

1. Abortion Supervisory Committee
2. Accident Compensation Appeals Authority
3. Copyright Tribunal
4. Coroners
5. Deportation Review Tribunal
6. Disputes Tribunal
7. Environment Court
8. Human Rights Review Tribunal
9. Land Valuation Tribunal
10. Lay Members of District and New Zealand Law Practitioners Disciplinary Tribunal
11. Lay Observers: District Law Societies
12. Liquor Licensing Authority
13. Motor Vehicle Disputes Tribunal
14. Social Security Appeal Authority
15. Tenancy Tribunal

ANNEX 2: DETAILS OF CURRENT FEE ARRANGEMENTS

REMUNERATION REVIEW: DETAILS AND REMUNERATION ARRANGEMENTS December 2004

Name and Description of Judicial or Statutory Body (including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
ABORTION SUPERVISORY COMMITTEE (Group 4 committee, level 1) Section 10, Contraception, Sterilisation, and Abortion Act 1977 remiss Responsible for keeping under review abortion law and practice in New Zealand, and licensing both institutions for the performance of abortions and medical practitioners as certifying consultants to consider cases for abortion. Minister of Justice (Parliament) Consists of three members including a Chair: two of whom must be registered medical practitioners. Annual budget: \$3,700,000.00	10	Chair - \$31,200 per annum (Annualised daily fee)	\$730 per day	1	1999 (effective 1/1/2000)	Cabinet Fees Framework Vote: Courts	All appointments have expired. "Carry-on" provision applies.
		Members - \$370 per day [also applies in sub-committee]	\$460 per day	2	1997 (effective 1/2/1998)	(Operational) Cabinet Fees Framework Vote: Courts (Operational)	Technical Committees: Counselling Advisors (2 persons) Guidelines for Medical Abortion (3 persons) Reducing Unintended Pregnancies (0 persons, yet to commence)
		Certifying Consultants - per consultation - \$87.50 (face-to-face); \$35.00 (by phone)	\$93.75 face-to-face \$37.50 by phone	201	1988	Cabinet Fees Framework Vote: Courts (Crown Other)	High level of expertise (GP or O&G specialists) Recruitment Retention Potential risk to reputation and person

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>ACCIDENT COMPENSATION APPEALS AUTHORITY (Higher Rate Tribunal) Section 103, Accident Compensation Act 1982 (repealed)</p> <p>Deals with residual appeals from the decisions of the Accident Rehabilitation and Compensation Insurance Corporation, under the Accident Compensation Act 1982 (repealed).</p> <p>Minister of Justice</p> <p>One or more members, who must be barristers and solicitors of the High Court with no less than seven years' practice.</p> <p>Annual budget: \$6,000.00</p>	4	Authority (Chair) – \$600 per day.	\$730 per day	1	1997 (effective 1/2/1998)	Cabinet Fees Framework Vote: Courts (Operational)	
<p>COPYRIGHT TRIBUNAL (Higher Rate Tribunal) Section 205, Copyright Act 1994</p> <p>Deals with disputes about licences allowing the copying, performing and broadcasting of works.</p> <p>Minister of Commerce</p> <p>Three members, one of whom must be a barrister or solicitor of the High Court of not less than seven years' practice.</p> <p>Annual budget: \$7,400.00</p>	0	Chair - \$600 per day Members - \$370 per day	\$730 per day \$460 per day	1 (currently salaried DCJ) 2	2003 1997 (effective – 1/2/1998)	Cabinet Fees Framework Vote: Courts (Operational) Cabinet Fees Framework Vote: Courts (Operational)	The Copyright Tribunal did not sit in the year to June 2004 due to vacancies.

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>CORONERS</p> <p>Coroners Act 1988</p> <p>A Coroner is a judicial officer who can investigate the cause of death where the death appears to have been violent, unnatural, without known cause, a suicide, or appears to have occurred while the deceased was in the custody of the state. Coroners can order post-mortem examinations and hold inquests. They have the powers of District Court Judges, including the power to summon witnesses.</p> <p>Minister of Justice</p> <p>Annual budget: \$1,200,000.00</p>		<p>Salaried Coroners - \$150,000 pa</p> <p>-----</p> <p>Other Coroners - schedule of fees per activity - as specified in Coroners (Fees) Regulations 1992</p>	<p>Fees specified in Coroners (Fees) Regulations 1992</p>	<p>2</p> <p>-----</p> <p>58</p>	<p>2001</p> <p>-----</p> <p>1997</p>	<p>Minister of Justice and Minister of Finance – Coroners Regulations 1989</p> <p>-----</p> <p>Vote: Courts (Crown Other)</p> <p>Minister of Justice and Minister of Finance – Coroners (Fees) Regulations 1982</p> <p>-----</p> <p>Vote: Courts (Crown Other)</p>	<p>A new Coroners Bill is before Parliament. The Bill sets out a new coronial system.</p> <p>-----</p> <p>Key features of the bill include establishing a chief coroner to provide leadership and support to coroners, and moving to a smaller number of mostly full-time, legally qualified coroners.</p>
<p>CRIMINAL JUSTICE REIMBURSEMENT ASSESSOR</p> <p>(Higher Rate Tribunal)</p> <p>No legislative authority.</p> <p>Considers applications for compensation for any material loss caused by victimisation as a consequence of assisting in the administration of Justice.</p> <p>Minister of Justice</p> <p>Annual budget: \$2,000.00</p>	0	Assessor - \$600 per day	\$730 per day	1 (currently DCJ)	1997 (effective 1/2/1998)	<p>Cabinet Fees Framework (but no statutory basis for this)</p> <p>-----</p> <p>Vote: Courts (Operational)</p>	

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>CUSTOMS APPEAL AUTHORITY (Higher Rate Tribunal) Section 244, Customs and Excise Act 1996</p> <p>Determines appeals under the Customs and Excise Act 1996 or any other Act against assessments, decisions, rulings, determinations and directions of the Comptroller of Customs.</p> <p>Comprised of a DCJ or barrister or solicitor of not less than seven years practice.</p> <p>Minister of Customs [check]</p> <p>Annual budget: \$12,000.00</p>	5	Authority (Chair) – \$600 per day	\$730 per day	1	1997 (effective 1/2/1998)	Cabinet Fees Framework Vote: Courts (Operational)	
<p>DEPORTATION REVIEW TRIBUNAL (Higher Rate Tribunal) Section 103, Immigration Act 1987</p> <p>Deals with appeals from people subject to deportation as a result of a conviction or revocation of residence permit.</p> <p>Comprised of three members, one of whom is the Chair who must be a barrister or solicitor of not less than five years' standing.</p> <p>Minister of Justice</p> <p>Annual budget: \$49,012.00</p>	20	Chair – \$600 per day Members – \$370 per day	\$730 per day \$460 per day	1 2	1997 (effective 1/2/1998) 1997 (effective 1/2/1998)	Cabinet Fees Framework Vote: Courts (Operational) Cabinet Fees Framework Vote: Courts (Operational)	One member is on a "carry over" provision.

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>DISPUTES TRIBUNALS (Lower Rate Tribunal) Section 4, Disputes Tribunals Act 1988</p> <p>Disputes Tribunals are not like formal courts as there are no lawyers or Judges. A dispute is heard by a referee who can either determine the dispute or help the parties agree their own solution. Any ruling is binding and will, if necessary, be enforced by the Courts.</p> <p>A person is qualified to be appointed as a referee if they are capable, by reason of their personal attributes, knowledge, and experience, of performing the functions of a referee.</p> <p>Minister for Courts Annual budget: \$2,070,111.00</p>	5,971	Disputes Referees – \$350	\$350 per day	54 (plus the Principal Disputes Referee)	2003 (effective 1/7/2004)	Cabinet Fees Framework Vote: Courts (Operational)	Complexity of functions (commercial issues, and highly acrimonious claims) Recruitment (arguably issues in terms of calibre, legally qualified, and diversity) Retention (arguably potential issues, contingent on outcome of remuneration review)
<p>ENVIRONMENT COURT (equivalent to Higher Rate Tribunal) Resource Management Act 1991</p> <p>The Environment Court is a court of record consisting of Environment Judges and Environment Commissioners delivered at a later date. The Court is not bound by the rules of evidence and the proceedings are often less formal than the general courts. Most of the Court's work involves public interest questions. Because of the gravity and complexity of the subject matter of the proceedings, decisions are usually reserved - meaning that a written judgement is delivered at a later date.</p> <p>To be eligible for appointment as a Commissioner one must have knowledge and experience relevant to matters coming before the Court, i.e. anything resource management related like planning or engineering.</p> <p>Minister for the Environment Annual budget: \$1,314,600.00</p>		Commissioners – \$109,200 or \$81,900 (annualised \$420 daily fee – prorated for some) Deputy Commissioners - \$420 per day	\$119,600 (annualised \$460 daily fee) \$460 per day	14 3	2000	Cabinet Fees Framework Vote: Courts (Operational)	The number of Deputy Commissioners will increase to 6 from 31 Jan 2005.

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>HUMAN RIGHTS REVIEW TRIBUNAL (Higher Rate Tribunal) Section 93, Human Rights Act 1993</p> <p>Decides complaints of discrimination and infringements of human rights under the Human Rights Act, the Health and Disability act 1994 and the Privacy Act 1993.</p> <p>Comprised of three members, one of whom is the Chair who must be a barrister or solicitor of not less than five years' standing.</p> <p>Minister of Justice</p> <p>Annual budget: \$100,000.00 (excl Chair rem)</p>	45	Members - \$370 per day	\$460 per day	15 (plus Chair)	1997 (effective 1/2/98)	Cabinet Fees Framework Vote: Courts (Operational)	
<p>LAND VALUATION TRIBUNALS (Higher Rate Tribunal) Section 19, Land Valuation Proceedings Act 1948</p> <p>Decides on objections to land valuations and claims for compensation under the Public Works Act 1981.</p> <p>DCJ (Chair) and 2 other members (one or both of whom must be Registered Valuers).</p> <p>Minister for Courts</p> <p>Annual budget: \$16,000.00</p>		Members - \$370 per day	\$460 per day	45	1997 (effective 1/2/98)	Cabinet Fees Framework Vote: Courts (Operational)	

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>LAY MEMBERS OF DISTRICT AND NEW ZEALAND LAW PRACTITIONERS DISCIPLINARY TRIBUNAL (Lower Rate Tribunal) Section 103, Law Practitioners Act 1982</p> <p>Lay members sit as members of the District Disciplinary Tribunals and New Zealand Law Practitioners Disciplinary Tribunals. These Tribunals investigate complaints against practitioners and either make an order against the practitioner or (in the case of the District Disciplinary Tribunals) refer the matter to the NZ Law Practitioners Disciplinary Tribunal.</p> <p>2 lay members on each of the District Disciplinary Tribunals (which must have 5-8 members in total). NZ Law Practitioners Disciplinary Tribunal has three lay members out of 5-12 members.</p> <p>Minister of Justice</p> <p>Annual budget: \$15,000,000</p>		\$320 per day	\$350 per day	8	1997 (effective 1/2/1998)	Cabinet Fees Framework Vote: Courts (Operational)	There could/should be more than 8 lay members as this number does not reflect the numbers that one would expect when all the District Law Societies are taken into account.

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>LAY MEMBERS OF MAORI LAND COURT (Higher Rate Tribunal)</p> <p>Section 62, Te Ture Whenua Maori Act 1993</p> <p>Where any case is stated under section 61(1)(b) of Te Ture Whenua Maori Act, for the opinion of the Maori Appellate Court, the <u>Chief Judge</u> may, if any party to the proceeding so requests, direct that for the purpose of the hearing of that case, the Maori Appellate Court shall consist of three Judges of the Maori Land Court and one or two other members (not being <u>Judges</u> of the Maori Land Court) to be appointed by the Chief Judge.</p> <p>Each person appointed under subsection (1)(b) of this section shall possess knowledge and experience of <u>tikanga Maori</u>.</p> <p>Section 30, Te Ture Whenua Maori Act provides that the Maori Land Court may do either of the following things:</p> <p>a) advise other courts, commissions, or tribunals as to who are the most appropriate representatives of a class or group of <u>Maori</u>;</p> <p>b) determine, by <u>order</u>, who are the most appropriate representatives of a class or group of <u>Maori</u>.</p> <p>Minister of Maori Affairs</p> <p>Annual budget: Not budgeted for. Districts are to meet the costs out of their own budgets, presumably through savings in other areas.</p>		Varies	Varies	0	2003	Cabinet Fees Framework Vote: Courts (Crown Operational)	Bearing in mind Section 30, Te Ture Whenua Maori Act 1993, lay members of the MLC are remunerated differently according to which court, commission or tribunal they are associated with. Remunerated on the Fees Framework (but not a comfortable fit)

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>LAY OBSERVERS: DISTRICT LAW SOCIETIES (Lower Rate Tribunal) Section 96, Law Practitioners Act 1982</p> <p>The principal function of a Lay Observer is to examine any written allegation made by or on behalf of a member of the public concerning any District Law Society's treatment of a complaint about the conduct of a law practitioner, or an employee of a practitioner, made to the District Law Society, by or on behalf of the complainant.</p> <p>One or more persons may be appointed as Lay Observers.</p> <p>Minister of Justice</p> <p>Annual budget: \$77,910,000</p>	<p>60 cases 16 cases 30 cases 15 cases 8 cases</p>	<p>\$16, 640 (Auckland) \$10,650 (Napier) \$13,330 (Wellington) \$13,330 (Chch) \$8,250 (Dunedin)</p> <p>(Annualised daily fees pro-rated at \$320 a day on the basis of local workload in year 2000)</p>	<p>\$350 per day</p>	<p>5</p>	<p>2000</p>	<p>Cabinet Fees Framework Vote: Courts (Operational)</p>	<p>The annualised daily fee, set in 2000, does not reflect the current workload of the lay observers and geographic differences in workload.</p> <p>The Lawyers and Conveyancers Bill currently before the House provides for the repeal of the Law Practitioners Act 1982.</p> <p>The bill proposes that the investigation of complaints should be handled by the NZLS, which has to set up one or more Lawyers Standards Committees for that purpose. Each committee must include at least one non-lawyer. Superimposed over the Standards Committees, and funded by the profession, will be a Legal Complaints Review Officer - a non-lawyer who will replace and have considerably wider powers than the present Lay Observers.</p> <p>Complainants and practitioners who are the subject of complaints, will be able to apply to that officer for a review of any "determination, requirement, or order made, or direction given by a Sids Committee."</p>

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>LIQUOR LICENSING AUTHORITY (Higher Rate Tribunal) Section 85, Sale of Liquor Act 1989</p> <p>Determines applications for the grant or variation of on-licences, off-licences and club licences (and renewals of those licences where variation is sought or where they may be opposed). It also determines applications for suspensions and cancellations of licences. The Authority is also an appellate body, able to hear appeals against decisions of District Licensing Agencies.</p> <p>Consists of 3 or 4 persons, of whom 1 must be a District Court Judge and who is the Chair.</p> <p>Minister of Justice</p> <p>Annual budget: \$30,000,000</p>	105	Members – \$96,200 (annualised \$370 daily fee)	\$460 daily fee	1 (plus Chair)	1997 (effective 1/2/1998)	Cabinet Fees Framework Vote: Courts (Crown Other)	The Sale of Liquor Act 1989 provides for at least one further member of the Liquor Licensing Authority.
<p>MAORI LAND COURT CONSULTATIVE COMMITTEE (Group 4 body, level 3)</p> <p>The MLCCC is considered a judicial committee or body, that is led by the Chief Judge. The Chief Judge selects key people from key organisations to consider issues and to initiate projects relating to Māori land and the Māori Land Court. Generally the MLCCC consists of Land information people and MLC people. The MLCCC attempts to meet every 6 months. Present members contain LINZ, MLC and non-government members.</p> <p>Annual budget: Not budgeted for as members to date have all been public servants – who do not receive fees.</p>	2 meetings	Non-public servant members - \$250 per day	\$295 per day	11	2003	Cabinet Fees Framework Vote: Courts (Crown Operational)	

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>MAORI LAND COURT CONSULTATION FORUM: FOCUS GROUP (Group 4 body, level 4)</p> <p>The consultation forum: focus group consists of members who are nominated and elected by the members of the MLC consultation forum.</p> <p>Annual budget: \$103,866</p>	4 meetings	<p>Non-public servant Focus Group members - \$215 per day</p> <p>-----</p> <p>Non-public servant Focus Group Chair - \$250 per day</p>	<p>\$215 per day</p> <p>-----</p> <p>\$290 per day</p>	15 (all non-public servant)	2003	<p>Cabinet Fees Framework</p> <p>Vote: Courts (Crown Operational)</p>	<p>It is understood that the practice is for a rotating Chair, whereby a different member chairs each meeting.</p>
<p>MAORI LAND COURT RULES COMMITTEE (Group 4 committee, level 4)</p> <p>Section 92, Te Ture Whenua Maori Act 1993</p> <p>Annual budget: \$12,960</p>		<p>Non-public servant members - \$215 per day</p>	\$215 per day	Varies but usually 8-9	1994	<p>Cabinet Fees Framework</p> <p>Vote: Courts (Crown Operational)</p>	
<p>MOTOR VEHICLE DISPUTES TRIBUNAL (Higher Rate Tribunal)</p> <p>Section 82, Motor Vehicle Sales Act 2003</p> <p>There are four Motor Vehicle Disputes Tribunals: two based in Auckland, one in Wellington and another in Christchurch. They decide disputes arising under the Motor Vehicle Sales Act, the Sale of Goods Act 1908, and the Consumer Guarantees Act 1993.</p> <p>Each Tribunal consists of an adjudicator who is the Chair and who must be a barrister or solicitor of not less than five years' standing, and an assessor (generally a mechanic, appointed by the Ministry of Consumer Affairs).</p> <p>Minister for Courts</p> <p>Annual budget: \$306,000.00</p>	128	Assessors - \$370 per day	\$460 per day	5	2003	<p>Cabinet Fees Framework</p> <p>Vote: Courts (Operational)</p>	<p>No fees classification exercise has been undertaken for the Assessor positions. Rather the fees are based on those paid to comparable officers and, more significantly, are as per the fee paid to members of the preceding Motor Vehicle Disputes Tribunal</p>

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>SOCIAL SECURITY APPEAL AUTHORITY (Higher Rate Tribunal) Section 12A, Social Security Act 1964 Decides appeals on welfare benefits, debt recovery, and related matters. Consists of three persons appointed by the Governor-General on the recommendations of the Minister of Social Welfare after consultation with the Minister of Justice, of whom one member is appointed Chairperson. Minister of Social Development and Minister of Justice Annual budget: \$160,000.00</p>	41	Chair – \$600 per day Deputy Chair - \$600 per day Members – \$370 per day	\$730 per day \$880 per day \$460 per day	1 1 (vacant) 2	1997 (effective 1/2/1998) 1997 (effective 1/2/1998)	Cabinet Fees Framework Vote: Courts (Operational) Cabinet Fees Framework Vote: Courts (Operational)	In practice one would have to be legally qualified to chair this Tribunal
<p>STUDENT ALLOWANCE APPEAL AUTHORITY (Lower Rate Tribunal) Section 304(2) Education Act 1989 Hears and determines appeals against decisions of the Director-General of Education relating to bursaries, grants and hardship awards. Comprises one member appointed by the Minister of Education. Minister of Education and Minister of Justice Annual budget: \$12,000.00</p>	10	Chair – \$430 per day	\$555 per day	1	2003	Cabinet Fees Framework Vote: Courts (Operational)	

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>TAXATION REVIEW AUTHORITIES (Higher Rate Tribunal) Section 5, Taxation Review Authorities Act</p> <p>Sit as judicial authorities to determine objections to assessments of tax or duty, or decisions or determinations of the Commissioner of Inland Revenue.</p> <p>Taxation Review Authorities are one-member Authorities who may be District Court Judges or barristers and solicitors of not less than seven years' practice.</p> <p>Minister for Courts</p> <p>Annual budget: \$15,500,000</p>	78	Chair – \$600 per day	\$730 per day	2	1997 (effective 1/2/1998)	Cabinet Fees Framework Vote: Courts (Operational)	Taxation Review Authorities have concurrent jurisdiction with the High Court but sit as one person Tribunals

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>TALAPURE - MAORI FISHERIES TRIBUNALS (Group 1, Commission of Inquiry)</p> <p>Talapure are established under the Fisheries Act 1983, amended by the Maori Fisheries Act 1989. The intention of the MFA 1989 is to set aside estuarine or shoreline coastal fishing areas which have customarily been of special significance to any iwi or hapu as a source of food or for any spiritual or cultural reasons. Following the approval of the proposed Talapure, the area is declared Talapure and local Maori recommend persons for the Management Committee (Talapure Tribunal) who in turn recommend to the Minister of Fisheries regulations for the conservation and use of the Talapure area.</p> <p>Each Talapure Tribunal consists of the Chief Judge of the Maori Land Court, and 1 or more assessors who are appointed by the Chief Judge.</p> <p>Minister of Maori Affairs</p> <p>Annual budget: Not budgeted for. Districts are to meet the costs out of their own budgets, presumably through savings in other areas.</p>	5	Non-govt Assessors - \$405 per day	\$490 per day	4 (2 non-public servants)	2003	Cabinet Fees Framework Vote: Courts (Crown Operational)	There is presently only one active Talapure, which has 4 members.

Name and Description of Judicial or Statutory Body (Including the classification of the body under the Cabinet Fees Framework, the constituting legislation, jurisdiction, and responsible Minister(s))	Number of sitting days Year to 30 June 2004	Current remuneration	Maximum remuneration	Number of officers	Date of last rem review / change	Fixing and Funding of remuneration	Comments
<p>TENANCY TRIBUNAL (Lower Rate Tribunal)</p> <p>Section 67, Residential Tenancies Act 1986.</p> <p>Decides disputes arising between landlords and tenants under the RTA.</p> <p>One member Tribunal. The Principal Land Deputy] Tenancy Adjudicator must be barristers and solicitors of not less than five years' practice or equivalent. Tenancy Adjudicators must be capable by reason of special knowledge or experience of performing and exercising the duties, functions, and powers of a Tenancy Adjudicator.</p> <p>Minister of Housing and Minister of Justice</p> <p>Annual budget: \$1,068,935.00</p>	2,836	Tenancy Adjudicators ² – \$350 per day	\$350 per day	34 plus PDR	2003 (effective 1/7/2004)	Cabinet Fees Framework Vote: Courts (Operational)	Expertise (must have practising certificate or suitable expertise) Recruitment (issues in terms of attracting a diverse range of persons (nationwide) and, in rural areas, persons with practising certificates) Retention (potential issues, contingent upon outcome of remuneration review) Public eye (increasingly) Fee sometimes insufficient to cover own practice overheads
<p>TRANS-TASMAN OCCUPATIONS TRIBUNAL (Higher Rate Tribunal)</p> <p>Section 41, Trans-Tasman Mutual Recognition Act 1997.</p> <p>Reviews decisions about the registration in New Zealand of equivalent occupations in Australia.</p> <p>Consists of a chair, who must be a barrister and solicitor of not less than seven years practice or a District Court Judge, who sits with two other individuals appointed from a panel of not more than 15 individuals maintained by the Minister of Justice or one member from the panel and a member of the Australian Tribunal.</p> <p>Minister of Justice</p> <p>Annual budget: \$4,000,000</p>		Chair - \$600 per day Members – \$370 per day	\$730 per day \$460 per day	1 (currently salaried DCJ) 9	2003 1997 (effective 1/2/1998)	Cabinet Fees Framework Vote: Courts (Operational) Cabinet Fees Framework Vote: Courts (Operational)	All positions are currently vacant pending Ministry steps towards appointment.

² Tenancy Adjudicators with office overheads (primarily lawyers) receive a further allowance of \$104.00 per day.

ANNEX 3: SCALE OF CROWN SOLICITORS FEES

The Solicitor-General has, pursuant to Regulations 4 and 6 of the Crown Solicitors Regulations 1994, fixed the following as the fees payable under the Crown Solicitors Regulations. (NB: The rates and fees came into effect on 1 July and are GST exclusive)

		Hourly Rate	Fee
<u>Regulation 15(2)(c)</u>	(no other appropriate fee – per hour)		
Senior		\$188	
Intermediate	(80% of senior hourly rate)	\$150	
Junior	(65% of senior hourly rate)	\$122	
<u>Regulation 17</u>	(instructing of agent – flat fee)		
Senior			\$188
Intermediate			\$150
Junior			\$122
<u>Regulation 19</u>	(travelling time – per hour)		
Senior	(66% of senior hourly rate)	\$124	
Intermediate	(53% of senior hourly rate)	\$100	
Junior	(43% of senior hourly rate)	\$81	
<u>Regulation 20</u>	(preparation – per hour)		
Senior		\$188	
Intermediate		\$150	
Junior		\$122	
<u>Regulation 21(1)</u>	(appearance fee per half day)		
Senior	(4 x senior hourly rate)		\$752
Intermediate	(4 x 80% senior hourly rate)		\$602
Junior	(4 x 65% senior hourly rate)		\$489
<u>Regulation 21(2)</u>	(interlocutory matters etc – per hour)		
Senior		\$188	
Intermediate		\$150	
Junior		\$122	
<u>Regulation 22</u>	(sentence appeals to High Court – flat fee)		
Offender Appeal	(150% of senior hourly rate)		\$282
Crown Appeal	(300% of senior hourly rate)		\$564
<u>Regulation 23</u>	(instruction of other counsel – flat fee)		
Senior	(150% of senior hourly rate)		\$282
Intermediate	(120% of senior hourly rate)		\$226
Junior	(97.5% of senior hourly rate)		\$183
<u>Regulation 24</u>	(arranging fixtures, attending callovers – per hour)		
Senior		\$188	
Intermediate		\$150	
Junior		\$122	