



Report of the

REGISTRAR OF THE ENVIRONMENT COURT

For the 12 months
ended 30 June 2006

*Presented to the House of Representatives pursuant to section
264(1) of the Resource Management Act 1991*

CONTENTS

	Page
INTRODUCTION	3
1. PROFILE OF THE ENVIRONMENT COURT	4
1.1 Judges and Commissioners	4
1.2 Senior Administrative Staff	5
1.3 Judicial Appointment	5
1.4 Environment Commissioners Appointment	5
2. ADMINISTRATION OF THE ENVIRONMENT COURT	5
2.1 The Court's Jurisdiction	5
2.2 Legislative Change	6
2.3 Review of Civil (Environment) Court Fees	7
2.4 Consolidated Practice Note	8
2.5 Media Guidelines	8
2.6 Alternative Dispute Resolution	8
3. WORKLOAD OF THE ENVIRONMENT COURT	9
4. RESOURCES	9
4.1 Maintaining the Productivity of the Environment Court	9
4.2 Case Management System	9
4.3 Evidence Recording and Transcription	10
4.4 Review of Environment Commissioner Fees	10
4.5 Court Expenditure and Revenue	11

4.5. Court Expenditure and Revenue

Expenditure and revenue of the Court during the 2005/06 financial year and in the previous year was:

Expenditure	2005/2006	2004/2005
	\$	\$
Judges' salaries and allowances	1,789,560	1,711,301
Commissioners' fees and salaries	1,608,237	1,376,642
Staff salaries and wages	1,494,925	1,599,808
Judges' and Commissioners' travel costs	666,157	732,428
Evidence Recording and Transcription	757,595	706,300
Staff travel costs	88,019	72,960
Staff and Commissioner training	105,973	98,914
Hireage of venues for sittings and mediations	92,221	71,231
Telephone, postage and courier costs	145,931	151,273
Stores and stationery	39,810	61,152
Textbooks and periodicals	18,992	61,909
Maintenance of buildings, furniture and equipment	161,030	158,714
Utilities (power and rates)	88,812	104,180
Miscellaneous overheads	857	5,374
	7,058,119	6,912,186
Revenue		
	\$	\$
Sale of copies of Court decisions	6,756	9,638
Appeal and application lodgement fees	42,699	52,340
	49,455	61,978

Upon joining CMS, the Court needed to alter its existing case numbering system so as to achieve compatibility with the pre-existing CMS numbering conventions. The advent of the new database, offered an opportunity to review the Court's method of allocation of case reference numbers.

Many who are familiar with the Court's operation will be aware that it is common to have a number of issues or topics within one appeal or application that may require separate case management and resolution. This is particularly the case for plan appeals. Being able to provide a unique case topic identifier is expected to assist the Court and parties when managing multiple topics within an appeal or groups of appeals. Consequently, when an appeal or application is filed, in addition to the lodgement or file number assigned, the Court will allocate a topic or topic numbers as well.

4.3 Evidence Recording and Transcription

In last May's budget, an initiative was announced to enable continuation with the Evidence Recording and Transcription (ERT) services in the Environment Court. Electronic evidence recording and transcription (particularly for the more complex and lengthy cases), has the potential to reduce hearing and decision writing time. This reduces costs to the Court and to Court users.

4.4 Review of Environment Commissioner Fees

Following a review of the level of remuneration payable to Environment Commissioners and Deputy Environment Commissioners (and other Judicial and Statutory Officers to whom the Ministry of Justice provides administrative support), in the 2006 Budget the Minister of Finance also announced funding to support fee increases and future regular reviews of the level of remuneration payable to Commissioners of the Court. These changes took effect from 1 July 2005.

The Executive Team of the Ministry of Justice has also approved the establishment of a formal procedure for regular, future reviews. These reviews will take place every two years, following on from the two-yearly review of the Cabinet Fees Framework by the State Services Commission. The first of these reviews is scheduled for 2006 (between about August and October). Any increases approved as a result of that review would have effect from 1 July 2007.

The Ministry is continuing to progress work on the option of transferring responsibility for the setting of fees from the Cabinet Fees Framework to the Remuneration Authority with regard to the Environment Commissioners.

INTRODUCTION

The Honourable Minister for Courts

Minister,

I have the honour to forward in terms of section 264(1) of the Resource Management Act 1991, my report on the administration, workload and resources of the Environment Court, for the twelve months ended 30 June 2006.

Yours faithfully,



Harry Johnson, Acting Registrar, Environment Court

1. PROFILE OF THE ENVIRONMENT COURT

1.1 Judges and Commissioners

Principal Environment Judge

RJ Bollard

Environment Judges

JR Jackson
SE Kenderdine
LJ Newhook
JA Smith
CJ Thompson
RG Whiting

Residence

Auckland

Christchurch
Wellington
Auckland
Christchurch
Wellington
Auckland

Alternate Environment Judges

JP Doogue (appointed Associate High Court Judge 30/11/2005)
FWM McElrea
DFG Sheppard

Auckland
Auckland
Auckland

Environment Commissioners

PA Catchpole
RM Dunlop
KA Edmonds
WR Howie (reappointed with effect from 28/06/2006)
CE Manning (reappointed with effect from 28/06/2006)
HA McConachy (reappointed with effect from 28/06/2006)
Dr DH Menzies (reappointed with effect from 28/06/2006)
JR Mills
MP Oliver
K Prime
JD Rowan
Dr ID Stewart
Dr AJ Sutherland
SA Watson

New Plymouth
Auckland
Wellington
Wellington
Christchurch
Auckland
Christchurch
Wellington
Auckland
Bay of Islands
Wellington
Auckland
Christchurch
Christchurch

Deputy Environment Commissioners

OM Borlase
Dr TW Fookes
Dr B Gollop
R Grigg

Dunedin
Auckland
Whangarei
Christchurch

In the last 12 months, the Court has undertaken mediation in some 544 cases. Often cases required multiple mediation events to progress issues and topics within individual and related appeals. Of those that have completed the mediation process, 196 cases have settled (with a consent order between the parties), 35 cases have been withdrawn and 123 have at the very least settled in part.

From April 2006, the Environment Court commenced managing mediation cases on the Ministry's Case Management System (CMS) (details of which are recorded in item 4.2 below). Use of the CMS database will improve future reporting of the use of court-annexed mediation.

3. WORKLOAD OF THE ENVIRONMENT COURT

During the year 913 matters were filed with the Court. The number of cases disposed was 1158 and the number of cases pending resolution stands at 1374. This figure represents the lowest number of cases outstanding since the end of June 1995 reporting year.

	Jul-05	Aug-05	Sep-05	Oct-05	Nov-05	Dec-05	Jan-06	Feb-06	Mar-06	Apr-06	May-06	Jun-06
Filed	97	66	86	75	71	78	80	68	52	65	84	91
Determined	103	114	128	117	80	97	45	87	58	91	105	133
Caseload	1613	1555	1523	1481	1472	1453	1488	1469	1463	1437	1416	1374

4. RESOURCES

4.1 Maintaining the Productivity of the Environment Court

The success in continuing the reduction in matters outstanding has been assisted by the case management improvements developed and implemented over the last few years. Building on the implementation of a new case management system incorporating case tracks in April 2004 (Practice Note [2004] NZRMA 237 referred to above), the Environment Court commenced managing cases on the Ministry's CMS database on 10 April 2006.

4.2 Case Management System (CMS)

CMS allows:

- access to on-line case information through the Ministry's IT network in courtrooms, at public counters, in chambers and within each Court registry;
- automated scheduling of case events;
- automated document production;
- tracking of cases and alerting of staff to key upcoming events;
- improved reporting of management information.

In order to validate the findings of the Working Party, the Special Jurisdictions Business Unit is currently assessing the robustness of the process and modelling used to evaluate the fees as promulgated against the objective of a 25% cost recovery in the Environment Court. This Review will also consider the effect of the fee waiver provision that enables the Registrar to waive, reduce or postpone the payment of Court fees if the person responsible for paying the fee is unable to pay or, where, in the case of proceedings concerning a matter of public interest (degrees of which may exist in a high number of Environment Court matters), the proceedings are unlikely to be commenced or continued if the powers are not exercised.

2.4 Consolidated Practice Note

Over the last three years the Court, in consultation with court users, has developed a new case management system supported by the “Case Management in the Environment Court” Practice Note introduced in April 2004 ([2004] NZRMA 237). In March 2005, the Principal Environment Judge announced additional changes to the Environment Court’s practice with the introduction of a further Practice Note. The Practice Note comprises three main parts - alternative dispute resolution (ADR) (with particular attention directed to mediation); expert witnesses; and a consolidating amendment to the Case Management Practice Note referred to above. (Refer [2005] NZRMA 193). The Practice Note also introduced a Code of Conduct for expert witnesses.

In June this year, the Principal Judge released a consolidated Practice Note (to take effect from 31 July 2006). It amends and adds to previous Practice Notes, and will act as a consolidated guide to the practice of the Court.

2.5 Media Guidelines

With effect from 1 November 2005, the Principal Environment Judge announced the release of the Environment Court’s Guidelines for Expanded Media Coverage of Court Proceedings. The guidelines build upon the District and High Court media guidelines. They were introduced after consultation with the New Zealand Law Society’s Environmental Law Committee. These guidelines are intended to ensure that applications for in-court media coverage are dealt with expeditiously and fairly and that so far as possible like cases are treated alike.

2.6 Alternative Dispute Resolution

Where appropriate, the Court is increasingly referring matters to court-annexed mediation as means of resolving issues between the parties without the need to go to a court hearing.

During 2005/06 there have been a large number of mediations undertaken on a wide range of matters before the Court. A number of plans (including land, air and water, and air quality) as well as major energy related cases such as proposed wind farms and thermal energy stations, have been subject to court-annexed mediation.

1.2 Administrative Staff

Registrar

Harry Johnson (Acting from 21 March 2005)

Deputy Registrars

Harry Johnson	Auckland
Rachell Whitty	Wellington
Michael Tinkler	Christchurch

Judicial Resources Manager

Tracey Chapman	Wellington
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1.3 Judicial Appointment

Judge JP Doogue was appointed an Associate Judge of the High Court on 30 November 2005 and therefore relinquished his appointment as an Alternate Environment Judge.

1.4 Environment Commissioners Appointment

Environment Commissioners WR Howie, CE Manning, HA McConachy and Dr DH Menzies having served only one term were all reappointed for a further five year term with effect from 28 June 2006.

2. ADMINISTRATION OF THE ENVIRONMENT COURT

2.1 The Court’s Jurisdiction

The Environment Court is established by section 247 of the Resource Management Act 1991 (the Act), as a Court of Record. It is a specialist Court that has jurisdiction over environmental and resource management matters. It can be characterised as follows:

- a Judge usually presides at sittings to hear and determine proceedings;
- it is required by law to act judicially;
- it hears contesting parties to the proceedings before it and gives a determination which is binding upon them.

The Court’s functions are to determine, among other things, appeals in respect of resource consents, designations and abatement notices, plan appeals¹ in respect of

¹ Formerly known as “references” but amended by the Resource Management Amendment Act 2003.

regional and district planning instruments, applications for enforcement orders, and inquiries in respect of water conservation orders. The Court may also make declarations about the application and interpretation of resource management law. Judges are not eligible to be appointed unless they are, or are eligible to be, District Court Judges. Judges of the Environment Court therefore also hold warrants as District Court Judges, and from time to time sit in the District Court to hear prosecutions laid summarily under the Resource Management Act.

For matters heard in the Environment Court, a quorum for the Court is one Environment Judge and one Commissioner, but the Court is most often constituted with one Environment Judge and two Commissioners. The Act also provides for Judge or Commissioner alone sittings. As required under the Act, hearings are conducted at a place as near to the locality of the subject matter to which the proceedings relate, as the Court considers convenient.

During the year the Environment Court Unit of the Special Jurisdictions Group of the Ministry has maintained the Court's registries in Wellington, Auckland and Christchurch. The Unit's staff supported by the Special Jurisdiction's National Office management group, provided administrative, case management, hearing management, word processing, records services, and legal research support to the Court.

2.2 Legislative Change

On 9 August 2005, The Resource Management Amendment Act (the RMAA) was given royal assent. The majority of the provisions came into force on 10 August 2005.

The major change brought about by the amendments to the Environment Court's practice is the new requirement for the Court to have regard to the decision of the council which is under appeal (section 290A). This is complemented by the more stringent requirements for detailed council decisions (section 113) as well as the new mandatory requirement for council hearing commissioner accreditation, which will take effect over the next two years. Further changes include:

- The Court may accept evidence that was presented at the council hearing without consent of the parties. The Court may also commission evidence from an independent expert, and may direct how evidence is to be given in Court.
- The Court Registrar may exercise any of the powers under section 281 (waiving requirements or timeframes) if the power is conferred by the Principal Environment Judge. On 13 September 2005, the Principal Environment Judge conferred upon the Registrar and Deputy Registrar, powers to grant waivers under prescribed circumstances. Under section 281A, a Registrar may waive, reduce or postpone payment of any fee.
- Changes were introduced to Part 6 of the Act with respect to Ministerial call in of matters that are or are parts of proposals of national significance. Such changes included giving power to the Minister for the Environment (or where the matter relates wholly to the coastal marine environment, the Minister of Conservation) to refer matters directly to the Environment Court for decision.

- Notification decisions may be capable of challenge in the future to the Environment Court, rather than the High Court. However, this is deferred until such time as the Environment Court has the capacity for the potential of an increased workload, and will be brought into force by an Order in Council.

2.3 Review of Civil (Environment Court) Fees

The Review of Civil Fees Project which commenced in 2001 and culminated with the recommendations of the Working Party in December 2003, involved an assessment of the proportion of the cost that should be borne by taxpayers and the proportion that should be borne by court users. Stage One of the Review was completed in October 2001 with the introduction of changes to fees in the Court of Appeal, High Court, District Courts and Disputes Tribunal. Stage Two of the Review extended the review to the other jurisdictions including the Environment Court.

In May 2003, the Working Party on Civil Court Fees reported back on Stage Two of the Review and presented the results of a comprehensive assessment of the structure of court fees across most civil court jurisdictions, including the Environment Court. Included in this report was a proposal to increase filing fees and introduce hearing fees to the Environment Court. It was proposed that fees be set at a level to recover approximately 25% of the costs of the jurisdiction.

On 24 March 2004, the Cabinet Policy Committee (POL Min (04) 6/14) agreed:

- that fees for the whole set of activities be set at a level that represents approximately 25% cost recovery;
- that fees for filing applications in the Environment Court be payable by every party that joins proceedings at any stage, excluding respondents;
- to the introduction of hearing fees in the Environment Court and that they be payable by the applicant who initiates proceedings.

At the time the recommendations were made, the Working Party acknowledged that the review of fees in the Environment Court was done with limited resources and condensed into a shorter period than would have been desirable. They also commented that in order to produce some measure of process cost, it was necessary to rely upon approximations and significantly simplify the data collection, and the cost allocation processes. The Working Party, however, retained the general principles of the Environment Court's approach.

The full schedule of Environment Court fees could not be introduced until the Resource Management Act 1991 was amended to allow fees to be waived in the appropriate circumstances. The relevant provisions of the RMAA came into effect on 10 August 2005.