

Regulatory Impact Statement

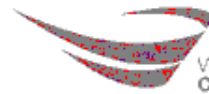
Magistrates' Court (Fees) Regulation 2012
Juries (Fees) Regulations 2012
July 2012

This Regulatory Impact Statement has been prepared in accordance with the requirements of the Subordinate Legislation Act 1994. Its purpose is to inform interested parties regarding a proposal to make new regulations. Comments are invited and should be addressed to the Regulations Officer, Courts Policy, Strategic Policy and Legislation, Department of Justice PO Box 13193 Law Courts, 8010 or by email to legalpolicysubmissions@justice.vic.gov.au and must be received no later than 5pm on Wednesday 22 August 2012.

Prepared for the Victorian Department of Justice by
Jaguar Consulting Pty Ltd
ABN 56089 615636

19 July 2012

Mr Stephen Lodge
Assistant Director
Courts Policy, Courts and Tribunals Unit
Department of Justice
Level 10, 233 William Street
MELBOURNE VIC 3000



Victorian
Competition & Efficiency
Commission

Level 14, 55 Collins Street
Melbourne Victoria 3000
GPO Box 4379
Melbourne Victoria 3001
telephone (03) 9092 5800
facsimile (03) 9092 5845
email contact@vcec.vic.gov.au
web www.vcec.vic.gov.au

Dear Mr Lodge

ADVICE ON THE ADEQUACY OF REGULATORY IMPACT STATEMENT

Thank you for seeking advice on the Regulatory Impact Statement (RIS) on the proposed Magistrates' Court (Fees) Regulations 2012 and the Juries (Fees) Regulations 2012.

The Victorian Competition and Efficiency Commission (VCEC) advises on the adequacy of RISs as required under section 10(3) of the Subordinate Legislation Act 1994 (the Act). I advise that the final version of the RIS received by the VCEC on 19 July 2012 meets the requirements of section 10 of the Act.

The VCEC's advice is based on the adequacy of the evidence presented in the RIS and is focused on the quality of the analysis rather than the merits of the proposal itself. **Therefore, the VCEC's advice that the RIS is adequate does not represent an endorsement of the proposal.**

In providing this advice, the VCEC notes that the options analysis in the RIS is focussed on the level of cost recovery and that subjective judgements are made regarding the impact of these options – in terms of efficiency, equity and access to justice – to determine the preferred approach. The RIS transparently explains the basis for the judgements made by the Department of Justice and stakeholders are explicitly invited to comment on the overall approach to cost recovery and in respect of specific fee categories.

The RIS also notes the Department had difficulties in obtaining detailed information on several issues, including the costs of specific administrative and judicial activities for which fees will be charged. While the RIS transparently identifies the limitations of the currently available data, it is important that the scope and quality of such information is improved to better inform the analysis of any future changes to the fees charged for court services. Such information would, for example, enable more detailed consideration of a broader range of cost recovery options.

It is government policy that, in the interests of transparency, VCEC's advice be published with the RIS when it is released for consultation.

If you have any questions, please contact RegulationReview@vcec.vic.gov.au.

Yours sincerely

A handwritten signature in blue ink that reads "Andrew Walker".

Andrew Walker

Assistant Director
Victorian Competition and Efficiency Commission



Summary

Users of the civil jurisdictions of the Victorian courts make significant contributions to the costs of the court system through payment of a range of fees established in various sets of regulations. These fee regulations are due to sunset in 2012 and it is intended to replace them with new regulations which are similar in form to the existing regulations but which will increase the level of cost recovery achieved. The current RIS relates to two sets of proposed regulations. These are:

- The Magistrates' Court (Fees) Regulations 2012, which set out the fees payable by litigants involved in civil actions in the Magistrates' Court and which also include a small number of fees payable in respect of criminal matters; and
- The Juries (Fees) Regulations 2012, which establish fees to be paid by civil litigants in the County and Supreme Courts who choose to have matters heard by a judge and jury, rather than by a judge alone.

Cost recovery

A key issue to be determined in setting civil court fees is that of the proportion of court costs that should be borne by users of court services and by government (i.e. taxpayers). It has long been accepted that the provision of a credible and effective court system, as a forum for the resolution of disputes between parties, is a fundamental role of government. However, this does not imply that the full costs of the court system should necessarily be borne by government. Numerous government reports have concluded that the work of the civil courts provides a mix of public and private benefits and that, as a result, the costs incurred should be shared between taxpayers and users.

Specifically, the key private benefit is clearly that of being able to resolve a dispute in a conclusive and timely manner, while also having access to mechanisms to enable enforcement of the decisions made. At least two public benefits can be identified. These are:

- The benefit of public confidence in the existence of courts that can resolve disputes between individuals and groups in society and the associated degree of protection of the property and individual rights of all citizens; and
- the effect of court decisions in setting precedents, thereby clarifying and establishing the law and reducing the need for other matters to be litigated, by providing a level of predictability as to likely outcomes.

Both the private and public benefits are of substantial importance. In the specific context of the Magistrates' Court, there is no significant power of precedent and, to this extent, the size of the public benefits due to the court's role may therefore be considered to be somewhat reduced. Conversely, the Magistrates' Court is of particular importance in the protecting personal and property rights of individuals (given its relatively low cost and consequent accessibility, as well as its jurisdiction over smaller disputes), suggesting that these public benefits may be larger in relation to this court.

The mix of private and public benefits indicates that the cost of court services should be shared. However, the appropriate relative size of user and taxpayer contributions is a matter of judgement, given that these benefits cannot be quantified in aggregate terms.

In the Magistrates' Court, recent decades have seen user contributions fund between 30% and around 45% of civil court costs. Current cost recovery levels are at the lower end of this range, though they are near the average of Australian States and Territories. For the purposes of reviewing the regulations, three options in relation to cost recovery have been identified. These involve recovering 100%, 50% and 25%, respectively, of the relevant cost base from user contributions.

To determine what costs are to be recovered in relation to the Magistrates' Court, detailed process analyses have been undertaken in relation to each fee. These have involved calculating the wage cost associated with completion of these processes, before adding identified corporate on-costs, as follows:

- Non-wage labour costs of 16.9%; and
- Corporate overheads of 64%.

In addition, commencement fees have been set on a "residual" basis, so that total fee revenue would meet the identified cost recovery target percentage for each option.

In relation to the juries fees, the juries related costs incurred in the Juries Commissioner's Office and the Supreme and County Courts have been calculated at a global level and a uniform rate of increase applied across the three current fee types.

Fee structures

A second issue in respect of fee setting is the structure of the user fees to be charged. As with many fee contexts, there is a trade-off between equity and efficiency. A comprehensive set of individual fees, each relating to specific functions carried out by the court, can achieve equity between different users of court services by ensuring a high level of proportionality between the fees paid in individual cases and the value of

court resources used in those cases. However, efficiency is likely to suffer, as the cost of administering a complex fee structure, including the need to collect large numbers of small fee payments, is likely to be large in relation to the fee revenue obtained. Conversely, a "block fee" structure, under which all litigants pay the same fee, achieves good efficiency performance but may achieve poor equity outcomes.

This issue has been the subject of a number of reviews over recent decades. The existing fee structure reflects the conclusions of these reviews and is characterised as a "modified block fee" structure. That is, a single relatively large commencement fee is paid, with a small number of additional fees potentially becoming payable in relation to specific processes that may need to be undertaken to finalise a matter. It has previously been determined that this basic fee structure should be maintained, with limited changes being made at the margin.

The fundamental change being made to the existing fee structure results from the fact that, for the first time, it has been possible to obtain usable information regarding the costs incurred by the courts in relation to specific fees. This enables individual fees to be set on an equitable basis, whereby the relationships between individual fee amounts broadly reflect the relativities in terms of the costs incurred. Given this additional information base, all three fees options use this information to determine the relativities between the size of the individual fees.

The approach adopted is as follows:

- Fees which relate to the completion of administrative tasks are set at 100% cost recovery levels in respect of Options 1 & 2, but at 25% in respect of Option 3;
- Fees which relate to the exercise of judicial functions are set to mirror the average cost recovery level sought in all cases; and
- The block "commencement" fee is set at a level that, taking account of the expected revenue from the remaining fees (set as per the above) will ensure the overall cost recovery target for each option is achieved.

The adoption of a 100% cost recovery target for administrative fees for Option 2 reflects the fact that it is not believed that public benefits can be attributed directly to the exercise of administrative functions by the courts. Thus, the public subsidies under this option are restricted to those fees that relate to judicial inputs being made.

Conversely, in relation to the 25% cost recovery option, a single 25% cost recovery rule is used across the board. This reflects the high level of public subsidy implicit in this option.

Juries Fees

Civil litigants in the County and Supreme Courts may choose to have matters heard by a judge alone or by a judge and jury. In the latter case, they become liable to pay fees to defray the costs incurred by the court in providing juries. In contrast to court fees generally, it is considered that the benefits associated with civil jury trials are essentially private in nature. That is, it is widely accepted that a just outcome is as effectively achieved by a matter being heard by a judge alone, as by a judge and jury.

Consistent with this view, the existing juries fees recover the substantial majority (around 88%) of the costs incurred in the provision of civil juries. Two options for the proposed new juries fees have been identified, involving 100% and 50% cost recovery levels.

Revenue implications of the alternatives

Table S1 sets out the revenue implications of the different options considered in respect of the proposed Magistrates' Court (Fees) Regulations 2012, while Table S2 sets out the revenue implications of the options in respect of the proposed Juries (Fees) Regulations 2012. It is based on 2010-11 court volumes, but uses the 2012-13 value of a fee unit to calculate notional expected revenues.

Table S1: Expected annual revenue - Magistrates' Court (Fees) Regulations

Option	Expected revenue (PV over 10 yrs)	Change (cf existing regs)
Current regulations	\$15.9m	-
25% cost recovery	\$14.4m (\$119.8m)	- \$1.5m (9.4%)
50% cost recovery	\$26.3m (\$218.7m)	+\$10.4m (65.4%)
100% cost recovery	\$52.6m (\$437.5m)	+\$36.7m (230.8%)

Note: Data based on 2012-13 fee unit values

Table S1 shows that the adoption of a 25% cost recovery option would reduce revenue by \$1.5 million, compared with the \$15.9 million annual revenue being received under the current regulations. By contrast, the 50% cost recovery option would increase revenue by 66%, or \$10.4 million. Moving to 100% cost recovery would increase revenue by 231%, or \$36.7 million.

It should be noted that the estimates contained in Table S1 refer specifically to the fees that relate to civil actions in the Magistrates' Court. The current, and proposed,

regulations also contain a small number of fees that relate to the criminal jurisdiction of the court. These fees are as follows:

- Fees for the issue of a summons to answer charges;
- Fees for listing an *Infringements Act 2006* offence for hearing in the Magistrates' Court; and
- Fees for hearing matters relating to re-licensing of drivers who have been disqualified pursuant to the *Road Safety Act 1986*.

These criminal fees are not primarily set with regard to cost recovery, although it remains a consideration. This reflects the fact that the operation of the criminal courts gives rise to public, rather than private benefits, in contrast to the civil courts.

Notwithstanding this, some upward adjustment in the current level of these criminal fees is considered appropriate in the context of the higher cost recovery options considered in relation to the civil fees. Table S2 summarises the expected revenue from these criminal fees under each option.

Table S2: Expected annual revenue - criminal fees

	Annual revenue (PV over 10 yrs)	Change (cf existing regs)
Current regulations	\$1.9 million	NA
Option 1	\$8.4 million (\$70.0m)	+\$6.5 million
Option 2	\$2.4 million (\$20.2m)	+\$0.5 million
Option 3	\$2.1 million (\$17.5m)	+\$0.2 million

Note: Data based on 2012-13 fee unit values

Table S3 combines Tables S2 and S3 to provide a summary of the total expected revenue implications of each option, including both criminal and civil fees.

Table S3: Expected annual revenue - Magistrates' Court fees

	Annual Revenue	PV over 10 yrs
Current regulations	\$17.79 million	
25% cost recovery	\$16.5 million	\$137.2 million
50% cost recovery	\$28.7 million	\$238.7 million
100% cost recovery	\$61.0 million	\$507.3 million

Note: Data based on 2012-13 fee unit values

Table S4 shows that the revenues obtained from the Juries fees are much smaller, currently totalling around \$568,000 annually. Adoption of the full cost recovery option

would yield a marginal increase, of around \$79,000 per annum, while the 50% cost recovery option would reduce revenue by around \$258,000.

Table S4: Expected annual revenue - Juries (Fees) Regulations

	Annual revenue	\$ Change (cf existing regs) (% change)
Current regulations	\$595,548	-
100% cost recovery	\$674,849	+ \$79,301 (11.8%)
50% cost recovery	\$337,424	- \$258,123 (76.5%)

Note: Data based on 2012-13 fee unit values

Fee Waivers

It should be noted that the *Magistrates' Court Act 1989* currently makes provision for fees to be waived, in the civil jurisdiction only, at the discretion of the court. Section 22 of the *Magistrates' Court Act 1989* provides that a registrar may waive fees payable in the Magistrates' Court, with the exception of fees paid to the Sheriff. Section 22(2) requires the registrar to have regard to the income, living expenses, assets and liabilities of the applicant, and may waive a fee *if it would cause the person liable to pay the fee financial hardship*.

These provisions will continue to apply. It is arguable that the proposed fee increases could lead to some increase in the currently relatively low level of use of the fee waiver provisions, given the financial hardship based threshold applied. To the extent that this occurs, revenue may be reduced slightly, vis-a-vis the above estimates.

Assessment of the Alternatives: Multi-Criteria Analysis (MCA)

Because not all of the relevant benefits and costs associated with the regulations can be quantified, MCA have been conducted as the basis for determining the preferred option. The following summarises the results of these analyses. Consistent with the discussion contained in the earlier sections of this RIS, the following three criteria have been identified as relevant to the determination as to which option should be preferred.

- Equity between court users and taxpayers
- Equity between different groups of court users
- Access to justice

The following discusses the relevance of each of these criteria and the rationale for the score given to each option.

Scoring and weighting

Where an option is judged as being superior to the unregulated base case in respect of a particular criterion, it receives a positive score. Conversely, where it is considered inferior, it receives a negative score. Options are scored on a scale of - 10 to + 10, consistent with the VCEC's guidance note on the use of MCA.

Each criterion has been weighted evenly reflecting the importance of each to the proper functioning of the fee regulations in the court system.

Tables S5 and S6, below, summarise the results of the application of the MCA to each alternative, in respect of both sets of proposed regulations. Detail on the basis for the scores awarded is provided in Section 8.

Table S5: Multi-Criteria Analysis of court fees options

Criterion	Option 1: 100% cost recovery	Option 2: 50% cost recovery	Option 3: 25% cost recovery
Equity between court users and taxpayers	$0 * 33.3\% = - 0$	$+10 * 33.3\% = + 3.33$	$+6 * 33.3\% = + 2.0$
Equity between different court users (efficiency)	$+10 * 33.3\% = + 3.33$	$+ 6 * 33.3\% = + 2.0$	$+ 2 * 33\% = + 0.67$
Access to justice	$- 3 * 33.3\% = - 1.0$	$-2 * 33.3\% = - 0.67$	$-1 * 25\% = - 0.33$
Total	+ 2.33	+ 4.62	+ 2.33

Table S3 shows that the preferred option in relation to the Magistrates' Court (Fees) Regulations 2012 is Option 2, which involves achieving 50% cost recovery. Option 2 is preferred largely because it scores highest on the criterion of achieving equity between court users and taxpayers. By contrast, the full cost recovery alternative (Option 1) scores most highly in relation to the efficiency criterion and Option 1 (25% cost recovery) scores most highly in respect of the access to justice criterion. Option 2 receives the second highest score in respect of each of these other two criteria - a factor that also contributes to its achieving a substantially higher score than the other options.

Table S6: Multi-Criteria Analysis of juries fees options

Criterion	Option 1: 100% cost recovery	Option 2: 50% cost recovery
Equity between court users and taxpayers	+ 10 * 33.3% = + 3.33	+5 * 33.3% = + 1.67
Efficiency	+5 * 33.3% = + 1.67	+ 2.5 * 33.3% = + 0.83
Access to justice	- 5 * 33.3% = - 1.67	-2.5 * 33.3% = - 0.83
Total	+ 3.33	+ 1.67

Table S6 sets out the scores of the two options in relation to the proposed Juries (Fees) Regulations 2012. Both options received positive scores, indicating that they are preferred to the base case, in which no fees would be charged. However, Option 1, that of adopting full cost recovery based fees, scores substantially higher, with + 3.33 points, while Option 2, of adopting 50% cost recovery based fees scores + 1.67 points. Option 1 receives the higher score largely because it performs better in relation to both the equity between court users and taxpayers criterion.

Given the results of the MCA, it is proposed to proceed to make Magistrates' Court (Fees) Regulations that will achieve 50% cost recovery, implying an average 65% increase in existing fee levels, while Juries (Fees) Regulations will be made on a full cost recovery basis, implying an increase of approximately 14% on current fee levels. The following tables provide a detailed comparison of the existing and proposed fees.

Table S7: Existing and proposed Magistrates' Court (Fees) Regulations

Reg	Fee description	Existing fee units	Existing fee (\$)	Proposed fee units	Proposed Fee (\$)	Percentage increase/decrease in fee units
1	File charge sheet-single charge	3.6	\$45.1	5.7	\$71.4	58%
1.2	File charge sheet-multiple charges	5.7	\$71.4	8.6	\$107.8	51%
1.3	Prescribed information- single offence	3.6	\$45.1	5.7	\$71.4	58%
1.4	Prescribed information- multiple offences	5.7	\$71.4	8.6	\$107.8	51%
1.5	Application to be relicensed	6.7	\$84.0	7.7	\$96.5	15%
1.6	Application to reduce time between assessments	3.1	\$38.8	5.9	\$73.9	90%
2.1	Commencement sub \$1k	6.2	\$77.70	10.2	\$127.8	65%
2.2	Commencement \$1k to \$10k	12.9	\$161.6	21.3	\$266.9	65%
2.3	Commencement \$10k -\$40k	19.6	\$245.6	32.4	\$406.0	65%
2.4	Commencement \$40k plus	29.4	\$368.4	48.6	\$609.0	65%
2.5	Request for order	1.5	\$18.8	3	\$37.6	100%
2.6	Interlocutory Application	3.1	\$38.8	10.6	\$132.8	242%
2.7	Applications L&TA 1958	3.1	\$38.8	6.0	\$75.2	94%
2.8	Instalment application or agreement	3.1	\$38.8	5.6	\$70.2	81%
2.9	Attachment of earnings application	3.1	\$38.8	10	\$125.3	223%
2.10	Registration of interstate judgement	N/A	N/A	4.9	\$61.4	Nil
2.11	Summons for oral examination	6.2	\$77.7	7.0	\$87.7	13%
2.12	Mediation - registrar (new fee)	N/A	N/A	18.1	\$226.8	Nil
2.13	Mediation – judicial registrar (new fee)	N/A	N/A	31.4	\$393.4	Nil
2.14	Hearing fees (daily)	18.5	\$231.8	41.7	\$522.5	125%
2.15	Warrant to enforce orders	1.5	\$18.8	1.2	\$15.0	-20%
3.1	Issue of a certificate	2.6	\$32.6	1.4	\$17.5	-46%
3.2	Issue of witness summons	N/A	\$7.00	3.4	\$42.6	509% ¹

¹ The current fee for Reg 3.2 (Issue of witness summons) of \$7.00 is charged in conjunction with Reg 3.1 (Issue of Certificate), making a total combined current fee of \$39.60. While the cited comparison is against the stand alone fee of \$7.00, the comparison of the current combined fee against the combined proposed fee results in an increase of 52%.

3.3	Preparation of documents by the registrar	1.5	\$18.8	1.9	\$23.8	27%
3.4	Search and handling fee (new fee)	N/A	N/A	1.9	\$23.8	Nil
3.5	Retrieval from storage (new fee)	N/A	N/A	1	\$12.5	Nil
3.6	Photocopy (per page) (new fee)	N/A	N/A	.60		Nil
Superseded fees						
7a	Summons under Part 3 IFDA 1958	3.1	\$38.8	Any Applications under this Act will be made under 7 – Interlocutory Application		
7b	Summons for oral examination	3.1	\$38.8	Fee – now part of Reg 10 Summons for Oral Examination		
8	Fee reduction for electronic lodgement	Nil	\$3.0	Reduction removed	- \$3.00	
15	Inspection of register	1	\$12.5	Fee-now part of new search/handling fee		

Note: The above table uses the 2012/13 fee value of \$12.53 to determine the dollar value of the proposed fees. All dollar values have been rounded to the nearest 10 cents.

Table S8: Existing and proposed Juries (Fees) Regulations

Reg. No.	Stage of proceeding	Existing fee-units	Existing Fee- \$	Proposed fee- units	Proposed fee- \$	Percentage change
5.1	Setting down	46.9	\$587.7	54.3	\$680.4	16%
5.2(a)	Days 2-6 (per juror)	5.7	\$71.4	6.5	\$81.4	14%
5.2(b)	Day 7 + (per juror)	11.3	\$141.6	12.9	\$161.6	14%
6	Admin Fee	4.6	\$57.6	4.6	\$57.6	Nil

Stakeholder questions

Stakeholder views are sought on all aspects of the proposed regulations. However, a number of issues have been identified in respect of which stakeholder views are particularly sought, as follows:

Question 1: In light of the above discussion, stakeholder views are particularly sought on the question of whether the current commencement fee thresholds continue to be appropriate or, if not, what alternative thresholds are considered preferable.

Question 2: Do you believe that setting fees in relation to these procedures under the *Road Safety Act 1986* at 50% cost recovery levels is appropriate? If not, what alternative fee level do you believe would be preferable?

Question 3: Stakeholders' views are sought on the question of whether there is significant merit in further simplifying the proposed fees to eliminate those that are rarely charged and which, consequently, generate little revenue.

Question 4: While the above analysis has focused on three potential cost recovery levels (i.e. 25%, 50%, 100%), which are considered representative of the potential options in this regard, there is clearly a continuum of possible cost recovery levels in relation to the proposed fees. Stakeholder views are sought on the question of whether any other cost recovery target should be given consideration as being potentially more appropriate than those assessed in the above analysis and what would be the basis for considering these options to be superior to those discussed above.

Contents

1. Background.....	15
2. Nature and extent of the problem.....	17
2.1 Overview	17
2.2 Historical fee comparisons.....	21
2.3 Interstate Fee Comparisons.....	22
2.4 Comparisons of average court costs per lodgement.....	24
2.5 Total cost recovery.....	25
2.6 Reasons for the decline in cost recovery since 2001.....	26
2.7 Moves toward full cost recovery	28
2.8 Fee structure and incidence	29
2.9 Magistrates' Court fees.....	34
2.10 Jury fees.....	37
2.11 Conclusions	39
3. Objectives.....	41
4. Authorising provisions.....	42
5. Summary of the proposed regulations	43
5.1 Magistrates' Court fees.....	43
5.2 Jury fees	47
6. Court costs and fee levels.....	48
6.1 Determining direct wage costs	48
6.2 Determining applicable on-costs	50
6.3 Estimating total costs.....	52
6.4 Mediation.....	54
6.5 Photocopying costs	57
6.6 Comparing costs and existing fees.....	59
6.7 Efficient costs	62
7. Identification and assessment of feasible alternatives - Magistrates Court (Fees) Regulations	65
7.1 Overview	65
7.2 Option 1: Set fees at full cost recovery levels.....	66
7.3 Option 2: set fees to recover 50% of recurrent cost	74

7.4.	Option 3: set fees at 25% cost recovery	83
8.	Identification and assessment of feasible options: Juries (Fees) Regulations.....	88
8.1.	Overview	88
8.2.	Option 1: Full cost recovery	89
8.3.	Option 2: 50% cost recovery	91
9.	Conclusion	92
9.1.	Magistrates Court (Fees) Regulations.....	92
9.2.	Juries (Fees) Regulations.....	97
10.	Consultation	101
11.	Statement of Compliance with National Competition Policy.....	102
12.	Implementation and enforcement.....	103
13.	Monitoring and evaluation	104
	Appendix 1: Proposed Magistrates Court (Fees, Costs and Charges) Regulations 2012	105
	Appendix 2: Proposed Juries (Fees) Regulations 2012	112
	Appendix 3: Detailed comparison of current and proposed fees	114
	Appendix 4: Magistrates' Court Scale of Costs, 2012.....	116
	Appendix 5: Initial and final incidence of fee costs	123

1. Background

This Regulatory Impact Statement (RIS) analyses the expected impact of two separate sets of proposed regulations that deal with fees charged to users of Victorian courts. The proposed Magistrates' Court (Fees, Costs and Charges) Regulations 2012 set out a range of fees payable by litigants in the civil jurisdiction of the Magistrates' Court, as well as a small number of fees in relation to criminal matters dealt with in that court. The proposed Juries (Fees) Regulations 2012 establish three fees payable by litigants in the civil jurisdictions of the County and Supreme Courts who choose to have a matter heard by a judge and jury, rather than a judge alone.

It is important to note that the fees regulations considered in this RIS largely relate to the civil jurisdictions of each court, rather than the criminal jurisdictions².

Both sets of proposed regulations would replace existing regulations that will sunset during 2012 as a result of the operation of the *Subordinate Legislation Act 1994*³. A single RIS is being prepared in respect of the two sets of regulations because they deal with related matters and, as a result, the issues arising in considering appropriate replacement regulations are also related.

It should also be noted that the Supreme Court (Fees) Regulations 2001 and the County Court (Court Fees) Order 2001 are due to sunset in December 2012 and replacements for these regulations are also currently under preparation. These regulations are not dealt with in the current RIS. However, most of the policy issues that arise in relation to the fees to be charged in these court jurisdictions are necessarily very similar to those canvassed here. For this reason, the following sections provide a broad-ranging analysis of court costs, user fee and revenue issues that includes all Victorian court jurisdictions.

In common with other Australian States and Territories, Victoria's court system comprises three levels. These are:

- **The Magistrates' Court**, which hears summary offences and some indictable offences (with the consent of the accused) as well as civil cases up to a jurisdiction limit of \$100,000. The Magistrates' Court also deals with family violence and personal safety intervention orders and encompasses specialist jurisdictions including the Drug Court and the Koori Court. Trials are heard by a Magistrate sitting alone;
- **The County Court**, which can hear all indictable offences other than treason, murder and some murder-related offences. It also has a civil jurisdiction, which

² The small number of fees that relate to criminal matters are highlighted explicitly in the following text.

³ The current regulations, Magistrates' Court (Fees, Costs and Charges) Interim Regulations 2012 and the Juries (Fees) Interim Regulations 2012 are due to expire on 30 September 2012.

is no longer limited in terms of a maximum monetary value of the matter in dispute. The County Court can also hear appeals in some circumstances;

- **The Supreme Court**, which is the highest level of the court hierarchy and also hears both civil and criminal cases. The Supreme Court has both a trial division and an appellate division (the Court of Appeal) which hears appeals against decisions of the trial division of the Supreme Court, the County Court and the President and Vice Presidents of the Victorian Civil and Administrative Tribunal (VCAT). Matters tried in the Supreme and County Courts can be heard by judge alone, or judge and jury.

In addition, the Victorian Civil and Administrative Tribunal (VCAT) hears civil and administrative matters arising under a wide range of legislation that allows or requires matters to be heard at VCAT, rather than in the courts, at first instance. VCAT's fees regulations are also due to sunset later in 2012, but replacement regulations will be discussed in a separate RIS. This reflects the fact that a number of different policy considerations arise in respect of VCAT's activities and the associated fees⁴.

The proposed regulations establish the fees payable by users of the Magistrates' Court. In addition, they establish fees to be paid by litigants who choose to have matters their civil matters heard by jurors. These fees are intended to cover the cost of allowances paid to jurors for civil hearings and related expenses, as well as the administrative costs incurred in relation to the provision of jurors for those hearings

⁴ Two further RIS will be released in the near future. One will deal with the proposed Victorian Civil and Administrative Tribunal (Fees) Regulations 2012, while the other will deal with both the proposed Supreme Court (Fees) Regulations 2012 and the proposed County Court (Fees) Regulations 2012.

2. Nature and extent of the problem

2.1 Overview

The provision of a system of justice, including both a police force for the investigation of crimes and a court system in which both criminal matters and civil disputes can be resolved, is one of the fundamental responsibilities of government.

However, while government takes overall responsibility for funding these institutions, it is widely considered to be appropriate for persons who make use of the court system for the resolution of civil disputes to make a contribution to the costs incurred by the courts in hearing and resolving those disputes. This reflects the fact that the work of the courts in this area yields a mix of public and private benefits.

Previous fee setting recommendations: The Civil Justice Committee Review

The issue of the need for, and appropriate extent of, a system of user contributions to court costs was considered at length in the Victorian context in the Victorian Civil Justice Committee Report of 1984⁵. This report constituted a wide-ranging and exhaustive review of civil justice issues, including issues of information, structure and operational relationships within the court system. The Committee recommended that the government pursue *"a middle course between a heavily subsidised system and a "user-pays" system"*.

The Committee argued that four factors are relevant in determining how to allocate the burden of funding the court system. These are:

- the extent to which access to courts should be affected;
- the extent to which there should be private payment for private benefit;
- the extent to which any scheme should be used as an administrative or management tool; and
- the extent to which court fees should be used as a means of indirect taxation.

The discussion contained in the Committee's report notes that, while it had traditionally been argued that the court system should be publicly funded because it is for the public benefit, in fact the operation of the court system provides both public and private benefits.

Public benefits include, most obviously, the fact that the availability of a fair and impartial mechanism for dispute resolution and determining the law and people's legal rights is fundamental to a well-functioning society. At a more specific level, the rules of precedent mean that the recorded decisions of cases in a superior court lead to the development of generally applicable rules of conduct and an understanding of how

⁵ Victorian Law Foundation/Law Department of Victoria (1984). *Report To The Honourable The Attorney-General Concerning The Administration Of Civil Justice In Victoria*. See Vol. 1, pp 375 - 379.

they are applied to a range of different circumstances⁶. Private benefits clearly relate to the ability to enforce private claims and obtain restitution for losses incurred due to the fault of others.

The Committee noted that the relative degree of public and private benefit will vary widely from case to case, however, it is not generally possible to separate the private and public benefit elements in any given case.

Given this analysis the Committee concluded that, in a system in which Government met most or all of the costs of court operations, there would be a significant cost to the taxpayer associated with the achievement of private benefits. Moreover, there would be no disincentive to the pursuit of frivolous or vexatious claims.

Conversely, a system based on full cost recovery entails a number of significant problems, notably that:

- private individuals would be fully funding a system which provides important public benefits, as discussed above;
- access to justice is likely to be unreasonably restricted; and
- there would be inadequate incentives for the courts to achieve and maintain high levels of administrative efficiency over time.

As noted above, having weighed these factors, the Committee concluded that a system which involves the partial recovery of court costs from users of the civil courts constitutes the preferable approach.

Access to justice

In the civil context, the notion of access to justice implies that parties in dispute, whether individuals, businesses or other actors are reasonably able to avail themselves of a fair and impartial court system as a forum for settling these disputes. Access is, in effect, limited or denied if the cost of using the court system is prohibitive, or at least so great as to be a major disincentive, for significant numbers of parties in dispute.

It must be acknowledged that the cost of legal representation is typically high and will usually substantially exceed the cost of any fees imposed by the court. However, this does not render the level of court fees unimportant when considering access to justice issues, for three main reasons. First, the cost of legal representation is not an impediment imposed by government nor, in practical terms, one which can easily be controlled by government. Second, individuals necessarily have the option of representing themselves in court, thus allowing for the possibility that court fees will constitute the major cash cost borne in obtaining access to the court system. Third, other circumstances increasingly arise where unsuccessful litigants are effectively indemnified from the cost of legal fees by their legal representatives (i.e. through "no

⁶ Note, however, that decisions in the Magistrates' Court do not give rise to precedent.

win no pay" agreements), such that court fees may represent the major out of pocket costs to be faced.

Alternative dispute resolution

Concerns over the potential impact of fee increases on access to justice would potentially be ameliorated to the extent that alternative dispute resolution (ADR) mechanisms implying lower costs to users were available and were seen as acceptable substitutes for the civil jurisdiction of the Magistrates' Court. Recent Victorian governments have, indeed, adopted policies favourable to ADR and have made relevant mechanisms available in some areas⁷.

The Magistrates' Court has several ADR mechanisms available in the civil jurisdiction. Pre-hearing conferences are informal hearings, generally conducted by a registrar, in which the parties are required to come together and discuss their dispute. The majority of defended cases in the civil jurisdiction are referred to pre-hearing conference. Over half of all proceedings are resolved at pre-hearing conference. The court does not charge a fee for the pre-hearing conferences it conducts.

Proceedings which have a greater level of complexity are referred to mediation (generally claims of over \$30,000 or Industrial Division matters). Once a matter is referred to mediation, the parties may choose a mediator, or have the court appoint a mediator. Mediations may be conducted by a legal practitioner, an accredited mediator or a registrar.

The Court has also established a mediation programme in partnership with the Dispute Settlement Centre of Victoria in various locations. The programme allows cases in which less than \$40,000 is in dispute to be referred to mediation before a DSCV mediator who is located on-site at the court. The programme has been established by Chief Magistrate's Practice Directions, and is currently available at eight locations'. In total, 17,708 matters were dealt with in the DSCV in 2010-11, while the 2013-13 budget papers show an expected throughput of 19,300 for 2011-12 and a target throughput of 19,500 for 2012-13, with the increase in throughput being attributed largely to an expanded regional presence⁸.

However, notwithstanding the above, for many users of the civil jurisdiction of the Magistrates' Court, the available ADR mechanisms do not constitute an effective substitute for the operation of the Court. Victorian survey data suggests that the most widely perceived disadvantage of courts and tribunals as dispute resolution mechanisms were cost (52%) and time (37%). However, this equally implies that only around half of court users report a significant level of concern with the cost of court

⁷ e.g., the mediation services provided, and subsidised, by the Office of the Small Business Commissioner to enable low-cost resolution of a range of disputes involving small businesses.

⁸ Department of Treasury and Finance (2012). *Budget Paper No. 3*, p 187.

actions, while only around one third (37%) considered themselves more likely to use one dispute resolution mechanism over another on the basis of cost differences⁹.

The survey findings also show that cost does not generally influence a person's decision about whether to act on legal issues, although it may influence the choice of forum to resolve a legal dispute. The study showed that key factors in determining the choice of one pathway over another were cost (37%), ease (24%) and speed (15%).

A related survey was conducted in the United Kingdom in 2007 and focused specifically on the impact of court fees on the decision to commence litigation. That survey¹⁰ found that individuals felt that cost played a minor role in their initial decision as to whether to commence litigation. The primary drivers identified were 'getting a final decision' and 'getting justice'. The survey did show, however, that the majority of individuals did consider alternative options for resolving disputes before going to court. The survey also measured the price sensitivity of different types of litigants. The survey found that litigants pursuing monetary claims, especially small claims, were the most price sensitive, while other litigants involved in proceedings that sought to define legal rights or status (such as those involved in private family matters) were the least price sensitive.

Given the above, the court system is and is expected to remain the primary dispute resolution mechanism for civil litigants. This means that the impact of court fees on access to justice remains a significant issue to be considered in fee setting decisions.

Fee setting policy: the New Zealand approach

Fee setting in the New Zealand civil courts is also based on the adoption of a partial cost recovery approach. A 2001 Ministerial Working Party on Civil Fees enunciated the following principles for fee setting¹¹:

- *Overall Cost Sharing*: The total cost of civil courts shall be met through a combination of taxpayer and user funding, in ratios to be determined by Government in respect of specific jurisdictions and services;
- *Variable Ratios of Taxpayer/User Funding for Specific Services*: The proportion of costs recovered through fees shall vary in accordance with an assessment of the balance of public and private benefits associated with the service concerned. For example, where direct users are the predominant beneficiaries of a service, fees may recover full costs. Where benefits are predominantly public, however, the taxpayer should meet the bulk of the costs and fees should be limited to those necessary to ensure optimal provision of public benefits (e.g. by deterring frivolous use);

⁹ Ipsos Australia (2007). *Dispute Resolution in Victoria: Community Survey*. Report prepared for the Victorian Department of Justice.

¹⁰ See: <http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/publications/research280607.htm>

¹¹ Working Party on Civil Court Fees, (2003). *Review of Civil Court Fees – Stage 2: Report to the Minister for Courts*, p46, Government of New Zealand, Wellington, December 2003.

- *Protection of Access to Justice*: Fees should not prevent citizens from having access to appropriate court dispute resolution services. This applies particularly to services in respect of which legal aid is not available;
- *Average Cost Pricing*: Fees shall be set to recover a proportion of the average cost of service provision. A single fee may cover a number of distinct processes in order to reduce administrative costs associated with setting and collecting fees, but in no case should fees exceed the average cost of the services to which they relate;
- *Operational Efficiency*: The fee structure should provide incentives for cost effective use of court services. The number of points at which fees are charged should be limited in order to minimise the transaction costs associated with imposing, reviewing and collecting them. Fees should, as far as possible, be payable in advance;
- *Judicial Discretion*: The judiciary shall continue to have discretion to reallocate costs, including court fees, between parties to litigation. This will enable court fees to be charged primarily to the party responsible for the use of court resources, in appropriate cases.

Consistent with these principles, the Working Party recommended varying proportions of cost recovery, depending on the jurisdiction. In practice, no more than 50 per cent of the costs were recovered in any jurisdiction, while cost recovery levels were differentiated between different jurisdictions according to the level of public and private benefits obtained.

2.2. Historical fee comparisons

Court	2001 (actual)	Post-2001 (estimated)	2010-11 (actual)
Magistrates'	44.9%	40.8%	30.2%
County	41.2%	48.5%	32.0%
Supreme	38.0%	43.4%	19.4% ¹²
Juries	NA	NA	86.3%

Sources: Various RIS, Productivity Commission *Report on Government Services*, courts administration & Juries Commissioner's Office data.

Table 2.1 shows that the percentage of cost recovery attained in the civil jurisdictions immediately prior to the current regulations coming into effect varied from 38.0% to 44.9%. The expected level of cost recovery upon the adoption of the current regulations was slightly higher overall, being between 40.8% and 48.5%. Following the adoption of the current regulations, cost recovery levels were expected to experience a modest increase in the County and Supreme Courts, but a modest decline in the Magistrates' Court.

¹² This figure excludes the operations of the Probate Office. Inclusion of the costs and revenues of the Probate Office has the effect of increasing cost recovery levels in the Supreme Court to a level slightly above that of the other court jurisdictions (i.e., to 35.7%). This reflects the fact that, in common with all other Australian jurisdictions, fees revenue from the Probate Office substantially over-recovers the costs incurred.

Review of Table 2.1 also shows that the level of cost recovery achieved in all jurisdictions has declined substantially since the adoption of the current regulations. The decline has been most pronounced in relation to the Supreme Court, where the percentage cost recovery being achieved has almost halved over the period. It has declined by approximately one quarter in the County Court and by around one third in the Magistrates' Court.

Given that the fees have been maintained in real terms since being converted to fee units pursuant to the *Monetary Units Act 2004*, it is clear that the primary reason for this decline is that the real cost per case heard has increased.

Historical data in relation to the juries fees regulations are not available. However, an analysis of current data indicates that a substantially higher level of cost recovery is being attained via these regulations. The current cost recovery level, of 86.3% is, in fact, little short of a full cost recovery outcome.

2.3. Interstate Fee Comparisons

Box 2: The Report on Government Services (RoGS)

The Productivity Commission has, since 1995, published an annual Report on Government Services. The focus of the report is on the equity, efficiency and cost effectiveness of government service provision. Consequently, it includes a range of performance indicators, developed in a way that is intended to be consistent with the Agreement on Federal Financial Relations.

Chapter 7 of the RoGS provides a range of data on court administration. This material provides a substantial data source that enables cross-sectional analysis of court administration issues including, in the current context, the cost per case of the provision of court services and the extent of cost recovery achieved in the various Australian court jurisdictions. Consequently, the majority of the data included in the following analysis has been sourced from RoGS.

All RoGS are available online at: <http://www.pc.gov.au/gsp/reports/rogs>

Table 2.2, below, is reproduced from the *Report on Government Services*. It compares the level of cost recovery currently being achieved in the Victorian courts with that being achieved in other Australian States and Territories.

Table 2.2: Cost recovery in Australian court jurisdictions, 2010-11 (%)¹³

Table 7.9 Civil court fees collected as a proportion of civil recurrent expenditure (cost recovery), 2010-11 (per cent)^{a, b}

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust courts	Total
Supreme ^c /Federal ^d	38.3	19.4	34.3	18.6	31.2	11.3	17.6	3.6	11.2	22.3
District/County	37.6	32.0	41.5	20.5	33.2	..	..	..	..	32.3
Magistrates' (total) ^e	30.5	25.8	23.3	26.5	27.0	33.1	2.3	6.5	..	25.9
<i>Magistrates' (only)</i>	35.7	30.2	28.9	28.0	29.2	43.8	2.4	6.9	..	29.9
<i>Children's</i>	–	..	–	–	0.3	..	..	..	..	–
Family courts ^d	..	..	..	13.8	..	..	..	..	2.1	4.3
Federal Magistrates ^d	..	..	..	..	..	..	..	..	31.3	31.3

^a Excludes payroll tax. ^b Some jurisdictions charge corporations twice the amount individuals are charged, therefore average fees can overstate the charge to individuals. ^c Excludes probate costs. ^d During 2010-11 the federal government imposed minimum filing and hearing fees even for parties that are eligible for exemptions and waivers. ^e Victorian Magistrates' Court fees include civil and criminal court fees paid through VCAT. .. Not applicable. – Nil or rounded to zero.

Source: Australian, State and Territory court administration authorities and departments (unpublished); table 7A.15.

Table 2.2 shows that all Australian States recover a significant proportion of the costs of the civil courts from users, although the two territories appear to have a much lower level of cost recovery. Victoria's current level of cost recovery is very close to the Australian average in respect of the County and Magistrates' Courts, and slightly below average in respect of the Supreme Court (i.e. 19.4% vs 22.3%).

New South Wales has the highest level of cost recovery in relation to the Supreme Court, Queensland has the highest level of cost recovery in the County Court and Tasmania achieves the highest level of cost recovery in respect of the Magistrates' Court. The highest level of cost recovery achieved is almost double that of Victoria in relation to the Supreme Court, is around 30% higher in relation to the County Court and is almost 50% higher in relation to the Magistrates' Court.

In absolute terms, no jurisdiction achieves more than 50% cost recovery. The highest levels achieved are 38.3% for the Supreme Court, 41.5% for the County Court and 43.8% for the Magistrates' Court.

Table 2.3, below, is also reproduced from RoGS and compares the actual average fee collections per matter lodged in each court.

¹³ Source: Productivity Commission (2012) *Report on Government Services*. See Chapter 7.

Table 2.3: Average fee collections per matter lodged¹⁴

Table 7.8 Average civil court fees collected per lodgment, 2010-11 (dollars)^{a, b}

	NSW ^c	Vic	Qld	WA	SA	Tas	ACT	NT	Aust courts	Total
Supreme (excl. probate) ^d /Federal ^e	2 420	1 068	1 003	1 790	2 290	476	1 114	633	2 098	1 721
District/county	1 266	1 177	726	666	833	..	..	..	..	978
Magistrates' (total) ^f	115	85	110	102	129	77	46	60	..	102
<i>Magistrates' (only)</i>	121	88	118	105	135	80	49	63	..	106
<i>Children's</i>	–	..	–	–	2	..	..	..	..	–
Family courts ^e	..	..	..	222	..	..	..	..	129	172
Federal Magistrates ^e	..	..	..	..	..	..	..	..	333	333
Probate — Supreme	1 076	298	541	196	847	370	725	1 092	..	652

^a Some jurisdictions charge corporations twice the amount individuals are charged, therefore average fees can overstate the charge to individuals. ^b Totals are derived for each court level by dividing the total fees for that court level by the lodgments for that court level. ^c Probate lodgments in NSW Supreme Court for 2010-11 subject to error and should be interpreted with caution. ^d During 2009-10, the Supreme Court of Victoria implemented a new Case Management system and associated Courts Data Warehouse. This has required changes to work practices in registries and judges' chambers and introduced new systems and opportunities for improved data analysis. 2010-11 is the first full year of data from the new system. ^e During 2010-11 the federal government imposed minimum filing and hearing fees even for parties that are eligible for exemptions and waivers. ^f Victorian Magistrates Court fees include fees paid through VCAT. .. Not applicable. – Nil or rounded to zero.

Table 2.3 shows that Victoria's average fee level is slightly below the national average in the Magistrates' Court and very substantially below the average in Supreme Court. Conversely, it is slightly higher than average in the County Court and is the second highest of the five jurisdictions reporting their average fee levels.

2.4. Comparisons of average court costs per lodgement

The data presented in the RoGS can be used to calculate the average cost per matter lodged in each court jurisdiction. This is achieved by dividing the average fee revenue per lodgement by the percentage cost recovery achieved in each case. Table 2.4, below, provides a comparison of average recurrent expenditure per case lodged in each Victorian court jurisdiction with the national average.

Table 2.4 shows that the average recurrent expenditure per lodgement in the Victorian Supreme Court is substantially below the Australian average (\$5,505, vs, \$7,717), while the average expenditure in the Magistrates' Court is also below average (\$291 vs \$355). By contrast, average expenditure in the County Court is somewhat above the average (\$3,678 vs \$3,028).

¹⁴ Source: Productivity Commission (2012).

In sum, Victorian court costs are comparable with those incurred in other Australian jurisdictions, indicating that the cost base against which the partial cost recovery objectives of these fees are measured is an appropriate, or efficient one, measured according to national benchmarks.

Table 2.4: Implicit cost per matter lodged, Victoria and Australia

	Fees per lodgement (average)	Fees as % of civil recurrent expenditure	Recurrent expenditure per lodgement (implicit)
Victoria			
Supreme Court	\$1,068	19.4% ¹⁵	\$5,505
County Court	\$1,177	32.0%	\$3,678
Magistrate's Court (only)	\$88	30.2%	\$291
Australia			
Supreme Court	\$1,721	22.3%	\$7,717
County/District Court	\$978	32.3%	\$3,028
Magistrate's Court	\$106	29.9%	\$355

Source: RoGS (2012). Data relate to 2010-11

2.5. Total cost recovery

Table 2.5, below, is also reproduced from the 2012 RoGS. It shows the comparison between court expenditures and incomes at the aggregate level for each jurisdiction. Table 2.5 shows that total courts administration expenditure in the civil jurisdictions in Victoria was \$122.7 million, while expenditure less income was \$90.4 million. Thus, total fees and other income was \$32.3 million and the aggregate level of cost recovery achieved in the courts was 26.3%. This represents a significant reduction from the 29.6% figure recorded in the previous year¹⁶. Taking all Australian civil courts together, the total expenditure was \$566.9 million, of which \$158.2 million is recovered via fees and other income, leaving a net cost of \$408.7 million. Thus, the aggregate level of cost recovery in Australian civil court jurisdictions was 27.9%. Overall levels of cost recovery in the Victorian court system are therefore slightly below the Australian average. Queensland (32.1%), New South Wales (36.9%) and South Australia (39.2%) currently have higher aggregate levels of cost recovery than Victoria.

¹⁵ Excludes Probate Office.

¹⁶ See RoGS (2012), RoGS (2011).

Table 2.5: Court administration recurrent expenditure less income (excluding fines) 200910

Table 7.1 Court administration recurrent expenditure less income (excluding fines), 2010-11 (\$ million)^{a, b}

	NSW ^c	Vic	Qld ^d	WA	SA	Tas	ACT	NT	Aust courts	Total
<i>Court administration recurrent expenditure</i>										
Civil courts ^{e, f, g}	169.2	122.7	52.9	68.6	30.9	6.5	12.5	11.0	92.8	566.9
Criminal courts ^h	205.9	179.0	136.7	110.6	63.5	16.6	13.0	19.2	..	744.5
Family courts ⁱ	..	..	..	24.2	..	..	..	..	106.6	130.8
Federal Magistrates ^j	..	..	..	..	..	..	..	..	96.5	96.5
Coroners' courts ^k	5.7	13.5	10.6	4.1	2.9	0.5	1.5	1.1	..	40.1
Probate — Supreme ^l	1.3	0.7	0.3	0.4	0.5	0.1	—	—	..	3.4
Total	382.0	316.0	200.5	207.9	97.8	23.7	27.0	31.3	295.9	1 582.2
<i>Court administration recurrent expenditure less income (excluding fines)</i>										
Civil courts ^{e, f, g}	106.8	90.4	35.9	51.2	18.8	4.8	10.7	10.3	79.7	408.7
Criminal courts ^h	194.3	179.0	134.4	102.0	57.7	15.4	12.5	19.0	..	714.4
Family courts ⁱ	..	..	..	20.7	..	..	..	..	100.1	120.8
Federal Magistrates ^j	..	..	..	..	..	..	..	..	66.3	66.3
Coroners' courts ^k	5.6	13.5	10.5	4.1	2.9	0.5	1.5	1.1	..	39.7
Probate — Supreme ^l	- 23.1	- 4.8	- 4.1	- 0.8	- 4.3	- 0.7	- 0.5	- 0.1	..	- 38.4
Total	283.6	278.2	176.7	177.2	75.1	20.1	24.3	30.2	246.1	1 311.5

^a Totals may not sum as a result of rounding. ^b Payroll tax is excluded. ^c NSW Courts and Tribunal Services are currently developing a data warehouse to extract and verify crime data in JusticeLink. Completion of the data warehouse is planned for March 2012. As a result, crime data for 2012 for the Magistrates and Children's courts are partially estimated, based on raw data that are subject to final verification. ^d Queensland has amended its methodology to calculate FTE to align with other states and territories. Expenditure data are based on FTE apportionment. ^e Includes data for the supreme, district/county and magistrates' courts (including children's courts) and the Federal Court. Excludes data for probate, family courts, the Federal Magistrates Court and coroners' courts. ^f Data for the Federal Court exclude the cost of resources provided free of charge to the Federal Magistrates Court. ^g Victorian Magistrates' Court civil data include a proportion of expenditure from the Victorian Civil and Administrative Tribunal (VCAT) and County Court civil and criminal data include the Public Private Partnership rental and associated costs for the Victorian County Court building. ^h Includes data for supreme, district/county and magistrates' courts (including children's courts). ⁱ Discounted (estimate) for resources and services (work of court staff and accommodation) provided free of charge to the FMC in accordance with the Federal Magistrates Act 1999 and appropriations transferred to FMC (shown as expenditure in Family Court of Australia annual report) arising as a result of delays in the 'Federal Courts Restructure'. In addition the Family Court of Australia provides further shared services, including IT, accommodation, work of court staff, depreciation and amortisation that cannot be quantified and as such no additional discount could be applied. ^j FMC expenditure data include resources received free of charge from the Federal Court and Family Court. Funds transferred from FCOA and FCA as income are excluded from these data as these amounts are now considered equivalent to government appropriations (noting that the full appropriation amount was returned to the court due to delays in the restructure of the federal courts). Expenditure for the FMC is based on the total net expenditure for that court and does not isolate family law work from general federal law work. Some Bankruptcy and Immigration matters filed with the FMC are delegated to be dealt with by Federal Court registrars. This work is funded by the FMC and is therefore included in its expenditure. ^k Excludes expenditure for autopsy, forensic science, pathology tests and body conveyancing fees as the inclusion of these costs in coroners' court expenditure varies between states and territories. Expenditure data for the Queensland Coroners' Court and the Victorian Coroners' Court include the full costs of government assisted burials/cremations, legal fees incurred in briefing counsel assisting for inquests and costs of preparing matters for inquest, including the costs of obtaining independent expert reports. ^l The true net revenue may not be identified because rent and depreciation attributable to probate matters may be reported with data for supreme courts. .. Not applicable. — Nil or rounded to zero.

Source: RoGS (2012).

2.6. Reasons for the decline in cost recovery since 2001

It has been shown above that the level of cost recovery achieved in the Victorian courts has declined substantially over the past decade. Table 2.1. shows that expected cost recovery levels at the time of the adoption of the current regulations varied between 40.8% and 48.5% in the different courts. A simple average of these expected cost recovery levels yields a figure of 44.7%. This compares with a figure of 27.2% at present. This implies that cost recovery levels have dropped by almost two fifths over the past eleven years.

Some of this fall in cost recovery was due to the fact that the 2001 fees were not adjusted to take account of inflation prior to 2005, when they were brought within the ambit of the *Monetary Units Act 2004*. The remaining part of the fall in cost recovery reflects real increases in the costs of courts administration. Table 2.6, below, compares the real value of the fees initially set in 2001 with those currently in place for a selection of the main fee types contained in the proposed regulations.

Table 2.6: Comparison of fees as made in 2001 and current fees - nominal and real

Fee	2001	2012 ¹⁷	2012 value of real 2001 fee ¹⁸	Fee reduction (%)
Supreme Court				
Commencement/counterclaims	\$600	\$767.40 (62.8 fee units)	\$797.58	3.8%
Commencement of Court of Appeal cases	\$2,500	\$3,146.70 (257.5 fee units)	\$3,323.25	5.3%
Special list setting down	\$1850	\$2,329.10 (190.6 fee units)	\$2,459.21	5.3%
Daily hearing fee	\$310	\$389.80 (31.9 fee units)	\$412.08	5.4%
County Court				
Commencement/counterclaims	\$420	\$529.10 (43.3 fee units)	\$558.31	5.2%
Daily hearing fee	\$220	\$277.40 (22.7 fee units)	\$292.45	5.1%
Magistrates' Court				
Commencement (< \$1,000)	\$60	\$75.80	\$79.76	5.0%
Commencement (\$1,000 < \$10,000)	\$125	\$157.60	\$166.17	5.2%
Commencement (> \$10,000)	\$190	\$239.50 ¹⁹	\$252.57	5.2%
Hearing fee	\$180	\$226.10	\$239.27	5.5%

¹⁷ The value of a fee unit in 2010-11 was \$12.22.

¹⁸ i.e. The 2001 fee inflated by the Melbourne All Groups CPI to obtain the equivalent real value in 2012 dollars.

¹⁹ Amounts up to \$40,000. This most closely accords with the original 2001 fee. A higher fee is currently payable for matters involving more than \$40,000 in dispute. However, the Magistrates' court did not have this level of jurisdiction in 2001.

Table 2.6 shows that current fees have a value that is between 3.8% and 5.5% below the real value of the fees initially set under the current regulations at the time of their introduction in 2001. This implies that a majority of the reduction in cost recovery levels that has occurred since 2001 has been due to increases in the average recurrent costs incurred in the courts per case lodged, while the erosion in the real value of the fees has played a small, but not insignificant, part.

2.7 Moves toward full cost recovery

While most comparable jurisdictions appear historically to have adopted a similar approach to cost recovery to Victoria's current approach (i.e. affixing an objective of partial cost recovery in recognition of the mix of private and public benefits derived from the operation of the civil courts) there has been movement in recent years toward higher levels of cost recovery. Indeed, an objective of full cost recovery has been adopted in some circumstances.

At the international level, the United Kingdom's family and civil court system is predominantly funded by the users of court services. According to the UK Ministry of Justice²⁰, the annual cost of operating the civil and family courts in England and Wales is £619 million, of which 82% is recovered via court fees, with the remaining 18% funded through the budget of the Ministry of Justice. The approach taken is to set fees on the basis of full cost recovery, while providing a comprehensive fee remission scheme to protect access to justice for lower income groups.

Changes at the Federal level also mean that the level of cost recovery via court fees is increasing in that jurisdiction. These changes respond to the recommendations of a 2009 report to the Commonwealth Attorney-General on access to justice in the Federal civil justice system²¹, which concluded that:

- The Attorney General, through the Standing Committee of Attorneys General (SCAG) process, should initiate a thorough examination of issues and options for funding aspects of the justice system on a cost recovery basis; and
- Given the significant public costs of court hearings and the opportunities parties have to resolve matters without hearing, or minimise the length of hearings by identifying the real issues in dispute, full cost pricing for long hearings is generally appropriate. The Government should propose a model of full cost pricing for long hearings.

The Taskforce Report also recommended that a comprehensive system of fee waivers should be adopted to ensure that access to justice was preserved in the context of a move toward full cost recovery. This approach is consistent with that enunciated in the United Kingdom, as discussed above.

²⁰ <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/fees/why-we-charge.htm>

²¹ Access to Justice Taskforce, Attorney General's Department (2009). *A Strategic Framework for Access to Justice in the Federal Civil Justice System*. Australian Government, Canberra, September 2009.

Some of these recommendations have been implemented in the Federal Court context, with a sliding scale of hearing fees having been implemented. The fees are set out in Table 2.7., below, with the previous fee scale included for comparative purposes.

Table 2.7: Federal Court Fees - Civil Jurisdiction

Fee	Corporation		Other	
	2009	Current	2009	Current
Filing fee	\$1,881	\$2,142	\$785	\$894
Setting down/hearing allocation fee	\$3,135	\$3,569	\$1,569	\$1,786
Hearing fee - days 2 -4	\$1,254	\$1,428	\$625	\$712
Hearing fee - days 5 - 9	\$1,254	\$2,568	\$625	\$1,184
Hearing fee - days 10 +	\$1,254	\$5,068	\$625	\$2,384

Source: Federal Court

2.8. Fee structure and incidence

2.8.1. Fee Structure

Recommendations of the Civil Justice Committee Report

The Civil Justice Committee Report also considered the question of what general fee structure should be preferred in the specific context of court fees²². Its review of this issue focused in particular on a consideration of the relative merits of "block fee" and "multiple fee" systems. A block fee is defined as a single large fee payable on filing of proceedings which is calculated so as to retrieve a substantial proportion of the administrative costs likely to be incurred throughout the process. Conversely, multiple fees systems seek a closer alignment between individual fees paid and the cost of individual administrative actions taken within the courts.

The Committee noted that, at the time of writing (i.e. 1984), the Supreme Court used multiple fee systems, while the County Court used a "quasi-block" fee system, consisting of one large filing fee and very few additional fees. The Magistrates' Court was found to have moved recently more in the direction of a block fee system, from a starting point of multiple fees.

The Committee argued that block fee systems had the substantial advantages of greater certainty of revenue for the courts and substantially lower administrative costs (i.e. costs of fee calculation and collection). This latter point was judged to be particularly significant, with the Committee noting that, in the Supreme Court, in the case of proceedings commenced by writ, up to 80 different fees may be chargeable.

²² Victorian Law Foundation/Law Department of Victoria (1984), op. cit., p 377-9.

Conversely, the block fee system has the disadvantage that it is more difficult to incorporate a user pays philosophy within it, as the administrative costs incurred will vary widely between different cases²³. Some of this variance in administrative costs is due to specific aspects of the cases in question and some to the ways in which the cases are managed. However, a significant part of the difference in administrative costs relates to the question of whether cases proceed through to judgment or are settled or withdrawn at an earlier stage of proceedings.

Having weighed the above factors, the Committee reached the view that a modified block fee system was most appropriate. This would mean that a single block fee would be charged at each major stage of proceedings. In the case of the Supreme Court, the Committee argued that the then current 80 or more fees should be reduced to a fee structure containing fewer than ten fees.

The Committee also recommended that there should be uniformity between the courts in the type of fee system used, as well as a clear proportionality between the size of the fees charged in the Supreme and County Courts.

The issue of the appropriate structure of court fees has also been considered more recently in the context of the 2008 Civil Justice Review Report completed by the Victorian Law Reform Commission. The Commission noted that:

"Depending on the court and the particular list within the court, such fees encompass fees for the commencement of proceedings, entry into certain lists, the filing of documents, hearing fees, jury fees, late filing fees, mediation fees, notice of trial, production of court files and searching of court files, the filing of motions, pre-trial conference fees, photocopying, setting down and issuing subpoenas. Fees may be waived in cases of hardship.

It is not clear what the costs of administering such a piecemeal system of charges are. At least for certain types of cases, it would appear that it may be more administratively convenient, and involve less "transaction costs" to have one uniform aggregate fee either payable or incurred at the outset, with provision for a reduction or refund in the event of settlement, as an added financial incentive."²⁴

The Commission's comments highlight the administrative costs associated with a multiple fee structure, in common with the 1984 Civil Justice Review Report and suggest that consideration could be given to moving from the current modified block structure to a position much closer to a simple block structure.

²³ The Committee noted that "This is true because each case requires different services and a different numbers of services." See: Victorian Law Foundation/Law Department of Victoria (1984), op. cit., p 378.

²⁴ Victorian Law Reform Commission (2008). **Civil Justice Review: Report**. Victorian Government Printer. Report No. 98, Session 2006-2008, p 637.

DTF Cost Recovery Guidelines and the Committee Recommendations

The Committee's discussion of fees issues acknowledges the importance of user pays principles in fee design, but sets these in the context of a number of competing considerations in the specific context of court fees, many of these considerations being of a pragmatic nature.

The DTF Cost Recovery Guidelines generally favour the adoption of a user pays approach to fee setting, but also recognise the existence of competing policy considerations and practical limitations. In particular, it acknowledges the tension between the need to avoid cross-subsidisation and the need to avoid incurring additional costs by introducing unduly complex charging structures:

When structuring charges (and, indeed, when designing cost recovery arrangements in general), it is important to ensure that they are simple to understand (and to implement). Complex arrangements, while theoretically pure, may result in unjustified costs, unnecessary confusion, and high levels of evasion.²⁵

Consistent with the recommendations of the Civil Justice Committee and the DTF Guidelines, the current regulations can be characterised as broadly implementing a modified block fee structure. There are 12 fees payable in the Magistrates' Court. However, revenue analysis indicates that the great majority of revenue collected is derived from a small number of these fees. Table 2.8, below, summarises this point.

Table 2.8: Fee revenue - Magistrates' Court

Fee type	Revenue	
<i>Commencement</i>		
- Matters involving less than \$1,000	\$0.7 million	
- Matters involving \$1,000 - \$10,000	\$6.8 million	
- Matters involving \$10,000 - \$40,000	\$3.6 million	
- Matter involving more than \$40,000	\$1.5 million	
<i>Total commencement</i>		<i>\$12.6 million (81.3%)</i>
Requests for orders		\$0.6 million
Judgment Debt Recovery Act fees		\$0.6 million
Sub-total		\$13.8 million (89.0%)
Other revenue		\$1.7 million
Total fee revenue		\$15.5 million

Source: Magistrates' Court. Data analysed by Deloitte. Data relate to 2009-10²⁶.

Table 2.8 shows that commencement fees (i.e. "block" fees) account for over 80% of all fee revenue, while the combination of these commencement fees and two further fees collectively accounts for almost 90% of total fee revenue. The pattern of fee

²⁵ Department of Treasury and Finance (2010). *Cost Recovery Guidelines.*, p 33.

²⁶ RoGS reports that total revenue was broadly similar in 2010-11, declining slightly to \$15.2 million.

revenue in the other court jurisdictions is similar, with block fees (comprising commencement or filing fees and entry into list fees) accounting for around 75% of total fee revenue in the Supreme Court and over 70% of fee revenue in the County Court²⁷.

Also of note in relation to the Magistrates' Court fees is that, in this jurisdiction, commencement fees vary according to the amount in dispute. Given the revenue data set out above for each of the four commencement fees, it is clear that the majority of disputes in the Magistrates' Court involve amounts of between \$1,000 and \$10,000.

The differentiation of commencement fees according to the amount in dispute highlights another important fee setting principle, referred to briefly in the previous discussion regarding the conclusions of the Civil Justice Committee. This is that the fee structure should not act as a substantial disincentive to potential litigants using the courts to resolve disputes. Commencement fees in the Magistrates' Court currently vary between 6.2 and 29.4 fee units, depending on the amount in dispute. While the administrative costs associated with cases with smaller amounts in dispute are likely to be lower, on average, due to these cases tending to be less complex, the average cost is likely to differ by less than this proportionate amount. Thus, the scaling of these fees can be seen as representing the outcome of a decision to accept lower levels of cost recovery in relation to small disputes in order to preserve the principle of maintaining a high level of access to the court system.

Three thresholds were initially established in the 2001 regulations. These sought to distinguish between:

- the very smallest cases, where the amount in dispute is low and a high fee could be a significant disincentive to bringing the matter to court. The threshold adopted here is \$1,000;
- the majority of cases brought in the Magistrates' Court. The threshold here is between \$1,000 and \$10,000; and
- the largest and, in many cases, the most complex cases. The threshold adopted was \$10,000 to \$40,000.

The \$40,000 threshold represented the extent of the Magistrates' Court's civil jurisdiction at the time the 2001 regulations were adopted. However, this jurisdiction was subsequently expanded to \$100,000, so that a number of matters that would necessarily have been heard in the County Court previously could now be heard in the Magistrates' Court. It was determined at that time to create a fourth fee threshold, in recognition of the greater complexity and cost likely to attach to these cases.

Table 2.9 sets out the distribution of the number of cases heard in the Magistrates' Court in 2010-11 in terms of these thresholds.

²⁷ Data are for 2009-10 and reflect courts administration data, analysed by Deloitte for the Department of Justice.

Table 2.9: Matters heard in the Magistrates' Court, by amount in dispute

Amount in dispute	Percentage of cases
Less than \$1,000	15.2%
\$1,000 - \$10,000	63.1%
\$10,000 - \$40,000	17.1%
Over \$40,000	4.6%
Total	100.0%

Source: Magistrates' Court

Decisions regarding the future value of these fee thresholds are necessarily a matter of judgement. One possible approach would be to adjust the current thresholds to broadly reflect the CPI change over the period since the current thresholds were set, possibly rounded to some extent. For example, given that the CPI change has been of the order of 30% over that period, new thresholds might be set at \$1,500, \$15,000 and \$50,000.

A second potential alternative would be for the thresholds to be set in terms of fee units, so that they would henceforth automatically retain their real value over time. This option would, however, have the disadvantage of reducing transparency to some degree, as the actual thresholds would not be expressed in round numbers and would change from year to year, as part of the budget process. This may lead to some confusion on the part of potential litigants and courts administration staff and associated inefficiency.

Retention of the existing thresholds will tend to increase the average commencement fee payable to some extent, since the real (i.e. inflation adjusted) value of each threshold will be reduced over time. As noted above, the current value of the thresholds is some 30% lower than was the case when the current regulations were adopted. That is, a proportion of matters where the amounts in dispute exceed a current threshold by a small amount would, if these thresholds were revised, pay a lower fee. However, given the distribution in the proportion of cases by value revealed by Table 2.9, notably the fact that almost two thirds of cases continue to fall within the \$1,000 to \$10,000 band, it appears likely that the impact on average commencement fees of not adjusting the thresholds will be relatively modest.

Given this fact and the benefits of maintaining transparency and simplicity in respect of the thresholds, it is considered that the current thresholds continue to provide an appropriate basis on which to differentiate commencement fees.

Question: In light of the above discussion, stakeholder views are particularly sought on the question of whether the current commencement fee thresholds continue to be appropriate or, if not, what alternative thresholds are considered preferable.

2.8.2. Fee incidence

A high proportion of the fees contained in the Magistrates' Court fees regulations are paid in the first instance by the plaintiff (i.e. the party initiating the civil action). However, should their action be successful, it is likely that the Magistrate will make a costs order against the defendant. Thus, the majority of fees will be paid by unsuccessful plaintiffs and unsuccessful defendants. That said, there are instances in which a costs order will not be made and as a consequence, each party will bear their own costs.

In relation to the criminal jurisdiction fees, the payment will, in the first instance, be made by the informant on filing of a charge sheet (subject to exemptions contained in the regulations). Again, however, if the *prosecution* is successful, a costs order will be made *if a fine is imposed and the informant was initially exempt from paying the fee*.

Finally, juries fees are paid by the party who has given the relevant notice requesting that the matter be heard with a jury, but may be retrieved via a costs order against the other party, should the action be successful.

Appendix 4 sets out the initial and final incidence of the individual fees contained in the regulations.

2.9. Magistrates' Court fees

2.9.1. Civil Jurisdiction

The above discussion of major considerations to be weighed in setting court fees has been framed in general terms, given that the key considerations involved and the objectives of fees policy are applicable to all of the court jurisdictions. However, the relative importance of these matters differs somewhat between the jurisdictions.

The size of the public benefits arising in relation to use of the civil jurisdiction of the Magistrates' Court is arguably somewhat smaller, proportionately speaking, than is the case in relation to the higher courts, particularly the Supreme Court. This reflects the fact that decisions of the Magistrates' Court, unlike the Court of Appeal, do not establish precedent. Further, the Supreme Court alone determines questions of law arising from cases in the lower jurisdictions. This factor would tend to suggest that the appropriate level of cost recovery would be higher in the Magistrates' Court than in the higher courts.'

However, a countervailing factor is that access to justice issues are arguably of particular importance in the Magistrates' Court, given that a high proportion of cases are litigated in this jurisdiction and that they are disproportionately relatively small scale disputes.

The importance of the access to justice criterion suggests, contrary to the above conclusion in relation to the balance of private and public benefits, that cost recovery

levels should remain modest. Legal fees are likely to constitute the great majority of the total cost of litigation in most cases which go to hearing. While data on the average costs of legal representation in the Magistrates' Court are not available, Appendix 2 sets out the "scale of costs" for the Court. This provides indicative costs for a range of functions that may be carried out by legal representatives in connection with a matter being heard by the Court²⁸. In addition, Appendix 5 provides information on the party initially responsible for payment of a fee, and whether the fee is recoverable from another party.

However, while legal costs will far outweigh court fees in a majority of cases, a number of contexts can be identified where these fees will be low or non-existent and, consequently, court costs may loom large in terms of overall costs. These include:

- Cases in which the litigant chooses to represent themselves. While data on the frequency of self-representation are not collected by the Magistrates' Court, it is likely that the incidence of self-representation will be higher in cases in which small amounts are in dispute. As noted above, these constitute more than three quarters of all cases lodged with the Magistrates' Court;
- Cases in which an unsuccessful litigant has been represented pursuant to a contingent fees agreement (i.e. "no win, no pay"). Here, the major liability in terms of cash outgoings may be the court fees;
- Cases which are settled at a relatively early stage, such that limited legal costs have been incurred. It should be noted that only a very small percentage of matters lodged with the Magistrates' Court actually proceed to hearing.

These examples indicate that the level of court fees may have an important impact on access to justice and that it remains an important consideration in fee-setting. While the average amount of fees paid per case lodged in the Magistrates' Court according to ROGS is less than \$100, this reflects the fact that a large proportion of matters are settled at an early stage. Fees payable where a case goes to hearing will inevitably be many times higher than this amount.

2.9.2. Criminal jurisdiction

While the Magistrates' Court fees are predominantly concerned with the Court's civil jurisdiction, six fees relate exclusively to its criminal jurisdiction. Two are fees paid by an informant upon filing of a charge sheet commencing a criminal proceeding, while another two pertain to applications under the *Road Safety Act 1986*. The final two relate to matters heard under the *Infringements Act 2006* - i.e. offences subject to "on the spot" fines. The following discusses fee-setting considerations in relation to these fees.

²⁸ The scale of courts effectively constitutes a benchmark as to the reasonableness of costs charged to litigants. However, actual costs can, and frequently will, exceed the levels set out in the scale.

Initiation of criminal proceedings

In general terms, fees are not charged by the courts in connection with criminal matters. With the exception of infringements matters, the fees are initially paid by an informant. Where a fee is not payable by an informant because of an exemption²⁹, and where a prosecution is successful and the unsuccessful accused is punished by way of a fine, the Court is required to make a costs order against the unsuccessful accused to the value of the fee.

The fact that fees are not generally charged in the criminal jurisdiction reflects, in part, that the operation of the criminal courts is essentially seen as delivering a public benefit and are therefore appropriately funded from public revenues. In addition, the Courts have significant discretion to set penalties at levels that are considered to be just in relation to all of the circumstances of the individual crime and the individual offender. This may result in large penalties in some cases, but may also result in very small penalties being levied in others, even though a matter is found proved.

An important consideration in fee setting will therefore be whether a non-discretionary costs order, requiring the offender to pay the fee, would add substantially to the penalty imposed by the court, effectively constituting an additional penalty.

Moreover, the costs involved necessarily vary widely between cases in ways that are difficult to map. Thus, a cost-recovery based fee in this area would, in essence, function as a "block fee". This, in turn, would mean that offenders whose cases were relatively simple and low-cost in nature (including those who plead guilty) would, in effect, be paying high fees that would "cross-subsidise" costs incurred in more complex and expensive matters. This implies that the question of horizontal equity is a consideration in fee setting in this area.

Infringement Act 2006 matters

Where infringement notices (i.e. "on the spot" fines) are not paid within the prescribed time, enforcement action is usually taken through the dedicated Infringements Court. However, the option exists for enforcement agencies³⁰ to have these matters dealt with in the Magistrates' Court. Two fees are payable by the enforcement authority in respect of such matters. Victorian government enforcement authorities are exempt from the requirement to pay these fees so that, in practice, the fees are essentially paid only by enforcement authorities that are from other levels of government (chiefly local government). Where an enforcement order is made, the enforcement authority is also able to seek reimbursement of the amount of these fees from the offender.

²⁹ Victorian government agencies are exempt from paying these fees.

³⁰ i.e. Agencies responsible for issuing infringement notices. These include the police, local councils and various state government regulatory authorities.

In setting these fees it should be noted that the fees regulations made under the *Infringements Act 2006* are based on full cost recovery. That is, the fees payable in respect of matters dealt with in the Infringements Court will be set on this basis. Given that the Infringements Court has been established specifically as the primary jurisdiction for dealing with unpaid infringements, a consideration in setting these fees within the Magistrates' Court context is that of ensuring that no perverse incentives are created toward "jurisdiction shopping".

Road Safety Act 1986 Fees

Applications to the Magistrates' Court under the *Road Safety Act 1986* fall between the traditional classifications of the civil and criminal jurisdictions. The applications to which these fees relate necessarily occur consequent to a driving offence leading to licence disqualification having been committed. However, the specific processes to which the fees relate do not relate to questions of guilt or innocence. Rather, fees are payable where an offender seeks an order to be re-licensed, and must present evidence as to their suitability, and where an offender applies to be considered for relicensing earlier than the normally allowed period, on "exceptional circumstances grounds". Moreover, the liability to pay these fees arises only where an offender seeks to regain their driver's licence - a discretionary choice.

In this context, the issue of the appropriate contribution of the public and the private to the court costs incurred in determining whether the offender is again a suitable person to hold a driver's licence must be considered. There is clearly a strong private benefit element involved, which suggests that a substantial contribution to court costs via the fees is appropriate. Conversely, it may be considered that the general presumption that the government should fund a substantial proportion of the costs of the court system applies in these circumstances as in all others.

2.10. Jury fees

The Juries (Fees) Interim Regulations 2012³¹ set out three fees that are charged to applicants who choose to have a civil matter in the Supreme Court or County Court heard by a judge and jury, rather than a judge alone. Further detail on these regulations is provided in Section 4.2., below. However, in general terms, the regulations are intended to recover the costs associated with the selection and empanelling of jurors and the management of juries during hearings. They also recover the costs of direct payments made to individual jurors for each day they attend a trial. The costs of civil juries are not analysed separately in the RoGS. Hence, the following analysis of the quantum of the relevant costs uses data supplied by the Juries Commissioner's Office and the worksheets prepared for RoGS purposes.

³¹ These regulations effectively continue in force the provisions of the previous Juries (Fees, Remuneration and Allowances) Regulations 2001 and Juries (Fees) Interim Regulations 2011 until 30 September 2012, pending the completion of the current RIS process. Thus, these substantive provisions have been in place for several years.

2.10.1 Costs of civil juries

The costs incurred in relation to these activities are incurred in the Juries Commissioner's Office (JCO) and in the Supreme and County Courts. The JCO is responsible for identifying a pool of eligible jurors, through administering questionnaires to potentially eligible adults, for assembling potential jurors in the court precinct and readying them for jury service and for a range of other administrative tasks in relation to the provision of juries to the Supreme and County Courts.

Breakdown of juries-related costs

The following table, provided by the JCO, provides a breakdown of the costs incurred in connection with the use of juries in the County and Supreme Courts.

Table 2.9: Breakdown of costs of civil juries, 2010-11³²

Item	Cost
Payments to jurors	\$199,331
Juror-related costs ³³	\$31,453
Employee-related costs (JCO)	\$86,684
Corporate overheads	\$326,165
Total	\$643,633

Source: JCO.

Table 2.9 shows that direct payments to jurors account for almost one third of total jury-related costs.

2.10.2. Current Revenues

Fee revenue data obtained from the County Court shows that total revenue received from the juries fees in respect of civil juries was \$381,000. The equivalent Supreme Court data show that the revenue figure for that jurisdiction was \$187,000. Thus, the total revenue accrued in respect of civil juries is \$568,000.

2.10.3. Comparison of revenue and costs

Comparison of the above indicates that there was a net deficit of (\$643,633 - \$568,000) or \$75,322 in relation to juries costs. That is, costs exceeded fee revenue by this amount. The current level of cost recovery is therefore approximately 88.2%. An increase in the current fee level of around 13.3% would be required in order to achieve full cost recovery in this area.

³² Note that these are actual figures. Those used elsewhere are budgeted figures.

³³ Includes selection questionnaires, refreshments, travel and accommodation.

2.10.4 Fee-setting considerations

The relevant considerations in setting fees for civil litigants who choose to have a matter heard by judge and jury are somewhat different from those discussed above: a litigant who has a matter heard by judge alone nevertheless receives justice. This suggests that a high degree of cost recovery is warranted.

The major attenuating factor relates to the fact that, in the criminal jurisdiction, trial by jury (i.e. one's peers) has been seen historically as an important safeguard in terms of standards of justice. This view has, apparently, been reflected to some degree in the civil sphere, although it is notable that the right to elect trial by judge and jury exists in relation to only a subset of civil matters. To the extent that a departure from full cost recovery based fees is justified in this area, it is essentially on the basis of a view that full access to justice requires that trial by jury be an option in civil matters and that, as a result, there are grounds for public subsidy to improve access to this aspect of the justice system.

2.11. Conclusions

The above discussion shows that the policy adopted in recent decades, of requiring a significant co-contribution to the costs of the civil court system to be paid by users, was reached following a detailed review of relevant aspects of the justice system. Historical levels of cost recovery have been at or above 40%, consistent with this stated policy. However, cost recovery levels have fallen substantially over the past decade, largely due to increases in the cost of courts administration, which appear to have occurred in all jurisdictions across Australia³⁴. The level of cost recovery being achieved is now around 30% in the Magistrates' and County Courts and below 20% in the Supreme Court³⁵.

Current levels of cost recovery are broadly in line with the current Australian average, but are well below the highest levels. Significant fee increases would be required in order to restore the co-contribution to court costs made by civil users to their 2001 levels. Moreover, the context is one in which a number of jurisdictions have made conscious decisions in recent years to increase the proportionate contribution to court costs derived from user fees.

The Department of Justice believes that the principles enunciated above in relation to fee setting are appropriate. A key issue canvassed above is that attempts to implement some principles will necessarily tend to work against the achievement of others. Thus, fees policy must reflect attempts to achieve an appropriate balance between these competing principles. In particular, in determining the overall level of cost recovery to be achieved via user fees, a balance must be struck between:

³⁴ That is, as discussed above, current Victorian court costs per matter finalised are similar to those incurred in other State and Territory jurisdictions, as well as in the Federal courts structure.

³⁵ As noted above, cost recovery in the Supreme Court excluding the Probate Office is 19.4% - as reported by the Productivity Commission. Inclusion of the Probate Office increases this figure substantially.

- ensuring civil users of court services make a contribution to court costs, in recognition of the private benefits that they attain due to their access to a government-provided forum for civil dispute resolution; and
- preserving effective access to justice, by avoiding setting fees at a level that will create a barrier to potential litigants making use of court services.

In addition, in determining the appropriate fee structure to be implemented, a balance must be achieved between:

- The need for equity between different court users, ensuring as far as possible that there is proportionality between the quantum of court resources used and the fees paid across different users; and
- The need to ensure that administrative complexity is avoided and the cost of administering the fee structure is, consequently, minimised.

In light of the findings of the 2008 Law Reform Commission report discussed above, it is considered that the modified block fees system adopted following the 1984 Civil Justice Committee review continues to reflect a broadly appropriate balance between this latter pair of competing objectives. However, as discussed below, the costing information now available allows for a rebalancing between individual fees in such a way as to improve equity as between court users.

3. Objectives

The objective of the proposed regulations revolve around the need for an appropriate sharing of the costs of the operation of the civil jurisdiction of the courts between users and taxpayers. Specifically, this requires:

- The achievement of equity between court users and taxpayers, recognising that the work of the courts yields a mix of private and public benefits;
- The achievement of appropriate incentives for efficiency, both in terms of the provision of court services in an efficient fashion and in ensuring that the matters before the courts are those that yield the greatest benefit from the use of this dispute resolution forum; and
- The need to maintain access to justice.

4. Authorising provisions

The proposed Magistrates' Court (Fees) Regulations 2012 are authorised by Section 140 of the *Magistrates' Court Act 1989*, which empowers the Governor in Council to make regulations for or with respect to the fees, costs and charges payable in respect of any proceeding in the Court.

The proposed Juries (Fees) Regulations 2012 are authorised under Section 90 of the *Juries Act 2000*. This section simply authorises the Governor-in-Council to make regulations prescribing (inter alia) fees and states that these may be general or of limited application and may differ according to circumstances, place or time.

5. Summary of the proposed regulations

The following is intended to provide a general overview of the structure of the proposed fees regulations. The structure of both sets of proposed regulations is effectively identical to the existing regulations. The full text of the proposed regulations is attached to this RIS as Appendix 1 and Appendix 2.

5.1. Magistrates' Court fees

5.1.1. Criminal jurisdiction fees

While the fees regulations of the various courts essentially relate to their civil jurisdictions, a small number of fees within the current Magistrates' Court fees regulations relate to criminal matters. It is intended to retain these fees in the proposed regulations. These fees are as follows:

Filing of a charge sheet

Where a charge sheet is filed to commence a criminal proceeding, a fee is payable by the person or body filing the charge-sheet. A different fee is payable depending upon whether the charge sheet relates to one or multiple charges. In practice, this fee is levied fairly infrequently, since most of the bodies that file charge sheets are exempt bodies for this purpose, and are therefore not charged the fee. That is, Victorian Government agencies are exempt from the requirement to pay these fees. Hence, where the fees are paid, it will generally be by authorities within either the Federal or local governments. However, where a charge sheet has been filed by an exempt body and the matter is proved, with a fine imposed, a costs order including the amount of the fee must be imposed on the offender.

Lodgement of prescribed information

An enforcement agency (e.g. the police, local councils and any other body empowered to issue infringement notices, or "on the spot fines") or an individual the subject of an infringements notice can seek to have the infringements notice heard and determined by the Magistrates' Court. A different fee is payable for either one or multiple infringements. The enforcement agency must lodge the prescribed information with the court to allow the matter to proceed. This fee then becomes payable by the enforcement agency. Again, Victorian Government agencies are exempt from the requirement to pay this fee.

Application for an order as to the issue of a licence or permit

A person who has been convicted of exceeding the prescribed alcohol limit or driving under the influence of drugs must make application to the Magistrates' Court for permission to be again licensed to drive at the completion of their period of disqualification and must give 28 days notice of their application to the Chief Commissioner of Police. On the return date of the application, the person must appear in open court and give evidence to support their application. These are commonly referred to as licence restoration hearings. The person seeking restoration of their licence must pay this fee on lodgement of their application.

Application for reduction in the period in which an assessment report must be obtained

If the person has a blood alcohol reading exceeding 0.15%, or the conviction was for a second offence, the person must produce two reports from an accredited drink driving assessment agency at their licence restoration hearing. The first of these reports (relating to their drug and alcohol use) is to be obtained 12 months before the person applies to have their licence restored. However, the person may make an application to the Court to have the 12 month period reduced on the basis of 'exceptional circumstances'.

5.1.2. Civil Jurisdiction fees

Commencement fees

These fees are payable when a matter is first lodged with the Magistrates' Court. The need for a commencement fee reflects the fact that a range of administrative requirements are put in train by the initial lodgement of a matter and significant court resources will be deployed before a hearing actually commences.

When a matter is lodged with the court, staff must:

- receive and inspect the documentation;
- identify specific legislative requirements in relation to that type of action and ensure these are complied with;
- allocate a case number and ensure all documents (including copies) are labelled with this number;
- provide a receipt for the fee paid and record this payment in the accounts;
- create a case record.

The fee is also intended to provide partial recovery of the cost of a number of other administrative steps likely to be taken following initiation but prior to hearing. These include:

- recording of defence;
- joining of third parties;

- amendment of particulars or of parties;
- conduct of a pre-hearing conference; and
- first hearing day.

The fee also relates to the recording of the details of any of these actions in the register and the sending out of any court orders that are made establishing when certain steps are to be completed. These steps are regarded as being essential parts of efficient case management.

As noted above, the current fees regulations differentiate the commencement fee payable according to the amount of money in dispute in a civil matter. It is proposed to retain the current four part scale of commencement fees.

Mediation fee

Mediations are generally held for more complex matters, where the amount in dispute is \$30,000 or more.

Before mediation is ordered, the registrar will inform the parties by written notice that the matter appears to be suitable for mediation. Unless a party raises any issues, a mediation referral order will be made after 21 days from the date of the written notice. The parties must agree on the mediator to be appointed and the date and time of the mediation. A court registrar may be requested to mediate, subject to the registrar's availability.

Hearing fee

These fees are payable at a daily rate in respect of the second and subsequent days of a hearing. The need for a hearing fee arises because the length of a hearing is a major determinant of the amount of court resources expended in finalising a matter. Hence, a daily hearing fee ensures that there is an element of proportionality in the contributions made to court costs by individual litigants. Payment in respect of the first hearing day is regarded as being included with the commencement fee. This change was made at the time of the introduction of the current regulations in 2001.

Judgment or order fee

A fee is also payable where a request for a judgment to be made has been entered by a party in circumstances in which the other party to the proceedings has failed to file a defence.

Interlocutory applications

A party at any stage of a proceeding may make an application to the Court for orders in accordance with any Act or rules. Common examples of these applications include:

- Summary order application
- Application to enforce compliance with discovery
- Application for preliminary discovery
- Rehearing application

Enforcement process

If an order has been made for the recovery or payment of money a registrar may, upon application by the judgment creditor, issue a summons requiring the judgment debtor to appear before the Court to be orally examined by the registrar as to their financial circumstances and their means and ability to pay the amounts owing. This would then be expected to lead to enforcement orders being made. This may include the filing of an instalment agreement or an application for an instalment order (whereby the judgment debt is paid off in instalments) or an attachment of earnings order (whereby regular payments are deducted from the debtors wages or salary).

Issue of warrants to enforce orders

When an order has been made by the Court, the party in whose favour the order was made can have a warrant to seize property issued by the Court. The registrar checks to ensure compliance and that the correct fee is paid. The warrant is then issued and returned to the party for transmission to the Sheriff.

Fees of general application

There are a number of further fees which are of general application in the Magistrates' Court.

Summons to witness/subpoena

An application can be made to issue a summons to witness, a summons to produce documents or both:

- A party to a proceeding can request the issue of a summons to witness to ensure the attendance of a witness.
- A party to a proceeding can also request the issue of a summons to produce documents. These are more complex as the subpoenaed documents are lodged with the court, usually before the date of hearing. The Court is required to manage these documents, which are often confidential in nature eg medical reports, WorkSafe Victoria files, police files etc.

Other fees

A range of additional fees are charged in respect of specific activities undertaken by the courts. These include fees for the issue of orders and certificates, a fee for the preparation of documents by a registrar and a fee for the inspection of a register. Photocopying fees will also be included in the proposed regulations.

5.2. Jury fees

An applicant in a civil trial in either the Supreme or the County Court may choose to have their matter heard either by a judge alone or by a judge and jury. In the event that they choose the latter option, a jury of six persons will be empanelled. In this case, fees will become payable to defray the costs to the court system associated with the selection of the jury and its attendance during the trial.

The proposed Juries (Fees) Regulations 2012 set out three fees that are potentially payable in these circumstances. The first fee is payable at the time that the matter is set down a trial and is intended to cover the costs associated with selecting and empanelling jurors. The second is a daily fee, payable between days two and six of the trial in respect of each juror, and the third is a higher daily fee, payable on day seven and thereafter of the trial. The higher daily fee payable in respect of days seven and thereafter of a trial largely reflects the fact that the allowances paid to jurors will increase substantially from day seven onward, in line with current practice.

6. Court costs and fee levels

Section 2.5, above, provides detail on the total of recurrent expenditures in each court jurisdiction. This data provides the basis for comparisons of fees and revenues at an aggregated level and is therefore crucial to determination of the overall level of cost recovery being achieved in each jurisdiction and comparing this with the identified policy goal. This then provides the basis for determining the average percentage change in fees needed to achieve the identified revenue goal.

However, this aggregate data does not provide a basis for determining the costs associated with the activities to which individual fees relate. Thus, it does not provide a basis for determining the appropriate level of individual fees, or setting the relativities between different fees.

Given this, data that would inform the setting of individual fees was sought. Given that the staff involved are typically engaged on a wide range of tasks, rather than being specialised in particular areas, it did not prove possible to generate data on the total resources devoted to each set of tasks in respect of which fees are charged. Since a "top down" analysis was therefore found to be infeasible, it was decided to develop a "bottom up" approach to estimating the costs incurred in carrying out the tasks related to each individual fee.

6.1. Determining direct wage costs

As with all courts, the staffing of the Magistrates' Court includes both judicial and non-judicial staff. As at 30 June 2011, there were of 111 magistrates, 11 acting magistrates and six judicial registrars.

The magistracy is supported by registrars and support staff. Total staffing numbers, including judicial and non-judicial staff, are approximately 600. Key functions among the non-judicial staff members are as follows:

Executive Group

The Executive Group (EG) is a decision-making body, formed to effectively address the strategic, operational and political challenges associated with the operation of the Magistrates' Court of Victoria.

Senior Registrars

Senior registrars manage all court operations within a defined geographical region, and are responsible for providing leadership to all staff employed within the court complex.

Court Registrars

Registrars of the Magistrates' Court perform a wide range of administrative tasks, including:

- in-court (bench clerk) duties
- client contact (telephone and counter) enquiries
- back-of-office administrative responsibilities.

Coordinators/Listings Staff

Coordinating and listings staff are court registrars who perform listing and caseflow management duties.

Court Support and Diversion Services Staff

Staff in the court support services programs, provide a range of types of assistance to those involved in the criminal justice system.

Administrative and Support Staff

Administrative and support staff work in areas including human resources, information technology, learning and development, finance and administration, contract and corporate management, strategic planning, security, executive and judicial support and project roles³⁶.

The costs attributable to the various fees necessarily include inputs from both judicial and non-judicial staff. The process of estimation of the costs involved was a "bottom up" one and involved requesting administrators in each court jurisdiction to undertake the following tasks:

- identify the processes undertaken by court officials (including judicial officers) in relation to each of the fees contained in the regulations;
- identify the classifications of the staff involved in carrying out these processes and the average hourly salary cost for each of these classifications³⁷;
- estimate the time taken by each staff member to complete each task;
- derive the direct cost of completing each task on the basis of the above data and estimates; and
- derive the estimated total wage cost of completing all tasks associated with each identified fee.

This process was carried out for all fees other than the modified block fees. As noted above, the latter are the initiation fees paid when a matter is first brought to the court.

³⁶ Magistrates Court of Victoria. *Annual Report 2010-11*. See pp 25-6, p 98.

³⁷ Based on a midpoint of the relevant salary range for each classification and an estimated annual number of working hours given according to VCEC guidelines - i.e. (44 weeks x 38 hours per week).

Equivalent analyses were not able to be conducted in respect of this group of fees for two, inter-related reasons. First, a large number of processes are, or may be, associated with the payment of these fees, while the complexity of some of these processes - and hence their cost - may vary widely with different cases. Second, depending on the path a case may take through the court process, and the characteristics of the case, there can be wide divergence between cases in terms of what process steps are followed.

6.2. Determining applicable on-costs

As previously noted, completion of the above steps resulted in a set of estimates of the direct salary costs incurred in completing the tasks to which each fee relates. In order to determine the full costs in each case, it is necessary to inflate these direct wage costs by an appropriate on-cost percentage. On-costs can broadly be divided into two categories:

- Non-wage labour costs. These include the costs of annual and long service leave, payroll tax, superannuation and workcover premiums.
- Corporate overheads. These include the costs of accommodation, services and equipment and indirect labour costs, including corporate management.

Consistent with the requirements of the *Victorian Guide to Regulation*, specific corporate overhead percentages were calculated for each of the courts involved. Non-wage labour costs are effectively identical for all courts, given that employee entitlements and workcover premiums do not vary between the courts. On-cost percentages were calculated from data supplied by the DoJ and court administrations

Non-wage labour costs

The total non-wage labour cost overhead derived for the three court jurisdictions is 16.9%. This differs only slightly from the 16.5% guideline figure³⁸ recommended for use by the VCEC in circumstances in which organisation-specific data are not available, and so can be considered to be a typical figure. Table 6.1, below, gives a breakdown of this total.

³⁸ See *Victorian Guide to Regulation* (2011). Appendices, pp 12 - 15.

Table 6.1: Non-wage labour cost overheads - all courts, non-judicial officers³⁹

Superannuation	9.00%
Workcover	1.34%
Payroll	4.90%
Rec Leave	1.70%
Total	16.9%

The above percentage constitutes a medium-term average figure. Actual on-cost percentages can vary slightly from year to year - notably due to variations in the pattern of redemption of annual and long service leave entitlements by staff. However, the major items (superannuation, Workcover premiums and payroll tax), which account for more than 15% of the 16.9% oncost figure, vary only infrequently. It is considered preferable to use this medium term average figure, rather than a figure derived from actual expenditures in a given year⁴⁰.

The above figures relate only to non-judicial staff. The equivalent figure in respect of magistrates is 28.5%. This figure has been calculated by the Department of Justice and is typically used in contexts in which supporting data justifying the cost of appointing magistrates is required to be presented to the Budget and Economic Review Committee of Cabinet. That is, this percentage is adopted where bids for funding to allow additional magistrates to be appointed are made in the budget process. In common with the above figure for public servants, this can be taken as a medium term average figure, rather than an "actual" figure for a given year. Virtually all of the major on-cost items will be similar in percentage terms for both judicial officers and administrative staff. The one exception to this which is clearly identifiable is that of judicial allowances. This factor is likely largely to explain the difference in labour on-cost percentages between the two groups.

Corporate overheads

The applicable corporate overhead percentages have been calculated from the RoGS worksheets supplied by the courts administration. Key components of corporate overhead costs include usage charges on land and buildings (i.e. rent, depreciation, services costs), IT, vehicle expenses, sheriff and bailiff services, counselling and mediation costs and cleaning and maintenance. In addition, these costs include the value of various services provided to the courts administration by the Department of Justice. The above overhead percentages were calculated by expressing the non-

³⁹ Note that annual and long service leave are not separately accounted for, since the "headline" annual salary level used in calculating direct wage costs effectively includes these amounts. Conversely, the costs included in this table are, from a departmental expenditure perspective, additional to this "headline" annual salary. The recreational leave figure included in this table relates only to the payment of annual leave loading.

⁴⁰ The latter is, in any case, likely to be infeasible in practice, since annual leave and LSL payments may not be identified separately from salary payments in many organisations' summary accounts.

labour costs reported in the Courts' Annual Reports with the reported total (judicial plus administrative) labour costs⁴¹.

The calculated overhead percentage for the Magistrates' Court is 64%. Table 6.2., below, provides a breakdown of the total corporate overheads figure into its major constituent elements.

Table 6.2: Components of Magistrates' Court corporate overheads

Item	Total (\$'000)	% of total overheads
Land and building	\$5,796	30%
Equipment	Nil	0%
Consumables	\$325	2%
IT & other support services	\$1,349	7%
Administrative Support ⁴²	\$4,589	23%
Corporate overheads ⁴³	\$5,000	25%
Other	\$2,575	13%
Total	\$19,634	100%

Source: Department of Justice.

6.3. Estimating total costs

In estimating the total costs incurred in carrying out the tasks associated with each fee, the approach taken was, first, to calculate a cost figure that represents the full cost incurred by the court administration per unit of labour time of each classification that is employed and, second, to multiply these cost figures by the amount of labour time required to complete each of the relevant tasks. Thus, the calculation involves:

- Determining the average annual salary for the relevant staff classification;
- Converting this to a per minute cost, as per 6.1, above;
- Multiplying this figure by the relevant labour on-cost percentage (6.2);
- Multiplying the result by the corporate overhead percentage;
- Applying the resulting cost per unit of time input by the number of minutes taken to complete each task; and
- Summing the results to determine the total cost of completing all tasks associated with the fee being charged.

Table 6.3, below, illustrates the results of this exercise in relation to a sample fee. This is the fee for an application for an judgement order to be made in default of a defence being entered. This fee has been chosen for illustrative purposes because it

⁴¹ Some minor adjustments were made as part of this calculation. Thus, total labour costs were \$30.5m, while non-labour costs were \$19.6m. The overhead cost percentage is thus $19.6/30.5 = 0.64 = 64\%$. Data relate to 2010-11.

⁴² Includes interpreters, library costs, telecommunications and court reporting costs.

⁴³ Corporate Administration overhead refers to the departmental costs associated with courts operations, including HR, payroll, finance and policy development functions.

demonstrates the large number of specific tasks that are sometimes performed in connection with a single fee being charged and because this is a relatively important fee in revenue terms, raising \$0.6 million in revenue in 2010-11⁴⁴. However, the methodology adopted in respect of the remaining fees is consistent with that illustrated below.

Table 6.3: Costing summary - application for an order in default of defence

Activity	Time	Classification	Cost/Min	Cost
Case (1): Liquidated Damages				
Documentation received/accepted				
Check correct fee tendered				
Transmit to cash office for processing				
Cash office receipt monies and generate cash imprint on document				
Check for compliance (service, certificates filed under Civil Procedure Act)				
Calculate costs according to relevant scale				
Registrar to make Order				
Order and service details entered onto Courtlink				
Notices of Order made generated				
Notices sent to plaintiff				
Documentation filed away				
Totals (time & cost)	30	VPS 3	\$1.12	\$33.54
Case (2): Unliquidated Damages				
Documentation received/accepted				
Check correct fee tendered				
Transmit to cash office for processing				
Cash office receipt monies and generate cash imprint on document				
Check to ensure correct documentation and compliance				
Provide advice re: calculation of costs				
Service details entered onto Courtlink				
List for Magistrates' hearing on Courtlink				
Attach generated decision sheet to file				
Sub-total (VPS-3 input) (a)	30	VPS 3	\$1.12	\$33.54
Notation made on Courtlink/in manual diary re: referral to magistrate (b)	40	Magistrate	\$5.70	\$227.93
Take file to Magistrates' chambers				
Magistrate reads material and makes order				
Registrar picks up file from chambers				
Details recorded re: file location				
Order details entered on Courtlink				
Notices of Order made generated on Courtlink				
Notices sent to plaintiff	15	VPS 3	\$1.12	\$16.77

⁴⁴ As noted above, the majority of court fees revenue is derived from block commencement fees, which cannot be costed at this disaggregated level. This fee is, therefore, one of the more important of the specific purpose fees in revenue terms.

Documentation filed away				
Sub-Total (further VPS-3 input) (c)				
Total (Unliquidated Damages) - (a)+(b)+(c)	85			\$278.24
Average cost (Liquidated + unliquidated)⁴⁵				\$70.25

Source: Department of Justice calculations, based on data provided by courts administration

Table 6.3 shows that, in practice, the time estimates provided by courts administration have been made at a highly aggregated level. That is, an estimate of the average amount of time taken to complete a range of tasks that are, in practice, performed as part of the same process has been provided in each case. Courts administration staff have advised that more disaggregated estimates would not be meaningful or of any real assistance in this costing exercise. That is, accurate costings cannot be made at a more disaggregated level, given current information systems. However, a key aspect of the process undertaken has been to elaborate a disaggregated process analysis as an aid to estimation of the time inputs involved.

Table 6.3 also shows that two separate cost estimates have been derived in respect of this fee. These differ according to whether the damages for which compensation is sought are liquidated or unliquidated. In determining the overall average cost, to be used as the basis for fee setting, a weighted average of these two costings has been used, with the weightings representing the proportion of cases in which each situation arises⁴⁶.

This illustrates in practical terms the issue of the trade-off between "accuracy" in matching fees and costs in different specific circumstances and the complexity of the fee structure and cost of its administration. It would be possible to strike two fees in respect of the above processes, one to be charged in cases of liquidated damages and one for unliquidated damages. However, a single fee has historically been used, reflecting a judgement that the additional complexity and cost involved is too great in relation to the potential benefits of better cost and fee matching. The Department of Justice believes that this continues to be an appropriate approach.

6.4. Mediation

Judicial registrars, registrars and deputy registrars are able to mediate disputes commenced in the civil jurisdiction of the Magistrates' Court. Order 50 of the *Magistrates' Court General Civil Procedure Rules (2010)* states a Magistrate or Registrar can direct an appropriate person to mediate the dispute, including, but not limited to: a registrar or deputy registrar; a local legal practitioner who has been approved as a mediator by the Law Institute of Victoria or the Victorian Bar; a mediator accredited by the *Institute of Arbitrators and Mediators Australia*; or a mediator within the meaning of section 21K of the *Evidence (Miscellaneous Provisions) Act 1958* or a person working for the body known as the *Dispute Settlement Centre of Victoria*. Judicial registrars generally conduct mediations for matters in the

⁴⁵ This figure constitutes a weighted average, based on the relative frequency of cases involving liquidated and unliquidated damages.

⁴⁶ Thus, 85% of requests for orders relate to liquidated damages and 15% to unliquidated damages.

Magistrates' Court Industrial Division although there are instances when they may mediate other civil disputes. Parties may also seek the assistance of a judicial registrar, registrar or deputy registrar to mediate their matter.

No fee has been established to date in relation to the provision of these mediation services. However, given that they necessarily constitute a significant use of court resources, and frequently enable parties to settle matters by consent, rather than incurring the additional delays and costs associated with a contested hearing, it has been decided to incorporate mediation fees into the proposed regulations.

There are two mediation fees being introduced into the proposed *Magistrates' Court (Fees) Regulations (2012)*. The first relates to mediation conducted by the registrar or deputy registrar. The second relates to mediation conducted by a judicial registrar. The fees were formulated based on an analysis of the costs associated with supplying each service. The key difference between the two fees is the cost associated with the court officer involved in the mediation; a judicial registrar is set against a judicial officer's salary while the salary of a registrar or deputy registrar is set by the Victorian Public Service salary grades.

It could be argued that mediation fees should be set at a level lower than the general cost recovery target of 50% in recognition of the fact that successful mediation outcomes reduce the call on court resources and, hence, the costs incurred by the court system. However, the alternative view is that the majority cost savings thus derived accrue to the litigants, particularly through reduced legal costs. Given this, the litigant has a strong private incentive to engage in mediation, even if they are required to make a significant contribution to its cost.

Table 6.4, below, sets out the cost components associated with the mediation function.

Table 6.4: Activity costings: mediation

Activity	Time	Classification	Rate/Minute	Total Cost per Activity				
Mediation								
Upon lodgement of defence, registrar to determine if matter suitable for mediation	90	VPS 4	\$1.35	\$121.90				
Enter decision on Courtlink								
Forward notices of decision to parties								
Review mediation files after 21 days								
List for mediation mention								
Forward copies of mediation mention hearing.								
Mediation mention conducted by telephone								
Consider responses from parties (party/parties may object)								
If mediation requested, list for hearing								
Enter details on Courtlink								
Send notices of mediation hearing to parties								
Conduct mediation					180	VPS 5	\$1.62	\$290.82
Make entry on Courtlink					15	VPS 4	\$1.35	\$20.32
File terms of settlement on file								
If not settled, list for hearing								
Make entry on Courtlink								
Forward hearing notices to parties								
Place documentation in appropriate filing								
Total	285			\$433.03				
Judicial Registrar mediation								
Matter referred to mediation from directions hearing	15	VPS 3	\$1.13	\$17.02				
Enter decision on Courtlink								
List matter for mediation and allocate Judicial Registrar								
Forward notices to parties								
Compile file and forward to allocated Judicial Registrar								
Conduct mediation	180	JR	\$3.99	\$717.31				
Make entry on Courtlink	15	VPS 3	\$1.13	\$17.02				
File terms of settlement on file								
If not settled, list for hearing								
Make entry on Courtlink								
Forward hearing notices to parties								
Place documentation in appropriate filing								
Total	210			\$751.36				

6.5. Photocopying costs

The proposed regulations will, for the first time, include fees to be charged in respect of document search and photocopying. While fees in respect of photocopying are currently charged in the Magistrates' Court, they have not historically been included within the fees regulations. However, it is proposed that these fees will now be established alongside the rest of the user fees charged in the court.

A two part fee is proposed. This is intended to ensure a better matching of costs incurred and fees paid for different types of user than would a simple "per page" fee. The two part fee reflects the fact that courts administration staff incur costs in locating and retrieving documents for copying, as well as in undertaking the copying per se. The following sets out the costing estimates obtained from courts administration staff in respect of these functions.

From time to time, the Court also prints documents from electronic sources for court users. It is proposed that this service will be charged at the same rate as the proposed photocopying fee, that is \$0.60 per a page.

6.5.1. Search and retrieval costs

Table 6.5 sets out the activities involved in searching for requested documents and retrieving them from storage. Two separate costings are provided. The first is applicable in cases in which documents are stored on-site: i.e. at the court complex itself. However, where documents are stored at an external site, a larger cost will be incurred in retrieving the document and returning it to storage. Thus, an additional fee will be payable. In general, this will be the case where older documents that have been archived at a remote location are sought.

Table 6.5: Search and retrieval costs

Activity	Classification	Time (mins)	Rate/Min.	Total Cost per Activity
Searching and Retrieval Fee		25		\$22.30
Payment receipted	VPS 2	2.5	\$0.89	\$2.23
Search	VPS 2	7.5	\$0.89	\$6.69
File retrieved from filing room or basement	VPS 2	5	\$0.89	\$4.46
Supervise/Assist	VPS 2	5	\$0.89	\$4.46
Return File	VPS 2	5	\$0.89	\$4.46
Retrieval from Storage		12.5		\$11.15⁴⁷
Request File from Storage	VPS 2	5	\$0.445	\$4.45
File returned to off-site facility	VPS 2	7.5	\$ 0.89	\$6.69

⁴⁷ In this case, the cost of retrieval from off-site storage and return, as calculated here, is the *incremental cost*, *vis-a-vis* retrieval and return to an on-site storage. Thus, the actual retrieval cost is $(5 + 5) = 10 \text{ min.} \times \$0.445/\text{min.}$

Table 6.6. sets out the costs incurred in undertaking the actual photocopying of documents.

Table 6.6: Photocopying costs - total item costs and per page calculations

Item	Cost
Fixed Costs	
Lease of photocopiers	\$17,820.00
Maintenance & associated costs ⁴⁸	\$9,900.00
Cards, Fees, other copier related costs	\$2,500.00
Office Space	\$4,312.12
Staff Allocation	\$16,475.39
Total Fixed Costs	\$51,007.51
Photocopied Pages 2011	181,818
Fixed Cost per Page (a)	\$0.28
Variable Costs	
Electricity	\$0.01
Maintenance Cost (per copy)	\$0.06
Paper Cost	\$0.01
Total Variable Cost Per Page (b)	\$0.08
Per Page Costs before Overheads (c) = ((a) + (b))	\$0.35
Court Overhead Ratio (d)	64%
Overhead per Page (e) = c * (1 + (d))	\$0.24
Total Cost Per Page [(c) + (e)]	\$0.59

Source: Magistrates' Court Administration. Data relate to 2010-11.

Notes:

1. The costs contained in this table relate specifically to copying conducted on a "fee for service" basis - i.e. that which is not conducted for court use, or at the order of the court.
2. Office space costs constitute implicit allocation of floorspace costs on a pro-rata basis, based on the floor area occupied by the public use photocopiers.
3. Staff costs are the costs of staff undertaking copying functions.

Table 6.6 shows that the total fixed costs associated with photocopying documents at the request of court users was approximately \$51,000 in 2010-11. Given that around 181,000 pages were copied, this implies an average fixed cost of 28c per page.

Variable costs total a further 8c per page on average and comprise maintenance costs for photocopiers, plus the cost of paper and electricity.

The total of the fixed plus variable costs can be considered as the direct cost per page of photocopying. An overhead percentage of 64% is applied to this direct costs, to

⁴⁸ This item refers to maintenance associated with the card reader systems which is charged as a fixed annual fee. The variable cost item for maintenance refers to maintenance of photocopiers per se and allocate actual annual charges over the number of copies made.

take account of the corporate overhead costs incurred. The percentage used has been calculated on the basis of Magistrates' Court-specific data.

The above costings are used as the basis for determination of the document search and photocopying fees to be adopted in the proposed regulations. It can be noted that the per page cost cited above substantially exceeds those typically charged in a range of commercial contexts. A key explanation for this difference lies in the fact that photocopying on a fee for service basis is an ancillary function for the courts, rather than constituting a core business activity. Thus, the economies of scale achieved by commercial photocopying operations are unlikely to be achieved. Moreover, the photocopying is actually undertaken by courts staff, as distinct from it being a "self-service" operation. Finally, while the proposed per-page fee is high relative to many commercial comparisons, it is quite low in relation to other comparisons more directly relevant to the legal services context. In particular photocopying fees authorised in the current Magistrates' Court Scale of Civil Costs are \$2.10 per page for the first 50 pages and 64c thereafter⁴⁹.

6.6 Comparing costs and existing fees

Comparison of the costs associated with individual fees, calculated as per the above methodology, with existing fee levels reveals widely varying results. That is, while the overall level of cost recovery being achieved is in the vicinity of 30% in the Magistrates' and County Courts and around 20% in the Supreme Court, as discussed above, the level of cost recovery achieved by various individual fees varies widely. In some cases, existing fees have been found to substantially over-recover the costs identified, while in others, cost recovery levels are extremely low: in some cases in the range of 5 - 10%.

There is some uncertainty as to the reason for this wide variation in cost recovery levels. On one view, it is possible that changes in court processes and technology have had greater impacts on the costs of carrying out certain functions than others and that such changes have led cost recovery levels to change substantially since the adoption of the current regulations in 2001. However, review of the various RIS completed in 2001 in relation to the existing regulations suggests that, while significant analysis of aggregate cost recovery issues was included, the costs associated with individual fees were not separately identified. This may reflect less well developed information management systems being in place in the courts administration at that time.

Given that the costs associated with individual fees were apparently not identified in 2001, it is probable that the existing fees were not set with reference to these micro-level costings. Rather, the fees may have been set on a subjective basis, applying adjustments to the pre-existing fees on the basis of perceived reasonableness.

⁴⁹

http://www.magistratescourt.vic.gov.au/resources/c/b/cbb32580404a2b88a783fff5f2791d4a/civil_scale_of_costs+_effective_1_jan_2012.pdf

The Department of Treasury and Finance *Cost Recovery Guidelines* suggest that individual fees within a larger fee structure should, as far as is feasible, be set on a consistent basis; that is, that the level of cost recovery to be achieved should be equalised across the individual fees within the structure⁵⁰. Given the above, it is apparent that, regardless of the level of cost recovery to be achieved via the proposed regulations, the relativities between the existing fees must be adjusted substantially from current levels.

Magistrates' Court Fees

Table 6.7, below, sets out the estimated cost of the activities associated with each of the fees contained in the current Magistrates' Court (Fees, Costs and Charges) Interim Regulations 2011, based on the methodology outlined in sections 6.1 and 6.2. It also reports the current fee level and percentage cost recovery being achieved under the existing regulations, in each case.

⁵⁰ See DTF (2010), op. cit., p 33. "One solution to this risk of inefficient cross-subsidisation is to define narrow leviable bands, based on identified regulatory cost drivers, ***so that those that make similar calls on the regulator's resources pay the same levy.***"

Table 6.7: Costs, fees and cost recovery percentages - Magistrates' Court

Fee	Cost	Fee	Cost recovery (%)
Criminal jurisdiction⁵¹			
Filing of a charge sheet (single charge)	\$275.00	\$44.00	16%
Filing of a charge sheet (multiple charges)	\$412.00	\$69.70	17%
Lodge prescribed information (Infringements Act) (single infringement)	\$396.00	\$44.00	11%
Lodge prescribed information (Infringements Act) (multiple infringements)	\$594.00	\$69.70	12%
Application for order as to licence	\$183.71	\$81.90	45%
Application re: assessment period	\$143.63	\$37.90	26%
Civil jurisdiction			
Request for order	\$70.25	\$18.30	26%
Interlocutory application	\$252.92	\$37.90	15%
Summons (Imprisonment of Fraudulent Debtors Act)	\$171.85	\$37.90	22%
Summons for oral examination	\$164.38	\$37.90	23%
Application under Landlord and Tenant Act	\$143.20	\$37.90	26%
Instalment agreement	\$133.36	\$37.90	28%
Attachment of earnings order	\$237.30	\$37.90	16%
Issue of warrant to enforce orders	\$27.95	\$18.30	65%
Issue or order or certificate	\$33.54	\$31.80	95%
Mediation – registrar (per session)	\$427.02	No fee	0%
Mediation – judicial registrar (per session)	\$721.52	No fee	0%
Hearing	\$2,170.46	\$226.10	10%
Fees of general application			
Issue of summons	\$89.98	\$7.00	8%
Preparation of documents by Registrar	\$22.24	\$18.30	82%
Inspection of register	\$16.77	\$12.20	73%

Table 6.7 shows that cost recovery levels in respect of individual fees currently vary widely in the Magistrates' Court, from around 8% to 95%, or near full cost recovery. This indicates that significant realignments in the value of individual fees are required if an equitable outcome which equalises cost recovery across the various fees is to be achieved.

⁵¹ Note that the criminal jurisdiction fees can be considered to be in the nature of block fees. Thus, the attributed costings are somewhat speculative in nature and subject to a high degree of uncertainty.

It should be noted that data in respect of commencement fees is not included in the table. This reflects the fact that, due to the widely differing nature of the activities that may be undertaken across different matters, and to which these "block fees" relate, it is not possible to produce an average costing or, as a result, a cost recovery percentage. The implications of this are discussed further in the following sections.

Juries fees

Detailed costings in relation to the three individual fees contained in the current Juries (Fees) Interim Regulations 2011 were not able to be obtained. However, as noted above, the fees are structured to reflect the general structure of the costs incurred in relation to making juries available at civil trials. These include:

- The initial costs of selecting and empanelling jurors;
- The daily payments made to jurors for attendance at trial;
- The higher daily payments made to jurors in respect of attendance at the seventh and following days of a trial; and
- The costs incurred in the court system in managing jurors during trials.

A payment of \$39 per day is made to each juror. Given that a civil jury consists of six jurors, this is equivalent to a total cost of \$234 per day. From day seven onward of a trial, this payment increases to \$78 per day per juror, or a total of \$468. This "flow through" payment represents a significant proportion of all of the fee amounts charged under the Juries regulations, as follows:

- An initial fee of \$573.10 covers both the cost of selecting and empanelling the jury, plus the \$234 cost of payments made to jurors on day 1 of the hearing, plus the administrative costs incurred by the courts in managing the jury;
- A fee of \$69.70 per juror per day on days 2 - 6 of a hearing covers the payment of \$39 per day made to each juror, plus the administrative costs of the court;
- A fee of \$138.10 per juror per day on days 7 and thereafter covers the payment of \$78 per day made to each juror, plus the administrative costs of the court;

In sum, it was noted above that the juries fees recover 88.2% of the relevant cost base in the aggregate. This, plus the above general observations in relation to the structure of fees and the associated costs suggests that the structure of these fees is broadly appropriate, albeit that it has not been possible to adduce data that would confirm this conclusion at a micro-level.

6.7. Efficient costs

The DTF *Cost Recovery Guidelines* state that cost recovery through regulatory fees or user charges should be based only on "efficient costs" - i.e. the costs that would be incurred by a normally efficient enterprise in carrying out the relevant tasks. The RoGS publishes a number of "key performance indicators" for the courts, among which are the two efficiency indicators of clearance rate and cost per finalisation. The results of

both of these indicators suggest that the Magistrates' Court of Victoria compares well in efficiency terms with equivalent courts across Australia. This suggests that the cost base identified in this RIS can be accepted as representing one based on "efficient costs".

Clearance rates

The clearance rate indicator is based on calculation of the ratio of the number of cases finalised in the relevant years to the number of new cases lodged. Thus, this indicator effectively measures whether the court is managing its workload adequately. If the indicator value is above 100%, the court backlog will have been reduced over the course of the year, while if it is below 100% the backlog will have increased. Table 6.8 reports the results of this indicator from the 2012 RoGS.

Table 6.8: Clearance indicator - Magistrates' Court

Year	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Average
2010-11	92.3	99.8	110.4	102.0	102.0	100.1	97.7	98.6	98.6
2009-10	88.8	100.9	112.7	103.6	107.4	103.4	109.4	93.1	98.7
2008-09	91.2	100.1	99.7	88.2	99.5	99.1	124.6	87.8	95.8
2007-08	93.5	99.8	102.7	98.0	109.1	105.9	92.3	100.7	98.4
2006-07	94.6	102.1	106.9	108.3	98.2	105.1	112.0	93.9	100.6

Source: RoGS (2012), Table 7A.22

Table 6.8 shows that Victoria's clearance rate has exceeded the national average in each of the last five years and that it is one of only three jurisdictions (with Queensland and Tasmania) to have achieved this outcome. Its clearance rate was marginally below 100% in 2010-11, but has been above 100% in three of the last five years and only 0.2% below 100% in the other two years.

The RoGS states that this is the only efficiency indicator they have been able to develop that is directly comparable between jurisdictions. However, it also reports an average cost per finalisation indicator, which it regards as broadly comparable, subject to a number of caveats. Table 6.9, below, reports the results of this indicator.

Table 6.9: Average cost per finalisation (\$) - Magistrates' Court

Year	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Average
2010-11	230	194	248	229	257	72	1,810	864	237
2009-10	204	166	261	135	280	93	1,388	739	209
2008-09	165	148	215	168	259	98	861	766	184
2007-08	187	136	222	222	226	90	1,011	718	192
2006-07	211	103	212	213	287	87	703	713	187

Source: RoGS (2012), Table 7A.24

Table 6.9 shows that Victoria's average cost per finalisation has been substantially below the national average in each of the last five years. Moreover, it has consistently been the second lowest cost jurisdiction in this regard, after Tasmania. That said, the RoGS speculates that geographical factors may be important in determining average costs. Thus, it would be expected that a geographically compact and relatively densely populated state such as Victoria would achieve relatively low costs. This issue highlights the importance of the RoGS caveats about comparability.

It is notable that Victoria's average cost per finalisation has risen more quickly than any other jurisdiction than the ACT over the period covered by the table. While there is inevitably uncertainty surrounding the issue of the causes of this trend, the Department of Justice believes that the large increase in the civil jurisdiction limit of the court, to \$100,000, which occurred in 2004, could constitute a significant explanatory factor. This implies that, as increasing use has been made of the Magistrates' Court to litigate larger and more complex matters, the cost per matter finalised would tend to rise strongly as a result.

7. Identification and assessment of feasible alternatives - Magistrates Court (Fees) Regulations

7.1. Overview

While the current RIS is an omnibus type covering two, related sets of regulations, it is necessary to consider the various options for achieving the identified regulatory objectives in each case separately. This reflects the fact that, while the key alternatives in each case differ according to the level of cost recovery to be attained, the considerations involved differ somewhat between the regulations. The following section considers options in relation to the fees to be charged in the Magistrates' Court, while Section 8, below, considers options in relation to juries fees.

7.1.1. General consideration of possible fees options

Fees options can be considered in terms of two broad dimensions: the structure of the fees and the extent to which the costs of court operations are to be recovered from users via the fees charged. Section 2, above, setting out the nature and extent of the problem being addressed by the proposed regulations, includes a detailed discussion of the issues involved in relation to the former issue. In general terms, the issue to be addressed is that of whether a single "block" fee should be payable by all litigants on commencement of an action, whether a large number of individual fees should be established, with each being related to the costs incurred in completing specific tasks in relation to the progress of a dispute through the court system, or whether some hybrid of these two options is to be preferred.

In weighing the options, the key issue is to achieve an appropriate balance between equity and efficiency. That is, a detailed fee structure, in which a separate fee is charged in respect of each significant activity undertaken in respect of a case, achieves a high level of equity between court users, in that the fee paid by any individual litigant will be related to the costs incurred in relation to their individual case. Conversely, implementation of such a fee structure is likely to incur substantial administrative costs in respect of the calculation of which fees are to be applied to which litigants and in issuing accounts and collecting the requisite amounts. Conversely, a block fee structure has major advantages in terms of administrative simplicity and, accordingly, low cost, but performs relatively poorly in terms of equity between individual litigants.

The detailed discussion of these issues contained in Section 2 concludes that a hybrid system, in which a substantial block fee is supplemented by a limited number of specific fees in relation to major individual activities that may be undertaken in moving a case through the court system, is preferable to the other two alternatives. This outcome derives substantially from the conclusions of two major reviews previously undertaken in Victoria, which are believed to remain relevant to the current context. Given the detailed discussion contained in Section 2, this aspect of the alternative fee options available is not considered further here.

However, it can be noted that, while the number of specific purpose fees to be charged in the proposed regulations is relatively small, the amount of revenue currently being obtained via several of these fees is relatively modest. For example, existing regulation 10 (Issue of Warrant to Enforce Orders) and regulation 13 (Issue of Summons) generate only around \$100,000 each. Consequently, there is a potential argument in favour of further simplification of the fee structure via elimination of such fees.

In this case, the maintenance of a given level of cost recovery would arguably require a small upward adjustment in the size of the block fees to compensate for the small amounts of revenue that would be foregone from the abolition of these fees. It is also possible that the abolition of these fees might have some impact on the incentives faced by litigants and could mean that there is some increase in demand for these actions to be taken.

Question: Stakeholders' views are particularly sought on the question of whether there is significant merit in further simplifying the proposed fees to eliminate those that are rarely charged and which, consequently, generate little revenue.

Given the above, the following discussion of alternatives considers only options in terms of the extent of cost recovery to be achieved.

7.2. Option 1: Set fees at full cost recovery levels

7.2.1. Description of option 1

Option 1 would involve setting all Magistrates' Court fees at full cost recovery levels. Given that direct costings have not been possible in relation to the activities to which the commencement fees related, in practice, the commencement fees would be set on a "residual" basis, whereby the required amount of revenue to achieve full cost recovery would be calculated after estimation of the full cost-recovery based expected revenue to be derived from the remaining fees is completed and this figure is used to calculate the necessary percentage increase on the current fee level.

Fee waivers

It should be noted that the *Magistrates' Court Act 1989* currently makes provision for fees to be waived, in the civil jurisdiction only, at the discretion of the court. Section 22 of the *Magistrates' Court Act 1989* provides that a registrar may waive fees payable in the Magistrates' Court, with the exception of fees paid to the Sheriff. Section 22(2) requires the registrar to have regard to the income, living expenses, assets and liabilities of the applicant, and may waive a fee *if it would cause the person liable to pay the fee financial hardship*.

The Court requires an applicant to complete a comprehensive Affidavit of Financial Circumstances, providing details of income, property and assets cash holdings, debts and liabilities and whether the person is legally represented. The Court advises that fee waiver requests are received in only a small proportion of cases in the civil jurisdiction, although the Court's database is not able to accurately record how many applications for fee waiver are either sought or granted. Thus, the fee waiver power is not widely used at present.

The current fee waiver provisions would necessarily continue to operate under the full cost recovery option. As a matter of logic, it could be anticipated that the adoption of substantially higher fees - as would be required to achieve full cost recovery - would lead to decisions being made to waive fees in a larger number of cases than at present. This would mean that the actual percentage cost recovery achieved under this option would necessarily fall short of 100%⁵². However, were the fee waiver discretion to continue to be exercised in the manner set out above, it is probable that there would be little change to the number of successful waiver applications. Should the government wish to expand the use of waivers in the context of a full cost recovery option, it may therefore be necessary to revise or expand the relevant provisions of the *Magistrates' Court Act 1989* to provide additional direction to the courts.

Aggregate impacts

This option involves setting fees at levels that would fully recover the recurrent costs of the Magistrates' Court, as well as fully recovering the costs associated with the provision of jurors in civil proceedings. As noted above, the current level of cost recovery in the Magistrates' court is 30.2%. This implies that an average fee increase of 231.1% would be required in order to achieve full cost recovery⁵³.

The adoption of Option 1 would necessarily result in a substantial increase in revenue to government. It would necessarily result in a major increase in the fees charged to users of the civil jurisdiction of the Magistrates' Court. Table 7.1, below, sets out the implications of the adoption of Option 1 in respect of the two sets of proposed regulations.

⁵² As an indicator of the potential importance of this issue, it was noted in Section 2, above, that current UK practice is to set fees at full cost recovery levels, subject to comprehensive waiver provisions, and that actual cost recovery is around 82%.

⁵³ That is, average fees would need to be $100/30.2 = 331.1\%$ of their current level - equal to an increase of 231.1%.

Table 7.1: Fee and revenue implications of adopting Option 1 (full cost recovery)

Court	Expenditure	Current Revenue (2010-11)	% cost recovery	Increase in revenue to achieve full cost recovery	% increase in revenue
Magistrates' Court	\$50.25m	\$16.35m	30.2%	\$33.90m	231.1%
Juries fees	\$643,633	\$568,000	85.3%	\$75,633	13.3%

Source: Productivity Commission (RoGS). Data for 2010-11.

Magistrates' Court fees

Table 7.1 shows that users of the Magistrates' Court would collectively pay an additional \$33.9 million annually in fees. This is equal to approximately \$281.9 million in present value terms over the expected 10 year life of the regulations⁵⁴.

Box 2: Calculating the fee impact of the alternatives

The cost estimates used as the basis for the following calculations relate to 2010-11, as this is the most recent data available. This means that the target revenue figures derived, in relation to each option (i.e. 100%, 50% or 25% cost recovery) relate to the 2010-11 expenditure figures. Thus, the dollar values of the individual fees required to achieve these cost recovery outcomes are also, necessarily, specified in terms of 2010-11 values. In drafting the proposed regulations, these values must be converted to fee units, as required by the *Monetary Units Act 2004*. Because all of the cost and target revenue calculations have been undertaken using 2010-11 values, the conversion of the target fee levels into fee units must, for the sake of consistency, also be undertaken using the 2010-11 value of a fee unit.

This means that the dollar value of the fees thus derived will be higher, at the time of their introduction in 2012-13, than the 2010-11 values contained in the tables used throughout Section 7. The difference, which reflects the difference between the 2010-11 value of a fee unit (\$11.95) and the 2012-13 value of a fee unit (\$12.53), is approximately 4.8%. Appendix 3 provides detail on these calculations and shows the dollar value of each proposed fee in 2012-13.

⁵⁴ Assumes a 3.5% real discount rate, as per VCEC recommendations.

Impact on individual fees

The above discussion of existing cost recovery levels in the Magistrates' Court has highlighted the wide differences in cost recovery between individual fees. Were a full cost recovery based option to be adopted it would necessarily imply that individual fees would be set at levels that corresponded to full cost recovery in relation to the activities to which they specifically relate. This means that, while the average rate of increase in fees in this jurisdiction would be 231.1%, the increases in individual fees would vary widely around this rate. Table 6.2 clarifies the size of the individual fees that would be required under this option.

Hearing fees

While individual fees would generally be set at levels that fully recovered the costs of the associated activities under this option, one exception, as shown in the following table, is that of hearing fees. As an indirect result of the recent agreement of the Standing Committee of Attorneys-General to harmonise certain court fees⁵⁵ this option would adopt a hearing fee of \$462.80. While this would represent an increase of more than 100% on existing hearing fees, it would yield less than 25% cost recovery.

Summary table

Table 7.1., below, summarises the fees that would be charged under Option 1 and the revenue implications of setting fees at this level. Because the most recent available cost data for the Magistrates' Court relates to 2010-11, the proposed fee calculations have been undertaken in 2010-11 terms in the first instance. That is, the fee that would be required to fully recover 2010-11 costs in each case is calculated and converted to fee units at the relevant 2010-11 rate of \$11.95.

The proposed fees regulations will express the value of each fee in terms of fee units (as required by the *Monetary Units Act 2004*) that are calculated in this way. However, to determine the dollar fee that will actually be charged at the time of the introduction of the regulations, it is necessary to convert the calculated fee unit value of the fee into dollars using the 2012-13 value of a fee unit, which is \$12.53.

The same approach is adopted in relation to all of the options presented in the following sections.

⁵⁵ This agreement is discussed further in Section 6.2.

Table 7.2: Proposed fees - Option 1 (Full cost recovery).

Fee	Cost (\$2010-11)	Current fee	Proposed fee (\$2010-11) (% change)	Proposed fee units	Fees charge	Expected revenue (\$2010-11)	Proposed fee (\$2012-13)	Expected revenue (\$2012-13)
Criminal jurisdiction								
Filing of a charge sheet (single charge)	\$275.00	\$44.00	\$275.00 (+525%)	23.0	3,372	\$927,300	\$288.40	\$972,307
Filing of a charge sheet (multiple charges)	\$412.00	\$69.70	\$412.00	34.5	2,210	\$910,520	\$432.00	\$954,713
Lodge prescribed information (Infringements Act) (single infringement)	\$396.00	\$44.00	\$396.00	33.1	7,567	\$2,996,532	\$415.20	\$3,141,970
Lodge prescribed information (Infringements Act) (multiple infringements)	\$594.00	\$69.70	\$594.00	49.7	1,318	\$782,892	\$622.80	\$820,890
Application for order as to licence	\$183.71	\$81.90	\$183.71	15.4	12,916	\$2,372,798	\$192.60	\$2,487,963
Application re: assessment period	\$141.63	\$37.90	\$141.63	11.8	297	\$42,064	\$148.50	\$44,106
Total criminal fees revenue				-		\$8,032,106		\$8,421,949
Civil jurisdiction								
<i>Commencement fees</i>								
< \$1,000	NA	\$75.80	\$250.14	20.9	9607	\$2,413,129	\$262.30	\$2,519,731
\$1,000 < \$10,000	NA	\$157.60	\$520.08	43.5	43173	\$22,547,680	\$545.30	\$23,543,203
\$10,000 < \$40,000	NA	\$239.50	\$790.35	66.1	15137	\$12,014,276	\$828.70	\$12,544,185
\$40,000 - \$100,000	NA	\$359.30	\$1,185.69	99.2	4259	\$5,070,551	\$1,243.20	\$5,294,951
Request for order	\$70.76	\$18.30	\$70.76	5.9	31583	\$2,234,686	\$74.20	\$2,343,281
Interlocutory application	\$253.99	\$37.90	\$253.99	21.3	NA	NA	\$266.30	
Application under Landlord and Tenant Act	\$143.98	\$37.90	\$143.98	12.1	NA	NA	\$151.00	
Instalment agreement	\$134.55	\$37.90	\$134.55	11.3	15716	\$2,114,486	\$141.10	\$2,217,221
Attachment of earnings order	\$238.14	\$37.90	\$238.14	19.9	NA	NA	\$249.70	
Registration of interstate judgement ⁵⁶	NA	\$60.00	NA	4.8	NA	NA	\$60.00	
Summons for oral examination	166.71	\$37.90	\$166.71	13.9	9348	\$1,558,353	\$174.80	\$1,634,043
Mediation – registrar (per session)	\$433.03	No fee	\$433.03	36.2	151	\$65,388	\$454.10	\$68,561
Mediation – judicial registrar (per session)	\$751.36	No fee	\$751.36	62.9	60	\$45,081	\$787.80	\$47,270
Hearing	\$2,170.46	\$226.10	\$462.80	38.7	368	\$170,427	\$485.30	\$178,577
Issue of warrant to enforce orders	\$28.37	\$18.30	\$28.37	2.4	5702	\$161,775	\$29.80	\$169,617
Issue of a certificate	\$34.04	\$31.07	\$34.04	2.9	84	\$2,947	\$35.70	\$2,998
Issue of summons (to witness or for production of documents)	\$82.37	\$7.00	\$82.37	6.9	16092	\$1,325,490	\$86.40	\$1,389,832
Preparation of documents by Registrar	\$22.57	\$18.30	\$22.57	1.9	11144	\$251,552	\$23.70	\$263,728
Photocopying - search and handling fee	\$22.30	NA	\$22.30	1.9	10709	\$238,837	\$23.40	\$250,402
Photocopying - retrieval from storage	\$11.15	NA	\$11.15	0.9	1071	\$11,943	\$11.70	\$12,521
Photocopying - per page	\$0.60	\$0.55	\$0.60	NA	181818	\$109,091	\$0.60	\$114,386
Total Civil Fees Revenue						\$50,335,693		\$52,594,504

Table 7.1, above, provides fee and revenue data expressed both in terms of 2010-11 values and their 2012-13 equivalents. Because the various options have been assessed

⁵⁶ This fee is established in Order 10.5, Chapter II of the Supreme Court Rules and is established in dollar terms. The fee in respect of the equivalent process in the Magistrates' Court is being maintained at the equivalent level, in the immediate term, due to concern to maintain proportionality between the fees charged. Note that cost information is not available in respect of this process.

against 2010-11 budget figures, the following discussion also focuses on the 2010-11 figures. This approach is also followed consistently in the presentation of the implications of Options 2 and 3.

Commencement fees

The various specific purpose fees listed above would, if set at full cost recovery levels, yield revenue of \$8.1 million, based on existing volumes. In addition, hearing fees set at full cost recovery levels would yield a further \$0.2 million. Given that a full cost recovery outcome requires revenue of \$50.3 million to be generated, this implies that a further \$42.0 million would need to be generated via the (block) commencement fees. This is equivalent to an increase of approximately 230% in current commencement fee revenues. It is assumed that the current relativities among the commencement fees payable in respect of disputes involving different monetary amounts would be maintained. Given this assumption, the required commencement fees are also set out in Table 7.2, above.

Criminal fees

As discussed above, the proposed regulations include several fees payable in respect of criminal matters. The costs incurred by the court in dealing with the matters to which these fees relate are, by definition, outside the scope of the civil jurisdiction. Hence, the revenue that would be obtained from these fees is not included in the full cost recovery calculation. That is, under this option, it is the fees relating to civil matters alone that would be set at levels that would fully recover the recurrent costs incurred in relation to the civil jurisdiction.

However, were a full cost recovery option to be adopted in relation to civil fees, a consistent approach suggests that the small number of criminal fees included in the regulations would also need to be set at cost recovery levels. As shown in table 6.2, above, this would result in revenue of \$8.0 million being obtained from the criminal fees. This represents an increase of around \$6.2 million when compared with the current revenue from these fees of \$1.8 million.

7.2.2 Expected benefits of option 1

Option 1 is advanced because it is consistent with the general presumption in favour of full cost recovery contained in the DTF *Cost Recovery Guidelines*. There is also broad precedent for the adoption of such a model, both internationally and in the Australian context, as discussed above.

Expected benefits

The implication of adopting this option is that the taxpayer would be required to subsidise the day to day operations of the civil court system to a far lesser extent than is currently the case, since recurrent costs would largely be met via fee revenue received from court users. As noted above, the need to retain and, most likely, expand

the use of fee waiver provisions in the interests of maintaining access to justice and avoiding hardship would mean that some degree of subsidy would necessarily remain, rendering the revenue estimates above to be notional in some sense. However, it is clear that actual cost recovery levels would be very substantially increased under this option.

A number of benefits would be likely to flow from the move to full cost recovery. The substantial increase in fees charged, when combined with the fact that fees are levied at different stages of the court process (e.g. on commencement, at the hearing stage, etc), would, at least theoretically, provide additional financial incentives for litigants to seek to settle matters earlier through compromise and negotiation. This could result in additional savings to the parties in terms of other legal expenses. Moreover, there is arguably a direct benefit to the parties in having reached a settlement to which both parties have consented, rather than one that is imposed by the courts. Finally, there would inevitably be savings in court costs as a result of this expected increase in the rate of early settlements.

However, the size of any such incentives would be relatively moderate in practice. RoGS data shows that the average fee paid per matter listed in the Magistrates' Court is only \$88. A 231% increase in fee levels would imply that this average would increase to \$291. Such an amount remains quite small, relative to the full costs of undertaking legal action. These full costs include the costs of legal representation and the probable costs of income foregone due to the need to attend court hearings.

The findings of the 2007 Victorian Dispute Resolution Survey⁵⁷ indicate that cost does not generally influence a person's decision about whether to act on legal issues, although it may influence the choice of forum to resolve a legal dispute. The study showed that people were more likely to choose one pathway over another if it was cheaper (37%), easier (24%) or quicker (15%). The survey showed that people were less likely to use a dispute resolution service based on the perceived cost (20%) or the time involved in dealing with an outside agency (13%). The disadvantage of courts and tribunals that were most frequently cited were cost (52%) and time (37%).

A related survey was conducted in the United Kingdom in 2007 and focused specifically on the impact of court fees on the decision to commence litigation. That survey⁵⁸ indicated that individuals felt that cost played a minor role in their initial decision as to whether to commence litigation. The primary drivers identified were 'getting a final decision' and 'getting justice'. The survey did show, however, that the majority of individuals did consider alternative options for resolving disputes before going to court. The survey also measured the price sensitivity of different types of litigants. The survey found that litigants pursuing monetary claims, especially small claims, were the most price sensitive, while other litigants involved in proceedings that sought to define legal rights or status (such as those involved in private family matters) were the

⁵⁷ Ipsos Australia (2007). *Dispute Resolution in Victoria: Community Survey*. Report prepared for the Victorian Department of Justice.

⁵⁸ See: <http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/publications/research280607.htm>

least price sensitive.

Finally, if the rate of early settlements were to increase, as suggested above, one corollary is that the total increase in fee revenue would be somewhat lower than that estimated in Table 7.2, as the calculations in the table effectively assumes the maintenance of existing case loads. That said, the costs incurred by the courts would also necessarily be reduced. A reduction in court caseloads would also be expected to allow for some reduction in court backlogs and allow more timely delivery of judgements in those cases that did continue to proceed to this final stage in the court process. Thus, access to justice would be improved in this respect.

7.2.3. Expected costs of Option 1

As noted above, the adoption of full cost recovery based fees would substantially increase the size of the fees payable by litigants in the courts. It was noted above that the average fee payment per matter lodged in the Magistrates' Court would rise from \$88 to \$291 under this option. However, the actual fees paid in individual cases will vary significantly from this average depending on whether the case is settled at an early stage or proceeds to hearing and judgment. Litigants who settle cases early will generally pay less than the above averages, while those that proceed to hearing and judgment will generally pay much more. This fact is important to underline in considering the issue of the likely impact of fees set at this level on access to the court system.

While litigants will, in the majority of cases, also need to pay substantial fees to legal practitioners to prepare their cases and represent them in court, large increases in court fees must be considered likely to raise some additional affordability concerns for many litigants considering commencing an action in the civil courts. Thus, it is probable that fees set at full cost recovery levels would have the effect of reducing access to the courts to resolve civil disputes.

The full cost recovery option would also be inconsistent with the logic advanced by the Civil Justice Committee, which argued that the operation of the courts led to both public and private benefits being obtained and should therefore be funded through a combination of government subsidies and user charges. In this view, a full cost recovery based option would mean that court users effectively subsidise the achievement of these public benefits by meeting all of the recurrent costs of the court system. That said, the extent of this subsidisation would appear to be smaller in the case of the Magistrates' Court than the higher courts, at least in the direct sense, since decisions of the Magistrates' Court do not set precedent and help to establish the case law as a future reference for all potential litigants. On the other hand, the public benefit of having a high level of access to justice could be considered to be particularly important at Magistrates' Court level. Thus, the broader picture is one in which this issue remains significant.

Such an outcome offends against both equity and efficiency principles. In respect of equity, the issue is that public benefits are being obtained, in part, at private cost. In

respect of efficiency, the issue is that the likely reduction in the use of the court system due to the failure of government to meet the costs of achieving the public benefit outcomes will mean that an inefficiently low level of use of this resource is obtained.

Finally, were these concerns regarding the impact of this option on access to the court system to be acknowledged, it is likely that the response might be the adoption of a more extensive fee waiver system than that currently in place. To the extent that this response was adopted, the size of the expected revenue increase from the adoption of this option would be smaller than that estimated above. In this context, it should be noted that the UK experience (cited above) of combining fees set at full cost recovery levels and detailed waiver provisions appears to have yielded a cost recovery level of only around 80% in practice.

7.3. Option 2: set fees to recover 50% of recurrent cost

7.3.1. Description of Option 2

Option 2 would involve adjusting the current fee levels in such a way as to ensure that 50% cost recovery was achieved overall in the Magistrates' Court. The adoption of a 50% cost recovery option reflects the conclusions of various inquiries to the effect that a) there are significant elements of both private and public benefit attached to the operations of the civil courts and b) the maintenance of access to justice is an important consideration. While the specific balance between private and public benefits is difficult to determine in any particular court jurisdiction, a view that court costs should be equally shared by users and the government (i.e. taxpayers) appears to be a reasonable approach to this issue. Moreover, even were it considered that the proportion of private benefits involved is higher than 50%, the size of the increase that would be needed to reach such a level, given current 30% levels of cost recovery, suggests that a move to 50% cost recovery in the first instance would represent a reasonable approach.

The implication of this option are as follows: First, the fee structure would generally reflect the existing regulations, in terms of the specific fees charged and the contexts in which they are levied. However, the suite of fees would be classified into five types, as follows:

- block fees, payable on commencement;
- fees which relate to activities requiring judicial input or some level of decision-making to be undertaken;
- fees which relate entirely to the completion of administrative tasks⁵⁹;
- hearing fees; and
- fees relating to criminal matters, including infringement offences.

⁵⁹ In the proposed Magistrates' Court fees there are only three fee items that fit this description: the fee for the issue of an order or certificate, the fee for the preparation of documents (e.g. warrant or summons) by the Registrar and the fee for inspection of the register.

Under this option, different approaches to cost recovery would be adopted in these different fee categories. This is discussed below.

Administrative fees

Fees which relate to activities that are wholly administrative in nature - that is, they are completed by non-judicial officers - would be set at full cost recovery levels. That is, the fee would be set to fully recover the specific costs identified in respect of the administrative activities to which they relate, on a case by case basis.

Fees with judicial input

Fees that relate to the litigation process and require judicial input or some level of decision making, but which do not constitute part of the modified "block fee" structure would be set at levels that would ensure 50% cost recovery.

Hearing fees

The daily hearing fee is payable in respect of every day after the first day of a hearing. The proposed fee is 41.7 fee units. While equal to substantially less than 50% of the daily hearing costs incurred in the Magistrates' Court, this proposed fee nonetheless represents an increase of well over 100% over the existing hearing fee.

This fee is set on a different conceptual basis again from those above. While the above logic would suggest that this fee should be set on a 50% cost recovery basis, it is necessary to take account of a recent Standing Committee of Attorneys-General (SCAG) agreement. This was that all States and Territories agreed to adopt hearing fees consistent with those recently implemented in the Federal Court in those courts that had shared jurisdiction with the Federal Court. Table 7.3. sets out these Federal Court fees.

Table 7.3: Federal Court Hearing Fees - Civil Jurisdiction⁶⁰

Fee	Corporations	Other
Hearing fee - days 2 -4	\$1,428	\$712
Hearing fee - days 5 - 9	\$2,568	\$1,184
Hearing fee - days 10 +	\$5,068	\$2,384

The key element of the SCAG agreement is the adoption of an escalating daily hearing fee structure, in order to provide incentives for early settlement and ensure that the

⁶⁰ It should be noted that Victoria does not differentiate between corporations and natural persons in setting court fees and intends to maintain this approach. Thus, implementation of the SCAG agreement will mean that all parties to Supreme Court hearings will be charged hearing fees at the rate applicable to unincorporated entities in the Federal sphere.

public subsidy is minimised where litigants have not responded to these incentives - particularly in relation to "mega-litigation", which is the area of concern giving rise to the Federal recommendations in this area. This approach has been endorsed by the Attorney-General, consistent with Victoria's commitment to the SCAG agreement in principle.

Adoption of the SCAG agreement would necessarily imply that daily hearing fees will continue to commence at a relatively low level of cost recovery. Moreover, Victoria will, in common with a number of participating jurisdictions, retain their "unified" fee structure, rather than moving to differentiate between corporations and individuals. This further limits the degree of cost recovery that can be achieved from hearing fees, while implementing the agreement.

It is anticipated that the Federal Court hearing fee structure will be adopted in both the Supreme and County Courts. However, the final decision in this regard will necessarily be made in the context of the development of regulatory impact statements in respect of proposed new fees regulations for these jurisdictions, expected to occur later in 2012.

While the SCAG agreement specifically affects only the Supreme Court (i.e. only the Supreme Court shares jurisdiction with the Federal Court), in practical terms, the commitment to introduce these fees in the Supreme Court has flow-on effects to the other Victorian court jurisdictions. That is, it would be widely considered inequitable for higher hearing fees to be charged in the County and/or Magistrates' Courts than in the Supreme Court, particularly given that the lower courts have lower average hearing costs. Thus, this option implies setting the hearing fee in the Magistrates' Court at a level that can be considered to be proportionate to that expected to be adopted in the higher courts. A fee equal to 70% of the Federal Court hearing fee charged to individuals on days 2 - 4 of trials has therefore been adopted as part of Option 2. Thus, the fee proposed under this option is $(\$712 \times .7) = \498.40 (or 41.7 fee units).

Criminal fees

Three sets of fees fall under this heading. These are:

- fees for the issue of a summons in relation to a criminal matter;
- fees in respect of applications for re-licensing of disqualified drivers; and
- fees for having infringement offences heard.

As discussed in Section 7.2, above, the calculation of cost-recovery based fee levels in this RIS necessarily focuses specifically on fees charged in the civil jurisdiction. That is, the recurrent cost base in the civil jurisdiction is appropriately compared with revenue from civil fees, since it is only in respect of civil matters that fees are routinely charged in respect of the major court activities.

While Section 140 of the *Magistrates' Court Act 1989* allows for fees to be charged in respect of any proceeding of the court, fees are not typically charged in respect of criminal matters. This reflects the significant differences in context: if an accused is found not guilty, allocating liability for court fees in respect of the unsuccessful prosecution to them would clearly seem to be onerous. Conversely, allocating liability to a prosecution authority would have no net impact on the government budget, while potentially creating perverse incentives against prosecutions being undertaken. Equally, in cases in which an accused is found guilty, allocating liability for the costs of a major prosecution to them could easily result in a disproportionate effective punishment.

More fundamentally, the operations of the criminal jurisdiction are widely agreed to be undertaken for the public benefit: a view which strongly suggests that the public collectively (i.e the taxpayer) should bear the bulk of the costs incurred. A limited number of fees are, nonetheless, levied in specific criminal contexts. The rationale for these is discussed below. However, it can be noted that, since fees are charged in respect of only a small number of activities in the criminal jurisdiction, significant levels of cost recovery are not achievable in respect of the costs of the criminal courts.

As noted, the operation of the criminal courts results overwhelmingly in the achievement of public, rather than private, benefits. It is this fact that gives rise to the fact that only a small number of fees are charged in the criminal context. Where fees are charged, there are specific rationales. Thus, in respect of the current regulations, the rationales for the three types of criminal fees are broadly as follows:

- ***Filing of a charge sheet.*** This fee is paid by a prosecuting authority or, in the event of a private prosecution, by the individual bringing that prosecution. In the latter case, it is considered that there is a need to provide a level of disincentive to frivolous or vexatious prosecutions being brought.
- ***Lodgement of prescribed information (Infringements Act).*** A specific Infringements Court exists which has been established to process infringements efficiently. Where an enforcement authority wishes to use the Magistrates' Court, significantly higher costs are involved. It is appropriate that some level of cost recovery should be charged in recognition of this. The proposed fees would ensure that enforcement authorities face significantly higher charges than in the Infringements Court.
- ***Re-licensing after Road Safety Act offences.*** These fees relate to processes that are arguably more administrative than criminal in nature and have clear private benefits attached (i.e. the ability to regain a driving licence). Thus, a higher level of fee is appropriately charged.

Given the differences in the nature of these fees and the rationale for charging them, this option would adopt differential approaches to cost recovery in relation to these three sets of fees. In relation to applications for restoration of a licence to drive and reduction of the minimum time for the making of such an application under the *Road Safety Act 1986*, both applications are made at the initiative of the driver and relate to the restoration of a privilege - i.e. the licence to drive. As suggested above, this implies

that a higher rate of cost recovery than that applied in relation to the remaining criminal fees is likely to be appropriate. Given this, Option 2 involves setting these fees at 50% cost recovery levels. This is consistent with the general approach taken in the regulations, in which fees that related to matters largely requiring judicial decision-making have been set at 50% cost recovery levels, while administrative fees have been set at 100% cost recovery.

On the other hand, it could be argued that the specific matters to which these fees relate involve largely private benefits: they do not relate to the determination of whether a criminal offence has been committed or what sanction should be imposed but, rather, relate to the question of whether the offender is fit to be re-licensed. The matter comes before the court only if the offender seeks the restoration of their licence. If this view is taken, it is arguable that a full cost recovery approach would be more appropriate. However, the alternative view, which implicitly underpins the setting of the fee at 50% cost recovery under this option, is that the public has a clear interest in the question of whether a former offender is re-licensed and that public, as well as private, benefits could ultimately flow from such re-licensing.

Stakeholder question: Do you believe that setting fees in relation to these procedures under the Road Safety Act 1986 at 50% cost recovery levels is appropriate? If not, what alternative fee level do you believe would be preferable?

By contrast, fees would be set to recover lower proportions of the attributable costs associated with the remaining criminal matters. In relation to the issue of a summons, the fees would be set at levels that would recover only 25% of costs, on average.

In relation to applications to have matters brought under the *Infringements Act 2006* heard in the Magistrates Court, the proposed fees would be set at the same levels as those set for the issue of a summons. This reflects the fact that, where an infringement offence is concerned, enforcement authorities have a choice as to which mechanism - i.e. issue of a summons or *Infringements Act* process - to use in having the matter brought before the Magistrates' Court. In this context, it is not considered appropriate to have this choice affected by fee differentials.

The effect of this approach is that the notional level of cost recovery achieved in respect of *Infringements Act 2006* applications would be lower than the 25% level set for issue of a summons. This reflects the fact that the costs attributed to these *Infringements Act 2006* applications are higher than for issue of a summons. That said, a fundamental point to be emphasised in this regard is that these fees are set largely on the basis of subjective views as to the appropriateness of a particular size of fee in the context, rather than with regard to cost recovery. This reflects both the fact that cost recovery is not a significant consideration in general in the criminal jurisdiction and the fact that, for several of these fees, there are significant conceptual issues as to the appropriate cost base to be adopted, were such an exercise to be contemplated. It is at least arguable that these fees are better characterised as block fees, rather than specific purpose fees.

In both cases, these fees will ultimately be paid by the offender, in the event of a successful prosecution. As noted elsewhere, a key consideration in setting these fees is a concern that high fees could substantially add to the penalty formally determined by the court and, as a result, effectively reduce the discretion and flexibility of the court in matching total penalties to the circumstances of individual cases.

That said, the very low level of cost recovery currently attained in respect of these fees is recognised, as is the formal legislative authorisation that exists to charge fees in these specific contexts. Thus, a mid-course is proposed under this option whereby, despite this lower level of cost recovery proposed, the current fees would increase significantly from their current levels.

Block fees

The block "commencement" fee would be set on a "residual" basis. That is, having calculated the expected revenue from the above three types of fee, the block fees would be set at a level that would ensure that, in the aggregate, 50% cost recovery is achieved. In practice, this implies that the block fee would be set at slightly below 50% cost recovery⁶¹.

This approach to setting the block fees is rendered necessary by the fact that, as discussed above, it is not possible to calculate an average cost for the activities to which the commencement fees relates. This, in turn, reflects the number of different activities that may be involved and the wide degree of difference between individual matters as to how they progress through the court system and, consequently, which of these costs are incurred.

However, it must be noted that the use of this "residual" approach to block fee setting has some limitations. In particular, to the extent that there are any court costs that have not been accounted for in the item-specific costings prepared in respect of the other fees, this implies that these "unallocated" costs will, in effect, be allocated to the block fees. However, while this may appear to be an inequitable result on the face of it, the fact that all litigants pay the block commencement fee implies that the issue is not likely to be a substantial one in practice.

Table 7.4, below, sets out the fees that would be charged under this option, identifying the target cost recovery level for each individual fee and comparing the proposed fees with the equivalent current fees in each case.

⁶¹ That is, because the remaining fees are set at either 100% or 50% cost recovery, they will collectively recover somewhat more than 50% of the costs to which they relate. This means that, if an overall level of 50% cost recovery is to be achieved, the block fee will be set at a level that represents less than 50% cost recovery (nb: the specific costs attributable to this fee have not been identified. Hence, this is a logical deduction, rather than something that can be verified specifically). However, given that a high proportion of the total fee revenue in the Magistrates' Court derives from the block fees, it is unlikely that the actual level of cost recovery implicit in adopting this approach would depart substantially from the 50% benchmark.

Table 7.4: Costs, fees and cost recovery percentages - current regulations vs Option 2 (50% cost recovery)

Fee	Cost	Current Fee	Cost recovery target (%)	Proposed fee (\$2010-11)	Proposed fee units	Fees charged ⁶²	Expected revenue	Proposed fee (\$2012-13)	Expected revenue (\$2012-13)
Criminal jurisdiction									
Filing of a charge sheet (single charge)	\$275.00	\$44.00	25%	\$68.70	5.7	3,372	\$231,656	\$71.30	\$240,339
Filing of a charge sheet (multiple charges)	\$412.00	\$69.70	25%	\$103.00	8.6	2,210	\$227,630	\$108.00	\$238,663
Lodge prescribed information (Infringements Act) (single infringement)	\$396.00	\$44.00	17.3%	\$68.70	5.7	7,567	\$519,853	\$71.40	\$540,443
Lodge prescribed information (Infringements Act) (multiple infringements)	\$594.00	\$69.70	17.3%	\$103.00	8.6	1,318	\$135,754	\$107.80	\$142,025
Application for order as to licence	\$164.28	\$81.90	50%	\$91.90	7.7	12,916	\$1,186,980	\$96.50	\$1,246,149
Application re: assessment period	\$126.61	\$37.90	50%	\$70.80	5.9	297	\$21,027.60	\$73.90	\$21,956
Total criminal fees revenue							\$2,322,901		\$2,429,574
Civil jurisdiction									
Commencement fees									
< \$1,000	NA	\$75.80	NA	\$123.31	10.2	9607	\$1,184,598	\$128.40	\$1,233,675
\$1,000 < \$10,000	NA	\$157.60	NA	\$256.38	21.3	43173	\$11,068,596	\$267.20	\$11,535,146
\$10,000 < \$40,000	NA	\$239.50	NA	\$389.61	32.4	15137	\$5,897,776	\$406.00	\$6,144,931
\$40,000 - \$100,000	NA	\$359.30	NA	\$584.50	48.6	4259	\$2,489,120	\$608.90	\$2,593,440
Request for order	\$70.76	\$18.30	50%	\$35.38	3.0	31583	\$1,117,343	\$37.60	\$1,187,205
Interlocutory application	\$253.99	\$37.90	50%	\$127.00	10.6	NA	\$ -	\$132.80	
Application under Landlord and Tenant Act	\$143.98	\$37.90	50%	\$71.99	6.0	NA	\$ -	\$75.20	
Instalment agreement	\$134.55	\$37.90	50%	\$67.27	5.6	15716	\$1,057,242	\$70.20	\$1,102,760
Attachment of earnings order	\$238.14	\$37.90	50%	\$119.07	10.0	NA	\$ -	\$125.30	
Registration of Interstate Judgement ⁶³	NA	\$60.00	NA	NA	4.8	NA	NA	\$60.00	NA
Summons for oral examination	\$166.71	\$37.90	50%	\$83.36	7.0	9348	\$779,176	\$87.70	\$819,913
Mediation – registrar (per session)	\$433.03	No fee	50%	\$216.52	18.1	151	\$32,693	\$226.80	\$34,246
Mediation – judicial registrar (per session)	\$751.36	No fee	50%	\$375.68	31.4	60	\$22,540	\$393.40	\$23,607
Hearing	\$2,170.46	\$226.10	NA	\$462.80	41.7	368	\$170,427	\$522.50	\$192,280
Issue of warrant to enforce orders	\$28.37	\$18.30	50%	\$14.19	1.2	5702	\$80,887	\$15.00	\$85,735
Issue of a certificate					1.4			\$17.50	\$1,474
Issue of summons (to witness or for production of documents)	\$82.37	\$7.00	50%	\$41.18	3.4	16092	\$662,745	\$42.60	\$685,551
Preparation of documents by Registrar	\$22.57	\$18.30	100%	\$22.57	1.9	11144	\$251,551	\$23.80	\$265,305
Photocopying (search and handling fee) ⁶⁴	\$22.30	NA	100%	\$22.30	1.9	10709	\$238,837	\$23.80	\$254,949
Photocopying (retrieval from storage)	\$11.15	NA	100%	\$11.15	1.0	1071	\$11,943	\$12.5	\$13,420
Photocopying - per page ⁶⁵	\$0.60	\$0.55	100%	\$0.60	-	181818	\$109,090	\$0.6	\$109,091
Total Civil Fees Revenue							\$25,176,808		\$26,282,727

⁶² Estimated number of times each fee was levied in 2010-11. This is used as the basis for the expected revenue calculation.

⁶³ This fee is established in Order 10.5, Chapter II of the Supreme Court Rules and is established in dollar terms. The fee in respect of the equivalent process in the Magistrates' Court is being maintained at the equivalent level, in the immediate term, due to concern to maintain proportionality between the fees charged. Note that cost information is not available in respect of this process.

⁶⁴ This fee effectively replaces the current fee for inspection of the register, which is levied at the rate of 1 fee unit per 5 minutes, or part thereof. Thus, the fees are not directly comparable, as the proposed search and handling fee would be charged at a flat rate.

⁶⁵ A single per-page photocopying fee is currently charged in the Magistrates' Court, but is not contained within the existing fees regulations.

Table 7.4 shows that block fees would increase by approximately 64% from their current levels under this option. The specific purpose fees would increase from current levels in all but one case. However, the size of these increases would vary widely, from only 6% to over 500%. Six of the 13 specific purpose fees currently charged in the civil jurisdiction would more than double. Two new fees would be created in relation to mediations conducted by the court. These are currently not subject to fees.

Table 7.4 also lists a small number of fees applicable in the criminal jurisdiction of the Magistrates' Court that are established under the current regulations and would be retained under the proposed regulations. The two fees relating to *Road Safety Act 1986* matters (involving re-licensing of disqualified drivers) are paid by applicants for re-licensing and would be set at 50% cost recovery, consistent with the approach taken to the other fees. The fees relating to the issue of summonses, which are paid primarily by Federal and local government enforcement agencies be set at 25%, while those relating to infringement notices would be set at 20% cost recovery.

Finally, it can be noted that the adoption of Option 2 would lead to an increase in cost recovery levels for the Magistrates' Court from 30.2% at present to 50%, an increase of approximately 66% in current cost recovery. This is equivalent to an increase from \$15.2 million at present to \$25.2 million, or an increase of \$10 million per annum, based on current costs and volumes. This is equivalent to a revenue gain of \$83.2 million in present value terms over the expected 10 year life of the regulations.

7.3.2. Expected benefits of option 2

As discussed in Section 3, court fees have, since the 1980s, been set on the basis of government acceptance of the recommendations of a substantial review of the operation of the civil justice system, which argued for a fee regime which resulted in users of the civil courts making a significant contribution to their running costs. The general rationale provided was that the operation of the civil court system resulted in a mix of public and private benefits and that the funding of the court system should, accordingly, be via a mix of public and private contributions.

This analysis of the issues and the resulting conclusion remain relevant at the present time. The issue of what percentage of cost recovery it is appropriate to achieve is necessarily a matter of judgment, given the impossibility of measuring precisely the relative size of the public and private benefits arising as a result of the operation of the court system. However, as noted in section 3, cost recovery levels of around 40% to 50% have historically been achieved under both the current regulations and the previous regulations.

Specifically, cost recovery levels of between 38.0% and 44.9% were being achieved in early 2001, the last year of operation of the previous regulations, while the level of cost recovery estimated to be achieved immediately following the introduction of the current regulations varied from 40.8% to 48.5%.

As discussed in Section 3, the current level of cost recovery in all courts is significantly lower than this amount, in part because of the erosion of the real value of the current fees in the early years following their introduction and, more importantly, because of increases in the average recurrent cost per lodgement of the court system.

While detailed information is not available as to the reasons for the increase in the average cost of the court system, it is generally considered appropriate that these cost increases should be shared between users and taxpayers, given that both obtain benefits from the courts' operations. Conversely, the fact that the real value of the current fees is below their 2001 levels means that all of the cost increases incurred have, to date, been met by taxpayer.

It is therefore appropriate to revise the existing fees. The specific size of the appropriate increase is necessarily a matter of judgement.

A 50% cost recovery level would imply a slightly higher level of user contribution than was achieved at the time of the introduction of the current regulations. Given that it is generally accepted that the provision of court services gives rise to significant public and private benefits, an equal sharing of the recurrent costs of use of court services can be considered to be an equitable outcome.

7.3.3. Expected costs of option 2

As discussed above, the adoption of option 2 would lead to significant increases in aggregate fee payments by users of the civil jurisdiction of the Magistrates' Court. Table 7.5 shows the expected impact of this option on average fee payments per matter lodged with the court. Average fee payments would rise from \$88 at present to \$146 under Option 2. This would be 37.7% higher than the current national average fee of \$106 and would be \$11, or 8.1% higher than the next highest average fee, which is \$135 in South Australia.

Table 7.5: Comparison of current and expected fee revenue per case lodged

	Option 2	Current Vic	NSW	Qld	WA	SA	Tas	ACT	NT	Total
Magistrates	\$146	\$88	\$121	\$118	\$105	\$135	\$80	\$49	\$63	\$106

Source: RoGS Report 2012, Table 7A.16.

In sum, the adoption of option 2 would place fee levels in the Magistrates' Court in Victoria at the upper end of the range of court fees nationally, but would not lead to average fees being significantly higher than in the next highest case - that of South Australia.

As the above indicates, the average additional cost of fee payments for users of the Magistrates' Court would be only \$58. This appears to be a small amount in the

context of any initiation of court action and may be judged unlikely to yield significant hardship or lead to change in behaviours among court users.

That said, it is clear that litigants whose matters proceed to hearing will experience much larger increases in average costs. For example, any matter which reaches a second hearing day will see the losing party facing additional hearing costs of \$246.40, vis-a-vis the current daily hearing fee.

7.4. Option 3: set fees at 25% cost recovery

7.4.1 Description of the alternative

Under this option, a consistent level of cost recovery of 25% would be adopted for the Magistrates' Court fees. The adoption of such an approach would imply a view that, even though there are significant private benefits attaching to the use of the civil court system, the government's traditional role in providing, and largely funding, the courts is one that should appropriately continue. Such an option implicitly gives greater weight to access to justice considerations.

In contrast to option 2, this option would involve adopting a 25% cost recovery rule for both administrative fees and those that relate to the exercise of judicial functions would be set to recover only 25% of costs. However, as with Option 2, block fees would be set at a level that would ensure that 25% cost recovery was achieved overall. The daily hearing fee would continue to be set at 70% of the Federal Court level - a level that represents a cost recovery level slightly below 25%.

The adoption of a 25% cost recovery rule would mean that revenues of around \$12.8 million per annum would be received in respect of civil fees and \$1.8 million per annum in respect of criminal fees. The level of cost recovery being achieved in the Victorian Magistrates' Court would be slightly below the national average: the 2012 RoGS shows that, in 2010-11, average cost recovery levels were 29.9% in Magistrates' Courts. Adoption of a 25% cost recovery target would imply there would be fee reductions in the Magistrates' Court, given that current cost recovery levels are slightly over 30%. This is demonstrated in the following table.

Given that the current level of cost recovery in the Magistrates' Court is 30.2%, a move to a 25% cost recovery target would imply an average reduction of 17.2% in fee levels. However, in common with the above options, this option would involve revising the level of individual fees to ensure that the current wide differences in cost recovery levels between individual fees was eliminated.

In respect of the criminal fees, the approach adopted largely mirrors that taken in respect of Option 2, above. That is, fees in relation to filing charges and in relation to *Infringements Act 2006* matters would also be set at 25% and 20% cost recovery, respectively, under this option. However, the fees in respect of re-licensing applications under the *Road Safety Act 1986* would be set at 25% cost recovery,

consistent with the general approach adopted under this option, rather than at 50% cost recovery, as in Option 2.

Table 7.6, below, sets out the fees that would be charged in the Magistrates' Court under this option.

Table 7.6: Costs, fees and revenue - Option 3 (25% cost recovery)

Fee	Cost	Current Fee	Cost recovery target (%)	Proposed fee (\$2010-11)	Proposed fee units	Fees charged ⁶⁶	Expected revenue (\$2010-11)	Proposed fee (\$2012-13)	Expected revenue (\$2012-13)
Criminal jurisdiction									
Filing of a charge sheet (single charge)	\$275.00	\$44.00	25%	\$68.70	5.7	3,372	\$231,656	\$71.3	\$240,339
Filing of a charge sheet (multiple charges)	\$412.00	\$69.70	25%	\$103.00	8.6	2,210	\$227,630	\$108.0	\$238,663
Lodge prescribed information (Infringements Act) (single infringement)	\$396.00	\$44.00	20%	\$79.20	8.2	7,567	\$603,847	\$102.8	\$777,929
Lodge prescribed information (Infringements Act) (multiple infringements)	\$594.00	\$69.70	20%	\$118.80	12.4	1,318	\$156,578	\$155.8	\$205,299
Application for order to licence	\$164.28	\$81.90	25%	\$41.07	3.8	12,916	\$530,460.12	\$48.2	\$622,000
Application re: assessment period	\$126.61	\$37.90	25%	\$31.65	3.0	297	\$9,400.79	\$37.1	\$11,026
Total Criminal fees revenue							\$1,759,572		\$2,095,257
Civil jurisdiction									
Commencement fees									
< \$1,000	NA	\$75.80	NA	\$62.03	5.1	9607	\$ 595,946	\$63.9	\$613,916
\$1,000 < \$10,000	NA	\$157.60	NA	\$128.98	10.7	43173	\$ 5,568,374	\$134.1	\$5,788,247
\$10,000 < \$40,000	NA	\$239.50	NA	\$196.01	16.3	15137	\$ 2,967,045	\$204.2	\$3,091,566
\$40,000 - \$100,000	NA	\$359.30	NA	\$294.05	24.4	4259	\$ 1,252,223	\$305.7	\$1,302,113
Request for order	\$70.76	\$18.30	25%	\$17.69	1.5	31583	\$558,672	\$18.8	\$593,602
Interlocutory application	\$253.99	\$37.90	25%	\$63.50	5.3	NA	\$ -	\$66.4	
Application under Landlord and Tenant Act	\$143.98	\$37.90	25%	\$36.00	3.0	NA	\$ -	\$37.6	
Instalment agreement	\$134.55	\$37.90	25%	\$33.64	2.8	15716	\$528,621	\$35.1	\$551,380
Attachment of earnings order	\$238.14	\$37.90	25%	\$59.53	5.0	NA	\$ -	\$62.7	
Registration of Interstate Judgement ⁶⁷	NA	\$60.00	NA	NA	4.8	NA	NA	\$60.00	NA
Summons for oral examination	\$166.71	\$37.90	25%	\$41.68	7.0	9348	\$389,588	\$87.7	\$819,913
Mediation – registrar (per session)	\$433.03	No fee	25%	\$108.26	18.1	151	\$16,347	\$226.8	\$34,246
Mediation – judicial registrar (per session)	\$751.36	No fee	NA	\$187.84	31.4	60	\$11,270	\$393.4	\$23,607
Hearing	\$2,170.46	\$226.10	25%	\$462.80	41.7	368	\$170,427	\$522.5	\$192,280
Issue of warrant to enforce orders	\$28.37	\$18.30	25%	\$7.09	1.2	5702	\$40,444	\$15.0	\$85,735
Issue of a Certificate					1.4			\$17.5	\$1,474
Issue of summons (to witness or for production of documents)	\$82.37	\$7.00	25%	\$20.59	3.4	16092	\$331,373	\$42.6	\$685,551
Preparation of documents by Registrar	\$22.57	\$18.30	25%	\$5.64	1.9	11144	\$62,888	\$23.8	\$265,305
Photocopying - search and handling fee ⁶⁸	\$22.30	NA	25%	\$5.58	1.9	10,709	\$238,837	\$23.8	\$254,949

⁶⁶ Estimated number of times each fee was levied in 2010-11. This is used as the basis for the expected revenue calculation.

⁶⁷ This fee is established in Order 10.5, Chapter II of the Supreme Court Rules and is established in dollar terms. The fee in respect of the equivalent process in the Magistrates' Court is being maintained at the equivalent level, in the immediate term, due to concern to maintain proportionality between the fees charged. Note that cost information is not available in respect of this process.

Photocopying - retrieval from storage	\$11.15	NA	25%	\$2.79	1.0	1071	\$11,943	\$12.5	\$13,420
Photocopying - per page ⁶⁹	\$0.60	\$0.55		\$0.15	-	181,818	\$27,273	\$0.6	\$109,091
Total Civil Fees Revenue							\$12,772,390		\$14,426,395

Table 7.6 shows that, under Option 3, revenue from the Magistrates' Court fees would fall from the current \$15.2 million to \$12.8 million, a reduction of approximately \$2.4 million per annum. The total reduction in fee revenue under this option would be approximately \$20.0 million in present value terms over 10 years.

7.4.2. Expected benefits of the alternative

By contrast with the "no fees" base case, the adoption of Option 3 would ensure that court users make at least a minimum contribution to the costs of having matters heard. As noted above, around \$12.8 million in civil fee revenue and \$1.8 million in criminal fee revenue would be expected to be collected annually.

When considered in incremental terms - i.e. in comparison with the existing regulations - it can be noted that, were this option to be implemented, the very large changes in average fee levels that are implicit in the options considered above would be avoided: the average percentage change in fee levels in the Magistrates' Court would be a reduction of 17.1%.

This option can also be seen as equitable, in that it implies cost recovery levels that are very close to the national average. It could also lead to some improvement in access to justice, given that the private costs borne by court users would be reduced. That said, these reductions would have only a small impact on the overall costs of litigation, given the high proportion of these total costs that constitute payments to legal representatives.

7.4.3. Expected costs of the alternative

As noted above, the revenue cost of adopting Option 3 in relation to the Magistrates' Court fees, vis-a-vis the existing regulations, would be \$2.6 million per annum, when compared with the revenue attained under the existing regulations. However, were such an option to be adopted, it would create a presumption in favour of the adoption of a similar approach in the Supreme and County Courts. In particular, it is often argued that the balance of public vs private benefits is oriented more toward the former in relation to the higher courts. Thus, there would be little policy basis for adopting a higher level of cost recovery in relation to the higher courts, were this option adopted in the current circumstance.

⁶⁸ This fee effectively replaces the current fee for inspection of the register, which is levied at the rate of 1 fee unit per 5 minutes, or part thereof. Thus, the fees are not directly comparable, as the proposed search and handling fee would be charged at a flat rate.

⁶⁹ A single per-page photocopying fee is currently charged in the Magistrates' Court, but is not contained within the existing fees regulations.

Table 7.7 demonstrates the impact on court fee revenues of the adoption of this option across all jurisdictions, in both dollar terms and percentage terms. As a result of the adoption of this option, it is clear that overall revenue from each of the jurisdictions' fees regulations would be reduced. In total, the adoption of this option would reduce fee revenues by \$8.3 million by comparison with current fee levels. That is, total fee revenue across the three court jurisdictions would fall from the current \$37.8 million to around \$29.5 million.

Table 7.7: Total recurrent expenditures on civil matters by court jurisdiction and expected fee revenue

Court	Expenditure	Revenue	% cost recovery	Change in revenue to achieve 25% cost recovery	Change in revenue
Supreme Court	\$42.37m	\$13.42m	35.7%	- \$2.83m	- 21.1%
County Court	\$25.49m	\$8.01m	32.0%	- \$1.68m	- 20.4%
Magistrates' Court (only)	\$50.25m	\$16.35m	30.2%	- \$3.79m	- 23.2%
Total	\$118.11m	\$37.78m	32.0%	- \$8.3m	- 22.0%

Source: Productivity Commission (RoGS). Data for 2010-11.

Note: Supreme Court data includes Probate Office.

The implication of this reduction in revenue is that taxpayers would finance an increased proportion of the costs of litigation of civil matters in the Victorian court system. In the aggregate, taxpayers would increase their contribution from 68% to 75% of the total, or from \$80.3 million to \$88.6 million, approximately.

While the preceding section has pointed to some arguable equity benefits in specific contexts in relation to this option, it is also clearly arguable that broader equity outcomes, considered as between court users and taxpayers, are likely to be poorer were this option to be reduced. As per the preceding discussion, the operation of the civil courts gives rise to both public and private benefits. A 25% cost recovery level can only be justified if it is considered that the preponderance of the benefits arising - i.e. around 75%, or three quarters - are, in fact, public benefits.

The fact that most Magistrates' and County Court jurisdictions around Australia charge fees that recover a significantly higher proportion of recurrent costs than this suggests that it is widely believed that private benefits loom larger among total benefits. This conclusion is also reinforced by the substantially higher level of cost recovery historically attained in Victoria, which neared 50% under the previous (pre-2001) regulations and exceeded 40% at the time of the introduction of the current regulations.

Moreover, the broader context is one in which governments around Australia are increasingly seeking to ensure user charges in a wide range of areas recover substantial proportions of the costs of government service provision, in the interests of controlling costs to taxpayers.

8. Identification and assessment of feasible options: Juries (Fees) Regulations

8.1. Overview

Civil trials may be heard by a judge alone, or a judge and jury of six people. A plaintiff or defendant may request that the matter be heard before a jury⁷⁰. In practice, most civil matters are heard by a judge sitting alone⁷¹, although there has been a considerable resurgence in the number of jury trials in civil matters in the Supreme Court in recent years. The function of a civil jury is to apply legal standards, as explained by a judge, to the facts as they find them. They do so as ordinary members of the public, without special expertise. They are most often called on to determine issues such as the duty owed by one person to another and whether a reasonable standard of care has been discharged. In doing so, they ensure that the application of legal standards reflects the community which the law serves. This enriches the justice system.

The costs associate with the use of juries in civil trials are, necessarily, incurred only if a party to the matter requests that it be heard by a judge and jury, rather than a judge alone. Given this, and the fact that a just outcome can necessarily be attained without this additional cost, it is clearly appropriate for litigants who elect to have a matter heard by a judge and jury to bear a significant proportion of the incremental costs associated with the use of a jury. Historical practice has reflected this view, with over 88% of the identified costs associated with the use of civil juries being recovered via the current fees.

Given this context, two fees options have been identified in relation to the proposed juries regulations. These are 50% cost recovery and full cost recovery. While there is clearly a range of possible cost recovery levels, the Department of Justice believes that a 50% cost recovery level is the minimum level that is consistent with the requirement that the litigant make a substantial contribution to jury costs. These two options are considered below.

It has not proven possible to model the costs associated with the three fees contained in the Juries (Interim) Regulations 2012 individually. A qualitative assessment of the relativities between these fees suggests that they remain broadly appropriate. Thus:

- the relative size of the fee for days 2 - 6 and that for days 7 onward is broadly equal to the relative size of the payments made to individual jurors in the equivalent periods;
- the setting down fee includes the cost of payments to jurors for the first day of a hearing; and

⁷⁰ <http://www.justice.vic.gov.au/home/courts/victorian+courts/justice+-+county+court>

⁷¹ <http://www.supremecourt.vic.gov.au/home/about+the+court/history/>

- the table in Section 2.10 suggests that the direct costs associated with empanelling jurors accounts for about 13% of total direct costs (i.e. these costs plus juror payments). It is plausible that the ratio between the revenue from the setting down fee and that from the remaining fees would broadly reflect this ratio.

Table 8.1, below, compares the size of each fee with the size of the payments made to jurors. The difference between these two amounts represents the contribution made to the recovery of the costs of the Juries Commissioner's Office (JCO) from the payment of each fee.

Table 8.1: Juries fees and payments to jurors

Fee	Amount	Juror payments	JCO cost contribution
Setting down	\$573.10	\$39 per juror	\$339.10
Days 2 - 6	\$69.70 per juror	\$39 per juror	\$30.70 per juror
Day 7 onward ⁷²	\$138.10 per juror	\$78 per juror	\$60.10 per juror

As noted in Section 5, above, it has not proven possible to calculate directly the costs associated with each of the above fees separately. Implicitly, the setting down fee should recover both the costs associated with the initial selection and empanelling of the jury, as well as the first day's payment to juror's, while the subsequent daily fees should cover the daily payment to jurors, plus the administrative and other costs incurred by the court in managing and providing relevant facilities to jurors (including such factors as travel and accommodation allowances, where applicable).

Table 8.1 suggests that the current fees appear to be broadly proportionate, in these terms. Thus, in the absence of specific data that would justify a change, it has been determined that the current fee relativities should be retained. Thus, both of the options set out below are based on the application of a uniform percentage change to each of the current fees in order to achieve the relevant cost recovery level of 100% and 50%, respectively.

8.2. Option 1: Full cost recovery

8.2.1. Expected benefits of option 1

Under option 1, the current level of each of the juries fees would all be increased by 13.3%, to achieve a full cost recovery outcome. Table 8.2, below, compares the existing fees and those that would be adopted under this option.

⁷² Note that if a juror's service extends beyond 12 months, a daily rate of \$155 becomes payable. This is, however, necessarily a rare occurrence.

Table 8.2: Juries fee under option 1

	Current fee	Proposed fee (\$2010-11)	Change	Proposed fee (\$2012-13)	Change
Setting down	\$573.10	\$649.30	+\$76.20	\$680.80	+ \$107.70
Days 2 - 6	\$69.70 per juror	\$77.50 per juror	+\$7.80 per juror	\$81.30 per juror	+ \$11.60 per juror
Day 7 onward	\$138.10 per juror	\$153.70 per juror	+\$15.60 per juror	\$161.20 per juror	+ \$23.10 per juror
Revenue⁷³	\$568,000	\$643,633	+\$75,633	\$674,872	+ \$106,872

Table 8.2 shows that the setting down fee would rise by \$76.20 under option 1, while the fee payable daily in respect of days 2 - 6 of a hearing would rise by \$47.20. A larger increase, totalling \$93.60, would be applied in respect of the daily fee for days 7 and thereafter of a hearing. The expected increase in annual revenue is \$75,633. This modest increase reflects the fact that relatively few litigants elect to have their matter heard by a judge and jury, as noted above. This fact is also reflected in the low level of current revenue from these regulations, of \$568,000.

The adoption of option 1 would ensure that the full cost associated with the use of a jury in a civil trial would be recovered from litigants and that the taxpayer would make no contribution. By contrast, there is currently a taxpayer subsidy of almost \$76,000 per annum toward this cost. The move to full cost recovery is an appropriate outcome from an equity perspective, since the use of a jury in a civil hearing is an option which litigants exercise by choice, rather than being a cost that is necessarily incurred. Moreover, there are not considered to be any additional public benefits arising from the hearing of a matter by a judge and jury, rather than a judge sitting alone.

In addition to the equity benefit, there may arguably be an efficiency benefit associated with the small increase in current fees implied by Option 1. That is, there would be a small increase in the size of the price signal provided by the fees, potentially implying that fewer jury trials would result, at the margin. The likely size of any such effect can be expected to be very small, however, given both the small size of the fee increase involved and the fact that relatively few matters are currently heard by judge and jury in the civil courts.

8.2.1. Expected costs of option 1

From the perspective of litigants, option 1 would raise jury-related fee payments by 13.3%. This may have some marginal impact in reducing access to jury trials.

⁷³ 2010-11. Source: JCO.

However, given that these fees are very small in relation to overall legal costs in almost all cases, the size of this impact is considered to be near-trivial in practice.

8.3. Option 2: 50% cost recovery

8.3.1. Expected benefits of option 2

As noted above, 88.2% cost recovery is currently being achieved in respect of juries costs. Thus, the adoption of a cost recovery level of 50% would lead to a quite substantial reduction in the current level of fees payable by litigants who choose this option. Table 8.3 shows the expected impact of the adoption of this option on the juries fees and revenue.

Table 8.3: Juries fees under option 2

	Current fee	Proposed fee (\$2010-11)	Change	Proposed fee (\$2012-13)	Change
Setting down	\$573.10	\$324.60	-\$249.50	\$340.40	- \$272.70
Days 2 - 6	\$69.70 per juror	\$38.80 per juror	-\$30.90 per juror	\$40.70 per juror	- \$29.00 per juror
Day 7 onward	\$138.10 per juror	\$76.90 per juror	-\$61.20 per juror	\$80.60 per juror	- \$57.50 per juror
Revenue	\$568,000	\$321,816	-\$246,184	\$337,436	- \$230,564

Table 8.3 shows that the setting down fee would fall by almost \$150 under this option, in 2010-11 dollar terms, while the daily fee payable from days 2 - 6 would fall by \$185.30 and that payable on days 7 and thereafter would fall by \$367.00. There would be an average decline of 26.1% in fee payments, vis-a-vis the current situation. This would represent a small, but not insignificant, reduction in court costs for litigants choosing a jury trial.

8.3.2. Expected costs of option 2

From the taxpayer viewpoint the current contribution to the costs of providing juries in civil trials would rise substantially. As noted in Section 8.2, above, this subsidy is currently very small, amounting to only \$75,633 in 2010-11. However, on a "steady state" basis, this subsidy would be expected to rise to \$321,816 under option 2. This represents an increase of \$246,184, or 325%, approximately. Given the overall context of a move to increase the user contribution to the cost of civil court actions, such an outcome could not be seen as representing an equity improvement.

9. Conclusion

The following assesses the options considered above in respect of each set of regulations in comparative terms and comes to a judgement as to the preferred option in each case with the aid of a Multi-Criteria Analysis. A separate assessment is made in respect of each set of regulations, given that the relevant considerations differ somewhat between the two cases.

9.1. Magistrates Court (Fees) Regulations

The conduct of a process analysis in respect of each of the activities associated with the current Magistrates Court (Fees) Regulations has provided the basis for a resetting of the relativities between the individual fees contained in these regulations. This will allow a substantially better alignment between the costs incurred and the fees charged in individual cases than is achieved under the current regulations. As such, it will yield a significant improvement in equity as between court users. It should also yield some, albeit small, efficiency gains due to more appropriate price signals being set.

Consequently, each of the three options considered above uses the results of this process analysis as the basis for the development of the proposed fees. This means that the fee options considered essentially differ in terms of the degree of cost recovery that each implies. The three options assessed would imply:

- 100% cost recovery;
- 50% cost recovery; and
- 25% cost recovery, respectively.

Within the context of these different aggregate cost recovery amounts, there are also differences between the options in terms of specific classes of fees. Thus, the full cost recovery option implies that full cost recovery would be applied in all fee contexts. Conversely, the 50% cost recovery option would involve the adoption of full cost recovery for administrative fees, 50% cost recovery for fees requiring judicial input and slightly less than 50% cost recovery for block fees (which also involve large elements of judicial input). The 25% cost recovery option would involve 25% cost recovery for all fees within the Magistrates' Court.

9.1.2 Assessment of the alternatives against the existing regulations

As noted above, the current cost recovery level in the Magistrates' Court is approximately 30%. This implies that the 25% cost recovery option would lead to a relatively small decline in revenue, while both the 50% and 100% cost recovery options would yield substantial increases. Table 9.1 summarises the expected impact on revenue of the three options considered.

Table 9.1: Expected annual revenue

Option	Expected revenue (PV over 10 yrs)	Change (cf existing regs)
Current regulations	\$15.9m	-
Option 3 (25% cost recovery)	\$13.2m (\$109.9m)	-\$2.7m (17.0%)
Option 2 (50% cost recovery)	\$26.4m (\$219.8m)	+\$10.5m (66.0%)
Option 1 (100% cost recovery)	\$52.6m (\$437.8m)	+36.7m (230.8%)

Note: Data based on 2012-13 fee unit values

It must be noted that all of the above estimates are calculated on a "steady state" basis, using 2010-11 turnover data as the base for the calculations. Actual revenue results could vary significantly from the above were court initiations or other factors to change materially.

9.1.2. Assessment against the unregulated base case

Because the context for the adoption of the proposed regulations is one in which existing regulations are sunsetting, the various options must be assessed against an unregulated base case. In this base case, no fees would be charged to users of the Magistrates' Court's civil jurisdiction and no fees would be charged in respect of the costs of juries where litigants choose to have civil matters heard in the County or Supreme Courts by a judge and jury, rather than a judge alone. This means that taxpayers would bear all of the relevant costs.

Column two of table 9.1, above, demonstrates the revenue implications of each option : that is, there would be zero revenue in the base case, hence the total revenue that would be obtained under each option represents the comparison against the base case.

However, the relative merits of the different options cannot be assessed simply with regard to their revenue implications. Consistent with the discussion contained in the earlier sections of this RIS, the following three criteria have been identified as relevant to the determination as to which option should be preferred.

- Equity between court users and taxpayers
- Equity between different groups of court users (efficiency)
- Access to justice

Because these criteria must be assessed largely qualitatively, a Multi-Criteria Analysis has been developed to enable the assessment of the various options. This involves scoring each of the options on each criterion, measured against the unregulated base case. The preferred option is that which receives the highest overall score.

The following discusses the relevance of each of these criteria and the rationale for the score given to each option.

Scoring and weighting

Where an option is judged as being superior to the unregulated base case in respect of a particular criterion, it receives a positive score. Conversely, where it is considered inferior, it receives a negative score. Options are scored on a scale of - 10 to + 10, consistent with the VCEC's guidance note on the use of MCA.

Each criterion has been weighted evenly reflecting the importance of each to the proper functioning of the fee regulations in the court system.

Criterion 1: Equity between court users and taxpayers

As discussed above, it is widely accepted that the operation of the courts gives rise to both public and private benefits. In the case of the Magistrates' Court, there is no substantive ability of decisions to act as precedents, unlike the case of the higher courts. Thus, one important source of public benefit in respect of the courts generally must be given very little, if any, weight in relation to the Magistrates' Court. However, the major source of public benefits in relation to the activities of the courts is the broad public benefit derived from the provision of an authoritative and credible forum for the resolution of private disputes. The availability of a credible and trusted system of justice has long been considered to be indispensable to a well-functioning society and as a necessary underpinning to the protection of private property rights and the rights of individuals and organisations more generally. The operations of the Magistrates' Court, which hears a larger number of matters than any other jurisdiction, and to which individuals, in particular, are more likely to bring disputes than to other courts, are highly significant in the achievement of this public benefit.

This mix of benefits implies that the cost of funding those operations should be shared between taxpayers and users of court services. This, in turn, means that both of the partial cost recovery options considered must be scored as being superior to the unregulated base case, since the taxpayer would meet all the costs of the court system in that case.

The full cost recovery option performs less well than either of the partial cost recovery options, given the existence of public benefits arising from the work of the courts. This judgement reflects, in the first instance, the fact that - as shown in Section 3 - historical cost recovery levels in Victoria as well as present and past cost recovery levels in other Australian states and territories, as well as in New Zealand, have uniformly been below 50%. This suggests that the historical view taken is that the public benefits from the operation of the courts are at least as large as the private benefits. This suggests that an option that contains no public subsidy will be less equitable than one which contains public subsidies. Thus, Option 1 (full cost recovery)

scores lowest against this criterion⁷⁴. Option 2 is ranked highest on this criterion, reflecting the view that the public and private benefits attained from the operation of the civil jurisdiction of the Magistrates' Court are broadly similar in size. This implies a need for a broadly equal allocation of costs between users and taxpayers. It can be noted that cost recovery levels being achieved at the time of the adoption of the existing regulations were over 40%, indicating that this view of the similar importance of the public and private benefits is one that has been held for some time.

When comparing the two partial cost recovery options, time-series comparisons of the Victorian data indicate that a 50% cost recovery option is more consistent with historical views of the appropriate degree of cost recovery than is 25%. Conversely, the average cost recovery level in Magistrates' Courts across Australia at present is closer to 25%, suggesting that the view in other parts of Australia is that this represents a more appropriate level of cost recovery.

Criterion 2: Equity between different groups of court users (efficiency)

Fee options should also be assessed in terms of their impact on economic efficiency. Two different dimensions of efficiency are identified in economics - allocative and productive efficiency. The former requires that court resources are "optimally allocated" - that is, that the most significant cases are heard. The underlying concept is that the "value added" by the court system resolving more substantial disputes will generally be higher. In general, it can be expected that higher court fees will act as a greater disincentive to potential litigants to take smaller matters to court, whereas litigants with larger amounts at stake will be less affected. Thus, higher fees can be said to favour allocative efficiency.

The second dimension of efficiency is productive efficiency. This implies that outputs are produced efficiently. In the current context, this means that the costs which the fees seek to recover are "efficient costs". It is arguable that higher fees also favour productive efficiency, all things being equal, since the higher fee levels will tend to lead to a greater level of scrutiny being applied to the court. For example, if fees are unusually high by national standards, users may be more likely to make comparisons of court costs across jurisdictions and to advocate for greater efficiency

Given the above, the full cost recovery option scores highest on this criterion, the 50% cost recovery option scores next highest and the 25% cost recovery option scores lowest.

⁷⁴ As a matter of arithmetic, Option 3 is superior to Option 1 provided the private benefits of civil court action account for less than 75% of total benefits. Above this level, however, a 100% cost recovery option will more appropriately distribute cost incidence than will a 25% cost recovery option.

Criterion 3: Access to Justice

All of the options considered would imply some reduction in effective access to justice, vis-a-vis the base case of having no fees. This is because all would involve higher litigation costs than in the base case. However, court fees constitute a very small proportion of the total costs of undertaking litigation, which also include the costs of hiring legal counsel, the implicit costs of the litigants' time and the costs that may be associated with obtaining evidence to support one's position. Even full cost recovery based fees would be small in relation to the total of these other costs. Moreover, the existence of a mechanism by which fees can be waived in some cases would further reduce the extent to which fee increases would have negative impacts for access to justice. That said, current practice is that the fee waiver power is used relatively rarely, so that this consideration may be of limited importance.

Given these factors, all options score negatively when assessed in relation to the base case. However, the size of these negative scores is small, while there is little differentiation between the options. Option 3, which implies the lowest fee levels, scores - 1, while option 2 scores - 2 and option 3 scores - 3.

Table 9.2: Multi-Criteria Analysis of court fees options

Criterion	Option 1: 100% cost recovery	Option 2: 50% cost recovery	Option 3: 25% cost recovery
Equity between court users and taxpayers	0 * 33.3% = - 0	+10 * 33.3% = + 3.33	+6 * 33.3% = + 2.0
Equity between different court users (efficiency)	+10 * 33.3% = + 3.33	+ 6 * 33.3% = + 2.0	+ 2 * 33% = + 0.67
Access to justice	- 3 * 33.3% = - 1.0	-2 * 33.3% = - 0.67	-1 * 25% = - 0.33
Total	+ 2.33	+ 4.67	+ 2.33

9.1.3. Conclusion

Table 9.2 sets out the scores of each of the three options against each of the three criteria assessed, with the base case being that of no fee setting regulations being adopted. All three options received positive scores, indicating that they are preferred to the base case, in which no fees would be charged. However, Option 2, of adopting 50% cost recovery based fees, scores highest with + 4.67 points. Both Option 1, that of adopting full cost recovery based fees, and option 3, that of adopting 25% cost recovery based fees, score 2.33 points.

Option 2 is the preferred option because it scores most highly in terms of equity between court users and taxpayers, while also scoring relatively highly in terms of the efficiency criterion. Its high score against Criterion 1 reflects an underlying judgement that both the public and private benefits of the services provided by the civil

jurisdiction of the Magistrates' Court are of substantial importance and that fees should reflect this.

Option 1, receives a lower score because it performs poorly in relation to both the equity between court users and taxpayers and access to justice criteria, but is clearly preferable to the base case, as it receives a significant positive score. Option 3, of adopting 25% cost recovery for the Magistrates' Court fees and 50% cost recovery in respect of civil jury costs, is also clearly preferred to the base case, largely because it scores better in terms of equity as between court users and taxpayers. It can also be noted that, while it is broadly similar to the current regulations in terms of overall cost recovery levels, it is superior in terms of the better matching it achieves between individual fees and costs.

Given these outcomes, it is proposed to proceed to make the Magistrates Court fees regulations as described above in Option 2. Appendix 3, below, provides a detailed comparison of the fees established in the current regulations and the proposed fees.

9.2. Juries (Fees) Regulations

9.1.2 Assessment of the alternatives against the existing regulations

Two options were considered in relation to the proposed Juries (Fees) Regulations 2012. These involved 100% and 50% cost recovery outcomes, respectively. In each case, the fee relativities would remain identical to those currently in place. Thus, the fees would each increase (or decrease) by the same percentage vis-a-vis the current fees. The implications for revenue of each option are set out below in Table 9.3. In each case, the expected revenue is compared with that obtained in 2010-11 under the existing regulations.

Table 9.3: Expected annual revenue - Juries (Fees) Regulations

	Annual revenue	\$ Change (cf existing regs) (% change)
Current regulations	\$595,548	-
Option 1 (100% cost recovery)	\$674,849	+ \$79,301 (11.8%)
Option 2 (50% cost recovery)	\$337,424	- \$258,123 (76.5%)

Note: Data based on 2012-13 fee unit values

Table 9.3 shows that the adoption of Option 1 would lead to an increase of \$75,633, or 13.3% in existing revenue, while the adoption of Option 2 would result in a decline of \$246,184, or 43.3%, in existing revenue.

9.2.2. Assessment against the unregulated base case

Because the context for the adoption of the proposed regulations is one in which existing regulations are sunseting, the various options must be assessed against an unregulated base case. In this base case, no jury related fees would be charged to litigants in the civil jurisdiction of the County and Supreme Courts who chose to have matters heard by a judge and jury and, accordingly, revenue received would be \$568,000 below current levels in this regard. Thus, considered against this base case, option 1 involves collection of \$643,633 in additional revenue, while Option 2 involves collection of half of this amount, or \$321,816 in additional revenue⁷⁵.

However, the relative merits of the different options cannot be assessed simply with regard to their revenue implications. The two options have been assessed using an MCA which adopts the same three assessment criteria as are employed above in respect of the Magistrates' Court (Fees) Regulations. These were:

- Equity between court users and taxpayers;
- Equity between different groups of court users (efficiency); and
- Access to justice.

The following discusses the relevance of each of these criteria to the Juries (Fees) Regulations and the rationale for the score given to each option.

Scoring and weighting

Where an option is judged as being superior to the unregulated base case in respect of a particular criterion, it receives a positive score. Conversely, where it is considered inferior, it receives a negative score. Options are scored on a scale of - 10 to + 10, consistent with the VCEC's guidance note on the use of MCA.

Each criterion has been weighted evenly reflecting the importance of each to the proper functioning of the fee regulations in the court system.

Criterion 1: Equity between court users and taxpayers

As discussed above, it is widely accepted that the operation of the courts gives rise to both public and private benefits. However, no additional public benefits are obtained by virtue of matters being dealt with by a judge and jury, rather than a judge alone. To the extent that any additional benefits are obtained, they are considered to be essentially private in nature.

Given this, option 1, involving full cost recovery, is clearly superior to option 2 on the equity criterion. Both criteria are, however, clearly superior to the unregulated base case, in which there would be zero cost recovery achieved. Thus, option 1 scores 10 points and option 2 scores 5 points.

⁷⁵ These are approximate figures only, derived simply from extrapolation of the 2010-11 revenue data supplied by JCO.

Criterion 2: Equity between different court users (efficiency)

Fee options should also be assessed in terms of their impact on economic efficiency. As noted above, two different dimensions of efficiency are identified in economics - allocative and productive efficiency. The former requires that court resources are "optimally allocated" - that is, that the most significant cases are heard. The underlying concept is that the "value added" by the court system resolving more substantial disputes will generally be higher. In general, it can be expected that higher court fees will act as a greater disincentive to potential litigants to take smaller matters to court, whereas litigants with larger amounts at stake will be less affected. Thus, higher fees can be said to favour allocative efficiency.

The second dimension of efficiency is productive efficiency. This implies that outputs are produced efficiently. If it accepted that the "quality of justice" delivered is equivalent, regardless of whether a matter is heard by judge alone or judge and jury, then it can be argued that the use of a jury represents a less efficient outcome, since the costs involved are necessarily higher.

It is not expected that the level of the juries fees charged would have more than the most minor impact on decisions as to whether to request a matter be heard by judge and jury. However, to the extent that the use of juries is reduced, the above factors suggest that efficiency outcomes are improved. Thus, option 1, of 100% cost recovery, scores slightly higher than option 2 on this criterion. Both options score more highly than the unregulated base case, in which no fees would be charged. Thus, Option 1 scores 5 points and option 2 scores 2.5 points.

Criterion 3: Access to Justice

Both of the options considered would imply some reduction in effective access to justice, vis-a-vis the base case of having no fees. This is because all would involve higher costs than in the base case. However, juries fees constitute a very small proportion of the total costs of undertaking litigation, which also include the costs of hiring legal counsel, the implicit costs of the litigants' time, the costs that may be associated with obtaining evidence to support one's position and the costs of the court fees per se.

Given these factors, all options score negatively when assessed in relation to the base case. However, the size of these negative scores is small, while there is little differentiation between the options. Option 1, scores - 5 on this criterion, while option 2 scores - 2.5.

Table 9.4: Multi-Criteria Analysis of juries fees options

Criterion	Option 1: 100% cost recovery	Option 2: 50% cost recovery
Equity between court users and taxpayers	+ 10 * 33.3% = + 3.33	+5 * 33.3% = + 1.67
Efficiency	+5 * 33.3% = + 1.67	+ 2.5 * 33.3% = + 0.83
Access to justice	- 5 * 33.3% = - 1.67	-2.5 * 33.3% = - 0.83
Total	+ 3.33	+ 1.67

9.1.3. Conclusion

Table 9.4 sets out the scores of the two options against each of the three criteria assessed, with the base case being that of no fee setting regulations being adopted. Both options received positive scores, indicating that they are preferred to the base case, in which no fees would be charged. However, Option 1, that of adopting full cost recovery based fees, scores higher, with + 3.33 points, while Option 2, of adopting 50% cost recovery based fees scores + 1.67 points. Option 1 receives the higher score largely because it performs better in relation to both the equity between court users and taxpayers criterion.

Given these outcomes, it is proposed to proceed to adopt full cost recovery in relation to the Juries (Fees) Regulations.

Other potential cost recovery levels

Question: *While the above analysis has focused on three potential cost recovery levels (i.e. 25%, 50%, 100%), which are considered representative of the potential options in this regard, there is clearly a continuum of possible cost recovery levels in relation to the proposed fees. Stakeholder views are sought on the question of whether any other cost recovery target should be given consideration as being potentially more appropriate than those assessed in the above analysis and what would be the basis for considering these options to be superior to those discussed above.*

10. Consultation

The proposed regulations have been developed following consultations with the Magistrates' Court and the Office of the Juries Commissioner. There has also been inter-departmental consultation with VicRoads and the Department of Treasury and Finance. In each case, the current fee structure has been assessed as remaining broadly appropriate, with a limited number of new or amended fees being proposed.

Public consultation has not been conducted prior to the development of the draft regulations. Hence, the release of this RIS constitutes the main opportunity for consultation with court users in relation to the proposed fees. As part of this process, key stakeholder groups including the Law Institute of Victoria, the Victorian Bar Council, Legal Aid Victoria, Victoria Police and the Federation of Community Legal Centres and WorkSafe will be sent copies of this RIS and their inputs will be sought specifically.

Public comment in response to the RIS and the draft regulations will be received for 28 days following the release of the RIS. This period of consultation reflects the fact that both sets of regulations discussed in this RIS have an imminent sunset date and that it is essential that the proposed regulations are in place prior to these sunset dates.

11. Statement of Compliance with National Competition Policy

The National Competition Policy Agreements (“NCPA”) set out specific requirements with regard to all new legislation adopted by jurisdictions that are party to the agreements. Clause 5(1) of the Competition Principles Agreement sets out the basic principle that must be applied to both existing legislation, under the legislative review process, and to proposed legislation:

The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:

- (a) The benefits of the restriction to the community as a whole outweigh the costs; and*
- (b) The objectives of the regulation can only be achieved by restricting competition.*

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation:

Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).⁷⁶

Accordingly, every regulatory impact statement must include a section providing evidence that the proposed regulatory instrument is consistent with these NCP obligations. The recently released OECD Competition Assessment Toolkit⁷⁷ provides a checklist for identifying potentially significant negative impact on competition in the RIA context. This is based on the following three questions:

- Does the proposed regulation limit the number or range of suppliers?
- Does the proposed regulation limit the ability of suppliers to compete?
- Does the proposed regulation limit the incentives for suppliers to compete vigorously?

According to the OECD, if all three of these questions can be answered in the negative, it is unlikely that the proposed regulations will have any significant negative impact on competition.

The proposed regulations do not act directly in any of the above ways. Therefore, it can be concluded that they are unlikely to have any significant negative impact on competition.

In sum, it has been concluded that the proposed regulations are fully compliant with the requirements of the National Competition Policy.

⁷⁶ Clause 5, Competition Principles Agreement, 11 April 1995 accessed at www.ncc.gov.au/pdf/PIAg-001.pdf

⁷⁷ See *Integrating Competition Assessment into Regulatory Impact Analysis*. OECD, Paris, 2007. (DAF/COMP(2007)8).

12. Implementation and enforcement

Fees are collected by the court registry. Receipt of the relevant fees, or the issue of a fee waiver, in civil cases is a pre-condition for a matter to progress through the court system. Consequently, there is no problem of enforcement of the requirement to pay fees, at least in the first instance.

That said, it is noted in Section 2, above, that costs orders may be issued in many cases, to allow fees that have initially been paid by one party to a dispute to be recovered from another. The issue of non-compliance with these orders will arise, and is dealt with through the normal processes by which the courts enforce their orders. In the case of monetary debts, this can include the seizure of assets through the operation of the Sheriff's office.

13. Monitoring and evaluation

As discussed above, the proposed fees set out in this RIS are, for the first time, based on estimates of the costs incurred in carrying out the specific tasks to which individual fees relate. This means that there should be a greater correlation between fees paid by individual users of court services and the costs to which they give rise in the future than has been the case to date. Consequently, equity as between different court users should be significantly improved.

However, it must be acknowledged that the cost data obtained from the courts administration lacks detail when considered at the level of the costing of individual administrative and judicial functions. This implies a need to continue to work to refine the cost data available to the courts administration for future managerial purposes, including the setting of future fees.

All courts, including the Magistrates' Court, are currently investigating the development and implementation of enhanced financial management systems which are expected to provide the basis for developing enhanced cost information in the future. This should ensure that subsequent regulations will entail further equity and efficiency gains, vis-a-vis those currently proposed.

Appendix 1: Proposed Magistrates Court (Fees, Costs and Charges) Regulations 2012

STATUTORY RULES 2012

S.R. No. /2012

Magistrates' Court Act 1989

Magistrates' Court (Fees) Regulations 2012

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

ROBERT CLARK
Attorney-General

Clerk of the Executive Council

1 Objective

The objective of these Regulations is to prescribe the fees payable in respect of proceedings in the Magistrates' Court of Victoria.

2 Authorising provision

These regulations are made under section 140 of the **Magistrates' Court Act 1989**.

3 Commencement

These regulations come into operation on 29 September 2012.

4 Revocation

The following Regulations are **revoked**-

- (a) the Magistrates' Court (Fees, Costs and Charges) Interim Regulations 2011¹;
- (b) the Magistrates' Court (Fees, Costs and Charges) Interim Amendment Regulations 2011²;
- (c) the Magistrates' Court (Fees, Costs and Charges) Interim Regulations 2012³.

5 Definitions

In these Regulations—

the Act means the **Magistrates' Court Act 1989**;

the Rules means the Magistrates' Court General Civil Procedure Rules 2010⁴.

6 Exemption from these Regulations

These regulations do not apply to-

- (a) proceedings under the **Family Violence Protection Act 2008**;
- (b) proceedings under the **Maintenance Act 1965**;
- (c) proceedings under the **Personal Safety Intervention Orders Act 2010**;
- (d) a judgment debtor filing for an application for an instalment order, or an instalment agreement or an application for variation or cancellation of an instalment order under section 6,7 or 8 of the **Judgment Debt Recovery Act 1984**.

7 Exemption from initiation fees in the criminal jurisdiction

The following persons or class of persons are exempt from paying the fees set out in Part 1 and item 3.2 of the Schedule—

- (a) a member of the police force acting in the course of his or her duty;
- (b) a person acting for or by authority of the Crown;
- (c) a person acting for or by authority of a municipal council where the proceeding relates to public health;
- (d) a POCTA inspector within the meaning of the **Prevention of Cruelty to Animals Act 1986** acting in the course of his or her duty;
- (e) a person authorised under section 24ZW of the **Prevention of Cruelty to Animals Act 1986** to file a charge for an offence referred to in that section.

8 Fees

The fees payable for proceedings in the Magistrates' Court are the fees set out in the Schedule.

SCHEDULE

SCALE OF FEES

PART 1 – FEES PAYABLE IN CRIMINAL JURISDICTION

COMMENCEMENT OF PROCEEDINGS

- 1 For the filing of a charge sheet to answer to a single charge 5.7 fee units.
- 1.2 For the filing of a charge sheet to answer to multiple charges 8.6 fee units.
- 1.3 For the lodging of the prescribed information under section 40(1)(a) of the **Infringements Act 2006** to have a single lodgeable infringement offence heard and determined in the Court 5.7 fee units.
- 1.4 For the lodging of the prescribed information under section 40(1)(a) of the **Infringements Act 2006** to have multiple lodgeable infringement offences heard and determined in the Court 8.6 fee units.

APPLICATIONS UNDER THE ROAD SAFETY ACT 1986

- 1.5 Filing an application under section 50(4) of the **Road Safety Act 1986** for an order as to the issue of a drivers licence or permit 7.7 fee units.
- 1.6 Filing an application under section 50(4) of the **Road Safety Act 1986** for an order under section 50(4D) reducing the period set out in section 50(4B)(a) in which an assessment report must be obtained from an accredited agency 5.9 fee units.

PART 2 – FEES PAYABLE IN CIVIL JURISDICTION

COMMENCEMENT OF CIVIL PROCEEDINGS

2.1 For filing every complaint,
counterclaim or third party notice
where the amount claimed is for
monetary relief that does not exceed
\$1000 or where the claim is one
other than for monetary relief

fee 10.2
units.

2.2 For filing every complaint,
counterclaim or third party notice
where the amount claimed exceeds
\$1000 but does not exceed \$10,000

units.

21.3 fee

2.3 For filing every complaint,
counterclaim or third party notice
where the amount claimed exceeds
\$10 000 but does not exceed \$40 000

32.4 fee
units.

2.4 For filing every complaint,
counterclaim or third party notice
where the amount claimed exceeds \$40 000

48.6 fee
units.

ORDER

2.5 Request for order 3 fee
units.

**APPLICATIONS AND
ENFORCEMENT PROCESS**

2.6 For filing an interlocutory application 10.6
fee units.

- 2.7 For filing an application under the following sections of the **Landlord and Tenant Act 1958-**
- (a) section 88(1) (for leave to give notice to quit); or
 (b) section 96(1) (to stay or suspend the execution or to vary discharge or rescind any judgment or order); or
 (c) section 101(1) (for order of consent to lease, sale or use of premises)
- 6 fee units.
- 2.8 For every application by a judgment creditor under section
 6 or 8 of the **Judgment Debt Recovery Act 1984** or filing by a judgment creditor of an instalment agreement under section 7 of that Act
- 5.6 fee units.
- 2.9 For filing an application for an attachment of earnings order under Order 72 of the Rules
- 10 fee units.
- 2.10 For filing an application for registration of an interstate judgment
- 4.9 fee units.

ORAL EXAMINATION

- 2.11 For filing a summons for oral examination including examination of the judgment debtor under Order 67 of the Rules
- 7 fee units.

MEDIATION

- 2.12 For every mediation session conducted by a Registrar under Order 50 of the Rules
- 18.1 fee units.

2.13 Registrar	For every mediation session conducted by a Judicial	31.4 fee units.
-------------------	---	-----------------

HEARING FEES

2.14	For hearing at trial or arbitration after the first day- for every day or part of a day	41.7 fee units.
------	---	-----------------

Note: For the purpose of this item any hearing at trial or arbitration of less than 2 hours on the first day does not count as the first day.

ISSUE OF WARRANTS TO ENFORCE ORDERS

2.15 fee	For each warrant issued	1.2 units.
-------------	-------------------------	-------------------

PART 3 – FEES PAYABLE GENERALLY IN THE COURT

ISSUE OF ORDERS AND CERTIFICATES AND FILING OF SUMMONS TO WITNESS AND SUBPOENA

3.1	For each order or certificate issued or supplied	1.4 fee units.
-----	--	----------------

3.2 fee	For each summons to witness or subpoena to witness issued	3.4 units.
----------------	---	-------------------

PREPARATION OF DOCUMENTS BY A REGISTRAR

3.3 fee	For preparation by a registrar of a summons, warrant, certificate or other document	1.9 units.
------------	--	-------------------

SEARCHING, RETRIEVING AND PHOTOCOPYING FEES

3.4	For searching a database, inspecting a register,	
-----	--	--

- | | | |
|------|--|----------------|
| | retrieving a document or accessing any material filed, lodged or produced to or held by the court, for each request | 1.9 fee units. |
| 3.5 | If the search, inspection, retrieval or accessing referred to in item 3.4 involves the retrieval of files held offsite an additional fee of 1 fee unit per file. | |
| 3.6. | For photocopying or printing any document
60c per page. | |
-

END NOTES

- 1 Reg 4(a): S.R. No. 54/2011. Subsequently amended by S.R. No 90/2011.
- 2 Reg 4(b): S.R. No. 90/2011.
- 3 Reg 4(c): S.R. No. 59/2012.
- 4 Reg 5: definition of *the Rules*: S.R. No. 140/2010 as amended by S.R. Nos 152/2010, 36/2011, 149/2011 and 2/2012.

Appendix 2: Proposed Juries (Fees) Regulations 2012

STATUTORY RULES 2012

S.R. No. /2012

Juries Act 2000

Juries (Fees) Regulations 2012

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

ROBERT CLARK
Attorney-General

Clerk of the Executive Council

1 Objective

The objective of these Regulations is to prescribe fees payable by a party requiring a civil case to be tried by a jury in the Supreme Court or the County Court.

2 Authorising provision

These Regulations are made under section 90 of the **Juries Act 2000**.

3 Commencement

These Regulations come into operation on 29 September 2012.

4 Revocation

The Juries (Fees) Interim Regulations 2012¹ are **revoked**.

5 Fees for civil juries

(1) For the purposes of section 24(1) of the **Juries Act 2000**, the prescribed fee on setting a proceeding down for trial by a jury in the Supreme Court or the County Court is 54.3 fee units.

- (2) For the purposes of section 24(2) of the **Juries Act 2000**, the prescribed fees are—
- (a) for the second day and each subsequent day of a trial, not exceeding 6 days— 6.5 fee units for each member of the jury; and
 - (b) if a trial exceeds 6 days, for each day of the trial in excess of 6 days— 12.9 fee units for each member of the jury.

6 Administrative expenses in respect of refund of fees

For the purposes of section 24(7) of the **Juries Act 2000**, the prescribed fee is 4.6 fee units.

ENDNOTES

- 1. Reg. 4: S.R. No 60/2012.**

Appendix 3: Detailed comparison of current and proposed fees

A. Magistrates' court (Fees) Regulations

Table S7: Existing and proposed Magistrates' Court (Fees) Regulations

Reg	Fee description	Existing fee units	Existing fee (\$)	Proposed fee units	Proposed Fee (\$)	Percentage increase/decrease in fee units
1	File charge sheet-single charge	3.6	\$45.1	5.7	\$71.4	58%
1.2	File charge sheet-multiple charges	5.7	\$71.4	8.6	\$107.8	51%
1.3	Prescribed information- single offence	3.6	\$45.1	5.7	\$71.4	58%
1.4	Prescribed information- multiple offences	5.7	\$71.4	8.6	\$107.8	51%
1.5	Application to be relicensed	6.7	\$84.0	7.7	\$96.5	15%
1.6	Application to reduce time between assessments	3.1	\$38.8	5.9	\$73.9	90%
2.1	Commencement sub \$1k	6.2	\$77.70	10.2	\$127.8	65%
2.2	Commencement \$1k to \$10k	12.9	\$161.6	21.3	\$266.9	65%
2.3	Commencement \$10k -\$40k	19.6	\$245.6	32.4	\$406.0	65%
2.4	Commencement \$40k plus	29.4	\$368.4	48.6	\$609.0	65%
2.5	Request for order	1.5	\$18.8	3	\$37.6	100%
2.6	Interlocutory Application	3.1	\$38.8	10.6	\$132.8	242%
2.7	Applications L&TA 1958	3.1	\$38.8	6.0	\$75.2	94%
2.8	Instalment application or agreement	3.1	\$38.8	5.6	\$70.2	81%
2.9	Attachment of earnings application	3.1	\$38.8	10	\$125.3	223%
2.10	Registration of interstate judgement	N/A	N/A	4.9	\$61.4	Nil
2.11	Summons for oral examination	6.2	\$77.7	7.0	\$87.7	13%
2.12	Mediation - registrar (new fee)	N/A	N/A	18.1	\$226.8	Nil
2.13	Mediation – judicial registrar (new fee)	N/A	N/A	31.4	\$393.4	Nil
2.14	Hearing fees (daily)	18.5	\$231.8	41.7	\$522.5	125%
2.15	Warrant to enforce orders	1.5	\$18.8	1.2	\$15.0	-20%
3.1	Issue of a certificate	2.6	\$32.6	1.4	\$17.5	-46%
3.2	Issue of witness summons	N/A	\$7.00	3.4	\$42.6	509%
3.3	Preparation of documents by the registrar	1.5	\$18.8	1.9	\$23.8	27%
3.4	Search and handling fee (new fee)	N/A	N/A	1.9	\$23.8	Nil
3.5	Retrieval from storage (new fee)	N/A	N/A	1	\$12.5	Nil
3.6	Photocopy (per page) (new fee)	N/A	N/A	.60		Nil
Superseded fees						

7a	Summons under Part 3 IFDA 1958	3.1	\$38.8	Any Applications under this Act will be made under 7 – Interlocutory Application	
7b	Summons for oral examination	3.1	\$38.8	Fee – now part of Reg 10 Summons for Oral Examination	
8	Fee reduction for electronic lodgement	Nil	\$3.0	Reduction removed	- \$3.00
15	Inspection of register	1	\$12.5	Fee-now part of new search/handling fee	

For comparison, the table uses the 2012/13 fee value of \$12.53 to determine the fee unit values. All dollar values have been rounded to the nearest 10 cents.

B. Juries (Fees) Regulations

Reg. No.	Stage of proceeding	Existing fee-units	Existing Fee- \$	Proposed fee- units	Proposed fee- \$	Percentage change
5.1	Setting down	46.9	\$587.7	54.3	\$680.4	16%
5.2(a)	Days 2-6 (per juror)	5.7	\$71.4	6.5	\$81.4	14%
5.2(b)	Day 7 + (per juror)	11.3	\$141.6	12.9	\$161.6	14%
6	Admin Fee	4.6	\$57.6	4.6	\$57.6	Nil

For comparison, the table uses the 2012/13 fee value of \$12.53 to determine the fee unit values. All dollar values have been rounded to the nearest 10 cents.

Appendix 4: Magistrates' Court Scale of Costs, 2012

Magistrates' Court General Civil Procedure Rules 2010, SR 149/2011

ITEM Particulars of Service

EFFECTIVE 1 JANUARY 2012

1	<u>Claim for debt, liquidated demand</u> or claim arising from a motor vehicle collision for costs of repairs only or for total loss of vehicle only including all professional costs where the amount claimed is-	\$
(a)	Less than \$500	189
(b)	\$500 to less than \$5,000	395
(c)	\$5,000 to less than \$7,500	485
(d)	\$7,500 to less than \$20,000	583
(e)	\$20,000 to less than \$40,000	723
(f)	\$40,000 to less than \$70,000	871
(g)	\$70,000 and over	1041

2012 SCALE OF COSTS

Scale of costs and fees which may be claimed by Australian lawyers and counsel as between party and party as well as between Australian lawyer and client.

If in any case the Court or registrar thinks that any item is inadequate or excessive, the Court or registrar may allow a greater or lesser sum than the scale provides.

If the scale of costs does not provide for any case, the Court or registrar may allow reasonable costs.

A	B	C	D	E	F	G
Less than \$500	\$500 to less than \$5,000	\$5,000 to less than \$7,500	\$7,500 to less than \$20,000	\$20,000 to less than \$40,000	\$40,000 to less than \$70,000	\$70,000 and over

Particulars of Service

(costs for items 2-80 are set out in Table 1)

	Up to \$500	>500 <5,000	>5,000 <7,500	>7,500 <20,000	20,000 < 40,000	40,000 < 70,000	70,000+
	A	B	C	D	E	F	G
<u>Instructions</u>							
2 Instructions to make, issue or oppose an application or summons or any notice of objection under the Judgment Debt Recovery Act 1984 including instructions for any affidavit (not otherwise provided for).	65	65	65	98	121	145	169
<u>Institution of proceedings</u>							
3 Complaint, including instructions to sue, letter before action, attendances on counsel, copies for service, issuing and attendances on process server.	189	396	486	584	724	873	1044
4 Consent of litigation guardian including preparation of memorandum, copies and obtaining signature of litigation guardian.	n/a	n/a	142	185	189	201	214
5 Notices of defence to claim, counterclaim or 3rd party notice including instructions to defend, perusal of claim, counterclaim or 3rd party notice, reply, attendances on counsel, copies, filing and service.	88	187	232	276	345	415	498
6 Counterclaim, 3rd party notice, notice of contribution or any further pleading including instructions to issue, attendances on counsel, copies, filing and service.	101	208	255	304	378	455	545
7 Perusal of notice of defence, counterclaim, 3rd party notice or any pleading, and notice of contribution.	46	46	46	46	46	46	46

		Up to \$500	>500 <5,000	>5,000 <7,500	>7,500 <20,000	20,000< 40,000	40,000< 70,000	70,000+
	<u>Particulars</u>	A	B	C	D	E	F	G
8	Request for particulars of any document including attendances on counsel, copies, filing, service and perusal of further particulars	66	148	180	217	269	321	381
9	Further and better particulars of any documents including perusal of request, attendances by counsel, copies, filing and service.	60	125	149	180	223	270	323
	<u>View</u>							
10	Attending view, including arranging view and attendance on counsel	n/a	n/a	151	210	227	255	287
11	If the attendance exceeds half an hour - for each quarter hour thereafter.	n/a	n/a	17	43	43	43	43
	<u>Discovery</u>							
12	Notice of discovery including filing and service.	43	70	88	103	131	153	177
13	Perusal of affidavit of documents and inspection of documents.	53	100	118	147	183	219	257
14	Affidavit of documents including instructions, attendances on counsel, copies, swearing, filing, service and production of documents for inspection.	103	221	270	323	408	482	572
15	Notice to produce documents including filing and service.	43	66	88	103	131	153	177

		Up to \$500	>500 <5,000	>5,000 <7,500	>7,500 <20,000	20,000< 40,000	40,000< 70,000	70,000+
	<u>Interrogatories</u>	A	B	C	D	E	F	G
16	Interrogatories for examination including instructions, attendances on counsel, copies, filing, service and perusal of answers.	86	176	214	255	320	380	441
17	Answers to interrogatories including perusal of interrogatories instructions, attendances on counsel, copies, swearing and service.	113	241	306	368	455	548	649
	<u>Brief to advise</u>							
18	Brief to advise including preparation of memorandum to counsel attendances on counsel and perusal of advice.	n/a	n/a	151	210	227	255	286
	<u>Notices, undertakings, etc.</u>							
19	Any necessary notice (including notices before proceeding), certificate (including certificates before proceeding), undertaking, consent, order, memorandum (not otherwise provided for) including copies, filing and service.	42	75	89	105	132	154	186
20	Notice to admit including perusal of admissions, copies, filing and service.	113	113	113	154	195	235	281
21	Admissions, including perusal of notice to admit, copies, filing and service.	113	113	113	154	195	236	281
22	Offer of compromise or notice of acceptance of offer including copies, filing and service.	98	98	98	144	180	217	257

		Up to \$500	>500 <5,000	>5,000 <7,500	>7,500 <20,000	20,000< 40,000	40,000< 70,000	70,000+
		A	B	C	D	E	F	G
Witnesses and Expert witnesses								
23	Subpoena including instructions, copies and issuing.	21	36	50	50	65	78	93
24	Attendance on witness to arrange attendance to give evidence without subpoena, including reminders.	20	21	21	36	40	47	55
25	Arranging examination or inspection by an expert witness and notifying party, supplying relevant documents to witness, obtaining and perusing report.	61	62	62	95	118	142	169
26	Notifying party of examination or inspection arranged by opposite party.	13	13	13	46	59	70	85
27	Statement of expert witness (pursuant to Rule 44.03) including instructions, filing and service.	83	150	210	251	316	373	432
Applications								
28	Application or summons or any notice under the Judgment Debt Recovery Act 1984 including copies, issuing and affidavit of service.	35	82	89	101	124	148	175
29	Application for and order under Rule 21.01 (in addition to item 1 if applicable) or 21.04 including copies and issuing.	39	39	39	39	39	39	39
Notice of Objection								
30	Notice of Objection under the Judgment Debt Recovery Act 1984 including copies, issuing and affidavit of service.	38	38	38	38	38	38	38

		Up to \$500	>500 <5,000	>5,000 <7,500	>7,500 <20,000	20,000< 40,000	40,000< 70,000	70,000+
		A	B	C	D	E	F	G
Affidavits								
31	Affidavits including attendances on counsel, copies, swearing, filing and service.	86	176	214	255	320	378	440
32	Affidavit of service, including swearing and filing (not otherwise provided for).	36	36	36	36	36	36	36
General Preparation								
33	For work necessarily and properly done in preparing for hearing and not otherwise provided for, including- (a) taking instructions for examination of any party or witness; (b) considering the facts and the law (c) attending on and corresponding with client (d) interviewing and corresponding with witnesses and taking proofs of their evidence. (e) obtaining reports or advice from experts and maps, plans, photographs and models; (f) making search in any public office and elsewhere for relevant documents; (g) inspecting any property or place material to the proceeding; (h) perusing relevant documents; (i) general care and conduct on the proceeding	343	1122	1384	1663	2078	3004	4671

		Up to \$500	>500 <5,000	>5,000 <7,500	>7,500 <20,000	20,000< 40,000	40,000< 70,000	70,000+
		A	B	C	D	E	F	G
<u>Pre-hearing Conference</u>								
34	Preparation including all necessary instructions, instructions for brief for counsel or brief notes for Australian lawyer, correspondence and perusals.	84	254	339	410	508	612	699
35	Attendance at conference whether by counsel or Aust lawyer.	149	288	411	508	635	767	892
<u>Mediation</u>								
36	Preparation including all necessary instructions, instructions for brief for counsel or brief notes for Australian lawyer, all necessary correspondence, perusals, etc	84	254	339	410	499	598	687
37	Attending mediation by Australian lawyer, for first 4 hours or part thereof.	149	288	411	508	626	751	878
38	For each subsequent hour.	43	82	101	119	155	186	218
39	Attending Mediation with counsel (where necessary) per hour.	43	82	101	119	155	186	218
40	If Australian lawyer attends at a place more than 50 km from his or her place of business, an additional fee may be allowed.							
41	The reasonable costs of a mediation held before the commencement of proceedings may be allowed.							

		Up to \$500	>500 <5,000	>5,000 <7,500	>7,500 <20,000	20,000< 40,000	40,000< 70,000	70,000+
		A	B	C	D	E	F	G
<u>Court Attendance</u>								
42	Attendance at Court or upon magistrate or officer of the Court on application, summons, appeal or to hear reserved judgment.	89	198	245	297	371	445	532
43	Attendance of Australian lawyer without counsel at a WorkCover directions hearing or at a hearing of an application for revocation of a direction of a conciliation officer.	149	288	412	510	640	770	894
44	Attending WorkCover mentions.	135	135	135	135	135	135	135
45	Attendance at Court on hearing-Australian lawyer without counsel for the first six hours (including any luncheon adjournment).	316	635	957	1148	1436	1716	1996
46	If attendance at Court exceeds six hours- for each hour thereafter.	67	125	149	183	227	273	319
47	Attendance at Court by Australian lawyer on hearing with counsel for the first three hours.	144	245	305	368	455	548	633
48	If attendance exceeds 3 hours- for each hour thereafter.	43	82	101	119	148	180	212
<u>Conference with Counsel</u>								
49	Appointment and attendance per hour (when necessary).	43	89	112	143	179	215	251

	<i>Up to \$500</i>	<i>>500 <5,000</i>	<i>>5,000 <7,500</i>	<i>>7,500 <20,000</i>	<i>20,000< 40,000</i>	<i>40,000< 70,000</i>	<i>70,000+</i>	
	A	B	C	D	E	F	G	
Fees to Counsel								
50	To draw or settle any necessary document including notice before action, particulars of claim or defence (including special defence). Counterclaim, interrogatories and medical panel referral documents including medical questions, section 65 (6A) statements, lists of documents and submissions pursuant to the Accident Compensation Act, 1985 etc.	56	104	136	157	204	243	282
51	To confer, prepare, view or consult - per hour.	56	104	136	157	204	243	282
52	To advise on evidence or give opinion.	n/a	n/a	180	272	294	329	492
53	Brief on hearing.	370	832	1121	1344	1677	2015	2200
54	For each six hours or part thereof after the first six hours of hearing (including any luncheon adjournment).	250	555	744	894	1121	1338	1564
55	Attending mediation, for the first 4 hours or part thereof.	153	298	424	523	656	788	920
56	For each subsequent hour.	46	84	103	123	166	195	230

	<i>Up to \$500</i>	<i>>500 <5,000</i>	<i>>5,000 <7,500</i>	<i>>7,500 <20,000</i>	<i>20,000< 40,000</i>	<i>40,000< 70,000</i>	<i>70,000+</i>	
	A	B	C	D	E	F	G	
57	Attending at WorkCover directions hearing	156	302	431	532	669	803	963
57A	Attending at the hearing of an application for revocation of a direction of a conciliation officer	532	532	532	532	532	532	532
Documents								
58	Drawing any document or brief (where not otherwise provided for) - per folio.	3.90	9.50	10.00	10.50	12.00	14.00	19.00
59	Typing any document or brief (where not otherwise provided for) - per folio.	2.40	2.40	2.40	2.40	2.40	2.40	2.40
60	Photocopying in a proceeding: For the first 50 pages - per page For further copies after the first 50 pages - per page	2.10 0.64	2.10 0.64	2.10 0.64	2.10 0.64	2.10 0.64	2.10 0.64	2.10 0.64
Perusals								
61	of any document or part of a document (where not otherwise provided for) per-folio.	2.40	2.40	2.40	2.40	2.40	2.40	2.40
62	Examination or scanning any document which is not necessary to peruse - per folio.	1.30	1.30	1.30	1.30	1.30	1.30	1.30
Correspondence								
63	Special letter.	36	36	36	36	36	36	36

		Up to \$500	>500 <5,000	>5,000 <7,500	>7,500 <20,000	20,000< 40,000	40,000< 70,000	70,000+
		A	B	C	D	E	F	G
64	Ordinary letter (including an agency letter).	25	25	25	25	25	25	25
65	Circular letter. After the first, postage may be claimed as a disbursement.	14	14	14	14	14	14	14
<u>Attendances</u>								
66	Attendance - such as an attendance at the office of the Registrar or on a process served or to serve or an attendance which is capable of being made by a clerk.	25	25	25	25	25	25	25
67	Attendance (personal or by telephone) of a Australian lawyer or managing clerk and involving an exercise of skill or legal knowledge - for each quarter hour.	43	43	43	43	43	43	43
68	Attendance which does not involve the exercise of skill or legal knowledge - for each quarter hour.	21	21	21	21	21	21	21
<u>Warrant, summons, etc.</u>								
69	Warrant to seize property or of delivery including instructions preparation and issuing.	49	100	118	148	186	223	262
70	Summons for oral examination, including instructions, preparation of summons and affidavit, issuing, arranging service, forwarding summons and affidavit to Registrar with letter.	51	119	145	160	202	245	286
71	Proceedings for attachment of debts including all professional costs.	144	290	325	388	485	579	758

		Up to \$500	>500 <5,000	>5,000 <7,500	>7,500 <20,000	20,000< 40,000	40,000< 70,000	70,000+
		A	B	C	D	E	F	G
72	Summons for attachment of earnings, including instructions, preparation of summons, affidavit and Form 72A, issuing summons , arranging service, forwarding summons and affidavit to Registrar with a letter (including affidavit of service).	257	365	392	492	615	737	966
73	Form 72F, including preparation, filing and service.	43	75	89	105	132	154	178
74	Order to attend or to give a statement under Rule 72.04 including preparation, issuing and arranging service.	43	75	89	105	132	154	178
75	Registration of interstate judgment.	65	65	65	98	98	98	98
<u>Service</u>								
76	For service of court documents on each person to be served.	62	62	62	62	62	62	62
77	For service of court documents on each person to be served where service is effected by post or by leaving at a document exchange.	12	12	12	12	12	12	12
78	For every necessary visit made in attempting service of court documents and for each report of non service where the time, date and number of visits attempting service are shown by affidavit.	42	42	42	42	42	42	42

		Up to \$500	>500 <5,000	>5,000 <7,500	>7,500 <20,000	20,000< 40,000	40,000< 70,000	70,000+
		A	B	C	D	E	F	G
79	In addition to the above mentioned service fees an allowance at the rate of 64 cents for each one kilometre in respect of any distance measured both ways from the nearest courthouse or other building where the court is held, or the residence of the person who served the court document, whichever is the closer to the place of service or attempted service of the document.							
80	Order for substituted service including all professional costs	127	229	273	322	405	479	556
81	If an advertisement in lieu of service is ordered, the necessary and reasonable costs of the advertisement in addition							
82	Witnesses Expenses Witnesses giving evidence in an expert or professional capacity, up to \$250 per hour or part thereof, but not to exceed \$1754 per day Other witnesses- up to \$63 per hour or part thereof, but not to exceed \$313 per day							
82A	Witnesses giving evidence in the capacity of motor vehicle loss assessors, up to \$130 per hour or part thereof, but not to exceed \$715 per day.							

Appendix 5: Initial and final incidence of fee costs

Fees relating solely to the criminal jurisdiction

REGULATION NUMBER	REGULATION	PARTY RESPONSIBLE	IS THE FEE RECOVERABLE FROM ANOTHER PARTY?
INITIATION			
1	(a) Filing of a charge sheet for a single charge	Informant	Yes – where the informant is exempt from paying the fee (eg Victoria Police) and where the accused is convicted and ordered to pay a fine, the court must make a costs order against the accused to the value of the fee.
	(b) Filing of a charge sheet for multiple charges	Informant	As above
2	(a) For the lodging of the prescribed information under section 40(1)(a) of the Infringements Act 2006 to have a single lodgeable infringement offence heard and determined in the Court	Informant	As above
	(b) For the lodging of the prescribed information under section 40(1)(a) of the Infringements Act 2006 to have multiple lodgeable infringement offences heard and determined in the Court	Informant	As above
3	Filing an application	Applicant	No

	under section 50(4) of the Road Safety Act 1986 for an order as to the issue of a drivers licence or permit		
4	Filing an application under section 50(4) of the Road Safety Act 1986 for an order under section 50(4D) reducing the period set out in section 50(4B)(a) in which an assessment report must be obtained from an accredited agency	Applicant	No

Fees relating solely to the civil jurisdiction

REGULATION NUMBER	REGULATION	PARTY RESPONSIBLE	IS THE FEE RECOVERABLE FROM ANOTHER PARTY?
5 Commencement	For filing every complaint, counterclaim or third party notice - (a) where the amount claimed is for monetary relief that does not exceed \$1000 or where the claim is one other than for monetary relief (b) where the amount claimed exceeds \$1000 but does not exceed \$10 000 (c) where the amount claimed exceeds \$10 000 but dose not exceed \$40 000	Plaintiff (complaint) Defendant (counterclaim) or (third party notice)	Yes – a party may seek an order from the court to recover the costs of this fee.

	(d) where the amount claimed exceeds \$40 000		
6 Order	Request for order	Plaintiff or Defendant	Yes – a party may seek an order from the court to recover the costs of this fee
Applications and Enforcement Process			
7	For filing an interlocutory application	Plaintiff and/or Defendant	Yes – a party may seek an order from the court to recover the costs of this fee
8	For filing a summons under Part 111 of the Imprisonment of Fraudulent Debtors Act 1958	Judgment creditor	Yes – the cost of this application will be added to the amount owed by the judgement debtor
9	For filing an application under the following sections of the Landlord and Tenant Act 1958 – <ul style="list-style-type: none"> • section 88(1) (for leave to give notice to quit) • section 96(1) (to stay or suspend the execution or to vary discharge or rescind any judgement or order) • section 101(1) (for order of consent to lease, sale or use of premises). 	Lessor/applicant	A party may seek a costs order from the court to recover the costs of this fee
10	For filing an	Judgment creditor	

	application under section 6 or section 8 of the Judgement Debt Recovery Act 1984 or filing by a judgement creditor of an instalment agreement under section 7 of that Act	(judgment debtor is exempt under Regulations)	
11	For filing an application for an attachment of earnings order under Order 72 of the Rules.	Judgment creditor	Yes – the court may make a costs order to recover the costs of the application
Mediation			
12	(a) For every mediation conducted by a Registrar under Order 50 of the Magistrates’ Court General Civil Procedure Rules 2010 For each mediation session (b) For every mediation conducted by a Judicial Registrar in the Industrial Division of the Magistrates’ Court.	Plaintiff Plaintiff	Yes – the court may make a costs order to recover the costs of the mediation Yes – the court may make a costs order to recover the costs of the mediation
13 Hearing Fees	For hearing at trial or arbitration after the first day- for every day or part of a day. Note: For the purpose of this item any hearing at trial or arbitration of less than 2 hours on the first day shall not count as the first day.	Plaintiff	Yes – the court may make a costs order to recover the costs of the hearing

14 Oral	For filing a summons for oral examination, including examination of the judgment debtor under Order 67 of the Rules	Judgment creditor	Yes – the cost of this application will be recoverable along with the amount owed under the judgment debt to the judgment debtor
15 Issue of Warrants to Enforce Orders	For each warrant issued	Judgment creditor: includes compensation orders made in the criminal jurisdiction	Yes – the cost of this application will be recoverable along with the amount owed under the judgment debt to the judgment debtor
Fees with general application to the court			
Issue of Orders and Certificates of Filing of Summons to Witness and Subpoena			
16	For each order or certificate issued or supplied	Person requesting certified extract or order	No
17	For each summons to witness or subpoena to witness issued	Any party	Yes – the court may make a costs order to recover the costs of the summons
18 Registration of an Interstate Judgement	For lodgement of a sealed copy judgment pursuant to Order 10 of the Service and Execution of Process Rules	Judgment creditor	Yes – the registering party can seek an order from the court to recover the costs of this fee from the judgment debtor.
19 Preparation of Documents by a Registrar	For preparation by a registrar of a summons, warrant, certificate or other document	Any party	Yes – the court may make a costs order to recover the costs of preparation
Searching, Retrieving and Photocopying Fees			
20	For searching a	Any court user	No

	database, inspecting a register, retrieving a file or accessing any material filed, lodged or held by the court.		This fee may also be charged to court users not involved in a matter before the court, in these instances it will not be recoverable.
21	If that above search or document handling requires retrieval of files held offsite	Any court user	No This fee may also be charged to court users not involved in a matter before the court, in these instances it will not be recoverable.
22	For photocopying a document filed in, lodged with, or produced to the court, or created by the court	Any court user	Yes – the court may make a costs order to recover the costs of the photocopying. This fee may also be charged to court users not involved in a matter before the court, in these instances it will not be recoverable.

