

# COUNTY COURT (FEES)

## REGULATIONS 2018

Regulatory Impact Statement

Courts Policy and Dispute Resolution

23 August 2018

## County Court (Fees) Regulations

### Regulatory Impact Statement

This Regulatory Impact Statement (RIS) has been prepared to fulfil the requirements of the **Subordinate Legislation Act 1994** and to facilitate public consultation on the proposed County Court (Fees) Regulations. A copy of the proposed Regulations is provided as an attachment to this RIS.

Public comments and submissions are invited on the proposed Regulations, in response to the information provided in this RIS. All submissions will be treated as public documents. In accordance with the Victorian Guide to Regulation, submissions will be provided to the Scrutiny of Acts and Regulations Committee of Parliament when making the Proposed Regulations. Submissions might also be accessible from other websites outside the department's control.

You can choose to make a confidential submission by marking your submission 'private and confidential'. You can also choose to make an anonymous submission by not providing your name. In those cases, the department will not publish your name.

Responses can be submitted online through the Engage Victoria website: [www.engage.vic.gov.au](http://www.engage.vic.gov.au)

Alternatively, responses can be emailed to [countycourtfees2018@justice.vic.gov.au](mailto:countycourtfees2018@justice.vic.gov.au) or posted to:

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Courts Policy and Dispute Resolution  
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All comments and submissions must be received no later than 5pm on Sunday 23 September 2018.



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## Glossary of acronyms and terms

Acronym or term	Meaning
Activity-based costing	The costing methodology used to determine the salary and oncost expenses identified in this document. The costing methodology is explained in detail in Section 4.
CBR	Commissioner for Better Regulation
Corporate costs	The costs of providing corporate services to the Court, including the cost of human resource management, financial services, infrastructure maintenance and communications costs.
County Court Act	The <i>County Court Act 1958</i>
CPI	Consumer Price Index
CSA	Court Services Agreement between the County Court and The Liberty Group which owns the County Court building and provides services to the Court. The CSA sets out the terms and conditions for the use of the County Court facility, including, but not limited to the obligation on the Court to pay for a minimum of 8,400 court room days per year. Separate agreements exist with other Courts in the event that they need to use court rooms in the County Court building.
CSV	Court Services Victoria. CSV was established in 2014 and is an independent statutory authority which provides the administrative services and facilities necessary for the Victorian courts and VCAT to operate independently of the direction of the executive branch of government. The Victorian courts and VCAT are funded by the Government through CSV. There are no separate funding arrangements set out in the Victorian Budget specifically for the County Court.
Department	Department of Justice and Regulation
Direct funding	Funding allocated directly to the Court by way of appropriations for the purposes of providing Court services.
Fees	Fees charged by the Court, in accordance with fee regulations under the <i>County Court Act 1958</i> .
FTE	Full-time equivalent
Horizontal equity	A concept that encourages those benefitting from a service to pay only for that particular service, and not to cross-subsidise the costs of services that they do not use.
HR	Human resources
Indirect funding	Funding provided to the Court other than Direct funding, primarily from Court Services Victoria, for purposes such as in-Court technology enhancements.
KPI	Key Performance Indicator



Acronym or term	Meaning
Operating Expenses	<p>Operating expenses cover a range of costs, including:</p> <ul style="list-style-type: none"> <li>• training;</li> <li>• information and communications technology costs;</li> <li>• accommodation, court room costs and facility management costs;</li> <li>• security;</li> <li>• corporate costs: Chief Executive's Office, human resources and finance services; and</li> <li>• Pro-rata share of the costs of Court Services Victoria.</li> </ul>
Original jurisdiction	The jurisdiction deciding a matter for the first time.
RIS	Regulatory Impact Statement
Salary and oncost expenses	Costs that are directly related to dealing with civil matters in the Court, including salaries and wages, leave provisions and superannuation.
SRL	Self-represented litigant
VCAT	Victorian Civil and Administrative Tribunal
Vertical equity	A concept that encourages litigants with proportionately greater means to pay more for Court services than those with lesser means.

## Executive summary

This Regulatory Impact Statement (RIS) sets out the reasons for, and the basis of, the proposed County Court (Fees) Regulations 2018 (the Proposed Regulations), which will, once they come into effect, determine fees payable at the County Court of Victoria (the County Court) for civil proceedings issued, under section 79A of the *County Court Act 1958* (the County Court Act).

The new Regulations will take effect on 14 December 2018 and replace the County Court (Fees) Interim Regulations 2017 (the Existing Fee Regulations), which expire on 14 December 2018.

The RIS explains how the costs relating to the Court's activities and administrative services were estimated, and how the proposed fees were subsequently developed.

Three possible options for restructuring the Court's fees are presented in detail in this RIS. For each option, this RIS considers the estimated costs of the option, the broader public benefits derived, and the specific policy considerations considered in relation to each option. Each option is assessed against criteria that reflect the stated objectives in replacing the Existing Fee Regulations, and a preferred option is presented in the RIS. The Proposed Regulations presented in this RIS have been drafted to reflect the preferred option.

The RIS also provides details of proposed arrangements for implementation, monitoring and evaluation of the proposed new fee structure.

## Background

The civil justice system provides the means by which disputes between parties can be resolved, legal rights enforced and remedies obtained through binding orders.

The State of Victoria provides access to dispute resolution and rights enforcement processes to meet a range of needs. The processes provided by the Magistrates' Court, the County Court, and the Supreme Court of Victoria constitute a system for the resolution of progressively more complex disputes, while the Victorian Civil and Administrative Tribunal (VCAT) provides specialised mechanisms for a well-defined range of matters.

For civil matters, the County Court would be a court of choice when matters are relatively large – valued at \$100,000 or more, which is the maximum limit for matters heard in the Magistrates' Court – or when applicants consider that the specialist expertise of the Supreme Court in dealing with the most complex of matters is not required.

Over the past few years, and in the intervening period since the last County Court fees RIS (2012), court organisation and practices have changed, with progressively more emphasis given to case management and early settlement. The changes reflect the policy objectives of government, and the operational objectives of the Court. In particular, the appointment of judicial registrars in the County Court and the increasing emphasis on judicial mediation has promoted an increase in the early resolution of matters where possible. The Court has also focused on improving its interface with litigants through electronic filing and document management.

Civil fees are charges that cover the cost, or a portion of the cost, of court services provided in relation to civil matters. Charging fees for civil matters is the practice of all Australian states and territories.

Civil fees send an important signal to the community regarding the costs involved in providing court and tribunal services, and, when they generate private benefits, ensuring that those who benefit from the services provided by the court or tribunal help to pay for them. Civil fees also send a signal to potential litigants regarding the appropriate court for lodging particular matters.

The current fees have been adjusted each year in accordance with the Victorian Government policy of automatic indexation for certain fees each year. The indexation of fees is designed to account for inflation and maintain the value of fees in real terms.

During 2016-17 total revenue from County Court fees under the Existing Fee Regulations amounted to approximately \$10.5 million. Taking account of increased activity in the 12 months to the end of March 2018 and the indexed change to the fee unit value,<sup>1</sup> the estimated revenue under the Existing Fee Regulations for 2018-19 would be \$10.755 million (32 per cent of the costs associated with providing the services relating to civil matters at the County Court). Under the Proposed Regulations fee revenue for 2018-19 is expected to be approximately \$11.030 million (33 per cent of costs).

## The Nature of the Problem

The Existing Fee Regulations expire on 14 December 2018. It is necessary that new fee regulations be made on or before 14 December 2018 if the County Court is to charge fees lawfully from this date.

If the County Court is unable to charge fees, while other Victorian jurisdictions continue to do so, demand for County Court services is likely to increase significantly and have a detrimental effect on the Court's ability to resolve matters in a timely manner. The inability of the Court to charge fees would inhibit access to justice for litigants and diminish the role of the County Court in Victoria's justice system.

## Policy

It is Victorian Government policy that court users contribute to the cost of the Court through its fees. Victoria's *Cost Recovery Guidelines*<sup>2</sup> (the Guidelines) underpin the preparation of this RIS and the Proposed Regulations.

The Guidelines require fees to be set on the basis of efficient costs, which account for salary and oncost expenses as well as operating expenses. An analysis of the full cost of service provision is considered the mandatory starting point for developing fee frameworks. Consequently, full cost recovery is the default pricing position. Full cost recovery promotes the efficient allocation of resources, is transparent, and avoids or reduces the need to rely on general taxation revenue.

However, the Guidelines also recognise that there are circumstances in which full cost recovery might not be possible or appropriate, for example, where full cost recovery is not practical or legal, or where charging the full cost could undermine other policy objectives. In particular, it is important to balance the preference for full cost recovery with the principles of access to justice and equity. For example, if a trial fee is set at full cost, it is likely that the fees would inhibit access to justice for many applicants. Therefore, while costs have been a consideration in setting fees in the development of this RIS, so too have considerations regarding litigants' ability to pay.

## Guiding Principles

The following principles, which are discussed further in Section 3, have been adopted to guide the development and assessment of the fees framework for the County Court:

1. The fee structure should reflect the role of the County Court in Victoria's civil justice system.
2. Access to justice is to be safeguarded.
3. Fees should be applied equitably.
4. The fee structure should support and enable efficient court operations.

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<sup>11</sup> In the Regulations fees are expressed in fee units, not dollars. The value of a fee unit is \$14.45 in 2018-19. It is indexed annually by the Victorian government.

<sup>2</sup> Department of Treasury and Finance, January 2013.

5. Fees should be easy for users to understand and for the County Court to administer.

After identifying the cost of the Court's activities, the guiding principles were used as criteria to assess the options for the new fee structure.

## Costing Principles

The costing principles (further described in Section 3.2) provide a framework for identifying the full cost of the County Court's activities in its civil jurisdiction, and the application of a costing framework that supports transparency in its cost structure.

The purpose of establishing a detailed cost structure is to ensure that the varying costs associated with different activities of the Court can be identified, allocated, and accounted for. The analysis and modelling in this RIS is based on actual financial outcomes and case-throughput data from 2016-17.<sup>3</sup> All costings were completed in 2017-18 and adjusted to take account of escalations in the Consumer Price Index (CPI)<sup>4</sup> and changes in fee unit values.<sup>5</sup> The costs used in this RIS are therefore expressed as estimates of 2018-19 costs.

Using the costing principles, the following methodology was adopted:

1. Estimate the direct costs for different classes of matters.
2. Determine and allocate indirect costs to each class of matter.
3. Aggregate direct and indirect costs associated with each class of matter, and reflect the aggregated costs in the relevant fees.
4. Estimate efficient costs.
5. Set fees taking account of the guiding principles.
6. Estimate revenue.

The steps above are explained in more detail at Section 4 of this RIS.

## Applying the Principles

This RIS has sought to give effect to the policy and principles set out above in a way that provides transparent and reasonable explanations for changes to the current fee structure.

There is some inherent tension among the principles. The tension means that decisions must be made about how, and the extent to which, the application of one principle (for example, access to justice) will be pursued in favour of another (for example, efficiency).

In practice, a balance is to be found between the competing principles. The balance reflects the intent of the Guidelines – that users of government services are mindful of the costs associated with providing such services. If there are no fees, the taxpayer meets the full costs, and users do not need to consider costs when accessing government services. If costs are fully recovered by fees, the taxpayer carries none of the burden, and the user might consider that the costs of accessing the services are more than outweighed by the benefits of doing so.

The principles have been applied so that relativities exist between fees charged in the County Court and those charged in other Victorian jurisdictions, in particular the Supreme Court, so that County Court fees are generally lower than Supreme Court fees in order to optimise the role of the County Court.

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<sup>3</sup> 2016-17 is the last full financial year for which audited financial and workload data is available.

<sup>4</sup> CPI has been used to escalate costs on the assumption that it is the best available indicator of how the costs of the County Court may change from year to year.

<sup>5</sup> Fee units are indexed annually by the Treasurer and, therefore, the dollar value of the fees will change annually.

## Cost recovery

The percentage of costs recovered through fees is generally referred to as the rate of cost recovery.

Determining the appropriate rate of cost recovery is a difficult exercise. Comparison can be made with the cost recovery levels achieved in other jurisdictions, both in Australia and internationally. For example, the County Court recovered approximately 33 per cent of its costs through fees in 2016-17. As a point of comparison, the Supreme Court of Victoria has a similar cost recovery rate. While useful, cost recovery levels in other jurisdictions should be regarded as indicative only, as different governments at different times have adopted different approaches to setting fees. Additionally, some courts charge fees for services that the County Court of Victoria does not. An example includes hiring rooms for ceremonies or functions, which is included in the reported cost recovery levels of some jurisdictions.

In considering the appropriate level of cost recovery for the County Court's fees framework, consideration has been given to the following factors:

- optimising the role of the County Court in resolving civil matters within its jurisdiction;
- the extent to which public and private benefits arise from court services;
- access and affordability; and
- the extent to which litigants have a choice of jurisdiction.

## Consultation

During the development of this RIS, consultation was undertaken with County Court judicial officers, registry staff and corporate staff, prior to the proposals contained in this RIS being finalised. Consultation was also undertaken with the County Court's user groups for its Common Law Division and Commercial Division.

The details of the consultations are set out in Section 5.1. The consultations highlighted the need for a new fee structure to better reflect the changes in the Court's practices and processes, particularly the:

- increased emphasis on case management, and the increased use of judicial mediation to assist in early settlement of matters; and
- increased use of electronic processes at the Court.

## Fee options

The three options for civil fees at the County Court examined in detail in this RIS were selected from a range of options considered. For more information on all options considered, see Section 6 of this RIS.

In determining the preferred option, the three options have been scored against the assessment criteria – see Table ES1 – designed to reflect the overall objectives in restructuring the County Court's fees (the guiding principles), and against a base case of no regulations (meaning no fees). Details of the assessment process are provided in Section 6.

**Table ES1:** Criteria used to assess fee options

Criterion	Weighting	Assessment against the Base Case
1. The fee structure should support the role of the County Court in Victoria's civil justice system	30%	Fees should encourage applicants to lodge their matters in the County Court if they have a monetary value over \$100,000 and they do not require the specialist attention of the Supreme Court.
2. Equity	30%	Equity is better to the extent that: - users pay for the services they use, and do not pay for services that they do not use; - court users contribute to meeting the costs of the Court and the full cost of the Court is not borne by taxpayers; and - those who can afford to pay more, do pay more, but no more than full cost.
3. Efficiency	30%	Fees support efficient court operations, principally enabling early settlement of a matter without incurring costs that are not necessary to settle a matter.
4. Simplicity	10%	Fees are easy for court users to understand and for the County Court to administer.
<b>Total</b>	<b>100%</b>	

## Waivers

The existence of fee waiver arrangements enable individuals experiencing financial hardship to access County Court services when necessary without paying fees, or by having fees partially waived and paying a reduced fee.

Irrespective of which option is pursued, the arrangements for fee waivers will be simplified. All options would allow for (unless stated otherwise):

- automatic eligibility to pay the Concession Fee for litigants who hold Commonwealth Health Care Cards (not applicable under Option 2);
- continued access to full fee waivers for litigants if payment of that fee at that time would cause the person financial hardship;<sup>6</sup>
- the ability of the Court to reduce fees for litigants who might not be entitled to a full fee waiver, but for whom the full fee would cause financial hardship;
- automatic waivers for litigants in receipt of legal aid or *pro bono* legal representation, and for prisoners; and
- search and photocopy fees to be waived if the applicant makes a specific application for a waiver in accordance with the waiver provisions in the *County Court Act 1958* (County Court Act).

<sup>6</sup> A person would be facing financial hardship if paying the Court fee meant that they would be unable to meet other payments that they need to make, such as for rent, electricity or gas.

## Option 1 Eighty per cent relativity (Not preferred)

Option 1 is based on the current fee structure, where County Court fees are no more than 80 per cent of the proposed corresponding fee in the Common Law Division of the Supreme Court. Option 1 also incorporates a number of modifications to the current fee structure, to better reflect current County Court practices and Government policy.

Option 1 uses different fees for different types of court user, so that:

1. Corporate Fees are paid by companies turning over more than \$200,000 per annum, and by public sector applicants.<sup>7</sup>
2. Standard Fees are paid by individuals, small businesses and registered charities. Standard Fees are 50 per cent of the Corporate Fee.
3. Concession Fees are provided for Health Care Card holders who do not apply for a full waiver or are not eligible for a full waiver. Concession Fees are 50 per cent of the Standard Fee, capped at \$250, with a minimum fee of \$14.50, which is 1 fee unit.

A new Commencement fee has been introduced for a party to expedite a matter in the Commercial Division – see Section 5.2.3 for further discussion. It is not proposed to apply a fee for expediting a matter in the Common Law Division.

Current Case Management fees for interlocutory applications by summons and *ex parte* applications are retained in Option 1. There is also a new fee for judicial mediation, charged by the half day, which, if it leads to early settlement, or is successful in reducing the issues in dispute between the parties, will enable litigants to avoid the Setting down fee and/or one or more Trial Day fees.<sup>8</sup>

There are a number of changes to fees for applications made during the course of a matter:

- a fee for the review of a decision by a judicial registrar has been introduced, reflecting the increasing importance of the work of judicial registrars in the County Court;
- there are also some revised fees for types of applications related to matters before the County Court for which the current Setting down fee is charged currently, namely, the taking of accounts and assessing damages or value; and
- the differentiated fee for applications under the *Judgment Debt Recovery Act 1984* (Judgment Debt Recovery Act), whereby creditors and debtors paid different fees, has been replaced with a single fee.

There are also a number of changes to other fees, including:

- the Setting down and First Trial Day fee has been unbundled. Setting down fees will need to be paid six weeks before the first trial day. The fee for the first trial day will be payable five days before the listed date; and
- there is a new Other Hearings fee that will apply to the second or subsequent day of an interlocutory hearing, the second or subsequent day of a review of a decision by a judicial registrar, and to assessment of damages or value hearings, which are sought by a minority of applicants for a default judgment.

Daily Trial fees continue to be charged for groups of days, namely, Days 2 to 4, Days 5 to 9, and for the tenth and subsequent days.

Most administrative fees are set at the same level as that of the Supreme Court because services relating to these fees are generally provided by staff who are paid the same rates in both courts.

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<sup>7</sup> The \$200,000 threshold for payment of the Corporate Fee has been in use at VCAT for two years and is proposed for the Supreme Court. The department considers that the County Court fees schedule should be consistent with those of other Victorian jurisdictions where fees have been reviewed recently.

<sup>8</sup> All three options considered in the RIS include a separate fee for Trial Day 1.

The estimated revenue for Option 1 of \$9.796 million is \$0.959 million lower than revenue arising from current fees, because the introduction of differentiated fees, combined with keeping fees lower than those of the Common Law Division in the Supreme Court, results in lower average fees than the Current Fee Regulations.

## Option 2 Full Cost Recovery (Not preferred)

Option 2 sets fees at full cost recovery for all matters for which a fee may be charged lawfully.

This option involves additional fees and increases current fee levels substantially. Anticipated revenue would rise to more than \$33 million.

This option is not preferred because most litigants could not afford to pay fees at the corresponding rate, which could cause high levels of waiver applications, and/or a reduction in the commencement of civil matters in the County Court of Victoria. Under such a scenario, litigants would choose to file their matters in the Supreme Court or the Magistrates' Court, depending on the value of their claim and the perceived complexity, as fees would be considerably lower in those jurisdictions. The department considers that full cost fees would be a barrier to justice for many litigants.

A reduction in initiations would not decrease County Court costs proportionally or quickly, as a major proportion of the Court's costs relate to fixed costs, including judicial salaries,<sup>9</sup> and Court facility costs at 250 William Street that are determined by the existing contract with the facility's owner – see further discussion in Section 4.3.1.

The reduction in initiations would, therefore, affect the level of revenue and, consequently, the level of cost recovery achieved in practice. It would be theoretically possible to adjust fees to account for the effect of reduced volumes on average costs, to try to maintain full cost recovery. However, this approach would further increase potential fees and, given the difficulty in estimating the scale of any potential reduction in initiations, the fee estimates for this option in this RIS are based on existing costs and volumes.

## Option 3 Restructured Fees (Preferred Option)

Option 3 disregards the historical basis on which County Court fees have been set, in which any County Court fee was not more than 80 per cent of the corresponding Supreme Court fee.

Instead, considerations of access to justice, encouraging the optimum use of the County Court by ensuring fees are lower than Supreme Court fees, avoiding multiple fee points for similar activities, and cost recovery have informed the proposed fee structure. As a result, Option 3 is a better reflection of the costs applicable to the services provided in the civil jurisdiction of the Court.

For example, the current Commencement fee in the County Court is \$865.60 and the proposed Supreme Court fee is \$723.90 for a Standard Fee payer.<sup>10</sup> If the County Court's general Commencement fee was set at 80 per cent of the proposed Supreme Court fee, it would be \$579.20 for a Standard Fee payer (Option 1). Under Option 3 a Standard Fee payer would pay \$708.10 (or about 18 per cent less than the current fee) with a Corporate Fee payer paying \$1,416.10. Sections 4.5, 4.6, 6.6 and 7 provide further information regarding the estimation of costs for the relevant fees, and how fees have been set.

The changes provided for in Option 1 are also featured in Option 3, such as differentiating fees by class of party with Corporate, Standard and Concession Fees, the introduction of some new fees, and the unbundling of the Setting down and the fee for the first trial day.

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<sup>9</sup> Judges can be removed from office only under exceptional circumstances and the decision has to be made by Governor in Council following a resolution by both houses of Parliament (section 87AAB *Constitution Act 1975*).

<sup>10</sup> Supreme Court fees are currently under review, and the comparisons here are made with the proposed fees for the Supreme Court.



Option 3 is set out in Table ES2 and Attachment 1. Attachment 2 sets out the fees in Table ES2 in terms of the fee units that will apply for the life of the Proposed Regulations, unless they are amended in the intervening period.

Revenue related to Option 3 is estimated to be \$11.030 million (33 per cent of costs), which is approximately \$280,000 more than the anticipated 2018-19 revenue of \$10.755 million, if the current fee structure were to be retained. Attachment 3 compares the proposed fees with the current fees.

**Table ES2:** Option 3, the proposed Option

Type of Fee	Full Unit Cost	Current 2018-19 Fees	Proposed fees		
			Corporate	Standard	Concession
<b>Commencement fees</b>					
All matters, except as follows, including counterclaim and additional party notices	\$1,540.35	\$865.60	\$1,416.10	\$708.10	\$250.00
Adoption List (including Substitute Parentage order applications)	\$1,314.58	\$437.80	N/A	\$481.20	\$250.00
Commercial Division Expedited List	\$3,482.94	\$865.60	\$2,832.20	\$1,416.10	\$250.00
Transfer into the Commercial Division's Expedited List	\$1,942.59	Nil	\$1,416.10	\$708.10	\$250.00
Transfer of a matter from the Magistrates' Court	\$1,540.35	\$865.60	\$1,416.10	\$708.10	\$250.00
	The fee is reduced by the amount of the Filing Fee paid to the Magistrates' Court				
<b>Case Management fees (includes 1st hearing day, where relevant)</b>					
Interlocutory applications	\$2,002.40	\$315.00	\$1,083.80	\$541.90	\$250.00
<i>Ex parte</i> applications	\$244.68	\$148.80	\$244.20	\$121.40	\$60.70
Mediation, per half day	\$3,223.95	Nil	\$541.90	\$270.20	\$134.40
<b>Other Applications (includes 1<sup>st</sup> hearing day, where relevant)</b>					
<b>Applications dealt with by judicial officers</b>					
Assessment of damages or value	\$2,571.50	\$1,023.10	\$1,083.80	\$541.90	\$250.00
Filing for an attachment of earnings	\$1,798.76	\$169.10	\$1,083.80	\$541.90	\$250.00
Review of a decision by a judicial registrar	\$1,965.58	Nil	\$1,083.80	\$541.90	\$250.00
Summons for attachment of debt (garnishee)	\$1,131.13	\$335.20	\$1,083.80	\$541.90	\$250.00
Summons for oral examination	\$2,233.01	\$169.10	\$1,083.80	\$541.90	\$250.00
Taking of accounts	Not costed	\$297.20	\$1,083.80	\$541.90	\$250.00
<b>Applications managed administratively</b>					
Order for oral examination	\$172.64	\$169.10	\$108.40	\$54.90	\$27.50
Warrant – seizure and sale	\$108.13	Nil	\$108.40	\$54.90	\$27.50
Warrant – possession of land	\$108.13	Nil	\$108.40	\$54.90	\$27.50
Creditor application under the Judgment Debt Recovery Act	\$159.81	\$20.20	Revised	Revised	Revised
Debtor application under the Judgment Debt Recovery Act	\$159.81	Nil	Revised	Revised	Revised
Creditor and debtor applications under the Judgment Debt Recovery Act	\$159.81	\$20.20 or Nil	\$70.80	\$34.70	\$17.30
<b>Hearing fees</b>					
Setting down	\$3,524.33	\$1,023.10	\$1,303.40	\$651.70	\$250.00
Trial Day 1	\$8,195.33	In setting down	\$1,011.50	\$505.80	\$250.00
Trial Days 2, 3 and 4, fee per day	\$8,195.33	\$531.80	\$1,445.00	\$722.50	\$250.00
Trial Days 5, 6, 7, 8 and 9, fee per day	\$8,195.33	\$888.70	\$2,312.00	\$1,156.00	\$250.00

Type of Fee	Full Unit Cost	Current 2018-19 Fees	Proposed fees		
			Corporate	Standard	Concession
<b>Commencement fees</b>					
All matters, except as follows, including counterclaim and additional party notices	\$1,540.35	\$865.60	\$1,416.10	\$708.10	\$250.00
Adoption List (including Substitute Parentage order applications)	\$1,314.58	\$437.80	N/A	\$481.20	\$250.00
Commercial Division Expedited List	\$3,482.94	\$865.60	\$2,832.20	\$1,416.10	\$250.00
Transfer into the Commercial Division's Expedited List	\$1,942.59	Nil	\$1,416.10	\$708.10	\$250.00
Transfer of a matter from the Magistrates' Court	\$1,540.35	\$865.60	\$1,416.10	\$708.10	\$250.00
	The fee is reduced by the amount of the Filing Fee paid to the Magistrates' Court				
<b>Case Management fees (includes 1st hearing day, where relevant)</b>					
Interlocutory applications	\$2,002.40	\$315.00	\$1,083.80	\$541.90	\$250.00
<i>Ex parte</i> applications	\$244.68	\$148.80	\$244.20	\$121.40	\$60.70
Mediation, per half day	\$3,223.95	Nil	\$541.90	\$270.20	\$134.40
<b>Other Applications (includes 1<sup>st</sup> hearing day, where relevant)</b>					
<b><i>Applications dealt with by judicial officers</i></b>					
Assessment of damages or value	\$2,571.50	\$1,023.10	\$1,083.80	\$541.90	\$250.00
Filing for an attachment of earnings	\$1,798.76	\$169.10	\$1,083.80	\$541.90	\$250.00
Review of a decision by a judicial registrar	\$1,965.58	Nil	\$1,083.80	\$541.90	\$250.00
Summons for attachment of debt (garnishee)	\$1,131.13	\$335.20	\$1,083.80	\$541.90	\$250.00
Summons for oral examination	\$2,233.01	\$169.10	\$1,083.80	\$541.90	\$250.00
Taking of accounts	Not costed	\$297.20	\$1,083.80	\$541.90	\$250.00
<b><i>Applications managed administratively</i></b>					
Order for oral examination	\$172.64	\$169.10	\$108.40	\$54.90	\$27.50
Warrant – seizure and sale	\$108.13	Nil	\$108.40	\$54.90	\$27.50
Warrant – possession of land	\$108.13	Nil	\$108.40	\$54.90	\$27.50
Creditor application under the Judgment Debt Recovery Act	\$159.81	\$20.20	Revised	Revised	Revised
Debtor application under the Judgment Debt Recovery Act	\$159.81	Nil	Revised	Revised	Revised
Creditor and debtor applications under the Judgment Debt Recovery Act	\$159.81	\$20.20 or Nil	\$70.80	\$34.70	\$17.30
<b>Hearing fees</b>					
Setting down	\$3,524.33	\$1,023.10	\$1,303.40	\$651.70	\$250.00
Trial Day 1	\$8,195.33	In setting down	\$1,011.50	\$505.80	\$250.00
Trial Days 2, 3 and 4, fee per day	\$8,195.33	\$531.80	\$1,445.00	\$722.50	\$250.00
Trial Days 5, 6, 7, 8 and 9, fee per day	\$8,195.33	\$888.70	\$2,312.00	\$1,156.00	\$250.00
Trial Days 10 <sup>th</sup> and subsequent days, per day	\$8,195.33	\$1,482.60	\$3,179.00	\$1,589.50	\$250.00
Other Hearing fee, other than trial days	\$8,195.33	\$1,023.10 or Nil	\$1,011.50	\$505.80	\$250.00
<b>Administrative fees</b>					
Subpoena	\$92.08	\$150.30	\$86.70	\$43.40	\$21.70
Search for paper files	\$194.64	\$24.60	\$70.80	\$34.70	\$17.30
To register a judgment from another jurisdiction	\$45.41	\$69.40	\$44.80	\$23.10	\$14.50

Type of Fee	Full Unit Cost	Current 2018-19 Fees	Proposed fees		
			Corporate	Standard	Concession
<b>Commencement fees</b>					
All matters, except as follows, including counterclaim and additional party notices	\$1,540.35	\$865.60	\$1,416.10	\$708.10	\$250.00
Adoption List (including Substitute Parentage order applications)	\$1,314.58	\$437.80	N/A	\$481.20	\$250.00
Commercial Division Expedited List	\$3,482.94	\$865.60	\$2,832.20	\$1,416.10	\$250.00
Transfer into the Commercial Division's Expedited List	\$1,942.59	Nil	\$1,416.10	\$708.10	\$250.00
Transfer of a matter from the Magistrates' Court	\$1,540.35	\$865.60	\$1,416.10	\$708.10	\$250.00
	The fee is reduced by the amount of the Filing Fee paid to the Magistrates' Court				
<b>Case Management fees (includes 1st hearing day, where relevant)</b>					
Interlocutory applications	\$2,002.40	\$315.00	\$1,083.80	\$541.90	\$250.00
<i>Ex parte</i> applications	\$244.68	\$148.80	\$244.20	\$121.40	\$60.70
Mediation, per half day	\$3,223.95	Nil	\$541.90	\$270.20	\$134.40
<b>Other Applications (includes 1<sup>st</sup> hearing day, where relevant)</b>					
<b>Applications dealt with by judicial officers</b>					
Assessment of damages or value	\$2,571.50	\$1,023.10	\$1,083.80	\$541.90	\$250.00
Filing for an attachment of earnings	\$1,798.76	\$169.10	\$1,083.80	\$541.90	\$250.00
Review of a decision by a judicial registrar	\$1,965.58	Nil	\$1,083.80	\$541.90	\$250.00
Summons for attachment of debt (garnishee)	\$1,131.13	\$335.20	\$1,083.80	\$541.90	\$250.00
Summons for oral examination	\$2,233.01	\$169.10	\$1,083.80	\$541.90	\$250.00
Taking of accounts	Not costed	\$297.20	\$1,083.80	\$541.90	\$250.00
<b>Applications managed administratively</b>					
Order for oral examination	\$172.64	\$169.10	\$108.40	\$54.90	\$27.50
Warrant – seizure and sale	\$108.13	Nil	\$108.40	\$54.90	\$27.50
Warrant – possession of land	\$108.13	Nil	\$108.40	\$54.90	\$27.50
Creditor application under the Judgment Debt Recovery Act	\$159.81	\$20.20	Revised	Revised	Revised
Debtor application under the Judgment Debt Recovery Act	\$159.81	Nil	Revised	Revised	Revised
Creditor and debtor applications under the Judgment Debt Recovery Act	\$159.81	\$20.20 or Nil	\$70.80	\$34.70	\$17.30
<b>Hearing fees</b>					
Setting down	\$3,524.33	\$1,023.10	\$1,303.40	\$651.70	\$250.00
Trial Day 1	\$8,195.33	In setting down	\$1,011.50	\$505.80	\$250.00
Trial Days 2, 3 and 4, fee per day	\$8,195.33	\$531.80	\$1,445.00	\$722.50	\$250.00
Trial Days 5, 6, 7, 8 and 9, fee per day	\$8,195.33	\$888.70	\$2,312.00	\$1,156.00	\$250.00
Search for electronic files with copy	Not costed	Nil	\$14.50	\$14.50	\$14.50
Certificate of Registrar	\$14.50	\$14.50	\$14.50	\$14.50	\$14.50
Photocopy, per page	Not costed	\$0.60	\$0.60	\$0.60	\$0.60

## Assessment of options

Using the assessment criteria outlined above in Table ES1 to compare the three options the following scores are obtained:

- Option 1: 4.4
- Option 2: -2.0
- Option 3: 5.6

Option 3, which is described in detail in Section 7, is the preferred option because the department considers that:

- the option better supports the role of the County Court by encouraging optimum use of the Court through its fee structure;
- the proposed model of differentiated fees increases equity for litigants, as the option better reflects the capacity of litigants to pay for the services offered by the Court, according to their means to pay; and
- the option better reflects the costs associated with the delivery of court services in the civil jurisdiction of the Court.

While the fee structure could be more difficult for litigants to understand because of the introduction of different fees for different classes of party, the proposed fee framework remains similar with the current fee structure, which should minimise issues for applicants.

The Proposed Regulations are attached to this RIS.

## Comparison of Proposed Regulations and Existing Regulations

Comparisons of the current full County Court fee structure with the Proposed Regulation fees are set out in Table ES3, which sets out the percentage change between the current fees (at 2018-19 levels) and the proposed fees.

In summary, the main changes from the current fees in the proposed fee structure are:

- the introduction of differentiated fees with different fees for Corporate, Standard and Concession Fee payers;
- the fee for lodging most matters with the County Court is now lower for Standard Fee payers;
- a new fee for expediting a matter in the Commercial Division;
- the fee for applying for a default judgment has been discontinued, however the fee for an assessment of damages or value (and the taking of accounts) has been restructured, and the Setting down fee will no longer apply to these applications;
- fees have been introduced for the Court to issue a warrant, whereas previously the fees collected by the Court were Sheriff's Office fees, and were passed in full to the Sheriff's Office;
- the Setting down fee has been unbundled from the First Trial Day fee. It will now be payable six weeks before the listed trial date in recognition that many matters settle prior to this time;
- There is a new First Trial day fee, which is payable 5 days before the listed date, but, otherwise trial fees have been set in groups of days (for example Days 2 to 4), which is consistent with the Current Fee Regulations;
- the Other Hearing fee is payable for the second and subsequent days for interlocutory applications and other applications hearings;
- there is a new fee for searching and copying electronic files;
- the fee for applications under the Judgment Debt Recovery Act has been restructured so that there is a single fee for applications whether they are made by debtors or creditors; and
- the fee for issuing a subpoena has reduced in cost, recognising the costs saving of electronic processing for the Court.

**Table ES3: Comparison of Current and Proposed Fees, 2018-19**

Type of Fee	Current 2018-19  Fees	Proposed fees and Percentage Increase compared with Current 2018-19 Fees					
		Corporate		Standard		Concession	
<b>Commencement fees</b>							
All matters, except as follows, including counterclaim and additional party notices	\$865.60	\$1,416.10	64%	\$708.10	-18%	\$250.00	-71%
Adoption List (including Substitute Parentage order applications)	\$437.80	N/A	N/A	\$481.20	10%	\$250.00	-43%
Commercial Division Expedited List	\$865.60	\$2,832.20	227%	\$1,416.10	64%	\$250.00	-71%
Transfer into the Commercial Division's Expedited List	Nil	\$1,416.10	New Fee	\$708.10	New Fee	\$250.00	New Fee
Transfer of a matter from the Magistrates' Court	\$865.60	\$1,416.10	64%	\$708.10	-18%	\$250.00	-71%
		The fee is reduced by the amount of the Filing Fee paid to the Magistrates' Court					
<b>Case Management fees (includes 1st hearing day, where relevant)</b>							
Interlocutory applications	\$315.00	\$1,083.80	244%	\$541.90	72%	\$250.00	-21%
<i>Ex parte</i> applications	\$148.80	\$244.60	64%	\$121.40	-18%	\$60.70	-59%
Mediation, per half day	Nil	\$541.90	New Fee	\$270.20	New Fee	\$134.40	New Fee
<b>Other Applications (includes 1<sup>st</sup> hearing day, where relevant)</b>							
<b>Applications dealt with by judicial officers</b>							
Assessment of damages or value	\$1,023.10	\$1,083.80	6%	\$541.90	-47%	\$250.00	-76%
Filing for an attachment of earnings	\$169.10	\$1,083.80	541%	\$541.90	220%	\$250.00	48%
Review of a decision by a judicial registrar	Nil	\$1,083.80	New Fee	\$541.90	New Fee	\$250.00	New Fee
Summons for attachment of debt (garnishee)	\$335.20	\$1,083.80	223%	\$541.90	62%	\$250.00	-25%
Summons for oral examination	\$169.10	\$1,083.80	541%	\$541.90	220%	\$250.00	48%
Taking of accounts	\$297.20	\$1,083.80	265%	\$541.90	82%	\$250.00	-16%
<b>Applications managed administratively</b>							
Order for oral examination	\$169.10	\$108.40	-36%	\$54.90	-68%	\$27.50	-84%
Warrant – seizure and sale	Nil	\$108.40	New Fee	\$54.90	New Fee	\$27.50	New Fee
Warrant – possession of land	Nil	\$108.40	New Fee	\$54.90	New Fee	\$27.50	New Fee
Creditor and debtor applications under the Judgment Debt Recovery Act	\$20.20 or Nil	\$70.80	Revised Fee	\$34.70	Revised Fee	\$17.30	Revised Fee
<b>Hearing fees</b>							
Setting down	\$1,023.10	\$1,303.40	27%	\$651.70	-36%	\$250.00	-76%
Trial Day 1	In setting down	\$1,011.50	New Fee	\$505.80	New Fee	\$250.00	New Fee
Trial Days 2, 3 and 4, fee per day	\$531.80	\$1,445.00	172%	\$722.50	36%	\$250.00	-53%
Trial Days 5, 6, 7, 8 and 9, fee per day	\$888.70	\$2,312.00	160%	\$1,156.00	30%	\$250.00	-72%
Trial Days 10 <sup>th</sup> and subsequent days, per day	\$1,482.60	\$3,179.10	114%	\$1,589.50	7%	\$250.00	-83%
Other Hearing fee, other than trial days	\$1,023.10 or Nil	\$1,011.50	New Fee	\$505.80	New Fee	\$250.00	New Fee
<b>Administrative fees</b>							
Subpoena	\$150.30	\$86.70	-42%	\$43.40	-71%	\$21.70	-86%
Search for paper files	\$24.60	\$70.80	188%	\$34.70	41%	\$17.30	-30%

Type of Fee	Current 2018-19  Fees	Proposed fees and Percentage Increase compared with Current 2018-19 Fees					
		Corporate		Standard		Concession	
To register a judgment from another jurisdiction	\$69.40	\$44.80	-35%	\$23.10	-67%	\$14.50	-79%
Search for electronic files with copy	Nil	\$14.50	New Fee	\$14.50	New Fee	\$14.50	New Fee
Certificate of Registrar	\$14.50	\$14.50	0%	\$14.50	0%	\$14.50	0%
Photocopy, per page	\$0.60	\$0.60	0%	\$0.60	0%	\$0.60	0%

## Implementation, monitoring and evaluation

The Proposed Regulations would have a lifespan of no more than 10 years.<sup>11</sup> Due to the differences between the Existing Fee Regulations and the Proposed Regulations, the County Court acknowledges that there will be some significant, but manageable, transition risks.

Transition planning has commenced and includes training of court staff, and modifications of operational systems, forms, and the County Court website. Notification of the changes would be announced in the Victorian Government Gazette, and on the County Court website.

Following implementation in December 2018, the new fee regime would be monitored for a period of at least 18 months to ensure that any remaining or emerging implementation risks are resolved effectively. The County Court will monitor data related to fees, such as filing volumes, to assess any impact arising from implementation. The analysis will inform any consideration of the need to amend the Fee Regulations in the short term.

Any emerging problems could be resolved through providing information to users, changing administrative practices and, if necessary, amendments to the Regulations.

The fee structure introduced in 2018 will be independently evaluated after five years. Key Performance Indicators (KPIs) for the evaluation are set out in Section 8, and will be finalised as part of the implementation and monitoring processes. See Section 8 for more details.

<sup>11</sup> Section 5 of the *Subordinate Legislation Act 1994* causes all regulations to sunset on the tenth anniversary of the date on which they come into effect, unless they are repealed as a result of some other regulatory provision.

# 1. Background

## 1.1. The County Court (Fees) Regulations

The Existing Fee Regulations are a statutory instrument of the County Court Act. The Existing Fee Regulations set the charges for specific services provided to litigants and applicants. The Existing Fee Regulations expire on 14 December 2018, and new regulations will need to be made so that the Court can charge fees after that date.

Court fees can be regarded as imposing an economic burden on the community and, therefore, under the provisions of the *Subordinate Legislation Act 1994*, a RIS must be prepared and released for public consultation prior to the regulations being re-made. This RIS sets out:

- the case for the remaking of the Regulations;
- the cost of service provision;
- options for the most effective form the new regulatory structure could take; and
- the level of fees to be imposed.

By issuing the RIS, the Government provides the community with the opportunity to assess the Proposed Regulations in terms of their objectives and effect, as well as alternative approaches to achieving the stated objectives, and an assessment of the costs and benefits of the Regulations and the alternatives. The Proposed Regulations are attached to this RIS.

In May 2018, Parliament passed the *Access to Justice Act*, which amends the County Court Act to enable fee regulations to set fees for different classes of proceedings and court users.<sup>12</sup> It is intended that these legislative amendments commence on the same day as the Proposed Regulations.

## 1.2. Civil Justice in Victoria

The civil justice system plays an important role in providing legal certainty, which assists in fostering economic growth and vitality of any society by providing expert, legally-enforceable dispute resolution processes for disputes between people, companies or other organisations. Legal rights and obligations are enforced and private and property rights are protected.

The civil justice system provides both the means for enforcement of private agreements and legislation in individual cases, and the environment in which laws and obligations are honoured. It provides the means to recover a debt, but also the environment in which people, companies and organisations comply with their financial obligations. The civil justice system also provides the means by which people can seek redress for individual harms, such as serious personal injuries.

The State of Victoria provides access to dispute resolution and rights enforcement processes to meet a range of needs. The processes provided by the Magistrates' Court, the County Court, and the Supreme Court of Victoria constitute a system for the resolution of progressively more complex disputes, while the Victorian Civil and Administrative Tribunal (VCAT) provides specialised mechanisms for a well-defined range of matters.

The system affords potential litigants with substantial choice of mechanisms for dispute resolution. Within that system:

- the Supreme Court has original and unlimited jurisdiction in civil cases (unless otherwise excluded by statute). The Supreme Court also hears appeals on questions of law from the Magistrates' Court and appeals on questions of law arising from decisions by ordinary

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<sup>12</sup> Justice Legislation Amendment (Access to Justice) Act 2018, Part 5.

and senior members of the VCAT. The Court of Appeal within the Supreme Court hears appeals from the Trial Division of the Supreme Court and the County Court.

- The County Court is the primary trial court for Victoria, and the primary appellate court for Magistrates' Court appeals. Its role in the provision of justice in Victoria has a direct impact on business confidence and public safety. Its level of service delivery affects both access to justice and public confidence in the justice system. The County Court has an unlimited monetary jurisdiction in civil matters which, with the exception of probate and some applications under the *Corporations Act 2001*, is concurrent with the jurisdiction of the Supreme Court.
- The Magistrates' Court can determine most disputes over money or property up to the value of \$100,000. However, in certain circumstances, the Court can hear cases with an unlimited value.
- Since its inception, VCAT's purpose has been to provide Victorians with a low cost, accessible, efficient and independent tribunal delivering high quality dispute resolution covering a wide range of matters, such as residential tenancy matters, domestic building disputes and planning approvals, for which it has exclusive jurisdiction.

As the primary trial court in Victoria, the County Court would be a court of choice for the majority of civil matters, where the applicant has a choice of court. To date, the Court's role in the civil justice system is reflected in its fee structure, where fees are higher than that of the Magistrates' Court, where jurisdiction is limited to \$100,000, and lower than that of the Supreme Court, where the most complex cases are heard. In comparison to VCAT, fees are higher in the County Court for most civil matters because smaller claims are better suited to VCAT's dispute resolution processes.

### 1.3. County Court Divisions and Lists

Where civil matters are concerned, the County Court has two Divisions; the Common Law Division, and the Commercial Division. Each Division contains a number of different Lists, where matters are categorised by area of specialty.

Once a matter is filed for commencement in the County Court, it is assigned into a list with other cases that deal with a similar subject area. In addition to General Lists in both Divisions, the County Court has a number of specialist lists that deal with specialist areas of the law. These lists are managed by a judge with expertise in that particular area. The specialist lists are set out in Table 1.

Common Law initiations have been stable over a number of years. The Serious Injury List has been the most sensitive to changes in initiations, as the flow of litigation is directly dependent on the desire of insurance companies to either settle or litigate.

Commercial Division initiations have more than doubled since 2006-07, but have stabilised over the past three financial years. Case duration is increasing due to greater case complexity, caused by an increase in litigation involving overseas investors and a large increase in the number of self-represented litigants (SRLs).



Table 1: County Court Civil Jurisdiction Divisions and Lists

Common Law Division	Commercial Division
General List	General List
Serious Injury List	Banking and Finance List
Family Property List	Building List
Medical List	Expedited List
Defamation List	
Confiscation List	
Applications List	
WorkCover List	
Other Processes List	
Adoption List	

The Expedited List in the Commercial Division handles matters that are urgent. Matters can be lodged in the Expedited List by an applicant or a party to a matter, who can apply to the Court for the matter to be expedited. At times, the County Court may determine that a matter should be expedited. In the Common Law Division, matters are sometimes expedited due to the circumstances of one of the parties, but the Common Law Division does not have an Expedited List.

Currently, most civil matters are settled before trial, commonly following mediation or a directions hearing. Matters sometimes settle 'at the door of the Court' or in the days immediately preceding a trial. The County Court encourages early settlement, and will direct mediation and other preliminary hearings to facilitate early settlement.

#### 1.4. Why are there fees for Court services?

Civil fees are charges that cover the cost, or a portion of the cost, of court services provided in relation to civil matters. Charging fees for dealing with civil matters is Victorian Government policy.<sup>13</sup> It is a worldwide practice and is used in all Australian states and territories. Fee charging sends an important signal to the community about the costs involved in providing court services, and, when they generate private benefits, it ensures those who benefit from these services help to pay for them. It also provides an important mechanism that avoids crowding the County Court with frivolous or vexatious matters.

#### 1.5. Objectives

The purpose of the County Court civil jurisdiction is to determine matters in a fair, timely, efficient and accessible way. Accordingly, the Proposed Regulations aim to set fees that:

- encourage the optimal use of Court services;
- are based on efficient and transparent costs;
- promote access to justice; and
- are easy for users to understand and for the Court to administer.

<sup>13</sup> *Cost Recovery Guidelines*, Department of Treasury and Finance, January 2013

## 2. The Nature of the Problem

Should new fee Regulations not be made, the County Court could not charge fees for its services. The Existing Fee Regulations expire on 14 December 2018. It is necessary that new fee regulations be made on or before 14 December 2018 if the Court is to charge fees lawfully from this date.

If the Court is unable to charge fees, while other Victorian jurisdictions continue to do so, demand for County Court services is likely to increase significantly, and have a detrimental effect on the Court's ability to resolve matters in a timely manner. The inability of the Court to charge fees would inhibit access to justice for litigants and diminish the role of the Court in Victoria's justice system.

In the absence of fee regulations, litigants in the civil process (many of whom would stand to gain substantial private benefits) would not be contributing to the costs of the Court and the burden of this cost would fall to the taxpayer.

Additionally, reviewing the Existing Fee Regulations provides an opportunity to better reflect the way in which Court services are delivered with a greater emphasis on specialisation, case management, and early settlement when compared to the Existing Fee Regulations.

### 2.1. Fee alignment with County Court reforms

The County Court's current fee structure has been in place since 2012. The review of the County Court fee framework during the 2012 process sought to increase the level of cost recovery for the Court, but was adjusted to ensure that no fee was more than 80 per cent of the equivalent Supreme Court fee.

That approach was premised on assumed relativities in cost structure of the two Courts, however, the assumed relativity was not tested at the time. Additionally, dispute resolution practices in both the County and Supreme Courts have been reformed since 2012, and the need to make new fee regulations presents an opportunity to independently assess the County Court's costs of service provision.

Since 2012, reforms have been progressively implemented across the County Court. In brief, these have entailed:

- the appointment of judges as heads of the Commercial, Common Law and Criminal Divisions, and head of Circuits, who have the responsibility to manage cases actively in order to facilitate the prompt resolution of matters;
- an upgraded document management system designed to provide more efficient record management, leading to reduced case duration times;
- the appointment of judicial registrars in the Commercial and Common Law Divisions to handle more case administration, and to undertake judicial mediation of matters that have not been resolved through external mediation, enabling judges to focus on more complex matters; and
- registry reforms to improve administrative efficiency, with increased specialisation and intensive case management, triaging, early intervention, and increased delegation and teamwork.

These reforms have led to significant improvements in case management, including improvements in case clearance rates, and a reduction in the overall case backlog. They have also improved the County Court's ability to manage its work, and have enabled the Court to pursue further reforms, including: e-filing; improved case management; and updating in-court technology, improving transparency and accountability for those external to the Court, and increasing support for SRLs.<sup>14</sup>

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<sup>14</sup> County Court of Victoria. Court Directions 2017-22

## 2.2. The County Court's Current Fee Structure

The Court's current fees primarily reflect two stages in the dispute resolution process, namely initiating a matter, and the trial, with intervening case management services only partially covered by fees. As a result, the Commencement fees are a type of 'block fee' that reflects a bundle of costs that cover a range of judicial, quasi-judicial and administrative work, although these activities have not been identified discretely and charged accordingly. As a result, litigants pay the same fees for all matters, even if only some matters utilise certain court services, such as mediation.

The need to review the County Court's fees has provided an opportunity to examine the costs involved in various elements of the dispute resolution mechanisms used by the Court, and to reconsider if there is a more equitable way of setting fees so that they better reflect the services provided. For example, a separate fee for mediation would mean that litigants benefitting from judicial mediation would contribute to its costs.

Making new Regulations provides an opportunity to structure the fees in a simplified and easily understood form.

The current fee structure lacks a clear, coherent, and robust set of fee policy principles that have regard to the design and decisions about the appropriate proportion of costs to recover. The Principles discussed in the following Section have guided the revision of the current fees and the setting of the proposed fees.

### 3. Policy context and guiding principles

#### 3.1 Government Policy

Government policy is that fees should generally be set at a level that fully recovers the costs of government services and regulatory activities, because this ensures that both efficiency and equity objectives are generally met. In designing fee arrangements Victoria's *Cost Recovery Guidelines* advise, among other things, that fees should:

- advance the objectives of efficiency, equity and fiscal sustainability;
- recover costs directly from those who benefit from the service;
- be cost effective and practical in administration of fees;
- avoid volatility;
- be easy to understand;
- be decided in consultation with relevant parties;
- be transparent; and
- be monitored and reviewed regularly.

Deviation from full cost recovery is permissible where there are clearly stated policy principles or objectives to support such a course.

The Costing Principles and the Fee Setting Principles set out below have informed the development of the fee structure.

#### 3.2 Costing Principles

The following Costing Principles have guided the identification of the full cost of service provision in the two Divisions of the civil jurisdiction of the County Court, to identify the appropriate cost base for setting fees. These principles also support transparency in the Court's cost structure.

##### 1. The full costs of delivering County Court services are to be identified including direct and operating expenses

Salary and oncost expenses include the following:

- salaries and wages;
- superannuation; and
- leave provisions.

Operating expenses include the following:

- overhead costs that are not associated with salary costs such as training and information and communications technology (ICT) costs;
- corporate costs including the costs of the Court's Chief Executive Office (CEO), and office and corporate services such as human resources (HR) and finance;
- accommodation costs and other similar costs; and
- the Court's share of the costs of Court Services Victoria (CSV) services.

##### 2. Costs allocated to the Civil matters

Where possible, costs are to be allocated to the activities that incur the costs. Where not possible, costs are to be allocated on a *pro rata* workload or full-time equivalent (FTE) basis (as determined by the activity-based costing methodology, because workload is the best measure of the relative resource usage of the Lists). However, if costs relate specifically to certain types of matters, then they would be allocated on a per matter basis. For example,

court room costs are allocated only to hearings, whereas ICT costs are allocated on an FTE basis, as they apply to all stages of all matter types.

### **3. Costs are to be based on actual 2016-17 expenses and case-throughput**

This is the last full financial year for which workload data<sup>15</sup> and audited financial information is available. See Section 4 for further discussion of the use of 2016-17 cost information.

### **4. The fee structure is to reflect efficient County Court operations**

The cost of the efficient processes or systems is to be reflected in the fee structure. For example, the fee structure should recognise the cost savings arising from electronic filing and data management.

### **5. County Court activities are to be modelled to determine costs of services provided within its different divisions**

Cost modelling identifies whether there are different cost structures for different types of services provided across the County Court. The cost modelling approach recognises that the cost of delivery might vary across Divisions<sup>16</sup> and the stage of proceedings. For example, if the costs of delivering services in the Commercial Court are found to be higher than the costs of the Common Law Division, different fees could reflect these different costs.

The extent to which different costs are to be reflected in different fees is determined by the Fee Setting principles below.

## **3.3 Fee Setting Principles**

The design and assessment of options for the Proposed Regulations have been guided by the following principles:

### **1. The fee structure should reflect the role of the County Court in Victoria's civil justice system**

In order to ensure that the County Court is used optimally, fees should reflect that, while it has mirror jurisdiction with the Supreme Court for most types of matters, it should be dealing with matters that do not require the specialist skills of the Supreme Court.

Ideally, if the cost structures of each of the Courts differed according to the need to provide progressively more specialised judicial and staff resources as the role of the court became more complex, then consistency in cost recovery levels (see further discussion below) would automatically position court fees so that each court was used optimally.

However, the cost structures of the two Courts do not follow this pattern. While the cost of judicial officers in the Supreme Court is greater than those of the County Court, facility and accommodation costs are higher for the County Court than the Supreme Court. This is because the County Court building is managed privately through the operation of a Private Public Partnership (PPP), whereas the Supreme Court buildings are owned and managed by the State. This is a matter that is external to the scope of the fees review and, therefore, some adjustments are required to set fees at a lower level than they otherwise might be set, to encourage the optimal use of the County Court by litigants.

Encouraging the optimal use of County Court services by charging appropriate fees is an allocative efficiency measure.

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<sup>15</sup> Actual 2016-17 data might differ slightly from published data due to the timing of reporting.

<sup>16</sup> Different cost structures have been found for Divisions in the Supreme Court and VCAT.

## 2. Access to justice is to be safeguarded

Access to a fair and impartial justice system is a fundamental tenet of the rule of law. The concept of access to justice<sup>17</sup> figures prominently in all discussions of court fees. A well-functioning justice system should provide timely and affordable justice. This means delivering fair and equitable outcomes as efficiently as possible and resolving disputes early, expeditiously, and at the most appropriate level.

The level of fees is a consideration where access would be limited or denied for a significant number of potential civil litigants if the cost were prohibitive, or at least so great as to be a major disincentive to taking a matter to court. However, as court fees generally constitute less than 10 per cent of total users costs (the majority being the costs of legal advice),<sup>18</sup> a reduction of court fees alone might not increase access materially.

Having no or very low fees might not, on the other hand, improve access to justice, and might even reduce it. This is because this approach might result in over-use of court services, which would lead to congestion, and would create significant delays in dealing with matters, limiting access to justice for many litigants.

The availability of fee waivers and concession fees for individuals also supports access to justice. Although it is generally more of a concern for individuals, access could also be impeded for corporations, in some cases, if full costs were recovered through fees. For example, the cost for Setting down (including the first trial day) is \$11,719 but a fee of this order could become a disincentive to lodging a matter with the County Court, especially for smaller corporations.

## 3. Fees should be equitable

Fees might be regarded as equitable if those who benefit from a court service pay for that service and are not subsidising the cost of services they do not use (horizontal equity).

Fees might also be regarded as equitable if those with proportionately greater means pay more than those with lesser means (vertical equity), thereby maximising access for the latter, while nonetheless avoiding the over-recovery of costs.

As a general rule, litigants should not pay for services they do not use. For example, litigants should not pay the cost of a trial if their matter is finalised without a trial.

## 4. The fees structure should promote efficient court operations

Cost recovery requires robust costing of services and transparent allocation of those costs to services that attract fees. The cost of the efficient processes or systems is to be reflected in the fee structure.

From an efficiency perspective, the proposed fee structure should be based on resolution of matters at the earliest stage, and management of matters to resolve before trial. Such a focus is regarded as the most efficient approach. Similarly, fees should encourage the use of the lowest cost, but most effective, dispute resolution mechanisms available within the Court.

## 5. Fees should be easy for litigants to understand and for the County Court to administer

Fee advice to court users should be easy to understand, including by those who have no legal training, such as SRLs. The fee structure should be sufficiently streamlined to support efficient administrative processes.

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<sup>17</sup> The Productivity Commission used the term 'access to justice' to mean 'making it easier for people to resolve their disputes' Productivity Commission, 2014: *Access to Justice*, page 3.

<sup>18</sup> Productivity Commission, 2014: *Access to Justice*, page 553.

### 3.4 Applying the Policy and Principles

Development of this RIS has sought to give effect to the policy and principles set out above in a way that provides transparent and reasonable explanations for change to the current fee structure. This approach retains the general relativities between fees charged in the County Court and those charged in other jurisdictions

The Costing Principles and Fee Setting principles underpin the development of the options set out in this RIS. There is some inherent tension between these principles, meaning that decisions must be made about how, and the extent to which, the application of one principle (for example, access to justice) will be pursued in favour of another (for example, efficiency).

In practice, a balance is to be found among the competing principles. This balance reflects the intent of the *Cost Recovery Guidelines* – that users of government services are mindful of the costs associated with providing those services. The extent to which fees are charged means that the cost of government services is, to a greater or lesser extent, borne by the taxpayer.

Charging fees for County Court services is a mechanism that assists litigants to select the most appropriate service for their needs. It also ensures that, where appropriate, litigants bear some of the cost of those services, to the extent that they are able. The existence of fee waiver arrangements means that individuals experiencing financial hardship can still access County Court services.

### 3.5 Cost recovery

The percentage of costs that is recovered through fees is generally referred to as the level of cost recovery. According to the *Cost Recovery Guidelines*, an analysis of full costs is the mandatory starting point for developing a fee framework, and full cost recovery is the default pricing position. In principle, full cost recovery is preferred because it promotes the efficient allocation of resources, is transparent, and avoids or reduces the need to rely on general taxation revenue.<sup>19</sup>

The *Cost Recovery Guidelines* also recognise however that there are circumstances in which full cost recovery might not be possible or appropriate; for example, when full cost recovery is not practical or legal, or where charging the full cost could undermine other policy objectives. In particular, it is important to balance the preference for full cost recovery with the principles of access to justice and equity. For example, if a trial fee is set at full cost, it is likely that the fees would inhibit access to justice for many applicants. Therefore, while costs have been a consideration in setting fees, so too have considerations regarding litigants' capacity to pay.

The *Cost Recovery Guidelines* and the Principles referred to above have informed cost recovery considerations for the proposed fees.

Determining the appropriate rate of cost recovery is difficult, as reflected in the variation of the rates of recovery across national and international jurisdictions. For example, UK court fees aim to recover 100 per cent of costs, however, there is a high level of fee waivers approved. The level of cost recovery arising from County Court fees covered by the Existing Fee Regulations was approximately 33 per cent in 2016-17. The Supreme Court of Victoria has a similar cost recovery rate. The District Court in New South Wales has a reported cost recovery of 38.6 per cent, and in Queensland it is reported as 39.1 per cent.<sup>20</sup> While useful, cost recovery levels in other jurisdictions should be regarded as indicative only, because different governments at different times have adopted different approaches to setting fees. Additionally, some courts charge fees for other services, such as hiring rooms for ceremonies or functions, which would be included in the reported cost recovery levels.

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<sup>19</sup> State Government of Victoria. 2013. *Cost Recovery Guidelines*, page 21.

<sup>20</sup> Productivity Commission. Report on Government Services 2018, Table 7A.14, but note that the reported cost recovery rate for the Supreme Court excludes the cost and fee revenue related to probate matters, which, when included, takes the cost recovery rate to 34 per cent.

In considering the appropriate level of cost recovery for County Court fees, consideration has been given to the following factors:

- the extent to which public and private benefits arise from Court services;
- access and affordability; and
- the extent to which litigants have a choice of jurisdiction.

### 3.6 Public and Private Benefits

Broadly speaking, economists regard public benefits as those that enhance the wider community, whereas private benefits confer an advantage on individuals.<sup>21</sup>

By providing expert, legally-enforceable dispute resolution processes for disputes between people, companies or other organisations, the civil justice system facilitates the economic growth and vitality of a jurisdiction. Through the doctrine of precedent, the litigation of matters in courts produces judgments that give predictability to the likely outcome of similar disputes, reducing the need for future court-based litigation.

The civil justice system delivers both private and public benefits.

Where there are public benefits that are not recognised in fees, services tend to be under-consumed and governments often subsidise the cost of such services so that optimum levels of consumption occur. An often -cited example of such services is immunisation services.

It follows that where there are substantial public benefits, such as in the protection of vulnerable parties, lower levels of cost recovery through fees might be appropriate.

On the other hand, parties do not take matters to court unless they are seeking some private benefit. Accordingly, the Government considers it appropriate that users should contribute to meeting the cost of services provided by the judicial system to the extent that they gain private benefits from it, for example, the resolution of a private contractual dispute.

### 3.7 Access and affordability

Given the importance of court services in a contemporary democracy, affordable access to these services is highly regarded. It is widely accepted that court services should be affordable to those seeking them, and that consideration be given to different levels of cost recovery for different classes of users. This consideration is expressed in the provision of safeguards for individuals who might face financial hardship in meeting the full cost of the fees. Most jurisdictions have a waiver system in place, irrespective of the level of cost recovery.

Additionally, while high fees could be a barrier to justice, no fees or low fees could result in high volumes of frivolous or vexatious matters coming before the Court. Such matters absorb considerable resources that inhibit access to justice for other litigants. It is therefore important that reasonable fees are set with a view to avoiding high levels of such matters.

### 3.8 Choice of jurisdiction

The issue of affordability is also balanced by the level of choice afforded to an applicant.

Except for matters on appeal from the Magistrates' Court, there are a range of alternative dispute resolution mechanisms available to applicants for civil matters before the County Court.

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<sup>21</sup> The Productivity Commission notes that 'when individuals and parties engage in civil litigation, it is generally because they have a private interest in the matter being brought...a party would not contest the matter in court unless they expect private benefits outweighed the private costs...'. It adds that '...the private benefits may be substantial (payment of damages) or non-financial (vindication of one's reputation)'. Public benefits include the value of 'the rule of law... to deter parties from engaging in unlawful conduct and encourage informal resolution... the setting of precedents... and the protection of vulnerable parties' *Access to Justice* (2014), pages 536-7.



For example, court users could choose to lodge their matters with the Supreme Court which has mirror jurisdiction (albeit with additional areas of exclusive jurisdiction, such as probate) but with higher fees. Alternatively, applicants could choose to pay lower fees and recover only a portion of their claim through the Magistrates' Court, which has jurisdiction for matters valued up to \$100,000.

## 4. Costing Methodology

The costing methodology applied by the County Court uses activity-based costing concepts, which have traced resource consumption of the Court's activities and functions.

### 4.1. Cost and revenue escalation

For the purposes of estimating future costs and future revenue, the financial analysis has been undertaken using 2016-17 data, in accordance with the costing principles set out in Section 3.

2018-19 costs have been estimated using Australian Bureau of Statistics CPI escalation factors<sup>22</sup> of:

- 2.1 per cent for 2017-18; and
- 2.0 per cent for 2018-19, based on year to date March quarter seasonally-adjusted CPI.

Taken together, the compounded cost escalation factor is 4.2 per cent.

Estimated 2018-19 fee revenue has been determined by using fee unit values which are set by the Victorian Government. The value of fee unit changes each year due to indexation. The rate of a fee unit was \$13.94 in 2016-17, \$14.22 in 2017-18, and is \$14.45 in 2018-19. The cumulative impact on revenue is growth of 3.7 per cent, which is about 0.5 per cent less than the anticipated growth in expenses.

### 4.2. Operating Expenses

The County Court's operating expenditure for 2016-17 totalled \$120.002 million, as shown in Table 2 below. Table 2 also sets out the anticipated costs for 2018-19, taking account of CPI changes from 2016-17 as discussed above.

Table 2: Court Operating Expenses, actual 2016-17 and estimated 2018-19

Whole of Court Operating Expenses	2016-17 Actual Cost (\$'000)	Estimated 2018-19 Cost (\$'000)
Judicial officers	44,479	46,347
Public Private Partnership - facility costs	26,366	27,473
Court support staff	12,975	13,520
Court Services Victoria - Jurisdiction Services	8,632	8,995
Public Private Partnership - interest	7,022	7,317
Victorian Government Reporting Service	4,996	5,206
Other Court administration	4,572	4,764
Registry	4,200	4,376
Juries Commission	4,142	4,316
Governance	1,346	1,403
Judicial College of Victoria	641	668
Protective Service Officers	631	658
<b>Total Whole of Court Operating Costs</b>	<b>120,002</b>	<b>125,042</b>

<sup>22</sup> Using CPI as the basis for escalation assumes that it accurately reflects the rate of growth of costs of the County Court. In the absence of a Court-specific index, the department regards this approach as the best available, and better than not escalating costs.

## 4.3. Functions of the County Court

### 4.3.1. Salary and Operating Expenses

Salary and operating expenses of the Court support delivery of its output services as follows:

1. judicial officers (comprising County Court judges and judicial registrars) who hear and judge on Criminal, Common Law, and Commercial cases;
2. County Court support staff, including court secretaries, tipstaves, and associates, who support judicial officers in the conduct of court room operations, judicial services, and interaction with parties;
3. registry staff, who provide a range of services to the community and judicial officers, including receiving and processing court lodgements, preparing and publishing daily court listings, organising video links between the County Court and other locations, providing assistance to SRLs, managing fee waiver applications, co-ordinating County circuit courts in conjunction with regional registrars, and providing high quality customer service to court users;
4. governance that includes corporate governance administration, audit and risk, and legal and policy research and interpretation, without which the County Court could not deal effectively with civil matters;
5. the Public Private Partnership (PPP) County Court Facility, whereby the State of Victoria and The Liberty Group Consortium entered into a Court Services Agreement (CSA). The 20 year contract commenced in June 2002 and will conclude in May 2022. Under the CSA, the Contractor is to:
  - develop, construct and maintain the Facility, which is owned by the Consortium;
  - provide the Court and court users with accommodation services at the Facility and, in return, the Court is committed to the reservation of a minimum of 8,400 court room days per annum;
  - provide security, technology and building services to the Court; and
  - provide other parties with access to court rooms in the Court building on a fee for service basis; and
6. other County Court administration, which provides a range of functions including court executive management, finance, procurement and contract management, court administration services, HR, occupational health and safety and risk compliance, facility and court event support, media and communication services, infrastructure technology operations and development, and court improvement programs and projects.

Not all operating expenditure is considered appropriate to be included within the costing methodology for determining Court fees for the following reasons:

- an interest repayment component of around \$7 million per annum, which relates to the servicing of the PPP, is excluded because this payment is a short-term cost.<sup>23</sup> Depreciation and other service expenses of the PPP within its operating expenditure have been retained, because these are costs that arise from day to day court operations, and are expected to continue in the foreseeable future.
- the Juries Commissioner's Office is funded by the Supreme Court of Victoria and its regulated fees are applied under the Juries (Fees) Regulations 2012. Juries' costs are

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<sup>23</sup> The interest payment is a debt servicing element of the PPP contract which is not expected to continue after the current CSA expires in 2022. The department therefore considers that it should not be included in costs that will determine fees well beyond that date.

assessed as out of scope from the County Court fees review because they are treated under other Regulations where their costs are reflected.

- Protective Services Officers (PSO) are officers of the Victoria Police. They provide a security presence around the Court precinct to uphold public and court user safety. PSOs are directly funded by the Victoria Police. The costs recognised in 2016-17 represent a notional amount which has no direct apportionment to County Court activities and these costs have therefore been excluded from the fees review costing.

### 4.3.2 Allocation of expenses

As discussed above, the cost of juries and the interest repayment component of the PPP payments have been excluded as relevant costs to future fees. Therefore, the costs to be considered reduce from \$120.002 million (Table 2) to \$109.314 million (Table 3) in 2016-17. For 2018-19, the costs are expected to reduce from \$125.042 million to \$113.905 million.

Table 3: Cost allocation by major functions, actual 2016-17 and estimated 2018-19

Expenses	2016-17 Actual Cost (\$'000)	Estimated 2018-19 Cost (\$'000)
<b>Direct Operating Costs</b>		
Judicial officers	48,198	50,222
Court support staff	26,951	28,083
Registry	6,091	6,347
Governance	1,707	1,779
Public Private Partnership - facility costs	26,367	27,474
<b>Total Direct Operating Costs</b>	<b>109,314</b>	<b>113,905</b>

As the major trial Court in Victoria, the County Court operates two jurisdictions: Civil and Criminal. Within the Civil jurisdiction there are a number of divisions and lists (see Table 1).

The adjusted total 2016-17 operating expense of \$109.314 million is divided between the Civil and Criminal jurisdictions, with the Civil jurisdiction costs set out in Table 4. The cost of the Civil jurisdiction, which is relevant to County Court fees, is \$32.076 million in 2016-17, and estimated to be \$33.423 million in 2018-19. Table 4 illustrates each cost component based on case load and/or staff allocations (measured as a percentage) assigned to the civil and criminal jurisdictions.

Table 4: Allocation of costs to the Court's Criminal and Civil jurisdictions

Cost component	Civil Jurisdiction	Criminal Jurisdiction	Civil 2016-17 Actual Cost (\$m)	Jurisdiction Estimated 2018-19 Cost (\$m)
Judicial officers	30%	70%	\$14.273	\$14.872
Court support staff	22%	78%	\$5.957	\$6.207
Registry	56%	44%	\$3.422	\$3.566
Governance	30%	70%	\$0.514	\$0.536
Public Private Partnership - facility costs	30%	70%	\$7.910	\$8.242
<b>Total Direct Operating Costs</b>	<b>29%</b>	<b>71%</b>	<b>\$32.076</b>	<b>\$33.423</b>

The civil jurisdiction costs outlined in Table 4 are the costs that have been subject to activity-based costing. With the exclusion of debt servicing, jury costs and the services of PSOs, the department considers that the remaining costs reflect the efficient costs of the County Court.

#### 4.4. The Activity-Based Costing Method

The County Court has documented the cost of activities required to deal with each matter type by identifying and measuring activities associated with the service of the matter type. Time and costs for judicial officers, registry staff and other court staff were identified. Outliers in time taken to complete tasks (where time taken was much longer than usual) were excluded from the costings in order to ensure that processes were as efficient as possible. The costs of court rooms has been based on average hearing times for each matter type.

The range of activities identified and costed includes:

- handling an initial application;
- transferring a matter to a judge/judicial registrar for advice;
- dealing with the advice received from a judge or judicial registrar;
- directions hearing;
- mediation;
- handling an interlocutory application;
- hearing an interlocutory application;
- administrative work;
- adoption hearing;
- other hearings;
- trial hearings;
- judicial chambers management of matters and trials;
- conducting an oral examination;
- discharge of adoption hearings;
- trial assessment hearings; and
- application hearings.

Each activity involves a group of tasks (inputs) performed by the relevant cost component. Each input is measured in minutes, which is then converted in to a unit cost. The unit cost is then calculated for each component of each activity based on actual salaries and oncosts. For example, the activity of Adoption Summons<sup>24</sup> involves tasks and times to perform those tasks such as:

- on the day of the hearing - adoptions clerk escorts parties to court room – 10 minutes;
- judge conducts adoptions hearing – 20 minutes;
- associate assists the judge during hearing – 20 minutes;
- adoptions clerk hands signed order and certificate to party – 5 minutes; and
- court room hire – 60 minutes.

Whereas, the activity to discharge of adoption hearing involves tasks such as:

- application for discharge of adoption received in the mail – 2 minutes;
- registry officer reviews the application and the attached affidavit – 15 minutes;
- judge makes formal order in court – 15 minutes;
- registry officer makes copy of order for the Department of Health and Human Services, and for Births, Deaths and Marriages, and the applicant – 5 minutes; and
- court room hire – 60 minutes.

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<sup>24</sup> Adoption matters have been selected for illustration purposes because, while they demonstrates the approach, they are a relatively straightforward part of County Court processes.

There are two types of adoption matters: proceedings leading to an adoption and discharge of adoption. On average, the cost per adoption matter is \$1,261.59, or \$1,112.34 for adoptions, and \$1,410.84 for a discharge of adoption. The number of adoption cases heard in 2016-17 was 56 – see Table 5.

Table 5: Costing of adoption matters, 2016-17 and estimated 2018-19

Function	2016-17 Actual Unit Cost	2018-19 Estimated Unit Cost
<b>A: Adoption matters</b>		
Judicial officers	\$479.24	\$499.37
Court support staff	\$31.11	\$32.42
Registry	\$153.58	\$160.03
Public Private Partnership – court room costs	\$448.41	\$467.24
<b>Total Cost: Adoption matters</b>	<b>\$1,112.34</b>	<b>\$1,159.06</b>
<b>B: Discharge of Adoption</b>		
Judicial officers	\$808.71	\$842.68
Court support staff	\$17.78	\$18.53
Registry	\$135.94	\$141.65
Public Private Partnership – court room costs	\$448.41	\$467.24
<b>Total Cost: Adoption matters</b>	<b>\$1,410.84</b>	<b>\$1,470.10</b>
<b>Average cost: Adoption matters</b>	<b>\$1,261.59</b>	<b>\$1,314.58</b>

The same principles used for adoption matters have been used to cost activities that, when brought together, represent how the Court deals with all matters lodged with the County Court's civil jurisdiction.

#### 4.5. Estimating Efficient Costs

The purpose of conducting the Activity-Based Costing was to identify the actual expenditure (as at 2016-17) incurred by the County Court in undertaking each of its activities, in order to inform inputs for modelling fees. The high-level elements of the County Court's approach to conducting the Activity-Based Costing were as follows:

- specify the activity categories to be costed;
- obtain human resource, activity and financial information;
- estimate time taken for the chosen activities and tasks;
- allocate activities to each activity category;
- estimate cost measures for the chosen activities;
- reconcile activity and financial information; and
- verify activity and financial information.

The only salary and oncost expenses that were included were expenses that arise when an application is considered by the court in some way. The costs of administrative support services for judges' chambers and the costs of judges' associates are fully identified in the process modelling.

Salary and operating expenses were adjusted to take account of a range of expenses that are not discovered through process modelling including:

- costs related to administration or corporate governance, which were reallocated across the costs on the basis of total FTE staff numbers at the County Court;
- costs related to judicial officers conferring with each other on issues related to cases, have been recognised within the overall judicial expenses;
- corporate costs, such as the costs of the CEO's Office, financial management, HR management, ICT and accommodation have been allocated on an FTE basis;
- the cost of court rooms and other hearing rooms have been allocated to hearing-related activities on the basis of average hearing time;
- the cost of shared services provided by CSV that are charged to the Court have been allocated on an FTE basis; and
- the cost of the Juries Commissioner's Office, the costs of PSOs or the PPP debt-servicing interest expense have not been included or adjusted for, as discussed previously.

Together, with the above mentioned adjustments, the activity-based costing has resulted in efficient cost calculations. An underlying assumption is that the judicial and administrative processes being followed and the time taken to do them are efficient, as indicated above.

Total modelled costs (\$33.864 million in 2018-19) were compared to actual total court costs (\$33.423 million in 2018-19 dollars) for civil matters indicating that the calculated total or 'efficient' costs are not overstated or understated. The resulting difference of 1.3 per cent is considered well within allowable limits for modelling and indicates that the costs identified through activity-based costing and the actual costs are comparable.

The resulting total costs for each type of task within an activity were then used as a basis for developing fee options.

## 4.6. Setting Fees

Having identified the costs of activities for a number of Lists, each activity was allocated to the following fee groupings:

- **Commencement fees:** applying to the Application that lodges a matter with the County Court in the first instance.
- **Case Management fees:** relating to County Court activities that might or might not occur, depending on how a matter progresses. It is proposed that Case Management fees include mediation fees, interlocutory applications by summons, and determining *ex parte* applications.<sup>25</sup>
- **Other applications fees:** relating to a range of applications including summons for an attachment of debt, summons for oral examination, filing an attachment of earnings, a warrant of seizure and sale, or a warrant of possession of land.
- **Hearing fees:** by convention, these cover the cost of listing a matter for trial. They also cover the cost of each trial day and other court hearings (such as a second hearing day for an interlocutory application).
- **Administrative fees:** relating to a range of administrative tasks mainly performed by the County Court's Registry at the request of a court user.

Activity-based costing identified a number of County Court activities for which no fees are currently charged, including, but not limited to:

- judicial mediation;

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<sup>25</sup> It should be noted that other case management activities, such as making Consent Orders or dealing with Interlocutory Applications by notice or leave are currently not subject to fees, and fees are not proposed for these activities.

- interlocutory applications by notice or by leave;
- consent orders; and
- reviews of decisions of judicial registrars.

Activities for which no fees are currently charged were considered in light of the principles established in Section 3. In summary, whether or not fees would be charged for one or more of these activities have been worked into the proposed fee options discussed in Section 5.2.

Regarding the grouping of fees, preferred fee options were then calculated on the following basis:

1. To reflect access to justice considerations, the Corporate Fee is as close as possible to full costs, while also ensuring that the proposed County Court fee remains lower than the equivalent proposed fee in the Common Law Division of the Supreme Court.<sup>26</sup> The Standard Fee is 50 per cent of the Corporate Fee, and the Concession Fee is 50 per cent of the Standard Fee, capped at 17.3 fee units (\$250 in 2018-19), with a minimum 1 fee unit (\$14.50 in 2018-19) applying, if setting the fee at 50 per cent of the Standard Fee would have resulted in it being lower than one fee unit.<sup>27</sup> The actual amounts vary marginally from this guide, to take account of the need to express fees in fee units (to one decimal point) and express fees in dollars, rounded to the closest 10 cents. In this way, modelled costs drive fee amounts and, in a general sense, determine the fees for Corporate Fee payers.
2. For Commencement fees, the costs included are from the initial lodgement of a matter up to, and including, the first opportunity to finalise a matter, which is the first directions hearing or administrative mention for a contested matter, or a default judgment if the matter is not contested. This approach promotes the principle of more efficient County Court operations.
3. The fee for Other Applications was allocated the same amount across similar matter types, in order to minimise the number of fee points. Table 6 illustrates the process for allocation of Other Application fees. The costs of applications that are managed by judicial officers vary between \$1,131 and \$2,571. The difference in costs reflects differing amounts of judicial time and courtroom time that are typically required to deal with different types of applications. In order to avoid multiple fee points, these applications have been allocated the same fee (\$1,083.80 as the Corporate Fee), based on the lowest cost type of application. This approach makes the fee structure simpler than it would be otherwise and, because the lowest cost application type was used, it avoids over-recovery of costs for any application type. Similarly, with the exception of applications under the Judgment Debt Recovery Act (see Sections 5.2.5 and 7.5), applications that are managed administratively have been allocated the same fee.

Table 6: How multiple fee points were avoided

Type of Application	Full Unit Cost	Current 2018-19 Fees	Proposed Fees		
			Corporate	Standard	Concession
<b>Other Applications (includes 1<sup>st</sup> hearing day, where relevant)</b>					
<b>Applications dealt with by judicial officers</b>					
Assessment of damages or value	\$2,571.50	\$1,023.10	\$1,083.80	\$541.90	\$250.00

<sup>26</sup> This approach results in County Court Common Law Division fees being slightly lower (about \$30 lower) than corresponding Supreme Court fees and Commercial Division fees being less than 65 per cent of the corresponding Supreme Court fee (about \$825 lower). The proposed approach seeks to find the best available balance of fees without introducing different fees for Commercial Division matters in the County Court.

<sup>27</sup> One fee unit is the minimum fee unit that can be expressed in Regulations. For fees lower than this amount the Regulations must stipulate dollar values which would not change over the 10 year life of the Regulations.



Type of Application	Full Unit Cost	Current 2018-19 Fees	Proposed Fees		
			Corporate	Standard	Concession
Filing for an attachment of earnings	\$1,798.76	\$169.10	\$1,083.80	\$541.90	\$250.00
Review of a decision by a judicial registrar	\$1,965.58	Nil	\$1,083.80	\$541.90	\$250.00
Summons for attachment of debt (garnishee)	\$1,131.13	\$335.20	\$1,083.80	\$541.90	\$250.00
Summons for oral examination	\$2,233.01	\$169.10	\$1,083.80	\$541.90	\$250.00
Taking of accounts	Not costed	\$297.20	\$1,083.80	\$541.90	\$250.00
<b>Applications managed administratively</b>					
Order for oral examination	\$172.64	\$169.10	\$108.40	\$54.90	\$27.50
Warrant – seizure and sale	\$108.13	Nil	\$108.40	\$54.90	\$27.50
Warrant – possession of land	\$108.13	Nil	\$108.40	\$54.90	\$27.50
Creditor and Debtor applications under the Judgment Debt Recovery Act	\$159.81	\$20.20 or Nil	\$70.80	\$34.70	\$17.30

4. Setting down costs reflect the cost of preparing a matter for hearing. Given the high cost of setting down, the Corporate Fees for Setting down have been set well below full cost recovery, to reflect the access to justice principle, and relativities with fees in other jurisdictions. The Setting down fee has been separated from the fee for the first trial day to reflect the high rate of settlement between Setting down and the first trial day.
5. Fees for trial days have been modified to include a new fee for Day 1. Otherwise, the current grouping of trial days (Days 2 to 4, Days 5 to 9, and for the tenth and subsequent trial days) has been retained. The average cost of one trial day includes an allowance for research or judgment writing. Hearing fees become more expensive as a trial progresses, to provide an incentive to settle a matter as early as possible, reflecting the principle of enabling more efficient operations.
6. An Other Hearing fee has been set to provide a basis for charging fees for hearings other than trial day hearings, such as the second day of hearing an interlocutory application by summons. This is to account for some types of hearings that have not attracted a fee, or have been charged a Setting down fee in the absence of a specific fee. Additionally, it is consistent with government expectations that users should contribute to the cost of service provision.

#### 4.7. Estimating Revenue

County Court fees (under the Existing Fee Regulations) collected in 2016-17 totalled approximately \$10.5 million, or 33 per cent of costs. If the current fees were retained, but were indexed in accordance with the fee units determined for 2018-19, and no changes in the volume of matters occurred, the anticipated revenue in 2018-19 would be \$10.655 million. Taking account of increases in the volume of commencements and court activities in the 12 month period from July 2017 to June 2018, the anticipated revenue in 2018-19 is estimated to be \$10.755 million, if the current fee structure were to be retained.

Revenue estimates included in the options outlined in Section 6 similarly reflect an increase in activities as evident in the 12 month period (July 2017 to June 2018).

## 5. The Proposed Fee structure

In the context of identifying options for this RIS, a number of different types of fee structures have been considered separately from options related to the level of cost recovery. Options for the level of cost recovery are set out in Section 6. This section deals with options related to how fees are to be structured.

### 5.1 Consultation

Two rounds of consultation have occurred over the course of the Fees Review.

#### *Internal consultations*

First, a series of internal consultations with County Court judicial officers, registry staff and other staff was undertaken to identify issues with the current fee regime and issues that might be relevant to a new set of fee Regulations.

Internal consultations highlighted the following issues:

#### **Commencement fees**

- No issues were identified with Commencement fees, except in the case of discharge of adoption. There was feedback to the County Court that fees for discharge of adoption should not be charged, when an adult applies for a previous adoption order to be quashed. The rationale for the view of stakeholders was that because the County Court is being asked to reverse a decision it has previously made, no fee should be charged.
- The prospect of a separate fee for expediting a matter in the Commercial Division was raised by stakeholders, and generally supported if the matter is expedited at the request of a litigant because of the benefits of expedition to litigants. There was no support for a fee for expediting a matter in the Common Law Division because matters are generally expedited in the Common Law Division because of the failing health of a litigant.

#### **Case Management fees**

- Case management is resource intensive, but is used to encourage early settlement because trials are costly.
- Increasingly, court processes are more and more informal, again oriented to early settlement. Stakeholders noted that it is important to retain and strengthen the case management approach.
- Up to 85 per cent of matters settle before trial.
- The County Court will often initiate a directions hearing in an effort to encourage a matter to early settlement. Stakeholders suggested that no fee should be charged for this type of hearing because it is not occurring at the request of a litigant.
- Judicial mediation is being used increasingly in an effort to settle matters early. For example, in the Family Property List, judicial mediation is used for all cases. External mediation is often ordered by a judge, but where that has not been successful, it might be referred to internal judicial mediation. Currently, there are no fees for internal judicial mediation. Some participants consider that there should be a mediation fee, others consider that a fee would be counter-productive and a disincentive to participating in mediation.
- Stakeholders suggested that there are a number of sources of inefficiency in court operations:
  - the Common Law Division experiences high levels of re-work for consent orders submitted by parties. Stakeholders suggested that a fee for lodging a consent order might act as an incentive to submit a correctly drafted order the first time it is submitted; and

- many thousands of interlocutory applications are received by email and do not attract a fee. These are specific types of interlocutory applications, for example, an application for a hearing to change a trial date. Some other interlocutory applications can only be commenced by summons, and do attract a fee. The large and growing number of interlocutory applications received by email suggests that these services are possibly over-used, and that a fee for such applications would discourage over-use.
- Stakeholders suggested a block case management fee could be considered in one of two ways:
  - as a deposit on case management activities, with costs being offset against the fee over time, as case management services were delivered. A second fee, under this scenario, would be paid if the first fee was exhausted, or a portion of the fee could be returned to the litigant if services had not been used; and
  - a single ‘average’ Case Management fee to offset some of the costs of case management, and avoid both the disincentives associated with fees for specific services and the administrative tasks associated with fees for specific services.

### Other application fees

- Stakeholders suggested that the fee for a default judgment is unreasonable, because there is no judicial time or court room costs incurred for these judgments, as they are completed administratively.
- The fees for an application under the Judgment Debt Recovery Act are anomalous. There is no fee for an application by a debtor but the cost of applications by debtors is higher than the costs of applications by creditors.

### Trial related fees

- The Setting down for trial fee, which incorporates the fee for the first hearing day, is paid very early in the case management process and is not refundable. Some stakeholders provided feedback to the County Court that the combined fee could be reconsidered, as, in most cases, matters do not go to trial. Otherwise the Setting down fee is widely regarded as a form of a Case Management fee.
- Stakeholders suggested there are few problems with administering the current fees regime:
  - The main problem identified by stakeholders is that users are sometimes confused about the meaning of the hearing day fees that are described in groups of days: Days 2 to 4, Days 5 to 9 and tenth and subsequent days. For example, some users mistakenly think that the \$523.30 fee for Days 2 to 4 is a block fee for the three days combined, whereas it is a daily fee for each day.
  - Similarly, administering the daily hearing fees requires staff to make two checks – which fee was paid last, and which day it was paid for. For example, it will be evident that a \$523.30 fee was charged, but staff will have to check whether that fee was for Day 2, Day 3 or Day 4.

### Fee waivers

- No issues were raised by stakeholders regarding fee waivers. Less than one per cent of total fee value was foregone through waivers in 2016-17 and it is not regarded as a significant issue.
- The administration of the waiver scheme is, nevertheless, regarded as more cumbersome than it needs to be because separate applications are required on a fee by fee basis, rather than being completed once for a matter.

## Administrative fees

- There is a high volume of digital copying that does not attract a fee. The County Court is seeking to actively discourage photocopying in favour of digital copying.

## General

- A comment was made that it would be helpful if the Regulations stipulated when fees, administrative and otherwise, had to be paid.

## External consultations

Following internal consultations and the development of an initial set of options, a round of external consultations was held. Two forums were organised, one for the Common Law Division Court Users Group, and one for the Commercial Division Court Users Group.

The issues raised in external consultations were condensed from those raised in internal consultations and covered the following:

### 1. **Whether County Court fees should continue to be a set as a proportion of the Supreme Court fees**

Participants considered that relativities of fees should be retained between the Supreme Court and the County Court, but not necessarily on a fee for fee basis.

### 2. **Whether it is useful to have different fees for different classes of party**

Different fees for different classes of party were considered acceptable, as long as the fee related to the class of litigants, and not to the status of the legal representative, because fees should attach to the parties making the application.

Some comments were made about the threshold for the Corporate Fee being set at \$200,000. Some concerns were raised about charging public sector entities the Corporate Fee. A concern was also expressed that, in the first instance, it would be a solicitor's role to determine what fee is payable, placing an onus on solicitors to delve into the financial circumstances of their clients to a level that might not have been needed otherwise.

Stakeholders suggested that the Concession Fee should not replace a full waiver. Concern was expressed that the Concession Fee might be a disincentive to applying for a full waiver, because some potential waiver applicants might choose to avoid the examination of their personal financial situation by the Court, even in cases where there was considerable financial hardship.

### 3. **Whether some new fees are justified, such as for interlocutory applications by notice, mediations and consent orders**

There was no support among stakeholders for separate fees for separate case management services, in the context that additional fees might be involved. A one-off Case Management fee was regarded as reasonable because it would be easier to manage administratively.

### 4. **Whether the Setting down fee should continue to include the 1st Trial Day fee**

Separating the Setting down from the First Hearing Day fee was received positively by stakeholders, as many matters are settled between Setting down and the first trial day. Stakeholders suggested that it would be optimal if the Setting down fee was charged closer to the first listed hearing day than it is now, because many matters are settled during the long lead time between when it is currently due (at least six months before the first trial day).

## 5. Whether the daily hearing fee should continue to be tiered

Stakeholders supported having different fees for each hearing day, but there was also some support for no changes to the way trial days are charged for.

### 5.2. The Proposed Fee Structure

In response to consultations, the proposed fee structure has adopted a number changes discussed below, including:

1. the introduction of different fees for different classes of party;
2. revised fee waiver arrangements;
3. revised Commencement fees;
4. revised and new Case Management fees;
5. revised fees for other applications;
6. an unbundled Setting down fee and new Trial fee for Day 1; and
7. revised administrative fees.

#### 5.2.1. Different fees for different classes of party

Currently, the County Court, along with other Victorian courts, does not have a differentiated fee structure with different fees for individuals and corporations. NSW Courts and the Federal Court operate differential fee rates for Corporate and Individual Fee payers, and the VCAT Regulations, which were made in 2016, introduced different fees for different classes of party. The differentiated fee approach is also under consideration for Supreme Court fees.

In general, Government policy is that the fee structure should reflect the principle that those fee payers with the ability to pay more should do so, and conversely, those without the ability to pay should still be able to seek access to justice. Consequently, the categories of Corporate, Standard and Concession Fee levels have been used as proxies for ability to pay. Although these are imperfect proxies (some individuals would likely be able to afford the Corporate Fee, and some corporations might struggle to do so, for example), the department considers these are the most likely to reflect, in most cases, ability to pay.

Setting different fees for different classes of party recognises differences between corporations and most individuals such as:

- corporations can generally claim court costs as a legitimate business expense, making them tax-deductible, whereas they are not tax-deductible for individuals unless the matter relates to earning an income;
- larger corporations are regarded as having proportionally greater resources and means than individuals (see further comments below about the Corporate Fee eligibility threshold); and
- corporations generally pursue litigation only where there is a clear financial interest in doing so, making price signals more effective.

A differentiated fee approach based on different fees for different classes of party, therefore, supports improved levels of vertical equity than other fee structures.

The following distinctions have been used in the Proposed Regulations:

- **Corporate Fee:** the Corporate Fee would be paid by corporations with a turnover of \$200,000 or more in the previous financial year. Public sector applicants would also be liable to pay the Corporate Fee, reflecting vertical equity (ability to pay) considerations, and to ensure that the real costs of taking matters to court are considered before a matter is lodged.

- **Standard Fee:** the Standard Fee would be set at 50 per cent of the Corporate Fee level, in acknowledgement of the tax-deductible value of the latter, and to provide an additional discount on the fee payable.
  - The Standard Fee would be payable by individuals, sole traders, unincorporated partnerships, and corporations with a turnover of less than \$200,000. Corporations seeking to pay the Standard Fee would be required to make a declaration about their financial status. Organisations with charity status for taxation purposes would also be eligible to pay the Standard Fee.
  - Almost all applicants to the County Court are legally represented, and the Court would rely on the integrity of solicitors, who are Officers of the Court, to determine the relevant fee correctly.
- **Concession Fee:** the Concession Fee would be set at 50 per cent of the Standard Fee and capped at 17.3 fee units, or \$250<sup>28</sup> in 2018-19, with a minimum of one fee unit, or \$14.50 in 2018-19, applying if setting it at 50 per cent of the Standard Fee would have resulted in it being lower than one fee unit. The Concession Fee would be automatically available to applicants who hold a current Commonwealth Health Care Card. Health Care Card holders and other applicants would still be entitled to apply for a fee waiver.

The RIS consultation process invites specific responses regarding whether:

- a differentiated fee system is likely to improve access to the County Court;
- the Concession Fee is reasonably set at \$250 (in 2018-19 or 17.3 fee units) with a minimum fee of \$14.50 (in 2018-19 or 1 fee unit); and
- there are potential problems for litigants in satisfying the County Court of the status of the fee payer.

### 5.2.2. Fee waiver arrangements

The widespread practice of fee waiver arrangements in civil jurisdictions is linked closely with the themes of access to justice and equity, and the availability of fee waivers is often regarded as an indicator of accessibility. Currently, upon consideration of a written application, the County Court can waive a fee where it believes that payment would cause financial hardship. This measure applies to individuals, not companies. In most instances, fee waivers only apply to SRLs because applicants with legal representation are regarded as having the ability to pay court fees.

In 2016-17, the Court waived fees to the value of \$76,816, or about one per cent of total fee revenue. The majority of applications for waivers were for matters heard in the Common Law Division, and over 97 per cent of the 101 applications were approved.

Fee waivers are currently the main mechanism available to the County Court to ensure that a lack of financial means does not become a barrier to justice.

To streamline fee waiver arrangements, Health Care Card holders would automatically qualify for a Concession Fee. The County Court expects that this provision will remove the need for a detailed assessment of a fee waiver application in some cases and, as a result, it would also reduce the administrative burden on the Court. A fee waiver would continue to be available to litigants who can demonstrate that full payment of the fee would cause financial hardship, to the satisfaction of the Court.

The Court would verify the card through the Commonwealth Department of Human Services.

In circumstances where an applicant has applied for a fee waiver, but is not eligible for a full fee waiver, the Court might determine that the Concession Fee can be paid.

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<sup>28</sup> The proposed Concession Fee in the Supreme Court would be capped at \$300. The Concession Fee at VCAT was \$150 when the Victorian Civil and Administrative Tribunal (Fees) Regulations 2016 were made. Capping the fee for the County Court at \$250 reflects the fact that County Court fees are lower than corresponding Supreme Court fees, but higher than VCAT.

With the introduction of a more affordable Concession Fee, it is expected that fewer people seeking access to court would need to rely on a fee waiver. It is expected that these arrangements would mean that more litigants would pay lower fees than is currently the case.

Additionally, provisions enabling automatic eligibility for fee waivers for individuals in receipt of *pro bono* assistance or legal aid are included in the Proposed Regulations. These provisions mirror the proposed approach for the Supreme Court and the arrangements that are in place for VCAT.

### 5.2.3. Commencement fees

Activity-based costing has demonstrated that the cost of dealing with matters in different lists are similar, with the exception of adoption matters, which have very streamlined management processes. This is because for adoption matters, parties are not in dispute, unlike other civil matters before the County Court.

Generally, the costs that differentiate matters relate to the number of case management activities and the number of trial days, rather than to the costs associated with commencing a matter.

With the exception of adoption matters, Commencement fees in the options discussed in Section 6 are reasonably uniform, and therefore there is no cost-related basis on which to charge different Commencement fees for different types of matters. During consultation, some stakeholders suggested that the fee for a discharge of adoption should be discontinued because the County Court was being asked to reverse a decision that it had already made. However, it is common practice, both nationally and internationally, to charge fees for the review of a previous decision, or an appeal against a previous decision, so the County Court did not consider it appropriate to discontinue this fee.

A new fee for expediting a matter in the Commercial Division has been proposed, because expediting a matter in the Commercial Division reflects the expectation that early resolution of the matter is beneficial to the litigant requesting the expedition. Expediting a matter also requires resources to be made available at short notice, such as the purchasing of additional court room space from the facility provider.

The only other issue related to Commencement fees is relativity with the Supreme Court. As previously indicated, the proposed fees are lower than Supreme Court fees, to encourage plaintiffs to lodge in the County Court if they do not need the specialist services of the Supreme Court.

### 5.2.4. Case Management fees

As discussed previously, as a result of reforms to County Court processes over the last five to ten years, there is now greater use of additional mechanisms to case manage matters with a view to finalising matters more quickly.

Judicial registrars are increasingly undertaking mediation to either narrow the range of issues in dispute, or finalise a matter without it going to trial. There is currently no fee for judicial registrar services, but these have the effect of either preventing a trial or reducing the number of days a matter is set for trial, which represents savings to litigants. A successful mediation therefore finalises a matter for the same fee that is paid for a matter that is withdrawn or dismissed. The discussion of options in Section 6 outlines the advantages and disadvantages of introducing a fee for mediation.

As mentioned above, the County Court has identified some inefficiencies arising from:

- the many thousands of interlocutory applications received by email (about 17,000 in 2016-17, amounting to about three applications per matter) that do not need to be commenced by summons and are not charged a fee. The large and growing number of such applications suggests that these services may be over-used and a fee for such applications might discourage over-use;

- the Court, particularly its Common Law Division, experiences a very high level of re-work on consent orders submitted to the Court, for which no fee is paid, prior to a judge being able to make the order; and
- at times, parties to a matter will request a directions hearing, but are not charged a fee for these hearings.

Charging fees to respond to these sources of inefficiency has been considered, but would require the introduction of new systems, and new administrative processes, that would result in delays in finalising matters by judicial officers who currently deal with such applications directly, potentially introducing a new source of inefficiency. Instead, the County Court is working with frequent Court users to reduce the demand on the Court of these requests.

Consideration was also given to the introduction of a single block case management fee that would provide litigants with access to a wide range of case management services. This approach has not been pursued because the department regards such a fee as inequitable – as many applicants would not need services covered by the fee – and because it would be a departure from the way in which court services are usually charged for in this and other court jurisdictions.

### 5.2.5. Fees for other applications

A range of other applications are grouped in the options discussed in Section 6. The changes to current arrangements (other than the dollar value of the fee) are:

- introduction of a fee for review of determination made by a judicial registrar. With the introduction of judicial registrars, there have also been applications for the review of decisions of judicial registrars that are heard by Court judges. This is a new activity and the new fee reflects the change to court practices since the current fee regulations were made in 2012;
- the removal of the distinction between the fee for debtors and creditors in relation to applications under the Judgment Debt Recovery Act. There is no difference in the resources required to deal with these matter types, which are managed administratively at a cost of \$160 with a fee of \$20.20. Therefore, the Proposed Regulations provide for one fee level only for such applications. The fee for these matters has been set at \$70.80 for the Corporate Fee, the same as the proposed Supreme Court fee. Given that the proposed fee is still quite low, the department does not expect that the increased fee would lead to any significant change in the rate of applications;
- discontinuation of the application fee for a default judgment. These matters are not contested, and the costing process has identified that a separate fee is not warranted because the costs of issuing a default judgment can be covered by the Commencement fee;
- changes to the fee for an assessment of damages or value. The current fee is used by a small proportion of court users, who apply for a default judgment, for which a Setting down fee is currently charged. Discontinuing the default judgment fee and changing the fee for the assessment of damages or value is considered to be more equitable than the current arrangements.
- There is a revised fee for the taking of accounts, which relates to the discharge of a commercial partnership. The revised fee better reflects the use and cost of judicial time for such applications.

The fees for each of these applications include an initial hearing of the matter.

Currently, the Existing Fee Regulations contain references to fees related to costs disputes. These fees are no longer relevant, and have not been included in the Proposed Regulations, as the County Court no longer deals with costs disputes, which are dealt with by the Supreme Court.



### 5.2.6. Hearing fees

The Setting down fee and the First Trial Day fee have been unbundled, with separate fees applying for Setting down and for Day 1 of a trial. Details about when these fees are due are set out in Section 7.6.

Consideration was given to introducing different fees for each trial day, as suggested during consultation. The department considers that different fees for each trial day would introduce a level of complexity to the fee structure, and would outweigh the confusion associated with the current tiered Hearing Day fees that was noted by some respondents during consultation.

A new Other Hearing fee has been introduced to take account of hearings related to other applications that extend beyond the first day.

### 5.2.7. Administrative fees

Administrative fees have also been reviewed to ensure that the costs related to these services is reflected in revised fee levels, particularly as many services are provided electronically.

## 5.3. Summary

In summary, the options considered in Section 6, incorporate the following changes to the current fees structure:

- a new fee for lodging a matter in the Expedited List in the Commercial Division;
- a corresponding make-up fee for matters that are uplifted to the Expedited List in the Commercial Division at the request of a party;
- the removal of the Default judgment fee;
- separation of the Setting down fee from the First Trial Day fee;
- a new Other Hearing fee;
- new application fees for the review of a decision of a judicial registrar;
- revised fees for the assessment of damages or value and the taking of accounts; and
- new fees for matters handled administratively, including the issuing of warrants, and a request for a digital copy.

## 6. Options

The options considered in this section reflect the application of the policies and principles set out in this RIS. Each of the options is assessed against criteria to compare their advantages and disadvantages. In each case, the assessment is against the base case, that no fees would be charged for County Court services, in the event that new regulations were not made.

### 6.1. Criteria for assessing options

The fee-setting principles discussed in Section 3.3 have guided the County Court fees review. Those principles and the objectives for the review are reflected in the criteria that have been used to assess fee options – see Table 7.

Table 7: Criteria for assessing fee options

Criterion	Weighting	Assessment against the Base Case
1. The fee structure should support the role of the County Court in Victoria's civil justice system	30%	Fees should encourage applicants to lodge their matters in the County Court if they have a monetary value over \$100,000, and they do not require the specialist attention of the Supreme Court.
2. Equity	30%	Equity is better to the extent that: <ul style="list-style-type: none"> <li>- court users pay for the services they use, and do not pay for services that they do not use;</li> <li>- users contribute to meeting the costs of the Court, and the full cost of the Court is not borne by taxpayers; and</li> <li>- those who can afford to pay more do pay more, but no more than full cost.</li> </ul>
3. Efficiency	30%	Fees support efficient court operations, principally enabling early settlement of a matter, without incurring costs that are not necessary to settle a matter.
4. Simplicity	10%	Fees are easy for court users to understand and for the County Court to administer.
<b>Total</b>	<b>100%</b>	

In light of the significance of Guiding Principle 2 – Access to Justice – for effective County Court operations, and its importance to the Court's stakeholders, a separate criterion was considered solely for this principle. However, it has not been pursued because elements of access to justice arise from supporting the County Court's intended role, equity considerations, and efficiency. Therefore, considerations of access to justice have been reflected in the other criteria, as discussed below.

#### Criterion 1

The County Court's fee structure should reflect the role of the County Court as the Victoria's primary trial court. The Court has the same jurisdiction as the Supreme Court in civil matters,<sup>29</sup> whereas the

<sup>29</sup> Both Courts have concurrent jurisdiction in civil matters, other than for probate, civil appeals, and applications related to legal costs that can only be heard in the Supreme Court.

jurisdiction of the Magistrates' Court is limited to claims with a monetary value of \$100,000. It follows that the County Court's fee structure should encourage optimum use of courts, with larger claims lodged in the County Court and smaller claims in the Magistrates' Court.

Matters of considerable complexity are more suited to the Supreme Court, which is resourced to deal with such matters.

Nevertheless, litigants have a choice of court and, therefore, while the fee structure should not be a disincentive to lodge the majority of larger claims in the County Court, applicants might choose to lodge a matter in other courts for a variety of reasons.

Access to justice is incorporated into this criterion to the extent that it is easy for users to bring a matter to the County Court when it is the most appropriate court to deal with the matter.

Because of the significance of the role of the County Court in the civil justice system, this criterion is given a weighting of 30 per cent.

### **Criterion 2**

Equity is one of the benchmark criteria arising from the *Cost Recovery Guidelines*. Horizontal equity means users only pay for the services that they use, not for services that they do not use. Where court fees are concerned, very strong horizontal equity would require fees to be highly disaggregated, so that users only paid for the elements of the judicial process that they participated in. This approach would result in separate fees for many activities such as lodging applications, lodging additional information, directions hearings, mediations and trial days.

Conversely, uniform block fees, where everyone pays the same fee irrespective of how their matter was dealt with, would result in poorer horizontal equity.

Vertical equity means that those with greater financial means contribute proportionately more than those with lesser means. On this basis, access to justice can be linked to vertical equity. In terms of court fees, this approach means that applicants with lesser means pay lower fees for the same service. In other words, fees are discounted to provide for capacity to pay.

Equity has been allocated an overall weighting of 30 per cent, with horizontal equity and vertical equity considered to be of equal importance. Equity has been given the same weighting as Criterion 1 because of its strong link to access to justice, without which the role of the County Court would be compromised.

### **Criterion 3**

Efficiency in dispute resolution is treated as a separate criterion, and focuses on how the Court operates in resolving disputes. Access to justice is incorporated in this criterion to the extent that it means that matters are dealt with expeditiously, and settled as quickly as possible.

Efficiency reflects the use of the lowest-cost and the most timely dispute resolution mechanisms. Early resolution of matters is regarded as the most important indicator of efficiency, because it avoids the use of the highest cost services, namely trials, although how the County Court deals with case management activities, such as interlocutory applications, is also a factor.

Efficiency has been allocated a weighting of 30 per cent. Efficiency has been given the same weighting as Criterion 1 and Criterion 2, because efficiency supports the role of the County Court by resolving matters as quickly as possible, and it supports equity by ensuring that litigants are not paying more in fees than they should be.

### **Criterion 4**

Simplicity of fees, particularly related to how easy the fee structure is for users to understand, is a separate criterion. This approach has been taken because the restructuring of fees could, inadvertently, result in complex fee arrangements that confuse users, and make court administration more complex and subject to error or dispute between the County Court and the parties to a matter.

Nevertheless, it is not considered to be as important as the other criteria, and it has been allocated a weighting of 10 per cent.

## 6.2. The base case

The Victorian Guide to Regulation requires that the options presented in the RIS be assessed against the base case of no regulation, where no fees would be charged,<sup>30</sup> which would occur if new Regulations are not made when the Existing Fee Regulations expire. To make the assessment, the following assumptions about how the County Court would operate under a no-fee arrangement have been made:

- the County Court would receive a significant increase in applications because the service would be free to the user;
- enabling legislation would not be amended to limit the scope of the County Court's responsibilities;
- current funding levels would be maintained but not increased in response to increased demand; and
- there would be continuing restrictions on other resources such as the infrastructure available to the Court for its operations and, correspondingly, limits to the number of judicial officers and staff who could be employed.

The base case has been assigned a score of zero for each criterion, making its total score zero. The assessment of the base case against the criteria is shown in Table 8. This table also sets out the meaning of each zero score.

An option can be regarded as better than the base case if it scores higher than zero. The higher the score, the better the option is considered to be. It would be worse than the base case if it scored less than zero. The following scoring system has been used:

- |     |                                     |
|-----|-------------------------------------|
| 10  | Very much better than the base case |
| 7   | Much better than the base case      |
| 5   | Better than the base case           |
| 0   | Same as the base case               |
| -5  | Worse than the base case            |
| -7  | Much worse than the base case       |
| -10 | Very much worse than the base case  |

Under this scoring system the maximum score for an option is 10, and the minimum score is -10.

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<sup>30</sup> *Victorian Guide to Regulation*, Department of Treasury and Finance, November 2016, page 34.

Table 8: Assessment of the Base Case

Criterion	Weighting	Score	Weighted Score	Assessment of the Base Case
1. Supports the role of the Court	30%	0	0.0	If there were no fees there would be a large increase in application volumes. Access to justice would be compromised because high volumes of potentially inappropriate and possibly frivolous or vexatious applications would impede access to justice for court users with legitimate matters.
2. Equity	30%	0	0.0	Horizontal equity is compromised. The users of court services are not paying for the use of court services, which is being borne by the taxpayer. Vertical equity is compromised because those with means to pay are not paying for the services they use.
3. Efficiency	30%	0	0.0	Large application volumes would undermine the efficiency of court administration and dispute resolution. Matters would not be heard expeditiously, limiting justice. Considerable re-engineering of processes would be required to ensure that case administration and case management were effective.
4. Simplicity	10%	0	0.0	The fee structure is very easy to understand because there are no fees. There would be no problems in administering the fee regime.
<b>Total</b>	<b>100%</b>		<b>0.0</b>	

### 6.3. Options

Development of the RIS has included consideration of a range of options for future fees. These options are outlined in Table 9. Table 9 includes a brief assessment against the criteria set out in Table 7. As a result of this assessment the following options are examined in detail in this RIS:

- **Option 1:** Eighty per cent relativity between Supreme Court and County Court fees. The relativity is generally maintained, with a revised fee structure as discussed in Section 5.
- **Option 2:** Full cost recovery. This is a required option for inclusion in the RIS under Victoria's *Cost Recovery Guidelines*.
- **Option 3:** Restructured Fees. In this option, changes to Application fees outlined in Section 5 are implemented, and fees are updated to better reflect the costs associated with the delivery of court services, while generally continuing to be lower than related Supreme Court fees. The primary difference between Option 3 and Option 1 is that the 80 per cent relativity to Supreme Court fees, which is a feature of Option 1, is not maintained in Option 3.

Options 1 and 3 have both been configured to provide for different fees for different classes of party.

Table 9: First round option assessment

Short Title	Main Features	Assessment against the Base Case
<p>A. Current Fee Structure</p>	<p>The current fee structure is used, with updated fees based on the cost analysis completed for the fees review.</p> <p>Some anomalies, which are minor, in current arrangements (such as there being no fees for Judgment Debt Recovery Act applications by debtors) are resolved.</p>	<p>Compared with the base case, Option A:</p> <ol style="list-style-type: none"> <li>1. supports the role of the County Court well;</li> <li>2. provides for better horizontal equity and vertical equity, because people who can afford to contribute to the cost of the County Court do so;</li> <li>3. is considerably more efficient, because the County Court would not be inundated with frivolous applications; and</li> <li>4. is less simple for users to understand and for the County Court to administer.</li> </ol> <p>Summary: This option performs better than the base case, especially where access to justice is concerned, but, other than removing some minor anomalies, it does nothing to improve efficiency and equity over current arrangements. This option has not been examined in more detail.</p>
<p>B. Eighty per cent relativity</p>	<p>Generally, County Court fees are no more than 80 per cent of related Supreme Court fees.</p> <p>Commencement fees are revised to provide for a new fee for expediting a matter in the Commercial Division.</p> <p>Fees are differentiated by class of party.</p> <p>Current Case Management fees are maintained. New fees are introduced for judicial mediation, some other applications, appeals of decisions by judicial registrars and hearings other than trial day hearings.</p> <p>The Setting down and the First Trial Day fee have been unbundled.</p> <p>Anomalies in the current fee regime (discussed in Section 5.2.5) are removed.</p>	<p>Compared with the base case, Option B:</p> <ol style="list-style-type: none"> <li>1. supports the role of the County Court well, because access is not compromised by high levels of frivolous matters;</li> <li>2. provides for better horizontal equity because users are contributing more to the court services that they use, and vertical equity is better because users who can afford to do so are contributing more to the cost of the Court;</li> <li>3. is more efficient, because litigants are paying for some of the services they use, like interlocutory applications and mediations, and these services will not be over-used; and</li> <li>4. is less simple for users to understand and for the County Court to administer as it has more fee points than some other options.</li> </ol>

Short Title	Main Features	Assessment against the Base Case
		<p>Summary: This option performs better than the base case, particularly from access, equity and efficiency viewpoints. This is <b>Option 1</b> discussed below.</p>
C. Full Cost Recovery	<p>Fees would be set at full cost recovery.</p> <p>New fees would be introduced, for example, for judicial mediation, issuing warrants and hearings other than trial day hearings.</p> <p>Anomalies in current fees would be resolved, as for Option A (see Section 5.2.5).</p>	<p>Compared with the base case, Option C:</p> <ol style="list-style-type: none"> <li>1. supports the role of the County Court poorly, because the higher fees will encourage litigants to file in the Supreme Court rather than the County Court;</li> <li>2. provides very good horizontal equity, but vertical equity is compromised by high fees for those with less ability to pay;</li> <li>3. is considerably more efficient, because new and higher fees will discourage frivolous applications; and</li> <li>4. is less simple for users to understand and for the County Court to administer.</li> </ol> <p>Summary: This option clearly demonstrates the costs of the County Court, for that reason it is <b>Option 2</b> considered below.</p>
D. Divisional Fees	<p>Different fees would be charged for the Common Law Division and the Commercial Division in recognition that, on average, higher levels of private benefit arise from matters in the Commercial Division.</p> <p>For most matters in the Commercial Division, fees would be higher than in the Common Law Division, even though costs are similar for most Lists. In other words, the level of cost recovery in the Commercial Division would be higher than in the Common Law Division.</p> <p>A number of new Application fees would be introduced to better reflect current Court processes, and fee anomalies would be resolved.</p>	<p>Compared with the base case, Option D:</p> <ol style="list-style-type: none"> <li>1. supports the role of the County Court very well, because specialisation in Commercial matters could be strengthened, however higher fees in the absence of higher costs are an inaccurate price signal that may discourage some applications and diminish access to justice;</li> <li>2. provides very good horizontal equity, and vertical equity is improved with higher levels of cost recovery for Commercial List matters, reflecting the economic nature of most commercial litigation;</li> <li>3. is considerably more efficient, because new fees will discourage frivolous applications; and</li> <li>4. is less simple for users to understand and for the County Court to administer.</li> </ol> <p>Summary: This option performs better than</p>

Short Title	Main Features	Assessment against the Base Case
		the base case, particularly from equity and efficiency viewpoints, but is not as strong as other options in relation to access to justice. This option has not been examined in more detail.
E. Restructured fees	<p>The 80 per cent relativity for deriving County Court fees from Supreme Court fees does not apply. Instead fees are based on both costs and maintaining a price differential with Supreme Court fees.</p> <p>Otherwise the fee structure is the same as that of Option B.</p>	<p>Compared with the base case, Option E:</p> <ol style="list-style-type: none"> <li>1. supports the role of the County Court very well, because access is less restricted and user choice is better supported;</li> <li>2. provides very good horizontal equity, because no-one is paying for services that they do not use. Vertical equity is much better because differentiated fees mean that those who can afford to pay more do pay more;</li> <li>3. is considerably more efficient, as new Case Management and application fees discourage frivolous applications; and</li> <li>4. is less simple for users to understand and for the County Court to administer.</li> </ol> <p>Summary: This option performs better than the base case, particularly from access, equity and efficiency viewpoints. This is <b>Option 3</b> discussed below.</p>
F. Hourly rate invoicing	<p>Fees would be set in terms of the amount of time taken by the County Court to deal with a matter. Fees would be differentiated by class of party – Corporate Fees, Standard Fees and Concession Fees would apply. The hourly rate would be based on judicial costs, with a small additional amount to reflect administrative and corporate costs.</p> <p>Judges' chambers would maintain a diary of work and litigants would be invoiced at milestone points, such as:</p> <ul style="list-style-type: none"> <li>• after the first directions hearing;</li> <li>• after a mediation;</li> </ul>	<p>Compared with the base case, Option F:</p> <ol style="list-style-type: none"> <li>1. could motivate users to lodge in the Supreme Court when they should be lodging in the County Court, because of a lack of certainty about costs;</li> <li>2. provides very good horizontal equity, because only the services used are charged for, and vertical equity is good because fees are differentiated by class of party;</li> <li>3. is more efficient, because users would be motivated to do without auxiliary and ancillary services, but they might also choose not to use services that could help settle matters early; and</li> <li>4. could lead to disputes over billing. It would be easy to administer if fees were not disputed and bills</li> </ol>



Short Title	Main Features	Assessment against the Base Case
	<ul style="list-style-type: none"> <li>• after an interlocutory application is finalised;</li> <li>• after further directions;</li> <li>• after trial days, on a day by day basis; and</li> <li>• after the judgment is delivered.</li> </ul>	<p>were paid, otherwise additional ease of administration would be compromised.</p> <p>Summary: This option performs better than the base case, particularly from efficiency and equity viewpoints, but is not as strong as other options in relation to access to justice and simplicity. This option has not been examined in detail.</p>
G. Fees set in accordance with claim value	<p>Fees would be set using an <i>ad valorem</i> scale reflecting the claim value.</p> <p>Fees would be differentiated by class of party. Commencement, Case Management and Hearing fees would apply.</p> <p>Additional fees would apply to expedited matters in the Commercial Division.</p> <p>Claims with no monetary value would pay the highest fee in order to encourage accurate assessment of claim value.</p> <p>Lower fees would apply for Adoption List matters.</p>	<p>Compared with the base case, Option G:</p> <ol style="list-style-type: none"> <li>1. supports the role of the County Court well, because the Court would not be inundated with applications. Allocative efficiency would be compromised when low value claims are more complex than higher valued claims, which could happen if the value of claims does not reflect the complexity of the case;</li> <li>2. horizontal equity is very good and vertical equity is very good, because fees are differentiated by class of party;</li> <li>3. disputes over the value of a claim are a common feature of civil matters, and can be the reason that a matter is brought to County Court, making it impractical to use claim value as the basis on which fees are charged; and</li> <li>4. might lead to confusion among some users about how to assess the value of a claim at the point of commencement and there will be corresponding problems for the County Court in administering the fees.</li> </ol> <p>Summary: This option performs better than the base case, particularly from an equity viewpoint, but is not as strong as other options in relation to efficiency and simplicity. This option has not been examined in more detail.</p>

In summary, the options that are not being pursued result in either inefficient administration, lack of transparency for users, and/or do not support the role of the County Court as effectively as other options.

#### 6.4. Option 1: Eighty per cent relativity (Not preferred)

Option 1 is set out in more detail at Table 10.

As with the current fee structure, most fees are no more than 80 per cent of the corresponding fee in the Common Law Division of the Supreme Court.<sup>31</sup>

Option 1 provides for different fees for different classes of party, so that:

- Corporate Fees are paid by companies turning over more than \$200,000 per annum,<sup>32</sup> and by public sector applicants;
- Standard Fees are paid by individuals, small businesses and registered charities; and
- Concession Fees are for Health Care Card holders who do not apply for a fee waiver, or who are not eligible for a fee waiver.

Option 1 also provides for fees for specific County Court services that currently attract fees, and, in addition, introduces a fee for judicial mediation, which could lead to early settlement, or reduce the issues in dispute between the parties, enabling litigants to avoid trial costs.

Fee levels are derived from full costs, but, as discussed in the methodology section of the RIS, fees have been set to encourage litigants to take their matters to the County Court where appropriate, rather than to the Supreme Court, which is resourced to deal with the more complex matters and should not be diverted from that role. More specifically:

- Commencement and Case Management fees have been set at 80 per cent of the proposed fees for the Common Law Division of the Supreme Court,<sup>33</sup> which are much lower than the proposed fees for the Commercial Court within the Supreme Court. As a result, there is no fee-related incentive to lodge a matter with the Supreme Court rather than the County Court. Nevertheless, it is unlikely that the lower fee would result in a large increase in the volume of matters being lodged with the County Court compared with the current situation, because current County Court fees are already well below the corresponding Supreme Court Fees; and
- Setting Down and Trial Day fees have also been set at 80 per cent of the fees of the Common Law Division of the Supreme Court. While setting fees in this way maintains some relativity with Supreme Court fees, the increase over the current fees helps to mitigate the cost borne by the County Court in purchasing court room days under the terms of the CSA.

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<sup>31</sup> The Supreme Court charges higher fees for matters in its Commercial Court, but historically the benchmark has been fees charged in the Common Law Division.

<sup>32</sup> The \$200,000 annual turnover threshold for payment of the Corporate Fee has been in use at VCAT for two years, and is proposed for the Supreme Court. The Department considers that the County Court fees schedule should be consistent with those of other Victorian jurisdictions where fees have been recently reviewed.

<sup>33</sup> The real costs of commencing a matter in the County Court is marginally greater than the cost of commencing a matter in the Supreme Court because Commencement fees include the cost of dealing with a matter up to and including the first opportunity to settle a matter, which comes with the first directions hearing in most cases. The cost of a directions hearing in the County Court is higher because it includes court room costs under the CSA for the County Court that are not borne by the Supreme Court.

Table 10: Option 1 – Eighty per cent relativity

Type of Fee	Full Unit Cost	Current 2018-19 Fees	Proposed fees		
			Corporate	Standard	Concession
<b>Commencement fees</b>					
All matters, except as follows, including counterclaim and additional party notices	\$1,540.35	\$865.60	\$1,158.30	\$579.20	\$250.00
Adoption List (including Substitute Parentage order applications)	\$1,314.58	\$437.80	N/A	\$657.20	\$250.00
Commercial Division Expedited List	\$3,482.94	\$865.60	\$2,832.20	\$1,416.10	\$250.00
Transfer into the Commercial Division's Expedited List	\$1,942.59	Nil	\$1,673.90	\$837.00	\$10.80
Transfer of a matter from the Magistrates' Court	\$1,540.35	\$865.60	\$1,158.30	\$579.20	\$250.00
The fee is reduced by the amount of the Filing Fee paid to the Magistrates' Court					
<b>Case Management fees (includes 1st hearing day, where relevant)</b>					
Interlocutory applications	\$2,002.40	\$315.00	\$898.20	\$449.10	\$224.20
<i>Ex parte</i> applications	\$244.68	\$148.80	\$244.60	\$122.30	\$61.20
Mediation, per half day	\$3,223.95	Nil	\$477.40	\$238.70	\$119.00
<b>Other Applications (includes 1<sup>st</sup> hearing day, where relevant)</b>					
<b>Applications dealt with by judicial officers</b>					
Assessment of damages or value	\$2,571.50	\$1,023.10	\$1,083.80	\$541.90	\$250.00
Filing for an attachment of earnings	\$1,798.76	\$169.10	\$1,083.80	\$541.90	\$250.00
Review of a decision by a judicial registrar	\$1,965.58	Nil	\$1,083.80	\$541.90	\$250.00
Summons for attachment of debt (garnishee)	\$1,131.13	\$335.20	\$1,083.80	\$541.90	\$250.00
Summons for oral examination	\$2,233.01	\$169.10	\$1,083.80	\$541.90	\$250.00
Taking of Accounts	Not costed	\$297.20	\$1,083.80	\$541.90	\$250.00
<b>Applications managed administratively</b>					
Order for oral examination	\$172.64	\$169.10	\$108.40	\$54.20	\$27.50
Warrant – seizure and sale	\$108.13	Nil	\$107.50	\$53.80	\$26.50
Warrant – possession of land	\$108.13	Nil	\$107.50	\$53.80	\$26.50
Creditor application under the Judgment Debt Recovery Act	\$159.81	\$20.20	Discontinued	Discontinued	Discontinued
Debtor application under the Judgment Debt Recovery Act	\$159.81	Nil	Discontinued	Discontinued	Discontinued
Creditor and debtor applications under the Judgment Debt Recovery Act	\$159.81	\$20.20 or Nil	\$70.80	\$35.40	\$17.30
<b>Hearing fees</b>					
Setting down	\$3,524.33	\$1,023.10	\$1,303.400	\$651.700	\$250.00
Trial Day 1	\$8,195.33	In setting down	\$957.20	\$478.60	\$239.20
Trial Days 2, 3 and 4, fee per day	\$8,195.33	\$531.80	\$1,305.10	\$652.60	\$250.00
Trial Days 5, 6, 7, 8 and 9, fee per day	\$8,195.33	\$888.70	\$2,031.10	\$1,015.60	\$250.00
Trial Days 10 <sup>th</sup> and subsequent days, per day	\$8,195.33	\$1,482.60	\$2,901.60	\$1,450.80	\$250.00
Other Hearing fee, other than trial days	\$8,195.33	\$1,023.10 or Nil	\$957.20	\$478.60	\$239.20

Type of Fee	Full Unit Cost	Current 2018-19 Fees	Proposed fees		
			Corporate	Standard	Concession
<b>Administrative Fees</b>					
Subpoena	\$92.08	\$150.30	\$86.70	\$43.40	\$21.70
Search for paper files	\$194.64	\$24.60	\$70.80	\$35.40	\$17.30
To register a judgment from another jurisdiction	\$45.41	\$69.40	\$44.80	\$22.40	\$14.50
Search for electronic files with copy	Not costed	Nil	\$14.50	\$14.50	\$14.50
Certificate of Registrar	\$14.50	\$14.50	\$14.50	\$14.50	\$14.50
Photocopy, per page	Not costed	\$0.60	\$0.60	\$0.60	\$0.60

- Most administrative fees have been set at the same level as that of the Supreme Court, because there is no judicial time or court room hire involved in these fees, and the department considers it reasonable for court users to pay the same fees for the same administrative service, irrespective of which court provides the service. While fee revenue from administrative fees under Option 1 is likely to be around \$300,000 lower than under the Current Fee Regulations,<sup>34</sup> the reduction in administrative fee revenue is mainly due to a reduction in the fee for issuing subpoenas (for which the Corporate Fee recovers full cost), combined with the impact of having differentiated fees, which have a downward effect on revenue when there is no corresponding increase in the Corporate Fee.

Under Option 1, there are three new fees to better reflect current County Court practices, for:

- the review of a decision by a judicial registrar (noting that judicial registrars were not employed by the County Court when fees were last made);
- judicial mediation, which is being offered more frequently rather than relying entirely on external mediation, as successful mediation either avoids trials and their associated fees entirely, or reduces the number of trial days and related cost to litigants. The Mediation fee is set relatively low to costs (in comparison with other fees), to minimise any disincentive for litigants to be involved in mediation; and
- other hearings, which would apply to the second or subsequent day of an interlocutory hearing, and the second or subsequent day hearings for Other Applications. The department considers that charging a Hearing Day fee for these requests is more equitable than charging all applications for a default judgment a pro-rated cost of a hearing, which is the current practice.

Anomalies in current arrangements, which are discussed in Section 5.2.5, also change the fee structure of Option 1, as outlined below:

- debtors and creditors pay the same fee for Judgment Debt Recovery Act applications;
- redundant fee points are removed;
- a revised fee has been set for the assessment of damages and value, that currently attracts a Setting down fee, to better reflect the resources used for this service;
- the fee for the taking of accounts has been amended to reflect the judicial time involved; and
- administrative fees are revised, and some new administrative fees are introduced. Where relevant, the administrative fees are set at the same level as corresponding Supreme Court fees, including differentiating fees by class of party.

The Setting down and First Trial Day fee has been unbundled. Setting down fees would need to be paid six weeks before the first trial day (not 6 weeks after the first directions hearing as is current

<sup>34</sup> Out of a total estimated fee revenue reduction of \$0.959 million.

practice). This approach is considered by the department to be more equitable. A First Trial Day fee is introduced.

Against the base case, the department considers the advantages of Option 1, compared with the base case, are as follows:

- support for the role of the County Court is much better, with fees providing no incentive<sup>35</sup> to take matters to the Supreme Court, if it is more appropriate to deal with the matter in the County Court. Additionally, access to justice is better supported, because the County Court would not be overwhelmed with applications;
- horizontal equity is very much better than the base case, because users are paying for some, if not all, of the services they use, rather than the full cost being borne by the taxpayer;
- vertical equity is also very much better than the base case, and better supports access to justice because those who can afford to pay more are paying more; and
- efficient court operations are very much better supported, with fees providing an incentive to use optional services. County Court resources are less likely to be over-consumed.

Against the base case, the department considers the disadvantages of Option 1 are as follows:

- litigants might be discouraged from participating in judicial mediation because they would have to pay a fee for this service, resulting in more matters going to trial, and more trial days than otherwise. Nevertheless, the proposed fee is relatively low, so any impact is expected to only partially erode the efficiency gains noted above; and
- simplicity of user understanding and ease of administration is very much worse when compared to the base case, as there are multiple, and differentiated, fee points, resulting in the possibility of confusion or wrong fees being charged and/or paid. There is also greater complexity in administering and charging the correct fee.

Based on current activity levels, the estimated revenue arising from Option 1 fees would be \$9.796 million in 2018-19, or 29 per cent of costs.

Using the assessment criteria and scoring scheme set out in Table 7. Option 1 scores 4.4 points – see Table 11.

Table 11: Assessment of Option 1

Criterion	Weighting	Score	Weighted Score	Assessment against the Base Case
1. Supports the role of the Court	30%	7	2.1	Access to justice is much better. Corporate Fees are not so high as to be a disincentive to litigate. Fees are lower than corresponding Supreme Court fees, providing an incentive to lodge in the County Court rather than the Supreme Court.
2. Equity	30%	5	1.5	Horizontal equity is better, because court users are paying for some of the services they use and taxpayers are not paying full costs.

<sup>35</sup> There will be incentives, other than fees, that affect decisions by litigants, such as the cost of legal representation.

Criterion	Weighting	Score	Weighted Score	Assessment against the Base Case
				Vertical equity is very much better, because generally, those with greater ability to pay are paying more, supporting access to justice.
3. Efficiency	30%	5	1.5	Overall, court efficiency is better. Litigants are unlikely to apply for court services that they do not need. Case management activities are oriented to early settlement, but litigants might choose not to participate in mediation because of the fee.
4. Simplicity	10%	-7	-0.7	Ease of understanding and administration is much worse, because the differentiated fee structure could cause confusion for court users, and administrative errors could be more likely.
<b>Total</b>	<b>100%</b>		<b>4.4</b>	

## 6.5. Option 2: Full Cost Recovery (Not preferred)

Option 2, set out in Table 12, reflects the full costs of dealing with matters. Fees are charged on an activity basis, as is currently the case, but with some additional fees to better reflect the full cost of service provision.

With the full cost recovery option, it is not possible to have different fees for different classes of party, because different fees result in less than full cost recovery, unless the costs of dealing with matters differs by class of party, which is not the case in relation to matters before the County Court. Nevertheless, fee waiver provisions would still apply.

There are new fees for:

- applying to expedite a matter in the Commercial Division;
- judicial mediation;
- the assessment of damages and value;
- the review of a decision of a judicial registrar;
- the issuing warrants; and
- searching and copying digital files.

Some changes also apply to when fees are due. The Setting down fee would be due six weeks before the first trial day. Litigants would not have to pay the Setting down fee for matters that settle before the first day. The change recognises that many matters settle early and do not, therefore, use the resources that are reflected in the current Setting down fee. The First Trial Day fee would be due five working days before the first trial day. Again, with the First Trial Day fee due only five days before the trial, matters that settle by this time, but after the Setting down fee has been paid, would not have to pay the First Trial Day fee. The department considers that the changes to when fees are due would be more equitable.

Some anomalies in the current fees would be resolved, such as the difference in fees for debtors and creditors making an application under the Judgment Debt Recovery Act – see Section 5.2.5.

Table 12: Option 2 - Full Cost Recovery

Type of Fee	Full Unit Cost 2018-19 Est (\$)	Current	Fee
<b>Commencement fees</b>			
All matters, except as follows, including counterclaim and additional party notices	\$1,540.35	\$865.60	\$1,540.30
Adoption matters	\$1,314.58	\$437.80	\$1,314.50
Transfer of a matter from the Magistrates' Court	\$1,540.35	\$865.60	\$1,540.30
The fee is reduced by the amount of the Filing Fee paid to the Magistrates' Court			
<b>Case Management fees (includes 1st hearing day, where relevant)</b>			
Default judgment	Included in Commencement fees	\$355.50	Included in Commencement fees
Interlocutory applications by summons	\$2,002.40	\$315.00	\$2,002.40
<i>Ex parte</i> applications	\$244.68	\$148.80	\$244.60
Mediation, per half day	\$3,223.95	Nil	\$3,223.90
<b>Other Applications (includes 1<sup>st</sup> hearing day, where relevant)</b>			
<b><i>Applications dealt with by judicial officers</i></b>			
Assessment of damages or value	\$2,571.50	\$1,023.10	\$2,571.40
Filing for an attachment of earnings	\$1,798.76	\$169.10	\$1,798.70
Review of a decision by a judicial registrar	\$1,965.58	Nil	\$1,965.50
Summons for attachment of debt (garnishee)	\$1,131.13	\$335.20	\$1,131.10
Summons for oral examination	\$2,233.01	\$169.10	\$2,233.00
Taking of accounts	Not costed	\$297.20	\$2,571.40
<b><i>Applications managed administratively</i></b>			
Order for oral examination	\$172.64	\$169.10	\$172.60
Warrant – seizure and sale	\$108.13	Nil	\$108.10
Warrant – possession of land	\$108.13	Nil	\$108.10
Creditor and debtor applications under the Judgment Debt Recovery Act	\$159.81	\$20.20 or Nil	\$159.80
<b>Hearing fees</b>			
Setting down	\$3,524.33	\$1,023.10	\$3,524.30
Trial Day 1	\$8,195.33		\$8,195.30
Trial Days 2, 3 and 4, fee per day	\$8,195.33	\$531.80	\$8,195.30
Trial Days 5, 6, 7, 8 and 9, fee per day	\$8,195.33	\$888.70	\$8,195.30
Trial Days 10 <sup>th</sup> and subsequent days, per day	\$8,195.33	\$1,482.60	\$8,195.30
Other hearing fee, other than trial days	\$8,195.33	Nil	\$8,195.30
<b>Administrative fees</b>			
Subpoena	\$92.08	\$150.30	\$92.00
Search for paper files	\$194.64	\$24.60	\$194.60
To register a judgment from another jurisdiction	\$45.41	\$69.40	\$45.40
Search for electronic files with copy	Not costed	Nil	\$14.50

Type of Fee	Full Unit Cost 2018-19 Est (\$)	Current	Fee
Certificate of Registrar	\$14.50	\$14.50	\$14.50
Photocopy, per page	Not costed	\$0.60	\$0.60

Against the base case where no fees are charged, the advantages of Option 2 are as follows:

- the fees send accurate price signals to litigants, and would mean that litigants weigh up the real cost of requesting discretionary court services against the value of their claim. Full cost recovery fees would better support the role of the County Court because frivolous claims would be discouraged;
- from a horizontal equity perspective, full cost recovery fees are much better than the base case because litigants pay for many of the services they use, and not for services that they do not use. The burden on the tax payer is lowered; and
- full cost recovery fees would support much more efficient court operations, because litigants would not apply for services that they do not need, and would be highly motivated to avoid high trial day fees by settling before trial.

Against the base case, the disadvantages of Option 2 are as follows:

- for Common Law matters and the majority of Commercial matters, access to the County Court would be very much worse, because fees are more than double the current fee, and higher than corresponding Supreme Court fees for Common Law and some Commercial matters. To the extent that court fees influence a decision to lodge a matter with the County Court, the majority of litigants would choose to take their matters to the Magistrates' Court or the Supreme Court. The department considers that this scenario would more than outweigh the benefit attached to accurate price signals, and the County Court would not play its role in dealing with a large number of relatively less complex civil claims.
- the impact on access to justice under this option would be reduced to some extent, because many more litigants, typically SRLs, would be eligible for fee waivers.<sup>36</sup> Therefore, there would still be some Common Law work for the County Court.
- vertical equity is compromised, and very much worse than the base case, because only well-resourced litigants could afford to pay fees. Those with lesser means would either not use the County Court, compromising access to justice, or would apply for waivers, resulting in a much larger proportion of waivers and lost fee revenue.
- the efficient use of County Court resources would be compromised, because fixed costs would be under-utilised:
  - judges of the County Court<sup>37</sup> would be under-utilised, while there would be correspondingly insufficient judicial resources in the Supreme Court, to deal with an increase in both Common Law and Commercial matters expeditiously; and
  - the County Court would still have to meet fixed costs under the CSA, principally for the cost of a minimum of 8,400 court room days per annum, a significant proportion of which would not be needed because of the lower number of matters before the Court. At the same time, the Supreme Court has limited capacity to utilise court rooms in the County Court building, because servicing those court rooms from the Supreme Court is not practical.

<sup>36</sup> Litigants who have legal representation, unless it is pro bono representation, are generally considered to have sufficient means to pay court fees.

<sup>37</sup> County Court judges are appointed to the age of 70, so there is no short-term opportunity to reduce the number of County Court judges to match the demands on the Court.



- from an efficiency perspective, some users would not avail themselves of services that they need, such as court-ordered judicial mediation, where the potential fee is double the fee that would be charged commercially, because high fees would be a disincentive. The disadvantage would lower the efficiency of court operations considerably, as services that support early settlement would attract higher fees; and
- while the fees would be easy for users to understand, and for the Court to administer, it is worse than the base case where no fees are charged.

Based on current activity levels at the County Court, the estimated revenue arising from Option 2 would be \$33.169 million in 2018-19, however, current activity levels could be expected to fall significantly, and the waiver rate could be expected to increase significantly. As a result, fees based on full costs could not be expected to result in revenue that would meet the costs of the County Court, including its fixed costs, in practice.

Using the assessment criteria and scoring scheme set out in Table 7, Option 2 scores -2.0 points – see Table 13

Table 13: Assessment of Option 2

Criterion	Weighting	Score	Weighted Score	Assessment against the Base Case
1. Supports the role of the Court	30%	-5	-1.5	Access to justice is much worse. To the extent that fees determine a decision to lodge a matter, most applicants would choose to lodge in the Supreme Court or the Magistrates' Court, where increasing commencements would hinder timely finalisations. However, more individual applicants (but not incorporated entities) would be entitled to fee waivers, supporting access to justice.
2. Equity	30%	5	1.5	Overall, equity is improved. Horizontal equity is much better, because Court users pay for many of the services they use. Vertical equity is worse, because many litigants would not have the ability to pay, and access to justice would be compromised (although, as noted above, the likely increased use of fee waivers would help to offset this effect).
3. Efficiency	30%	-5	-1.5	Overall, the efficiency of the Court would be worse. While litigants only apply for court services that they need, some users could be motivated to avoid services that would assist in early settlement because of the cost. Additionally, judicial and infrastructure resources would be under-utilised, because those costs could not be avoided.
4. Simplicity	10%	-5	-0.5	Ease of understanding and administration is worse, as there is a fee structure to consider and administer. The flat daily Hearing fee balances the multiple fees for case management activities.
<b>Total</b>	<b>100%</b>		<b>-2.0</b>	

## 6.6. Option 3: Restructured fees (Preferred)

Option 3 provides a three-tiered fee structure based on relevant stages for resolving a matter, similar to the fee structure described in Option 1: commencement, case management and trial – see Table 14. Fees are differentiated by class of party as is the case for Option 1.

The significant point of departure from Option 1 is that the assumption that fees do not exceed 80 per cent of the related Supreme Court fee does not apply, and has not been replaced with a similar numerical relativity. Instead, a number of factors have been considered in order to set the fee value:

1. the Corporate Fee is set to optimise cost recovery, while also ensuring that other factors (as outlined below) are applied;
2. for fees involving judicial time and effort, the proposed County Court fee remains lower than the equivalent proposed fee in the Common Law Division of the Supreme Court (see the example of Commencement fees below);
3. multiple fee points have been avoided for similar types of matters, and set close to the cost of the lowest cost fee in the group – see discussion in Section 4.6; and
4. where costs are high, such as for trial days, fees are further discounted to avoid them becoming a barrier to accessing justice, and to encourage litigants to take matters to the County Court if it can deal with matters effectively.

For example, for Commencement fees, with the exception of matters in the Expedited List, there is no cost differential between matters commenced in the Common Law Division and the Commercial Division of the County Court and, therefore, the same Commencement fee applies. The corresponding fee in the Common Law Division of the Supreme Court was then considered, which is proposed at 50.1 fee units, or \$723.90 for the Standard Fee payer. The County Court Standard Fee has therefore been proposed at 49 fee units, or \$708.00.

Case Management fees and Other Application fees, as set out in Option 1 also apply. A similar approach was used for setting these fees as was used for Commencement fees, and the number of different fee points was minimised by setting the Interlocutory Application fee and Other Application fees dealt with by judicial officers at the same value, as discussed in Section 4.6.

The Setting down and Trial Day fees are unbundled, as is the case with Option 1. The high cost of these judicial activities has been taken into account in setting fees, which are closer to 90 per cent of the related Supreme Court fee, taking account of the need to provide incentives to use court services efficiently, with fees rising as the number of trial days increase.

Against the base case, the department considers that the advantages of Option 3 are as follows.

- support for the role of the County Court is much better, with fees providing no incentive<sup>38</sup> to take matters to the Supreme Court if it is more appropriate to deal with the matter in the County Court. Additionally, access to justice is better supported because the County Court would not be overwhelmed with applications;
- horizontal equity is much better than for the base case, because users are, on average, paying for some of the services they use, rather than the full cost being borne by the taxpayer;
- vertical equity is very much better, and better supports access to justice as those who can afford to pay more for court services are paying more; and
- efficient court operations are very much better, compared to the base case, because the lower volume of applications would mean a greater focus on the early resolution of matters.

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<sup>38</sup> There will be incentives, other than fees, that affect decisions by litigants, such as the cost of legal representation.

Table 14: Option 3 – Restructured Fees

Type of Fee	Full Unit Cost	Current 2018-19 Fees	Proposed fees		
			Corporate	Standard	Concession
<b>Commencement fees</b>					
All matters, except as follows, including counterclaim and additional party notices	\$1,540.35	\$865.60	\$1,416.10	\$708.10	\$250.00
Adoption List (including Substitute Parentage order applications)	\$1,314.58	\$437.80	N/A	\$481.20	\$250.00
Commercial Division Expedited List	\$3,482.94	\$865.60	\$2,832.20	\$1,416.10	\$250.00
Transfer into the Commercial Division's Expedited List	\$1,942.59	Nil	\$1,416.10	\$708.10	\$250.00
Transfer of a matter from the Magistrates' Court	\$1,540.35	\$865.60	\$1,416.10	\$708.10	\$250.00
The fee is reduced by the amount of the Filing Fee paid to the Magistrates' Court					
<b>Case Management fees (includes 1st hearing day, where relevant)</b>					
Interlocutory applications	\$2,002.40	\$315.00	\$1,083.80	\$541.90	\$250.00
<i>Ex parte</i> applications	\$244.68	\$148.80	\$244.20	\$121.40	\$60.70
Mediation, per half day	\$3,223.95	Nil	\$541.90	\$270.20	\$134.40
<b>Other Applications (includes 1<sup>st</sup> hearing day, where relevant)</b>					
<b>Applications dealt with by judicial officers</b>					
Assessment of damages or value	\$2,571.50	\$1,023.10	\$1,083.80	\$541.90	\$250.00
Filing for an attachment of earnings	\$1,798.76	\$169.10	\$1,083.80	\$541.90	\$250.00
Review of a decision by a judicial registrar	\$1,965.58	Nil	\$1,083.80	\$541.90	\$250.00
Summons for attachment of debt (garnishee)	\$1,131.13	\$335.20	\$1,083.80	\$541.90	\$250.00
Summons for oral examination	\$2,233.01	\$169.10	\$1,083.80	\$541.90	\$250.00
Taking of accounts	Not costed	\$297.20	\$1,083.80	\$541.90	\$250.00
<b>Applications managed administratively</b>					
Order for oral examination	\$172.64	\$169.10	\$108.40	\$54.90	\$27.50
Warrant – seizure and sale	\$108.13	Nil	\$108.40	\$54.90	\$27.50
Warrant – possession of land	\$108.13	Nil	\$108.40	\$54.90	\$27.50
Creditor application under the Judgment Debt Recovery Act	\$159.81	\$20.20	Discontinued	Discontinued	Discontinued
Debtor application under the Judgment Debt Recovery Act	\$159.81	Nil	Discontinued	Discontinued	Discontinued
Creditor and debtor applications under the Judgment Debt Recovery Act	\$159.81	\$20.20 or Nil	\$70.80	\$34.70	\$17.30
<b>Hearing fees</b>					
Setting down	\$3,524.33	\$1,023.10	\$1,303.40	\$651.70	\$250.00
Trial Day 1	\$8,195.33	In setting down	\$1,011.50	\$505.80	\$250.00
Trial Days 2, 3 and 4, fee per day	\$8,195.33	\$531.80	\$1,445.00	\$722.50	\$250.00

Type of Fee	Full Unit Cost	Current 2018-19 Fees	Proposed fees		
			Corporate	Standard	Concession
Trial Days 5, 6, 7, 8 and 9, fee per day	\$8,195.33	\$888.70	\$2,312.00	\$1,156.00	\$250.00
Trial Days 10 <sup>th</sup> and subsequent days, per day	\$8,195.33	\$1,482.60	\$3,179.00	\$1,589.50	\$250.00
Other Hearing fee, other than trial days	\$8,195.33	\$1,023.10 or Nil	\$1,011.50	\$505.80	\$250.00
<b>Administrative fees</b>					
Subpoena	\$92.08	\$150.30	\$86.70	\$43.40	\$21.70
Search for paper files	\$194.64	\$24.60	\$70.80	\$34.70	\$17.30
To register a judgment from another jurisdiction	\$45.41	\$69.40	\$44.80	\$23.10	\$14.50
Search for electronic files with copy	Not costed	Nil	\$14.50	\$14.50	\$14.50
Certificate of Registrar	\$14.50	\$14.50	\$14.50	\$14.50	\$14.50
Photocopy, per page	Not costed	\$0.60	\$0.60	\$0.60	\$0.60

Against the base case, the department considers that the disadvantages of Option 3 are as follows:

- efficient court operations could be compromised to some extent, because new fees might discourage court users from participating in court services that they need to achieve early settlement. Nevertheless, the proposed fee is relatively low, so any impact is expected to only partially erode the efficiency gains noted above; and
- simplicity of user understanding and ease of administration is worse compared to the base case, as fees are charged and need to be understood and administered. However, there are fewer fee points than with Option 2, so it is simpler to understand than Option 2.

Based on current activity levels at the County Court, the estimated revenue arising from Option 3 fees would be \$11.030 million in 2018-19 or 33 per cent of costs.

Using the assessment criteria and scoring scheme set out in Table 7, Option 3 scores 5.6 points – see Table 15.

Table 15: Assessment of Option 3

Criterion	Weighting	Score	Weighted Score	Assessment against the Base Case
1. Supports the role of the Court	30%	7	2.1	Access to justice is much better. Fees are relatively low, providing an incentive to lodge in the County Court rather than in the Supreme Court, but not so low as to be an incentive to use the County Court instead of the Magistrates' Court.
2. Equity	30%	7	2.1	Overall, equity is much better. Horizontal equity is much better, because court users are paying for some of the services they use, and taxpayers are not paying full costs. Vertical equity is much better, because those who can afford to pay more are paying more.

Criterion	Weighting	Score	Weighted Score	Assessment against the Base Case
3. Efficiency	30%	7	2.1	On balance, court efficiency is much better. Litigants would not apply for court services that they do not need, however, some new fees (such as the Mediation fee) might discourage some litigants from participating in services that could lead to early settlement.
4. Simplicity	10%	-7	-0.7	Ease of understanding and administration is much worse, compared to the base case, because there are fees to understand and administer.
<b>Total</b>	<b>100%</b>		<b>5.6</b>	

## 6.7. Comparison of Options

The assessment of the three options using the assessment criteria and scoring scheme against the base case, are brought together in Table 16, with the major strengths and weaknesses of the three options as follows:

- **Option 1:**
  - differentiated fees make access to justice more affordable and provide strong incentives to use the County Court rather than the Supreme Court, when this is the more appropriate venue;
  - horizontal equity is strong, because litigants are paying for some of the case management services they use;
  - vertical equity is very strong, because differentiated fees mean that litigants who can afford to pay more are paying more;
  - efficiency is well supported, because litigants would not be motivated to use services that they do not need;
  - however, the improved efficiency might be partially offset, because some new fees might be a disincentive to some litigants to access services that are effective in encouraging early settlement; and
  - the fee structure is complex, making it more difficult for users to understand, and for the County Court to administer.
- **Option 2:**
  - sends accurate price signals to potential litigants;
  - ensures that the discrete work of the County Court is highly efficient in an operational sense, but results in inefficient use of fixed resources, because litigation is likely to be diverted to other courts, resulting in court rooms and judges being under-utilised; and
  - high fees would be a strong disincentive for many litigants to lodge matters with the County Court, and those litigants who are not eligible for fee waivers would find it less costly to lodge in the Supreme Court, adding to case pending times in that court, and restricting access to justice.
- **Option 3 (Preferred):**
  - supports the role of the County Court well;
  - makes access to justice much more affordable, through differentiated fees, which greatly improves vertical equity;
  - horizontal equity is very good, because court users are paying for many case management services, and the taxpayer contribution is less than for Option 1;

- as with Option 1, new fees might discourage some participation in court services rather than lead to early settlement, affecting efficiency. In comparison to Option 1, the distinguishing factor with Option 3 is the higher score on equity; and
- as with Option 1, efficiency in the use of fixed resources is better than for Option 2. The better reflection of the cost of providing Court services also means that Option 3 will be more efficient operationally than Option 1.

Table 16: Comparison of Options

Option	Weighted Score	Comments
1. Eighty per cent relativity	4.4	Access to justice is better under Option 1 than under Option 2, because fees are not likely to be a disincentive to lodging matters with the County Court. This is also the case with Option 3. Equity is good, because litigants are paying for some of the services they use. Efficiency, while better than under Option 2, is potentially compromised somewhat, if fees become an incentive for litigants not to participate in court activities that could lead to early settlement. This issue also applies to Option 3.
2. Full cost recovery	-2.0	Other than for a minority of commercial matters and for SRLs, fees set at full costs would be a strong disincentive to litigants to lodge a matter with the County Court. The Supreme Court would be the preferred choice of court, compromising its capacity to deal with the most complex matters in a timely way, and under-utilising the County Court.
3. Restructured fees (Preferred Option)	5.6	Slightly higher fees than for Option 1 provide a mechanism by which court users contribute more closely to reflect the costs of the provision of court services, which reduces the contribution of the taxpayer, making fees more horizontally equitable. It supports efficient court operations, and reducing delays at court, to a greater extent than Option 1. Its higher overall score makes it the preferred option, with the distinguishing factors being those of equity and efficiency.

Option 3 is the preferred option because it achieves the highest score. A more detailed description of Option 3 is set out in the following section, which also compares the proposed fee structure with the current fee structure.

## 7. The Preferred Option

Option 3 is the preferred option. This option best reflects the recent changes in County Court practices, such as the introduction of judicial registrars, and the more frequent use of mediation, since the current fees structure was last reviewed in 2012.

The department has sought to retain a sense of relativity between the Supreme Court and the County Court fees, with County Court fees being lower than Supreme Court fees where judicial time is involved. The reduced fee approach has been the preferred approach even in some instances where County Court costs, such as court room related costs, are higher. The rationale for such an approach is that it is preferable to preserve the integrity of the role of both Courts, in which higher courts deal with progressively more complex matters.

Where fees are purely of an administrative nature, Supreme Court and County Court fees are now the same or similar. This approach better reflects the cost structure of both Courts, because administrative staff at each court are employed at similar levels, and perform similar jobs. The only divergence in costs for administrative services is the cost of searches for County Court files, which would be more than double the cost of searching for Supreme Court files. However, the department considers that a fee of almost \$200 for a file search would be unreasonable, and that the proposed Supreme Court fee (of 4.9 fee units or \$70.80) is the better option.

The proposed fee structure has been driven primarily by consideration of access and equity, and efficiency.

### Access and Equity

It is government policy that court users contribute to meeting the costs of the court where there are private benefits in using court services, as is the case with civil matters before the courts. Court fees mean that taxpayers do not meet the full cost of court services.

The introduction of a differentiated fee structure recognises that larger corporations are better placed to pay court fees. Smaller corporations, individuals and not-for-profit organisations will, in some cases, face lower fees than is currently in place.

The County Court's recognition of the Commonwealth Health Care Card as the basis for automatic eligibility to pay a Concession Fee, which is 25 per cent of the Corporate Fee, and capped at \$250 (in 2018-19 dollars, or 17.3 fee units ongoing), would further assist access to justice.

The introduction of some new fees reflects the cost of new or revised processes, notably the recent introduction of judicial registrars and their role in case management. The new fees mean that court users would be making some contribution towards the cost of the Court, reducing the contribution of tax payers to some extent. Nevertheless, the new fees have been set so as to avoid them becoming a barrier to justice.

### Efficiency

Fees in the County Court have been designed specifically to support early settlement of matters. A greater emphasis on judicial mediation and the unbundling of the Setting down and Day 1 trial fees should encourage early settlement. The Proposed Regulations support the resolution of matters at the earliest stage, and the management of matters to resolution before trial.<sup>39</sup> In addition, the fee structure encourages the use of the lowest cost, but most effective, available dispute resolution mechanisms.

The following discussion outlines the following features of the preferred option:

- the use of differentiated fees;

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<sup>39</sup> Early settlement means that litigants avoid Setting Down and Trial Day fees, and the Court provides its most resource-intensive services less often than would otherwise be the case.

- Commencement fees;
- fee waivers;
- Case Management fees:
  - discontinued fees;
  - new fees;
  - restructured fees;
- fees for Other Applications;
- Hearing fees:
  - restructured Setting down fee;
  - Trial Day fees;
  - Other Hearing fees;
- Administrative fees:
  - new fees;
  - restructured fees; and
- anticipated revenue from fees.

## 7.1. Differentiated fees

A major difference between the current and the proposed fees is that the proposed fees are differentiated by class of party.

Three tiered fee levels, called 'Corporate', 'Standard', and 'Concession', aim to maximise cost recovery from larger corporate and government users, while minimising the potential for fees to become a barrier to justice for other users. The fees proposed at the Corporate Fee level under Option 3 aim to recover a higher proportion of County Court costs, without exceeding either the full cost of related activities, or the level of Supreme Court fees, in order to ensure that there is no fee-related incentive for applicants to take matters to the Supreme Court.<sup>40</sup> The proposed fee structure is as follows:

1. Corporate Fees are paid by companies turning over more than \$200,000 per annum and by public sector applicants;
2. Standard Fees are paid by individuals, small businesses and charities with not-for-profit taxation status; and
3. Concession Fees are for Health Care Card holders who do not apply for a full waiver, or are not eligible for a full waiver. Concession Fees might be applied to other applicants for a fee waiver, if the County Court considers that they have the ability to pay the lower fee without causing them financial hardship.

For most matters lodged with the County Court, the proposed Standard and Concession Fees are generally lower than the current fees for the same services.

Companies bringing matters to the County Court would need to make a declaration of their turnover if they seek to pay the Standard Fee instead of the Corporate Fee. For litigants with legal representation, the County Court would rely on the integrity of solicitors, who are Officers of the Court, to make the appropriate decision regarding fee levels payable by their clients.

SRLs who are incorporated will be required to make a declaration about their turnover in order to be eligible to pay the Standard Fee.

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<sup>40</sup> There may be other incentives for taking matters to the Supreme Court, such as the perceived level of expertise of that Court, or for taking matters to the County Court, such as the generally lower cost of legal representation.



Individuals seeking to pay the Concession Fee would be asked to show their Health Care Card before the County Court charges the Concession Fee.

## 7.2. Commencement fees

Commencement fees have been restructured. In addition to different Commencement fees for different classes of party, as discussed above, and changes to the actual dollar values of fees, the only further change to Commencement fees is the introduction of a fee for matters to be entered into the Expedited List in the Commercial Division. If a litigant seeks to expedite a matter after it has commenced, the difference in the fee for an ordinary matter and an expedited matter would be payable by the litigant requesting expedition.

A Commencement fee continues to apply to adoption matters. While it is lower than the Commencement fee for other matters, the dollar value of this fee has increased by ten per cent only, to balance the actual costs to the County Court of dealing with such matters and the public interest in maintaining affordable access for this service.

## 7.3. Fee waivers

Fee waivers would continue to apply, permitting the waiving of fees for individuals on grounds of financial hardship. Automatic waivers would also apply to certain categories of litigants, namely, those in receipt of legal aid or *pro bono* legal representation, and prisoners.

Additionally, the Concession Fee would provide a discount to those litigants who have applied for a fee waiver, and who might struggle to meet to costs of the Standard Fee, but who the County Court considers can afford to contribute to the costs of dealing with their matters.

## 7.4. Case Management fees

Three case management fees exist in the Proposed Regulations:

1. a fee for an interlocutory application by summons;
2. a fee for an *ex parte* application; and
3. a Judicial Mediation fee, which is a new fee.

The fees for an interlocutory application by summons and *ex parte* applications would operate in the same way as those fees currently operate, but would be differentiated by class of party.

The Judicial Mediation fee has been introduced in recognition of the increasing use of judicial mediation to bring matters to early settlement, compared with the way in which matters were dealt with when the fees were last reviewed in 2012. Judicial mediation, when successful, enables litigants to avoid one or more trial day fees.

## 7.5. Fees for Other Applications

Fees continue to be charged for:

- matters dealt with by judicial officers:
  - filing an attachment of earnings;
  - filing a summons for attachment of debt (garnishee);
  - summons for oral examination;
  - taking of accounts; and
  - assessment of damages or value.
- applications managed administratively:
  - order for oral examination;
  - warrant - seizure and sale;
  - warrant - possession of land; and

- for filing an application under the Judgment Debt Recovery Act.

The application fee for an order under the Judgment Debt Recovery Act has been restructured. There is no difference in the resources required to deal with these matters, which are managed administratively at a cost of \$160 with a fee of \$20.20. Therefore, the Proposed Regulations provide for one fee level only for such applications. In order to retain relativity with the proposed Supreme Court fees, the fee for these matters has been set at \$70.80 for the Corporate Fee.

Fees have been introduced for:

- an application for a review of a decision by a judicial registrar. Judicial registrars were not part of the County Court's operations when the current fees were made. A fee for a review or appeal of a judicial decision is a common feature of court fees in all jurisdictions;
- an application to assess damages or value, which previously was covered by the default judgment fee, has been revised so that a Setting down fee is no longer required for these applications;
- the County Court to issue a warrant. Currently, the only fees payable in relation to warrants are fees charged by the Sheriff's Office. The new fee will partially cover the cost to the Court of issuing the warrant; and
- a review of a decision under the Judgment Debt Recovery Act where, previously, a Setting down fee was charged.

## 7.6. Hearing fees

Trials are the most resource-intensive service provided by the County Court. In most jurisdictions, including the Court, trial fees recover a very low proportion of actual costs. In the Court, the high cost of trials is driven by two factors: judicial costs and court room hire costs, both of which are largely fixed and unavoidable costs for the County Court, even if demand changes.

Fees related to trials have been restructured as follows:

- all Hearing fees are differentiated by class of party;
- the Setting down fee no longer includes the fee for the first day of a trial;
- the Setting down fee would be payable six weeks before the listed date of the first trial day;
- the First Trial Day fee would be payable five days before the listed date;
- fees for the second and subsequent trial days, and for other hearings, are payable by close of business on the day prior to the hearing; and
- the Other Hearing fee is payable for the second and subsequent days for interlocutory applications and other applications hearings.

## 7.7. Administrative fees

All the current administrative fees are retained in the new fee structure, however, there are some new fees.

There is a new fee for a search and copy of an electronic file, reflecting the move of the County Court from manual to electronic processes.

Generally, administrative fees are either the same as or, if the Supreme Court fee is higher than the cost to the County Court,<sup>41</sup> lower than that of the Supreme Court.

Given the discretionary nature of search and photocopy fees, these fees would only be waived if the applicant makes a specific application for a fee waiver in accordance with the waiver provisions in the County Court Act.

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<sup>41</sup> For example, the proposed fee for issuing a subpoena is lower in the County Court, because the County Court's e-filing system is used to manage the application, while such applications are managed manually in the Supreme Court.

## 7.8. Fee revenue

Under Option 3, the total revenue for fees is expected to be approximately \$11.030 million per annum (in 2018-19 dollars), which is approximately \$280,000 more than the anticipated 2018-19 revenue of \$10.755 million, if the current fee structure was retained.

## 8. Implementation, monitoring and evaluation

The introduction of the Proposed Regulations would require careful short-term and long-term management at the County Court. Outcomes of monitoring and evaluation of the Proposed Regulations might indicate further amendment to fees is required over the life of the Regulations.

The impact of the following new characteristics of the Court's fee schedule would be examined closely during implementation, monitoring and evaluation, in particular:

- the uptake of the Concession Fee for holders of Commonwealth Health Care cards;
- the extent to which the Court reduces fees to the Concession Fee level for waiver applicants who do not qualify for a full fee waiver;
- the use of the fee for expediting matters in the Commercial Division;
- the impact of new and revised fees, such as the fee for judicial mediation; and
- unbundling the Setting down and First Trial Day fee.

Additionally, the mid-term evaluation in 2023 would determine if there have been any significant changes in costs that should be reflected in amended fees (see Section 8.3 below).

### 8.1. Implementation

The new fees will take effect on 14 December 2018.

Given the extent of the changes to the County Court's fee structure, the way in which the new structure is presented to County Court users could result in some significant transition risks that the Court would need to manage.

The Court has commenced transition planning on the basis that the fee structure would change in presentation with the introduction of tiered Corporate, Standard and Concession Fees. The quantum and structure of fees would not be finalised until after the formal consultation period on the RIS has been completed.

Preparation for the new fee regime involves:

- updating online information systems, hard copy forms and brochures;
- updating the Court's e-filing portal;
- reconfiguring the Court's electronic case management system;
- risk identification and consequent mitigation plans;
- a communications plan to ensure that judicial officers, staff and County Court users have easy access to accurate information regarding changes to fees;
- staff training to ensure there is minimum disruption to Court processes upon commencement of the new structure;
- providing information to judicial officers so that they are aware of the fee arrangements that relate to matters they are dealing with; and
- updating staff manuals.

### 8.2. Monitoring

Following implementation, the County Court would closely monitor the new fee regime for a period of at least 18 months, to ensure that any remaining or emerging implementation risks are effectively responded to. Monitoring would enable the Court to establish if:

- there are any unintended consequences of the changes;
- the fee schedules are easy for users to understand and for the Court to administer;

- costs have changed substantially, necessitating a further review of fees – this situation would be critical in the event that costs fall significantly and, as a result, fees are over-recovering related costs; and
- projections on fee volumes and fee revenue were correct.

Particular focus will be placed on changes such as:

- the effect of the introduction of differentiated Corporate, Standard and Concession Fees, especially with regard to the proportion of applicants in each fee category; and
- whether the waiver arrangements are effective from both the litigant's perspective and administratively.

Emerging problems with the Proposed Regulations could be resolved through providing information to users, changing administrative practice, or if considered necessary, amendments to the regulations.

### 8.3. Mid-term evaluation

In accordance with government policy, the fee structure introduced in 2018 will be independently evaluated in 2023 to assess the impact of the new fee structure.

The department would be responsible for ensuring that the mid-term evaluation is completed, and for liaising with the Commissioner for Better Regulation about its adequacy and transparency. The evaluation is expected to occur over a period of at least six months, in order to allow sufficient time for stakeholder consultation, data collection and analysis.

The evaluation would draw on and build on the information from the early monitoring of the changes to:

- determine the extent to which the objectives of the fees review have been achieved, with particular focus on whether the new fee structure has successfully aligned with the changes in the manner and costs of delivery arising from changes to County Court operations;
- enable County Court users to comment on the fee structure and raise issues of concern;
- review the cost structures to account for any further changes to operational delivery;
- identify opportunities to improve the fee structure prior to the expiry of the regulations; and
- identify opportunities, risks and issues that should be considered before the fees are restructured.

The evaluation will need to take account of a range of factors that might affect Court operations other than the impact of the revised fee schedule. These might include, for example, any changes to the jurisdiction of the County Court over the period, changes to the role of other bodies responsible for dispute resolution, changes to the PPP governing the use of and access to the County Court building, and changes in the economy that could be expected to be reflected in the volume of applications.

Primarily, the evaluation will test the hypothesis that the revised fee schedule introduced in 2018 will progressively deliver better outcomes than the current fee schedule for the following objectives:

- 1. supporting the County Court's role in Victoria's civil justice system as measured by:**
  - feedback from County Court users;
  - maintenance or increase in the volume and proportion of matters commenced at the Court; and
  - lower levels of vexatious or frivolous claims (that detract time from dealing with genuine matters).

**2. improving equity as measured over the period by:**

- changes in the proportion of users paying Corporate, Standard and Concession Fees;
- changes to the proportion of litigants who are applying for fee waivers; and
- examination of the rationale for accepting or rejecting waiver and Concession Fee applications.

**3. improving efficiency as measured by:**

- settlement rates before trial;
- changes in case management practices, such as the use of mediation and its outcomes;
- the impact of the new and revised fees on access to the Court's case management services, such as judicial mediation;
- the impact of unbundling the Setting down and First Trial Day fee on early settlement; and
- improved case flow as assessed by the Court.

**4. simplicity of fees and fee structures that are easier for users to understand, and for the County Court to administer, as measured by:**

- increased user satisfaction with the fees structure compared to the existing fee structure;
- increased staff satisfaction with fees processing;
- decreases in complaints regarding the fee schedule; and
- a decrease in problems with processing fees reported by registry staff.

The baseline data for the evaluation is the data collected and analysed for this RIS. Information and data for the evaluation will be drawn from several sources such as:

- the County Court's case management system data;
- the Court's financial management system data;
- stakeholder consultation on the strengths and weaknesses of the revised fee schedules;
- judicial officer and staff satisfaction surveys; and
- County Court user satisfaction surveys, which will be designed carefully to ensure that they reflect satisfaction in relation to the issues about which information is being sought.

Supreme Court data might also be considered, to see if there has been an increase in commencements in the Supreme Court (at the expense of initiating at the County Court), although it is likely to be very difficult to attribute any such movement to fee changes alone (as the cost of legal representation, quality, and timeliness are likely to be more influential factors).

The data review will necessarily involve collecting and storing five years' of KPI operational data and survey information from a number of sources. This data would be managed by the County Court over the course of the next five years in order to ensure that it is accessible for an evaluation when required.

During the implementation phase for the new fee schedule, the department would determine whether any additional KPIs for the mid-term evaluation are necessary, or if processes need to be implemented to ensure that the relevant data is collected and available at the time of the evaluation.

## ATTACHMENTS

1. Proposed fees for 2018-19
2. Proposed fees for 2018-19, expressed in fee units
3. Comparison of proposed fees with current fees
4. Proposed Regulations for the preferred option

**Attachment 1: Proposed fees for 2018-19**

Type of Fee	Proposed fees		
	Corporate	Standard	Concession
<b>Commencement fees</b>			
All matters, except as follows, including counterclaim and additional party notices	\$1,416.10	\$708.10	\$250.00
Adoption List (including Substitute Parentage order applications)	N/A	\$481.20	\$250.00
Commercial Division Expedited List	\$2,832.20	\$1,416.10	\$250.00
Transfer into the Commercial Division's Expedited List	\$1,416.10	\$708.10	\$250.00
Transfer of a matter from the Magistrates' Court	\$1,416.10	\$708.10	\$250.00
	The fee is reduced by the amount of the Filing Fee paid to the Magistrates' Court		
<b>Case Management fees (includes 1st hearing day, where relevant)</b>			
Interlocutory applications	\$1,083.80	\$541.90	\$250.00
<i>Ex parte</i> applications	\$244.60	\$121.40	\$60.70
Mediation, per half day	\$541.90	\$270.20	\$135.50
<b>Other Applications (includes 1<sup>st</sup> hearing day, where relevant)</b>			
<b><i>Applications dealt with by judicial officers</i></b>			
Assessment of damages or value	\$1,083.80	\$541.90	\$250.00
Filing for an attachment of earnings	\$1,083.80	\$541.90	\$250.00
Review of a decision by a judicial registrar	\$1,083.80	\$541.90	\$250.00
Summons for attachment of debt (garnishee)	\$1,083.80	\$541.90	\$250.00
Summons for oral examination	\$1,083.80	\$541.90	\$250.00
Taking of accounts	\$1,083.80	\$541.90	\$250.00
<b><i>Applications managed administratively</i></b>			
Order for oral examination	\$108.40	\$54.90	\$27.50
Warrant – seizure and sale	\$108.40	\$54.90	\$27.50
Warrant – possession of land	\$108.40	\$54.90	\$27.50
Creditor and debtor applications under the Judgment Debt Recovery Act	\$70.80	\$34.70	\$17.30
<b>Hearing fees</b>			
Setting down	\$1,303.40	\$651.70	\$250.00
Trial Day 1	\$1,011.50	\$505.80	\$250.00
Trial Days 2, 3 and 4, fee per day	\$1,445.00	\$722.50	\$250.00
Trial Days 5, 6, 7, 8 and 9, fee per day	\$2,312.00	\$1,156.00	\$250.00
Trial Days 10 <sup>th</sup> and subsequent days, per day	\$3,179.10	\$1,589.50	\$250.00
Other Hearing fee, other than trial days	\$1,011.50	\$505.80	\$250.00



Type of Fee	Proposed fees		
	Corporate	Standard	Concession
<b>Administrative fees</b>			
Subpoena	\$86.70	\$43.40	\$21.70
Search for paper files	\$70.80	\$34.70	\$17.30
To register a judgment from another jurisdiction	\$44.80	\$23.10	\$14.50
Search for electronic files with copy	\$14.50	\$14.50	\$14.50
Certificate of Registrar	\$14.50	\$14.50	\$14.50
Photocopy, per page	\$0.60	\$0.60	\$0.60

**Attachment 2: Proposed fees for 2018-19, expressed in fee units**

Type of Fee	Proposed fees		
	Corporate	Standard	Concession
<b>Commencement fees</b>			
All matters, except as follows, including counterclaim and additional party notices	98.0	49.0	17.3
Adoption List (including Substitute Parentage order applications)	N/A	33.3	17.3
Commercial Division Expedited List	196.0	98.0	17.3
Transfer into the Commercial Division's Expedited List	98.0	49.0	17.3
Transfer of a matter from the Magistrates' Court	98.0	49.0	17.3
	The fee is reduced by the amount of the Filing Fee paid to the Magistrates' Court		
<b>Case Management fees (includes 1st hearing day, where relevant)</b>			
Interlocutory applications	75.0	37.5	17.3
<i>Ex parte</i> applications	16.9	8.4	4.2
Mediation, per half day	37.5	18.7	9.3
<b>Other Applications (includes 1<sup>st</sup> hearing day, where relevant)</b>			
<b><i>Applications dealt with by judicial officers</i></b>			
Assessment of damages or value	75.0	37.5	17.3
Filing for an attachment of earnings	75.0	37.5	17.3
Review of a decision by a judicial registrar	75.0	37.5	17.3
Summons for attachment of debt (garnishee)	75.0	37.5	17.3
Summons for oral examination	75.0	37.5	17.3
Taking of accounts	75.0	37.5	17.3
<b><i>Applications managed administratively</i></b>			
Order for oral examination	7.5	3.8	1.9
Warrant – seizure and sale	7.5	3.8	1.9
Warrant – possession of land	7.5	3.8	1.9
Creditor and debtor applications under the Judgment Debt Recovery Act	4.9	2.4	1.2
<b>Hearing fees</b>			
Setting down	90.2	45.1	17.3
Trial Day 1	70.0	35.0	17.3
Trial Days 2, 3 and 4, fee per day	100.0	50.0	17.3
Trial Days 5, 6, 7, 8 and 9, fee per day	160.0	80.0	17.3
Trial Days 10 <sup>th</sup> and subsequent days, per day	220.0	110.0	17.3
Other Hearing fee, other than trial days	70.0	35.0	17.3

Type of Fee	Proposed fees		
	Corporate	Standard	Concession
<b>Administrative fees</b>			
Subpoena	6.0	3.0	1.5
Search for paper files	4.9	2.4	1.2
To register a judgment from another jurisdiction	3.1	1.6	1.0
Search for electronic files with copy	1.0	1.0	1.0
Certificate of Registrar	1.0	1.0	1.0
Photocopy, per page	\$0.60	\$0.60	\$0.60

*Note:* Given the discretionary nature of search and photocopy fees, these fees would only be waived if the applicant makes a specific application for a waiver in accordance with the waiver provisions in the County Court Act.

### Attachment 3: Comparison of proposed fees with current fees

Type of Fee	Current 2018-19 Fees	Proposed fees and Percentage Increase compared with Current 2018-19 Fees					
		Corporate		Standard		Concession	
<b>Commencement fees</b>							
All matters, except as follows, including counterclaim and additional party notices	\$865.60	\$1,416.10	64%	\$708.10	-18%	\$250.00	-71%
Adoption List (including Substitute Parentage order applications)	\$437.80	N/A	N/A	\$481.20	10%	\$250.00	-43%
Commercial Division Expedited List	\$865.60	\$2,832.20	227%	\$1,416.10	64%	\$250.00	-71%
Transfer into the Commercial Division's Expedited List	Nil	\$1,416.10	New Fee	\$708.10	New Fee	\$250.00	New Fee
Transfer of a matter from the Magistrates' Court	\$865.60	\$1,416.10	64%	\$708.10	-18%	\$250.00	-71%
The fee is reduced by the amount of the Filing Fee paid to the Magistrates' Court							
<b>Case Management fees (includes 1st hearing day, where relevant)</b>							
Interlocutory applications	\$315.00	\$1,083.80	244%	\$541.90	72%	\$250.00	-21%
<i>Ex parte</i> applications	\$148.80	\$244.20	64%	\$121.40	-18%	\$60.70	-59%
Mediation, per half day	Nil	\$541.90	New Fee	\$270.20	New Fee	\$134.40	New Fee
<b>Other Applications (includes 1<sup>st</sup> hearing day, where relevant)</b>							
<b>Applications dealt with by judicial officers</b>							
Assessment of damages or value	\$1,023.10	\$1,083.80	6%	\$541.90	-47%	\$250.00	-76%
Filing for an attachment of earnings	\$169.10	\$1,083.80	541%	\$541.90	220%	\$250.00	48%
Review of a decision by a judicial registrar	Nil	\$1,083.80	New Fee	\$541.90	New Fee	\$250.00	New Fee
Summons for attachment of debt (garnishee)	\$335.20	\$1,083.80	223%	\$541.90	62%	\$250.00	-25%
Summons for oral examination	\$169.10	\$1,083.80	541%	\$541.90	220%	\$250.00	48%
Taking of accounts	\$297.20	\$1,083.80	265%	\$541.90	82%	\$250.00	-16%
<b>Applications managed administratively</b>							
Order for oral examination	\$169.10	\$108.40	-36%	\$54.90	-68%	\$27.50	-84%
Warrant – seizure and sale	Nil	\$108.40	New Fee	\$54.90	New Fee	\$27.50	New Fee
Warrant – possession of land	Nil	\$108.40	New Fee	\$54.90	New Fee	\$27.50	New Fee
Creditor and debtor applications under the Judgment Debt Recovery Act	\$20.20 or Nil	\$70.80	New Fee	\$34.70	New Fee	\$17.30	New Fee
<b>Hearing fees</b>							
Setting down	\$1,023.10	\$1,303.40	27%	\$651.70	-36%	\$250.00	-76%
Trial Day 1	In setting down	\$1,011.50	New Fee	\$505.80	New Fee	\$250.00	New Fee
Trial Days 2, 3 and 4, fee per day	\$531.80	\$1,445.00	172%	\$722.50	36%	\$250.00	-53%
Trial Days 5, 6, 7, 8 and 9, fee per day	\$888.70	\$2,312.00	160%	\$1,156.00	30%	\$250.00	-72%
Trial Days 10 <sup>th</sup> and subsequent days, per day	\$1,482.60	\$3,179.00	114%	\$1,589.50	7%	\$250.00	-83%
Other Hearing fee, other than trial days	\$1,023.10 or Nil	\$1,011.50	New Fee	\$505.80	New Fee	\$250.00	New Fee

Type of Fee	Current 2018-19 Fees	Proposed fees and Percentage Increase compared with Current 2018-19 Fees					
		Corporate		Standard		Concession	
	<b>Administrative fees</b>						
Subpoena	\$150.30	\$86.70	-42%	\$43.40	-71%	\$21.70	-86%
Search for paper files	\$24.60	\$70.80	188%	\$34.70	41%	\$17.30	-30%
To register a judgment from another jurisdiction	\$69.40	\$44.80	-35%	\$23.10	-67%	\$14.50	-79%
Search for electronic files with copy	Nil	\$14.50	New Fee	\$14.50	New Fee	\$14.50	New Fee
Certificate of Registrar	\$14.50	\$14.50	0%	\$14.50	0%	\$14.50	0%
Photocopy, per page	\$0.60	\$0.60	0%	\$0.60	0%	\$0.60	0%