

Magistrates' Court (Fees) Regulations 2022 and Juries (Fees) Regulations 2022

Regulatory Impact Statement

Publication information

The Department of Justice and Community Safety acknowledges the traditional owners of the land on which we work, and pays respect to their Elders past, present and emerging.

'Aboriginal' is used as the Department of Justice and Community Safety's standard reference for Aboriginal and Torres Strait Islander people. Prior to June 2018, 'Koori' was used as the department's standard reference, and this term continues to be used in some departmental business units, affiliated organisations and documents, including the Koori Justice Unit, the Koori Courts, and the department's Koori Inclusion Action Plan 2017–2020, Yarrwul Loitjba Yapaneyepuk – Walk the Talk Together.

May 2022

Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

ISBN 978-1-922262-81-3

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Accessibility

Also published in an accessible format on www.justice.vic.gov.au.



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Abbreviations

CLC	Community Legal Centre
CMS	Case management system
Department	Department of Justice and Community Safety
GIA	Gender Impact Assessment
MCA	Multi-criteria analysis
RIS	Regulatory Impact Statement
VCAT	Victorian Civil and Administrative Tribunal
VOCAT	Victims of Crime Assistance Tribunal
VLRC	Victorian Law Reform Commission



Executive Summary

Purpose of this document

The Magistrates’ Court (Fees) Regulations 2012 and the Juries (Fees) Regulations 2012 expire in September 2022.¹ The Government is proposing to remake both sets of Regulations, with some changes.

Court fees can be regarded as imposing an economic burden on the community and therefore, under the provisions of the *Subordinate Legislation Act 1994*, a Regulatory Impact Statement (RIS) must be prepared and released for public consultation prior to the regulations being remade.

Regulations that set fees are also subject to the Government’s *Pricing for Value Guide*, which sets out Pricing Principles and requires departments to undertake pricing reviews to articulate an appropriate pricing strategy and identify fee options that align to that strategy.

This RIS assesses both the proposed Magistrates’ Court (Fees) Regulations 2022 and the proposed Juries (Fees) Regulations 2022. The proposed Regulations are attached to this RIS. Before making the proposed Regulations, the Attorney-General must consider all submissions received within the consultation period.

Magistrates’ Court (Fees) Regulations

Objective of the proposed Regulations

The Magistrates’ Court (Fees) Regulations set fees payable by court users for civil proceedings in the Magistrates’ Court, and also set a small number of fees for criminal proceedings.

To inform the development of the proposed Regulations, the Department of Justice and Community Safety (the Department) undertook a pricing review as required by the *Pricing for Value Guide*. As part of the review of fees, the Department considered the *Pricing for Value Guide* Pricing Principles (see section 2.2 of this RIS).

The Department has determined the relevant Pricing Principles applicable to fees charged by the Magistrates’ Court are:

1	Agencies should aim to recover the full costs of service provision to promote efficient consumption
2	The cost of service provision should be borne by those who benefit from the service
3	Services creating broad benefits for the community should be priced to support efficient consumption
5	The price of services should not limit access to those with a lower ability to pay
6	Users should pay for differentiated service based on the value created by that differentiation
8	Pricing should support positive behaviours
11	Pricing structures should be easy to understand and simple to administer

The pricing review concluded that the appropriate pricing strategy is for fees to be set for the services provided by the Magistrates’ Court to recover a proportion of its costs of providing those services. The appropriate proportion should be assessed in relation to the relevant fee-setting

¹ All statutory rules (regulations) automatically expire ten years after they are made (section 5 *Subordinate Legislation Act 1994*).



criteria (see below). The pricing strategy includes making better use of differentiation of fees between different court users.

The Pricing Principles led to a set of clear fee-setting objectives that encompass the broader objectives of the Court itself, the position of the Court within the state’s court system, and other policy objectives. These fee-setting objectives are:

- Access to justice is to be safeguarded.
- The fees should support and enable efficient court operations. This includes supporting matters being heard in the most appropriate forum (the fees should reflect the role of the Magistrates’ Court in Victoria’s civil justice system), as well as encouraging the most expedient and efficient way to resolve matters.
- Fees should be applied equitably. This reflects both the fairness of the sharing of costs between court users and taxpayers, but also fairness between different users of court services. In particular, where a policy of full cost recovery is not the preferred outcome, fees should reflect the relative ability to pay of different parties, and the relative willingness to pay.
- Fees should be easy for users to understand and for the Court to administer.

Proposed Magistrates’ Court fees

The proposed Regulations make the following key changes from the current fees:

Criminal division

- The existing fees in the criminal division will remain the same, except more applications to the Magistrates’ Court under the *Road Safety Act 1986* will be subject to a fee. For example, fees will now be charged for appeals against a decision to refuse to grant a driver licence or vehicle registration. It is proposed to set this fee at the current fee for the filing of single charge sheets in the criminal division.

The proposed criminal division fees are set out below.

*Table 1: Proposed fees in the criminal division**

Fee item	Current fee (fee value from 1 July 2022)	Proposed fee (fee value from 25 Sept. 2022)	Percentage change
Filing charge sheet for a single charge	5.7 fee units (\$87.20)	5.7 fee units (\$87.20)	No change
Filing a charge sheet for multiple charges	8.6 fee units (\$131.50)	8.6 fee units (\$131.50)	No change
Enforcement agency lodging information in relation to a single infringement	5.7 fee units (\$87.20)	5.7 fee units (\$87.20)	No change
Enforcement agency lodging information in relation to multiple infringements	8.6 fee units (\$131.50)	8.6 fee units (\$131.50)	No change
Filing an application under section 31B of the <i>Road Safety Act 1986</i> for a licence eligibility order	7.7 fee units (\$117.70)	5.7 fee units (\$87.20)	-26%
Filing an application or appeal under the <i>Road Safety Act</i> ²	nil	New fee — all applications	-

* Fees are expressed in terms of a number of fee units. The value of a fee unit increases each year, as determined by the Treasurer. The value of one fee unit in 2022-23 is \$15.29.

² The fees would apply to applications or appeals under sections 12, 15A, 16E, 26, 26A, 31B, 33, 46H, 46I, 50AAAC, 50AAAF, 84O, 84ZB, 84ZQAD, 84ZO, 85S.



Civil division

- A three-tiered fee structure will be introduced for most civil jurisdiction fees. The current fee amount has been retained as the 'standard fee' (unless reduced as noted below). A new corporate fee is set at double the standard fee and a new concession fee is set at half the standard fee (or less). The definitions and relativities used for these fee categories are the same as those introduced in the County Court and the Supreme Court in 2018, to ensure the fee categories are easy to understand and applied consistently across courts.

Proposed fee payer categories in civil division

A **concession** fee payer means a person who holds a current health care card within the meaning of the Commonwealth *Social Security Act 1991*.

A **standard** fee payer means a natural person (other than a natural person acting in the capacity of a statutory office holder), an entity which is a not-for-profit organisation, an entity that has a turnover of less than \$200,000 in the financial year before the financial year in which a fee is to be paid, or the executor or administrator of a deceased estate.

A **corporate** fee payer means an entity other than a standard fee payer or a concession fee payer.

- Fees for applications by judgment debt creditors (i.e., those that are owed money under a court judgment or order) to seek, file or vary a debt instalment order will be reduced and the same fee will now apply to applications by judgment debtors (i.e., those that owe the money under a court order). Fees to register interstate judgments and for issue of summons or subpoena to witness will be reduced. These changes are to better align the fees charged by the Magistrates' Court in relation to the equivalent fees charged by the County Court and Supreme Court.
- The commencement fee for employees suing for unpaid wages will be reduced to 10 fee units (\$152.90) for a standard fee payer and 5 fee units for a concession fee payer (\$76.50). This will implement the commitment made by the Government in 2018 to lower filing fees for claims of unpaid wages.
- The fees payable for federal jurisdiction proceedings in the Magistrates' Court will be limited to the corresponding VCAT fees (if any) for the equivalent activity, rather than what would otherwise be charged by the Magistrates' Court. This seeks to ensure that parties whose cases are heard by the Magistrates' Court only because VCAT lacks jurisdiction to hear their case are not worse off in terms of the total amount of fees payable, and are treated equitably with an otherwise identical case that can be heard by VCAT.
- A wider group of people will be eligible for an automatic fee waiver, to ensure access to justice and consistency with waivers available in the County Court and Supreme Court. Fee waivers will be expanded to recipients of legal aid and pro bono services, persons under 18 years and prisoners. (Existing waivers for certain proceedings under the *Family Violence Protection Act 2008*, the *Personal Safety Interventions Order Act 2010* and the *Maintenance Act 1965* will be retained.)³

The proposed civil jurisdiction fees are set out on the following page.

³ These automatic waivers are in addition to the Court's ability to consider applications for fee waivers on the basis of financial hardship under section 22 of the Magistrates' Court Act.



Table 2: Proposed fees in the civil division

Fee item	Current fee in fee units (fee value from 1 July 2022)	Proposed fee in fee units (fee value from 25 September 2022) [% change from current Regulations]		
		Corporate	Standard	Concession
Fee for commencement of proceedings:				
Claims less than \$1000	10.2 (\$156.00)	20.4 (\$311.90) [100%]	10.2 (\$156.00) [0%]	5.1 (\$78.00) [-50%]
Claims \$1000 to \$10,000	21.3 (\$325.70)	42.6 (\$651.40) [100%]	21.3 (\$325.70) [0%]	10.7 (\$163.60) [-50%]
Claims \$10,000 to \$40,000	32.4 (\$495.40)	64.8 (\$990.80) [100%]	32.4 (\$495.40) [0%]	16.2 (\$247.70) [-50%]
Claims over \$40,000	48.6 (\$743.10)	97.2 (\$1,486.20) [100%]	48.6 (\$743.10) [0%]	16.2 (\$247.70) [-67%]
Fees for mediation (per session) with Registrar	18.1 (\$276.70)	36.2 (\$553.50)	18.1 (\$276.70)	9.1 (\$139.10)
with Judicial Registrar	31.4 (\$480.10)	[100%/15%]	[0%/-42%]*	[-50%/-71%]
Fee for hearings (per day, excluding first day)	41.7 (\$637.60)	83.4 (\$1,275.20) [100%]	41.7 (\$637.60) [0%]	20.9 (\$319.60) [-50%]
Fee for requesting an Order	3 (\$45.90)	6 (\$91.70) [100%]	3 (\$45.90) [0%]	1.5 (\$22.90) [-50%]
Fee for issuing warrant to enforce order	1.2 (\$18.30)	2.4 (\$36.70) [100%]	1.2 (\$18.30) [0%]	1** (\$15.30) [-16%]
Fee for filing summons for oral examination	7 (\$107.00)	14 (\$214.10) [100%]	7 (\$107.00) [0%]	3.5 (\$53.50) [-50%]
Fee for interlocutory application	10.6 (\$162.10)	21.2 (\$324.10) [100%]	10.6 (\$162.10) [0%]	5.3 (\$81.00) [-50%]
Fee for application by judgment debt creditor or debtor	5.6 (\$85.60) (creditors only)	4.9 (\$74.90) [-12.5%]	2.4 (\$36.70) [-57%]*	1.2 (\$18.30) [-79%]
Fee for application for an attachment of earnings order under Order 72 of the Rules	10 (\$152.90)	20 (\$305.80) [100%]	10 (\$152.90) [0%]	5 (\$76.50) [-50%]
Fee for application to register interstate judgment	4.8 (\$73.40)	2.7 (\$41.30) [-44%]	1.3 (\$19.90) [-73%]*	1** (\$15.30) [-79%]

* Standard fee will be set below the current fee to align Magistrates' Court fees against other courts.

** To be automatically indexed each year, fees must be expressed as at least one fee unit (see Monetary Units Act 2004, section 8).



The other administrative fees (that apply to both criminal and civil jurisdictions) are proposed as follows:

Table 3: Proposed administrative fees (payable in both criminal and civil divisions)

Fee item	Current fee (fee value as from 1 July 2022)	Proposed fee (fee value from 25 Sept 2022)	Percentage change
Issue of order or certificate	1.4 fee units (\$21.40)	1.4 fee units (\$21.40)	No change
Issue of summons or subpoena to witness	3.4 fee units (\$52.00)	2.7 fee units* (\$41.30)	-20.6%
Preparation of summons, warrant, certificate by Registrar	1.9 fee units (\$29.10)	1.9 fee units (\$29.10)	No change
Search/inspect database	1.71 fee units (\$26.10)	1.7 fee units (\$26.00)	-0.4%
Photocopying or printing	60 cent/page	60 cent/page	No change

* Fee will be set below the current fee to align Magistrates' Court fees against other courts.

The setting of fees is authorised under section 140 of the *Magistrates' Court Act 1989*.

Impacts of the proposed fees

While the proposed changes were not driven by an objective to change the level of overall cost recovery, the revenue from fees expected to be collected is likely to change. The Department estimates that the proposed Regulations would increase the overall fee revenue by around \$9.1 million per year (40 per cent) compared to a continuation of the current fees, to result in total fee revenue of \$32.0 million per year.

The Department believes that the following are the likely indicative changes to overall revenue from the fee changes.

Table 4: Revenue changes under the proposed Regulations

Fee change	Change in total fee revenue per year	Percentage change contribution to total revenue
Change to 3-tier fee structure	+\$9.0 million	+39%
Expanded fee waivers	-\$135,400	-0.6%
Expanded fees for applications under the Road Safety Act	+\$257,100	+1.1%
Net change in total fee revenue	+\$9.1 million	+40%

The other changes to the fees are expected to have negligible impact on the total revenue.



The proposed approach has the following benefits:

- The introduction of a three-tier fee structure means that fee levels would either remain broadly unchanged or lower than the current fee for most fee payers. For individuals and small businesses, the fees paid will be the same or lower than under the current Regulations.
- Implementing a three-tiered fee structure increases equity for litigants, as the option better reflects the capacity of litigants to pay for court services, according to their means to pay. The fees payable by corporate fee payers will double in most cases, reflecting their greater ability to pay. The Department does not consider that this presents a barrier to accessing justice. Despite increasing, the corporate fees will remain small compared to the typical value of claims involving corporate parties, typical legal costs, and the benefit a corporate fee payer receives from having the ability to use the Court to resolve disputes or enforce commercial rights.
- The new concession fee category would recognise that Health Care Card holders have already been assessed as having limited means to pay a full fee. (Full fee waivers will continue for those who can demonstrate financial hardship.)
- Increasing the overall level of cost recovery better supports the efficient use of the Court's resources and its role within the civil justice system in Victoria.

Outside of the impacts noted above, the proposed fees are not likely not have a material impact on competition, as the fees of themselves do not restrict competition in any market. Indeed, having a well-resourced and efficient court system available to resolve disputes supports competitive markets.

Also, the proposed fees do not create a disproportional impact on small business. Small businesses will mostly fall within the definition of 'standard' fee payer. The proposed Regulations recognise that small businesses will have a more limited means to pay fees than larger corporations that will pay the corporate fees. The turnover threshold for defining a corporate fee payer (\$200,000 or more per year) was based on analysis that showed, in 2017, around 60 per cent of actively trading businesses in Australia had a turnover of less than \$200,000.⁴ This figure has not changed materially since that threshold was set for the County Court and Supreme Court, and hence the same threshold is proposed for the proposed Regulations to maintain consistency of definition for corporate fee payers across all courts.

Alternative options considered

The Department identified alternative options to the proposed Regulations, being:

- to continue the current fee structure and amounts with no changes
- to continue the current fee structure but increase all fees by 40 per cent to achieve the same revenue increase as the proposed Regulations.

These options were compared using a multi-criteria analysis, having regard to the impacts of each option on:

- access to justice
- efficiency of the overall court system
- fairness between court users
- ease and simplicity of applying fees.

⁴ Australian Bureau of Statistics, *Counts of Australian Businesses, including Entries and Exits* (latest release August 2021).



The proposed Regulations were found to be the superior option, on the basis that they better support efficient court operations, better promote fairness between court users, and better protect access to justice. Efficient court operations recognised both the overall level of recovery of the Court's costs as well as how well the fees reflected the Court's position within the state's court hierarchy.

Juries (Fees) Regulations

Objectives of the proposed Regulations

The Juries (Fees) Regulations set out fees payable in the County Court and Supreme Court by civil litigants who chose to have their matter tried by a judge and jury, rather than a judge alone.

Consistent with the Pricing Principles, the objective of the proposed Juries (Fees) Regulations is to recover the full cost to government associated with making jury trials available in civil matters. Full cost recovery in this instance is consistent with fairness and efficiency, and would not impose barriers to access justice.

For civil proceedings, there is no general right of a party to have a matter tried by a jury. Unlike the issues around access to the Magistrates' Court noted above, the availability of jury trials for civil proceedings is not considered a fundamental necessity to providing justice. It is now generally regarded that access to a jury trial in civil matters is entirely of a private benefit to the party requesting the use of a jury. The community as a whole obtains no additional benefit if a civil matter is tried by jury compared to if it were tried by a judge alone.

Proposed jury fees

The review of the current jury fees identified:

- a gradual shift to over-recovery of costs, due to jury fees being expressed in terms of fee units (which are automatically increase each year) while a majority of the costs relate to payments to jurors, which do not automatically increase each year
- an imbalance between the upfront fee for requesting a jury (also intended to meet costs of the first day of trial) and the fee charged per day as the trial progresses beyond the first day. The upfront fee was found to be too low to meet the costs attributable to tasks that occur up to and including the first day of trial, while the per day fee was higher than the incremental daily costs of the jury trial.

Therefore, the Department proposes the following changes to the fees structure, to better align with full cost recovery:



Table 5: Current and proposed jury fees*

Fee Component	Current fee (fee amounts from 1 July 2022)	Proposed fee (fee amounts from September 2022)
Fee to set down matter for jury trial (includes costs of first day of trial)	54.3 fee units = \$824.80	40 fee units + 25 ⁵ x amount paid as remuneration to a person attending for jury service = \$611.60 + (25 x \$40 ⁶) = \$1,611.60
Days 2-6	6.5 fee unit per day per juror = \$98.70 per juror per day = \$592.20 per day	4 fee units + amounts paid to jurors as remuneration, per day per juror = \$61.20 + (\$40 per juror x 6 jurors) per day = \$301.20 per day
Days 7+	12.9 fee units per day per juror = \$196.00 per juror per day = \$1,176.00 per day	4 fee units + amounts paid to jurors as remuneration, per day per juror = \$61.20 + (\$80 per juror x 6 jurors) per day = \$541.20 per day

* Fee amounts based on value of fee unit (\$15.29 for 2022-23 financial year) and the current remuneration payments made to jurors under the notice gazetted by the Attorney-General in 2012. Fee values are shown for 2022-23 to compare the fee amounts for when the proposed Regulations will commence.

The setting of fees is authorised under section 90 of the *Juries Act 2000*.

Impacts of the proposed fees

The following table shows how the proposed fee structure would change the amount paid depending on trial length. It shows that shorter trials will pay slightly higher fees in total under the proposed Regulations, while longer trials (any trial of 3 days or more) will pay lower fees in total. As well as reducing the overall revenue collected from fees, this corrects a current cross-subsidisation of longer trials to shorter trials.

⁵ This ensures that the fees recover all payments made to jurors for the first day of the trial, plus payments made to those that attend for jury service but not selected to serve on the jury. Of those people attending for jury service on a particular day, 25 of those are notionally required for each civil jury trial scheduled.

⁶ \$40 is the current payment for persons attending for jury service up to and including day 6 of a trial.



Table 6: Fee payments for trial lengths (fee values in 2022-23)

Trial length	Fees payable under current Regulations	Fees payable under proposed Regulations
Total fee for a 2-day trial	\$1,417	\$1,913 (increase of 35%)
Total fee for a 6-day trial	\$3,786	\$3,118 (decrease of 18%)
Total fee for a 10-day trial	\$9,082	\$5,584 (decrease of 39%)

The proposed Regulations are expected to result in total revenue collected of \$492,292, a decrease of 25 per cent from the case if the current fee structure continued. This total revenue reflects fees paid for those that use jury trials of \$366,498 per year (a decrease of around 38 per cent from the current Regulations) and fees paid by those that request a jury trial but cancel the request within 14 days of the trial date of \$125,794 (an increase of 96 per cent).⁷

As jury fees are essentially voluntary—it is a choice by an individual party if they wish to have a civil matter heard by a jury—the setting of jury fees does not raise any competition or small business impacts. Juries in civil trials are not considered an essential element of providing access to justice; parties can still access justice without a jury.

On the same basis, setting of jury fees does not of itself raise any issues of having a disproportionate impact on any disadvantaged groups.

Administrative fee for cancelled jury requests

Under the Juries Act, if a party requests a jury for a civil trial, but then cancels the request at least 14 days before the scheduled commencement of the trial, they are able to apply for a refund of any fees paid under the Act for requesting the jury. If a refund of jury fees paid does occur, the Act allows the court to deduct from the refund an administrative fee. The intention is to retain part of the fees to cover any costs already incurred because of the request for a jury.

It is proposed to continue this administrative fee at the current rate (4.6 fee units, or \$70.30 from 1 July 2022). Noting that in practice it is charged rarely, the total revenue associated with this administrative fee is less than \$2,000 per year.

Implementation

The courts regularly publish the latest information on fee amounts (e.g. when fee amounts change every 1 July resulting from increases to fee units). When the proposed Regulations commence, the courts will update published information about fee amounts to enable parties to find out the correct fee amounts to be paid.

The proposed Magistrates’ Court (Fees) Regulations introduce new classifications for concession and corporate entities. The Magistrates’ Court will need to set up a new system to be able to determine which classifications apply to a party. Key steps to be taken by the Court include:

- updating online information systems, hard copy forms and brochures
- updating filing portal and case management systems

⁷ The Act only allows refunds to be made where a jury request is cancelled at least 14 days prior to the scheduled start of the trial. This is because within 14 days, work has already commenced to make the jurors available for a scheduled jury trial, and cancellation within 14 days requires additional work to change planning requirements, such as cancel or change the dates for summons jurors.



- communications plan for court and users
- information for magistrates, registrars and court staff about the new fee structure
- training for relevant staff about the new fee waiver categories.

This approach has already been introduced at VCAT, the County Court and the Supreme Court with no implementation issues identified. The classifications in the proposed Regulations have deliberately been aligned to the systems used in those other courts to provide for a clear and consistent approach across the court system.

However, the Magistrates’ Court is currently in the process of introducing a new case management system (CMS) which will need to be modified to support the new fee structure if the proposed Regulations are made. The Department will continue working with the Court over the coming months to determine implementation requirements and timeframes for the commencement of the new fee structure.

Evaluation

Consistent with the Victorian Government’s commitment to better regulation and a culture of continuous improvement, departments must evaluate all regulations. While all regulations are reviewed every ten years due to the automatic sunseting, for high impact regulation (where the impacts are greater than \$8 million per annum), a mid-term evaluation needs to be taken within three to five years after implementation. This is to ensure that regulations are achieving their intended outcomes, no unintended consequences are observed, and opportunities for adjustment can be considered.

Accordingly, the Magistrates’ Court fees will be independently reviewed by September 2027 to assess the impact of the new fee structure and fee amounts.

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

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

The evaluation will take account of a range of factors that might affect Court operations other than the impact of the revised fee schedule. These might include, for example, any changes to the jurisdiction of the Magistrates’ Court in the future, changes to the role of other bodies responsible for dispute resolution (for example, VCAT), and changes in external factors (e.g., compliance strategies, the economy) that could be expected to be reflected in the volume of matters being heard by the Court.

Primarily, the evaluation will test the hypothesis that the revised fee schedule introduced in the 2022 regulations will progressively deliver better outcomes, than the current fee schedule.

The preliminary consultation established the baseline data for the proposed evaluation, and also identified gaps in the data. Information and data for the evaluation will be drawn from several sources such as:

- the Magistrate Court’s case management system data



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

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

In addition, the County Court (Fees) Regulations 2018 and the Supreme Court (Fees) Regulations are due for a mid-term evaluation in 2023. These regulations introduced the three-tier fee structure into those courts in 2018. If the mid-term evaluation of those Regulations identifies issues relevant to the Magistrates' Court (including in relation to the fee structure or fee relativities between the courts) those issues could be addressed at the same time as the other courts.



Consultation

The proposed Regulations and this RIS have been published on the Engage Victoria website to invite comments from the public on the proposed fees. Information on how to make a submission can be found at <https://engage.vic.gov.au/magistrates-and-juries-fees>

Questions for stakeholders

In making submissions, parties are free to comment on any part of the proposed Regulations, however the following list of questions may provide some guidance.

Magistrates' Court fees

- Do you support the introduction of different fees for concession and corporate fee payers? If not, why not?
- Do you support the expansion of fee waivers to additional classes of people such as recipients of legal aid and pro bono assistance, people under 18 years and prisoners? If not, why not?
- Do you support fees being charged for a greater range of applications to the Court under the Road Safety Act? Given that currently fees are charged for some applications and not others, is there a different approach to ensuring those that call on the services of the Court make a contribution to the costs of the service, as well as fairness between different parties?
- Do you have any views on any of the other changes proposed? Are there any unintended consequences that the Department should be aware of?
- Are there other potential changes to the structure of fees that could be considered? For example, should the fee for commencing proceedings in the civil division be separated out into individual fees for the first day of hearings and pre-hearing conferences (see section 2.3.4)?
- The Department is concerned to ensure that the proposed Regulations do not contribute to gender inequality, and where possible, to reduce the effects of gender inequality in the community. This includes how people of all genders may access court services in different ways—whether because of gender directly, or because of how gender inequality may intersect with other forms of discrimination or disadvantage. Do you believe that the proposed Regulations will cause inequitable impacts based on gender (either directly or indirectly)? If so, what evidence or data is available to inform an assessment of these impacts? Are there other ways that the proposed Regulations could be adjusted to reduce gender inequality in access to court services?

Jury fees

- Is it reasonable that the fees for requesting a jury in a civil trial recover all the costs to taxpayers of making juries available for those trials? Are there other Pricing Principles (see section 2.2.1) that suggest a different approach?
- Is it reasonable to link the fees for requesting juries to the actual payments made to jurors? Is this likely to cause any unintended consequences?
- Are the proposed jury fees clear?



1. Background

1.1 Overview

This Chapter provides contextual information about Victoria's court system, the functions and activities of the Magistrates' Court of Victoria, and the use of juries in civil trials. This is to assist readers who may be unfamiliar with these court activities to better understand the discussion of fees for particular court services in later chapters.

1.2 Court system and hierarchy in Victoria

Victoria's court system comprises the Magistrates' Court, the County Court, and the Supreme Court. The Supreme Court is the most senior court in Victoria. There are also speciality courts and tribunals. Each court and tribunal has rules about what is heard in that court or tribunal. This includes where a case may commence, and to where a decision of a court can be appealed.

The cases that can be heard in each court (known as the court's 'jurisdiction') are as follows:

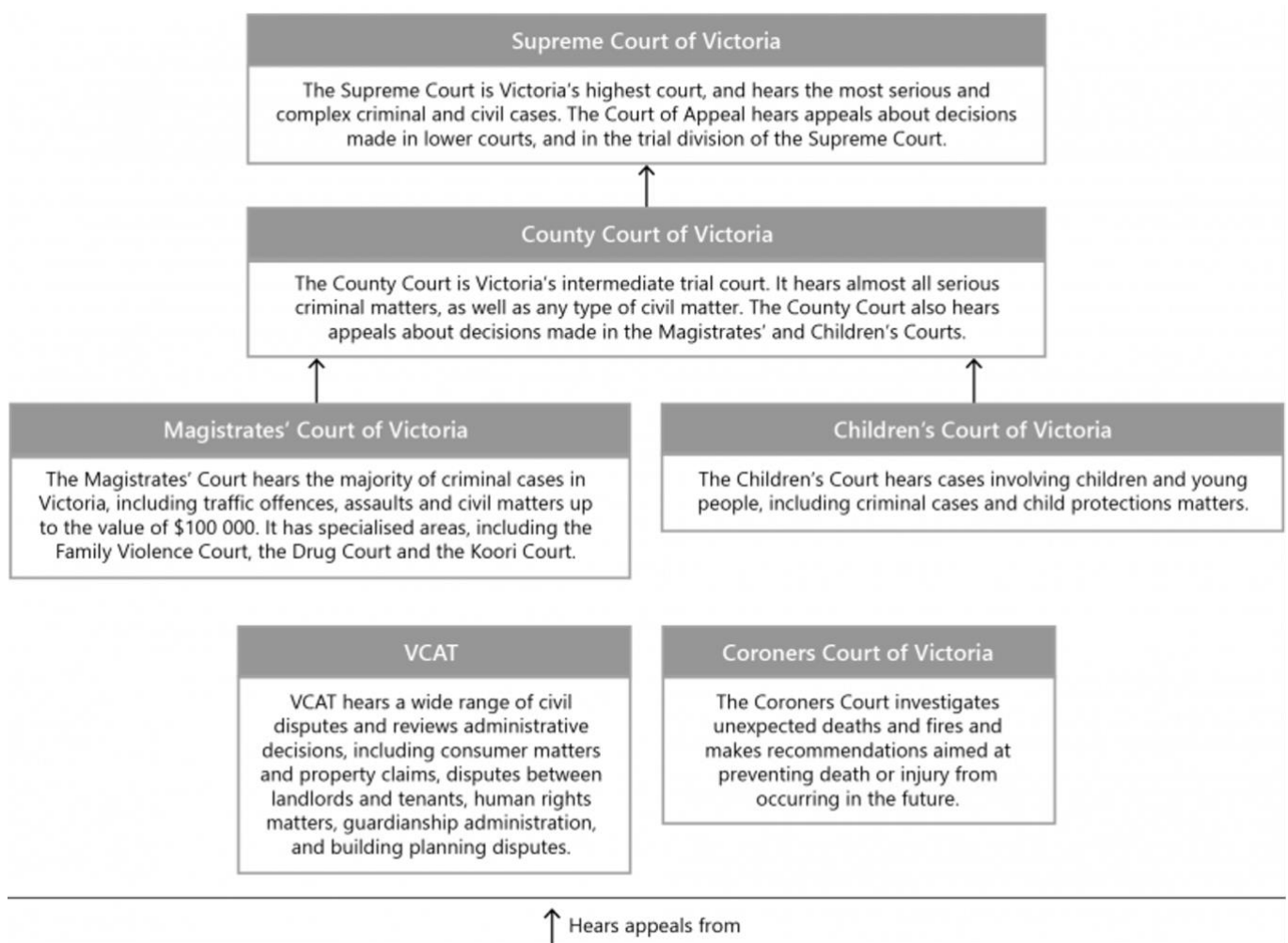
- the **Magistrates' Court** handles less serious criminal matters and civil disputes up to the value of \$100,000.
 - The Court's criminal jurisdiction hears 'summary offences' (less serious charges which are heard and decided by a magistrate), including traffic offences, minor assaults, property damage and offensive behaviour. Some 'indictable offences' (more serious charges that are heard by a judge and jury of a higher court) may also be heard and decided by a magistrate if the accused agrees. These offences include burglary and theft.
 - In civil disputes, such as negligence claims, contract disputes and claims for repair and injury from car accidents, the Magistrates' Court can decide most disputes about money or property up to the value of \$100,000 (in some cases the court can deal with unlimited value).
- the **County Court** deals with more serious crimes and with civil dispute claims for amounts over \$100,000. Cases in the County Court may be heard by a judge alone, or a judge and jury. If a decision of the Magistrates' Court is appealed, it usually goes to the County Court.
- the **Supreme Court** is the highest court in Victoria, and hears the most serious criminal and civil matters. It is divided into the Trial Division (hearing cases for the first time) and the Court of Appeal. Cases in the Supreme Court may be heard by a judge alone or by a judge and jury.
 - The Trial Division hears very serious criminal cases, like murder, and deals with large disputes over money and business. Claims for \$200,000 and above in civil matters are heard in the Supreme Court.
 - The Court of Appeal hears appeals about decisions made in the County Court and in the Trial Division of the Supreme Court.
- the **Children's Court**—deals with matters relating to children and young people. The Children's Court operates like the Magistrates' Court but specialises in children's matters.⁸
- the **Coroners Court**—investigates all reportable deaths.

⁸ The Criminal Division of the Children's court hears all charges except offences resulting in death or attempted murder, which must be heard in an adult court. The Family Division of the Children's Court hears protection applications, breaches of welfare orders, changes to welfare orders, irreconcilable differences applications and applications for permanent care. Applications for family violence and personal safety intervention orders are also held in this division.

There are also a number of tribunals. These are less formal than courts and resolve a broad range of disputes. The Victorian tribunals include:

- the Victorian Civil and Administrative Tribunal (VCAT) which hears and determines disputes, including disputes about the purchase and supply of goods and services, consumer credit, discrimination, and residential and retail tenancies. It also deals with disputes between people and the state or local government in areas such as planning and business licensing. VCAT decisions can be appealed to the Supreme Court but only on questions of law.
- the Victims of Crime Assistance Tribunal (VOCAT) which provides assistance to victims of violent crime, where the crime occurred in Victoria.
- the Mental Health Tribunal.

Figure 1: Victoria's court and tribunal jurisdictions



Source: Victorian Auditor-General's Office (2021)

1.3 Magistrates' Court of Victoria

One of the two sets of proposed Regulations assessed in this RIS relates to setting fees charged by the Magistrates' Court.

The Magistrates' Court operates pursuant to the *Magistrates' Court Act 1989*, which establishes the Court, and outlines its jurisdiction, composition, functions and conduct. Under that Act, the Court determines its procedures and Rules. Other legislation also confers powers on the Court.



The Magistrates' Court sits at 51 locations, and is divided into 12 administrative regions, each managed by a regional coordinating magistrate and a senior registrar. Each region consists of a headquarter court and many also include satellite courts.

The Magistrates' Court deals with most legal disputes in Victoria. In its civil jurisdiction, the Court has the authority to decide most disputes about money or property typically up to the value of \$100,000. There is no jury and each matter is heard and determined by a judicial officer.

In its criminal division, the Court hears summary criminal offences and also some indictable offences that can be heard and decided by a magistrate. The largest volume of cases is within the criminal jurisdiction of the Court. Intervention order applications consistently make up approximately 30 per cent of the cases initiated at the Court.

Table 7: Workload of the Magistrate's Court (selected data)

	2016-17	2017-18	2018-19	2019-20	2020-21
Criminal Division					
Cases initiated	166,499	160,473	143,151	145,625	134,835
Cases finalised	198,185	196,871	173,778	135,840	126,613
Applications finalised	62,260	68,906	62,273	50,905	40,388
Total criminal listings ⁹	726,249	713,062	660,262	606,061	607,167
Civil Division					
Complaints issued	39,978	38,697	40,100	34,131	17,877
Claims finalised	44,932	43,968	43,245	41,576	33,483
<i>Defence notice filed</i>	7845	7256	7237	8387	6803
<i>Defended claims</i>	7826	7192	7243	8059	7004
<i>Default orders</i>	20,263	19,722	19,596	17,387	7592
<i>Complaints dismissed</i>	16,843	17,054	16,406	16,130	18,887
Applications finalised	14,355	13,698	15,640	11,515	9,631
Intervention orders - family violence and personal safety					
Total finalised cases with one or more interim orders	26,528	26,932	28,800	24,880	28,792
Total original matters finalised	44,093	43,151	44,608	41,189	44,733
Total applications finalised	7,471	7,336	7,616	7,479	8,283

Source: Magistrates' Court of Victoria

The Magistrates' Court Civil Division comprises three main areas:

- The General Civil division deals with proceedings where the disputed amount or the amount claimed does not exceed \$100,000
- The WorkCover Division hears disputes between an employee and their employer or the Victorian WorkCover Authority under the *Workplace Injury Rehabilitation and Compensation Act 2013*, the *Accident Compensation Act 1985* and the *Workers Compensation Act 1958*
- The Industrial Division deals with claims brought under the *Fair Work Act 2009* for disputes by an employee against an employer (excluding workplace injury) concerning matters such as

⁹ Criminal listings also include bail application orders and breach cases.



entitlements under a contract of employment, Award or Enterprise Agreement. Proceedings may also be brought under the *Long Service Leave Act 1992*, the *Public Holidays Act 1993*, the *Outworkers (Improved Protection) Act 2003*, the *Occupational Health and Safety Act 2004* or the *Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015*. Matters relate to claims for wages, annual leave, and long service leave. The Industrial Division does not deal with claims relating to unfair dismissal or superannuation.

Specialised areas of the Magistrates’ Court include:

- Specialist Family Violence Courts (SFVCs), which have specialist expertise and facilities to hear applications for family violence protection orders and contravention proceedings. SFVCs are available at the Ballarat, Heidelberg, Moorabbin, Frankston and Shepparton Magistrates’ Courts.
- The Drug Court, whose purpose is to impose and administer an order called a Drug and Alcohol Treatment Order.
- The Koori Court, which has been developed to reflect cultural issues and operate in a more informal way.

1.4 Jury trials in Victoria

The second set of proposed Regulations assessed in this RIS relate to fees charged for requesting a civil matter to be tried with a jury in the Supreme Court or County Court.

1.4.1 Availability of jury trials in civil proceedings

Proceedings in the Supreme Court and County Court in Victoria may be tried by a judge alone, or by a judge and jury.¹⁰

The role of the jury in both criminal and civil trials is to determine questions of fact and to apply the law, as stated by the judge, to those facts to reach a verdict. The judge continues to determine any questions of law. In criminal trials, the jury’s role is to determine guilt or otherwise. In civil trials, the jury’s role is to decide fault and damages.¹¹

The right to trial by a jury was historically based on the principle that limits should be placed on the power of the state over people’s lives.

Jury trials are available in all jurisdictions in Australia for indictable criminal trials.

For civil cases, there is no general right of a party to have a matter tried with a jury. Most states and territories limit the types of proceedings or circumstances where juries can be used in civil matters. Tasmania and South Australia no longer allow for jury trials in any civil trials. Whether a civil trial may be heard with a jury depends on the type of remedy sought and the way in which the parties initiate the proceeding.

In Victoria, jury trials for civil cases are limited to proceedings commenced by writ founded on contract or tort.¹² If one party¹³ in a case wishes to have the matter tried with a jury, they must give written notice of this request within certain timeframes. The Court retains discretion to direct trial without a jury.¹⁴

¹⁰ Jury trials are not available for proceedings in the Magistrates’ Court or any other lower court or tribunal.

¹¹ Juries in civil trials may also give a special verdict (as well as a general verdict) on a range of issues, for example, fair comment, privilege and justification in defamation cases. See VLRC, *Jury Empanelment: Report*, May 2014.

¹² Supreme Court (General Civil Procedure) Rules 2015 (SR No 103 of 2015) - Reg 47.02(1)

¹³ In general, if one party to the proceedings wishes the matter to be tried by a jury and the other party does not, the party who does not want the matter to be tried by jury must persuade the court to dispense with the jury trial.

¹⁴ Supreme Court (General Civil Procedure) Rules 2015 (SR No 103 of 2015) - Reg 47.02(3)



1.4.2 Legislation

In Victoria, the *Juries Act 2000* provides for the operation and administration of a system of trial by jury.

The Juries Act aims to equitably spread the obligation of jury service amongst the community, and to make juries more representative of the community. Every person aged 18 years or above who is enrolled to vote in state elections is qualified and liable for jury service. However, there are some persons that are ineligible (generally because of their position) or disqualified (generally because of criminal offences). There are processes under the Juries Act to call people for jury service, and for jury selection (including reasons for being excused, deferred or exempted from jury service).

Juries in civil trials generally have 6 jurors. The court may order up to 8 jurors in accordance with section 23 of the Juries Act. It is very rare that more than 6 jurors would be selected.

1.4.3 Data on civil jury trials

The following table shows the number of civil trials that were tried with a jury, the total number of jury trials (civil and criminal), and the number of civil jury trials as a proportion of total jury trials.

Table 8: Jury trials in Victoria (Supreme Court and County Court)

	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Civil jury trials	93	67	110	79	62	37	5
Total jury trials	616	573	511	514	524	232	151
Civil jury trials as a proportion of total jury trials	15%	12%	22%	15%	12%	16%	3%

Source: Juries Victoria

The number of civil jury trials was significantly affected by the response to Covid-19.¹⁵

Civil jury trials are held significantly more often in Victoria than in other Australian jurisdictions.¹⁶

Over the period 2017 to 2020, juries were used in around 8 per cent of all civil trials within the Supreme Court.

In the Supreme Court, civil jury matters are managed in the Common Law Division. There are two main types of cases in which parties may request a jury:

- Personal injury damages actions – these constitute by far the majority of civil matters in the Supreme Court (over 90 per cent). The vast majority settle prior to trial. Claims are typically brought by individuals and are typically against corporate or insured individuals or other entities. Individual defendants are sometimes uninsured although such claims tend to be rare since there may be little chance of executing a judgment. Either party may request trial by jury, however jury trials are more typically requested by plaintiffs in asbestos and child abuse actions and by defendants in workplace injury, motor vehicle accidents and occupiers’ liability.

¹⁵ New jury trials were suspended in March 2020 and recommenced in a limited way in Melbourne on 16 November 2020, and incrementally in regional Victoria from May 2021. Lockdowns in 2021 caused further disruptions to jury trials, albeit to a lesser extent.

¹⁶ VLRC Jury Empanelment Report, May 2014



- Defamation actions – juries are sometimes¹⁷ requested in defamation actions to determine liability issues, predominantly by plaintiffs. However, the trend seems to be for defamation claims to be filed in the Federal Court where jury trials are not generally available.

The average length of a civil jury trial across both the Supreme and County Courts is 11 days.

1.4.4 Jury selection process

There is a clear process for how juries are made available for trials.

There are several steps in the selection and empanelment of jurors under the Juries Act:

- random selection from the Victorian electoral roll
- determination of liability for jury service (through questionnaires and other checks)
- summons to attend for jury service
- attendance at court as a jury ‘pool’ (not all those summoned attend, for example if they apply to be excused, or a summons may be cancelled)
- selection of a panel from the jury pool¹⁸
- selection of the jury from the jury panel.

In addition, Juries Victoria considers applications from people wishing to be excused from jury service or have their service deferred. This happens when a person receives a summons, but may also happen after a person receives a questionnaire.

This process is managed to take account of planned or expected jury trials across both civil and criminal divisions. The intention is that for each civil jury trial planned to commence, a panel of around 25 people is available from which the jury of 6 can be selected.

The tasks associated with making juries available for trials are set out in the figure on the following page.

Notes to Figure 2:

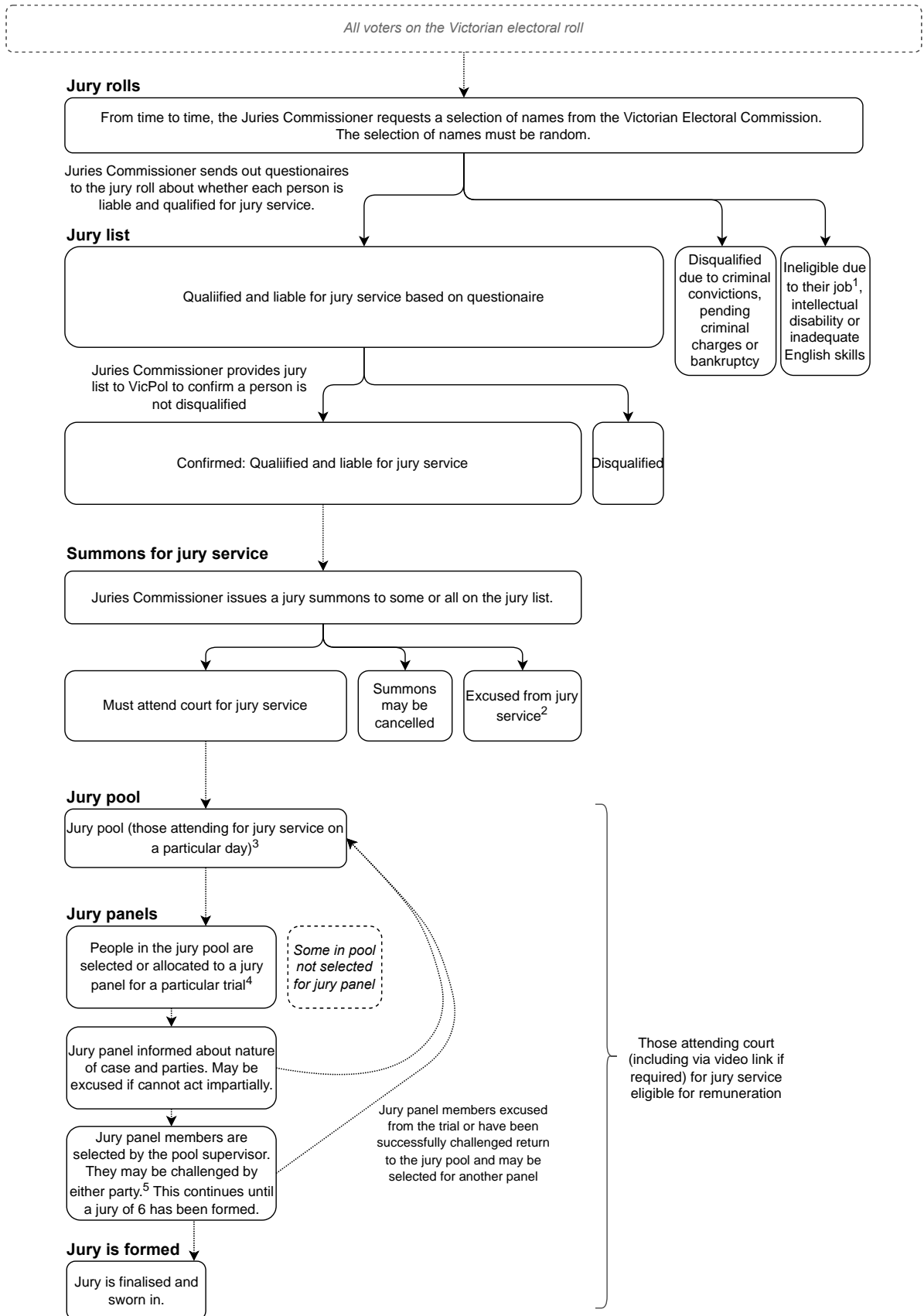
1. Some ineligible people include lawyers, police officers, judicial officers and some government employees or office holders.
2. Reasons to be excused from attending for jury service may include advanced age, health, a full-time care-giver self-employed or work for a small business, casual employee with unpredictable hours, full time student or apprentice.
3. The Juries Commissioner may exclude a person from a pool if the Juries Commissioner is satisfied that the person is unavailable to sit on a trial due to the likely length of the trial.
4. For courts sitting outside Melbourne, the entire jury pool typically makes up the panel.
5. A challenge is determined by the trial judge. In a civil trial, the number of potential jurors that each party may challenge for cause is unlimited. Each party is also allowed to challenge peremptorily (i.e., without stating a reason) two potential jurors.

¹⁷ Defamation matters represent less than 2 per cent of all cases in the Supreme Court, however have a higher likelihood that a jury will be requested: typically up to 50 per cent of defamation matters request a jury trial.

¹⁸ This does not occur in regional areas where the whole jury pool constitutes the jury panel.



Figure 2: Functions of Juries Victoria in managing the availability of juries





The following table shows the number of Victorians that have been selected, summonsed, and attended for jury service, and those that were selected to be part of a jury, in recent years.

Table 9: Jury service activity

	2017-18	2018-19	2019-20	2020-21
Citizens randomly selected	174,345	222,982	127,055	203,062
Jurors summonsed	54,370	59,929	38,306	43,482
Jurors attended	19,817	20,261	6,717	3,673
Served on a jury (civil or criminal)	5,694	5,916	2,562	1,782
Served on a civil trial jury	474	372	222	30

Source: Juries Victoria

The number of jury trials was significantly affected by the Covid-19 pandemic from April 2020 onwards. Prior to this, the number of people selected, summonsed, and attending for jury service has not changed significantly since 2012.



2. The problem being addressed by the proposed Regulations

2.1 Overview

This Chapter outlines the reasons why the proposed Regulations need to be made. The proposed Regulations are needed to allow the courts to charge fees from court users, in order to recover some of the costs associated with providing court services from those that use the services.

2.2 Framework for remaking fees regulations

The proposed Regulations set fees to recover costs to government of providing court services. The Victorian Government, through the state budget and parliamentary appropriations, allocates funding to the courts to operate. This includes funding of the Magistrates’ Court, and funding to the Supreme Court to meet the costs of providing juries to the Supreme Court and County Court.

Like other services that are funded by the government, charging fees has been a common characteristic of our court system for many decades.

The fees in the current Regulations were set in 2012, in accordance with the Victorian Government’s *Cost Recovery Guidelines*. Those Guidelines provided an approach to measuring the cost of services and determining appropriate fees.

2.2.1 New fee setting principles – Pricing for Value Guide

From 1 July 2021, the *Pricing for Value Guide* replaced the *Cost Recovery Guidelines*. The new Guide is intended to improve consistency and capability in price-setting across government. It updates principles to align with current best practice.

The Guide helps departments and agencies use pricing to recover the costs of regulating and delivering services, and as a tool to support wider policy objectives.

A key feature of the new *Pricing for Value Guide* is a principles-based approach to identify opportunities to set government charges in better ways. The Guide sets out a number of Pricing Principles, as follows:

1	Agencies should aim to recover the full costs of service provision to promote efficient consumption
2	The cost of service provision should be borne by those who benefit from the service
3	Services creating broad benefits for the community should be priced to support efficient consumption
4	The cost of interagency services should be borne by the user agency
5	The price of services should not limit access to those with a lower ability to pay
6	Users should pay for differentiated service based on the value created by that differentiation
7	The public should share in the value generated by pricing based on user differentiation
8	Pricing should support positive behaviours
9	Pricing should ensure sustainable usage of public services and reflect the value of natural resources
10	Where services are in competition with the private sector, pricing should be relative to market prices
11	Pricing structures should be easy to understand and simple to administer
12	Pricing arrangements should be monitored annually and reviewed periodically



While the previous *Cost Recovery Guidelines* focused on cost considerations, the new Pricing Principles are broader, identifying a range of potential benefits. Cost recovery is one principle among a broader range of principles relevant to setting prices. Some principles support setting prices below cost recovery, while some principles support setting prices above cost recovery.

Not all of the Pricing Principles will be relevant or need to be applied in all circumstances. Agencies and departments must consider which Pricing Principles should be considered, within the context and objectives of the services being assessed.

The new *Pricing for Value Guide* provides practical step-by-step guidance for undertaking pricing reviews. Pricing reviews are a detailed process to collect data, consult with stakeholders, and identify and test a range of different pricing strategies. The *Pricing Playbook* is a document that provides support for the *Pricing for Value Guide*. It sets out a number of steps to guide comprehensive and evidence-based assessment of pricing strategies. Not all steps in the Playbook will be relevant or appropriate to all situations. The setting of fees in regulations, including in remaking sunseting regulations, will usually be based on the pricing objectives and strategies agreed during the pricing review.

To inform the development of the proposed Regulations, the Department completed a pricing review in accordance with the Pricing Playbook. For the purposes of setting new Magistrates' Court fees and jury fees regulations, the scope of the pricing review was limited to the fees that are authorised under the respective legislation. As part of the pricing review, revenue options that would be outside the regulation-making powers were not considered.

Further information about the *Pricing for Value Guide* can be found on the website www.dtf.vic.gov.au.

2.3 Magistrates' Court fees

2.3.1 Magistrates' Court costs and fee revenue

The total operating costs of the Magistrates' Court was \$246.5 million in 2020-21, an increase of 4.3 per cent from the costs in 2019-20. The main cost area is the remuneration of judicial officers and staff.

Against this, the total revenue collected in fees by the Magistrates' Court in 2020-21 under the current Regulations was \$10.8 million.¹⁹ The overall rate of recovery of costs through fees was 4.4 per cent.

The majority of fees is collected in relation to civil proceedings. The Covid-19 pandemic has resulted in a decrease in the use of the civil jurisdiction and therefore a decline in the amount of fees collected by the Magistrates' Court.²⁰ Prior to the pandemic, fee revenue collected by the Court was around \$21.7 million in 2018-19 (against expenses of \$206.7 million), and \$19.3 million in 2019-20 (against expenses of \$236.3 million), giving a rate of cost recovery in those years of 10.5 per cent and 8.2 per cent respectively.

While this suggests that fees are currently recovering only a small percentage of costs, it is noted not all of the services that are provided by the Court are subject to the charging of a fee.

¹⁹ The Court does not retain fee revenue for its own use. All fee revenue is credited to the state's consolidated revenue. The Court can only spend funds in accordance with the output or special appropriations passed by Parliament.

²⁰ The most likely factors behind this decrease are that the pandemic resulted in less vehicles on the road and therefore a decrease in accidents and liability disputes. There was also less business trade resulting in decreased business debts and disputes.



Criminal division

Criminal proceedings (which are the bulk of the work undertaken by the court) attract fees in only limited situations. The current Regulations only prescribe fees for commencement of proceedings (filing of charge sheet or lodging infringement information). The fee is not intended to recover the costs associated with criminal proceedings—the Act does not provide a power to charge fees for the criminal proceedings or hearings themselves—as it is considered that criminal trials and outcomes are essentially for the public good, rather than a service offered to any individual. Further, even where commencement fees may apply, the vast majority of proceedings are exempt from fees because of fee waivers for particular classes of persons.²¹ The total revenue collected from fees in the criminal division is negligible.

The Court also hears a range of applications under the *Road Safety Act 1986*. These include appeals against administrative decisions to suspend or refuse driver licences, and release of impounded vehicles. Some matters are related to offences (e.g., convictions of alcohol or speeding infringements), however an application need not be connected to an offence. Nevertheless, the Court manages all applications under the Road Safety Act within its criminal jurisdiction.

Since 1990, only one type of application under the Road Safety Act has been charged a fee (an application under section 31B for a licence eligibility order).²² There are 18 other sections in the Road Safety Act that allow a person to apply to the Magistrates' Court to appeal against an administrative decision under that Act, seek a stay of suspension, apply for a direction, seek an extension of time related to traffic infringements, or apply for another type of order.²³ As these are heard in the criminal division, they do not attract a fee under the current Regulations.

The Court hears more than 3,000 applications and appeals under the Road Safety Act each year, with the most common being licence restoration applications and interlock removal applications.²⁴

There is no data available on the Court's resources used specifically on applications under the Road Safety Act, however based on the volume of matters, it is clear that there is a significant amount of activity for which no fees are charged.

Civil jurisdiction

The Magistrates' Court Act allows for regulations to prescribe fees in relation to any proceeding in the Court. In the civil jurisdiction, fees have typically been prescribed for a much wider range of events throughout a case.

The following figure provides a summary of the typical pathways that civil proceedings may follow, and where the current fees commonly arise.

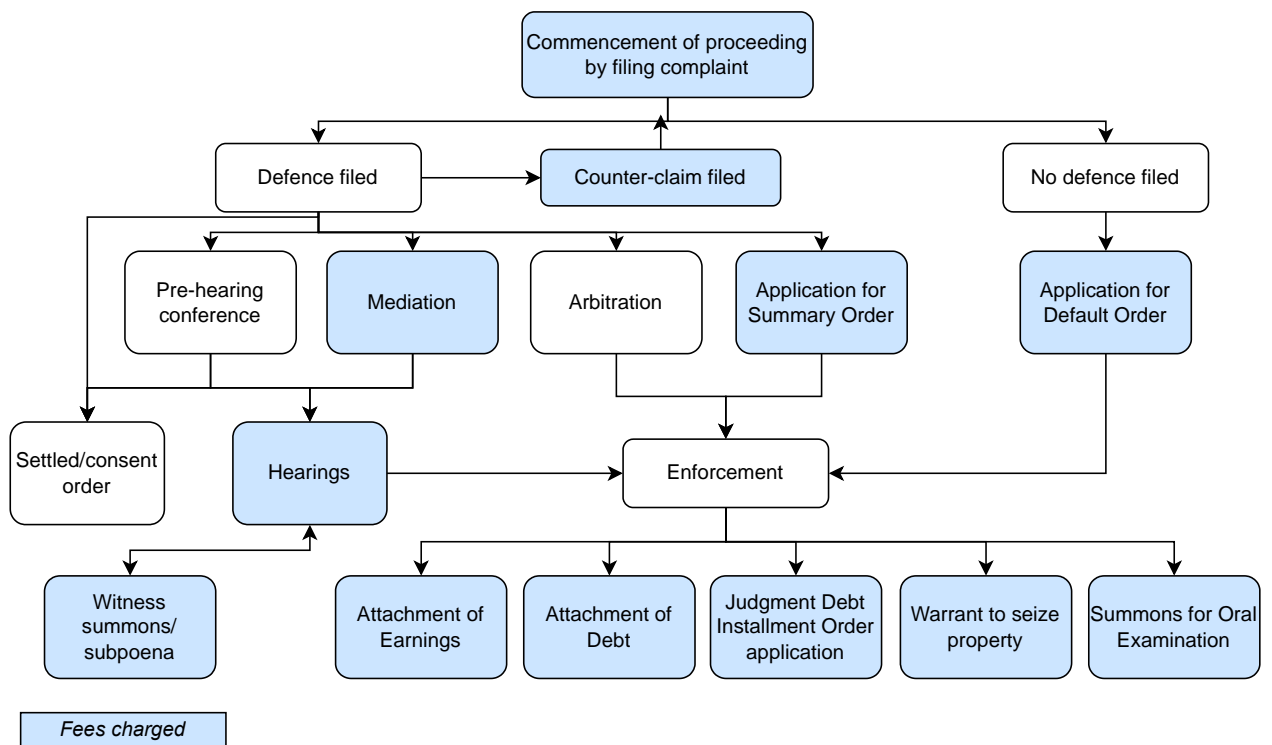
²¹ Persons or classes of persons exempted from paying fees include a member of the police force, a person acting on authority of the Crown, a person acting on authority of a local council in relation to public health, an inspector under the Prevention of Cruelty to Animals Act, a person represented or funded by Victorian Legal Aid, and the Business Licensing Authority. In practice the only criminal matters that attract a fee are those by local councils (other than public health matters), Commonwealth Government agencies and charges filed by way of a private prosecution.

²² The fee is 7.7 fee units, which in 2021-22 amounts to \$115.70 and from 1 July 2022 will increase to \$117.70. The current Magistrates' Court (Fees) Regulations 2012 also prescribe a fee for applications under section 31D, however that section has since been repealed from the Road Safety Act. A fee has been prescribed for licence eligibility order applications (or their equivalent prior to 2013) since at least 1990.

²³ There are also a number of sections that allow a police officer (or authorised officer) to apply for extensions of time or search warrants. These are in connection with suspected offences.

²⁴ Since December 2019, the majority of licence eligibility order applications and interlock removal applications have been determined by VicRoads and not the Magistrates' Court. This has caused significant reduction in these applications from previously higher levels.

Figure 3: Magistrates’ Court civil proceedings pathways



In 2020-21, around \$77 million of the Court’s expenses relate to its civil jurisdiction.²⁵ Fee revenue from civil proceedings was around \$10.5 million. As such, the fee revenue collected under the current Regulations recovers around 14 per cent of costs.

Prior to Covid-19, the cost recovery rate within the civil jurisdiction was around 24 per cent.

The relatively low level of overall cost recovery can be explained by functions not within scope of costs recovery, and exemptions from fees for others. For example, there are no fees charged for pre-hearing conferences conducted by the court, as use of these hearings avoids more costly use of court resources if a high number of matters progress to a hearing.

There are a range of fee exemptions for civil matters. The Court may waive fees on application by a person who can demonstrate financial hardship. This exemption is specified in the Magistrates’ Court Act.²⁶ In addition, the current Regulations provide automatic fee waivers for:

- proceedings under the *Family Violence Protection Act 2008*
- proceedings under the *Maintenance Act 1965*
- proceedings under the *Personal Safety Intervention Orders Act 2010*
- 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*.

²⁵ Productivity Commission, Report on Government Services, data for 2020-21 (published February 2022).

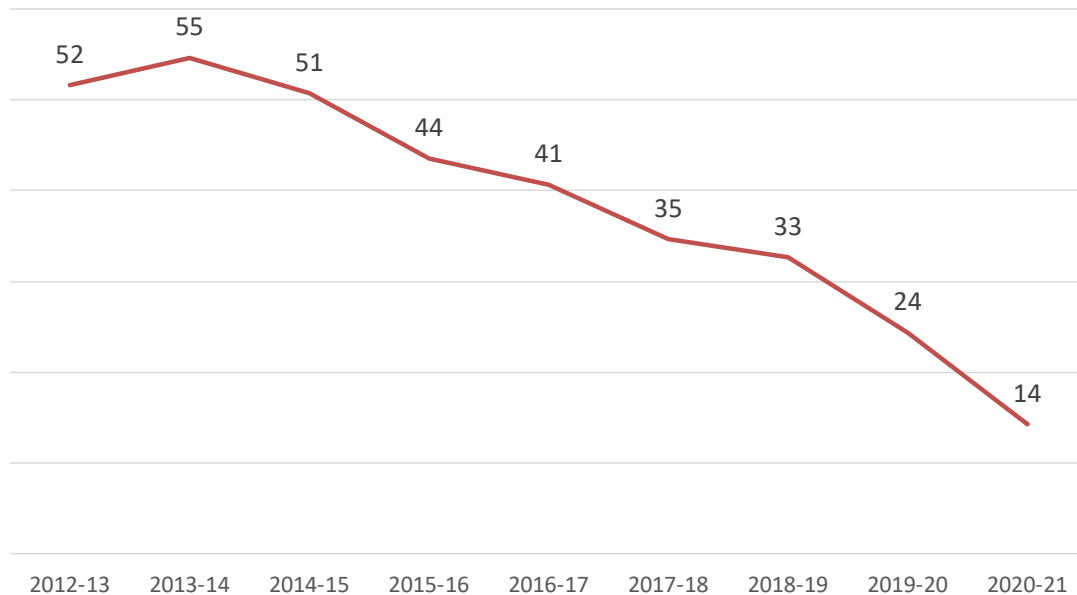
²⁶ Magistrates’ Court Act section 22(2). Melbourne processed 74 fee waiver applications in 2020 and 21 in 2021. Most metropolitan headquarter courts report up to five applications per year with the regional headquarter courts reporting one or two per year for the region.



Proceedings under the Family Violence Protection Act and Personal Safety Intervention Orders Act involve a high volume of matters. Proceedings related to the applications under the Judgment Debt Recovery Act are only a small proportion of the overall enforcement options within the jurisdiction. Most matters falling under the Maintenance Act are now finalised with the Court, with only a single matter still active.

Nevertheless, the proportion of costs recovered through fees in the civil division has decreased significantly since the fees were last set in 2012.

Figure 4: Level of cost recovery (percentage) for Magistrates’ Court civil division



Source: Productivity Commission, *Report on Government Services, February 2022*

This decline does not necessarily arise because the costs of services has grown faster than the annual increase in fee amounts (indexed to the value of fee units). The decline may also reflect:

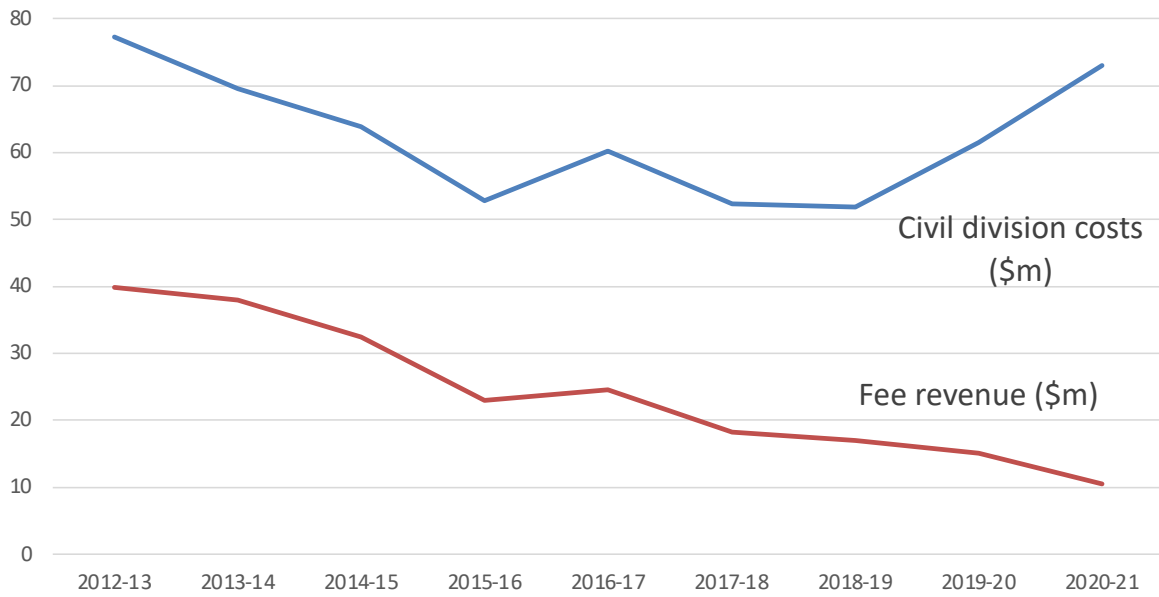
- a shift in the composition of matters brought to the Court (i.e., growth in the proportion of proceedings that fall within the exemptions), or
- greater priority of resources to activities that do not attract a fee (e.g., greater use of pre-hearing conferences or other case management services designed to minimise the overall demand on the court’s resources). It is noted that the Report on Government Services data on the rate of cost recovery excludes fees charged for mediation services.

The fall in the level of cost recovery up to 2018-19 generally coincided with a decline in the total costs of the civil division of the Court in real terms.²⁷ However, the sharp decline in the rate of cost recovery in 2019-20 and 2020-21 has coincided with an increase in costs—see Figure 5 below.

²⁷ Data in the *Report on Government Services* is reported in real terms, based on 2020-21 values, so values in other years do not equal the actual nominal amounts.



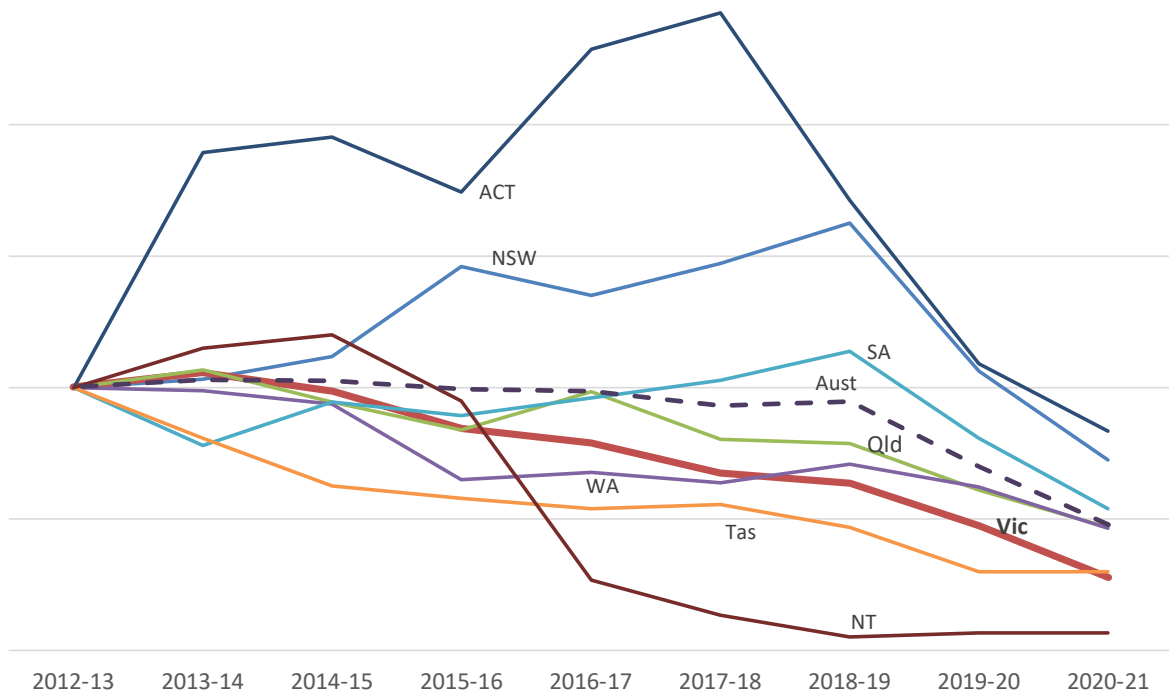
Figure 5: Costs attributable to civil matters in the Magistrates’ Court and fees collected



Source: Productivity Commission, Report on Government Services, 2022

A similar decline in the rate of cost recovery has been reported for the magistrates’ courts of every other Australian jurisdiction over the same period.²⁸ The decline has been sharper in Victoria than other states, mostly due to increased expenditure over the last two years.

Figure 6: Changes in cost recovery in Magistrates’ Court civil divisions – interstate comparison



Source: Productivity Commission, Report on Government Services, 2022

Note: To show trends in the change of cost recovery over time, all states and territories cost recovery was based at 100 in 2012-13. This allows the comparison to focus on the change in cost recovery levels rather than the actual rate of cost recovery, which may vary between states for a number of other reasons.

²⁸ See Productivity Commission, Report on Government Services, Table 7A.16.



Excluding 2020-21, which was most affected by Covid-19, the average fees paid per matter lodged in the Court has remained steady (in real terms) of around \$245 per lodgement over the past ten years. This is higher than all other Australian states and territories. However, the average cost per matter finalised has increased from around \$410 in 2012 to around \$1000 now.²⁹

The Report on Government Services notes that, unlike other states, the Victorian Magistrates' Court has a higher number of judicial officers and other court staff as a proportion of finalisations³⁰ (with this increasing noticeably in recent years).

Some of this increase in workload and effort of the Court relates to changes in the jurisdiction and other activities of the Court in recent years—these are discussed below.

The above data on average costs per matter, which is drawn from the Magistrates' Court's financial and performance reporting, is based on averaging costs over all matters commenced and/or finalised within the civil jurisdiction. It does not take distinguish between matters where fees are generally charged, matters that are exempt from fees, and cases where individuals may have fees waived or reduced.

The Department estimates that, for a typical proceeding in the civil division that is not exempt from fees nor where any fee waiver applies, that the current fees recover between 35 and 40 per cent of the Courts' costs attributable to that particular typical proceeding (on average, taking account of fees for the commencement of proceeding, hearings, and other matters that typically arise during proceedings).

2.3.2 Cost recovery principles relevant to the Magistrates' Court

Private and public benefits of the Court

The Court provides benefits to those that use the Court's services (private benefits), as well as the community as a whole through maintaining a sound justice framework.

Like other courts and tribunals, the Magistrates' Court provides an important service. As part of Victoria's civil justice system, it provides the means by which disputes between parties can be resolved, legal rights enforced and remedies obtained through binding orders.

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

The private benefit is 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.

The public benefit involves public confidence in the existence of courts that can resolve disputes between individuals and groups and the associated protection of property and individual rights of all citizens.

Victoria's civil justice system plays an important role in providing legal certainty, which assists in fostering economic growth and vitality of any society by providing expert, legally-enforceable

²⁹ See Report on Government Services, Tables 7A.17 and 7A.35.

³⁰ See Report on Government Services, Table 7A.29, which shows the Victorian Magistrates' Court has increased from 0.4 judicial officers per 100 finalisations in 2012-13 to 0.9 judicial officers per 100 finalisations in 2020-21, while other states and territories have remained relatively stable, with an average of 0.5 judicial officers per 1000 finalisations. For staff numbers per 1000 finalisations, see Report on Government Services Table 7A.30.



dispute resolution processes for disputes between people, companies or other organisations. Legal rights and obligations are enforced and private and property rights are protected.

The charging of fees to those who use or benefit from government-funded services has been long established. Parties to civil proceedings, or certain persons that make applications on criminal matters, draw on the services of the court for their own purposes.

When the fees were last set in 2012, it was intended that the fees would recover around 50 per cent of the cost of the services to which they relate (on average), for those persons for whom a fee is payable. The 2012 RIS noted:

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.³¹

The mix of private and public benefits indicates that the cost of court services should be shared between users of court services and the community as a whole (through government collection of taxes). The appropriate relative size of user and taxpayer contributions is a matter of judgement.

Protecting access to justice when setting fees

Aside from sharing total costs between government and users of court services in a 'fair' way, the fees have typically had regard to the need to promote access to justice. Even where a particular service provides only a private benefit to the individual litigant, the amount of the fee charged may be a barrier to that person accessing justice.

That said, access to justice does not necessarily mean that the fees need to allow for any matter to be brought to the Magistrates' Court. Where people have a dispute, there are a number of different forums available to pursue justice, including courts, tribunals, dispute resolution mechanisms, or mediation and conciliation services. Even within the formal court processes, the Magistrates' Court sits within a clear hierarchical court system from which litigants may pursue matters, and this position should be reflected in how 'access to justice' is considered. Barriers to accessing justice specifically through the Magistrates' Court need to be balanced against the need to promote overall efficient use of the resources of the court system, which includes promoting use of the most appropriate forum in which to resolve disputes, and to ensure there is no incentive to make frivolous or vexatious claims.

However, in practice, fees charged by the Magistrates' Court are generally small compared to other costs of initiating proceedings in the Court (such as costs of legal representation). Therefore, the level of fees set for the Magistrates' Court is unlikely to have a material influence on a litigant's choice of court, or whether to pursue a claim in a court at all.

Importantly, consideration of access to justice in the setting of fees will differ depending on the type of proceedings or the outcome being sought. For example, for proceedings that use the Court's resources to pursue entirely commercial outcomes, court fees can send a clear price signal of the Court's resources used to pursue such claims, to discourage inefficient use of the Court's services. On the other hand, for proceedings that are aimed at providing personal safety, price signals are not appropriate for a person at risk to decide whether or not they use court services. These considerations are in part reflected in the current exemption categories.

³¹ Department of Justice, 2012, Regulatory Impact Statement, page 2.



2.3.3 Relevant contextual changes since the Regulations were last made

In remaking the fees, the Department has considered the impact of a number of developments since the fees were last set in 2012.

New fee structures in Supreme Court, County Court and VCAT

Differential fee structures were introduced in VCAT in 2016 and in the Supreme Court and County Court in 2018. The single fee per item structure was replaced by a three-tiered fee level with a standard fee, a corporate fee and a concession fee.

In 2018, the Magistrates’ Court Act was amended³² to permit regulations to provide different fees for different classes of proceedings or different classes of party, to align with Supreme Court, County Court and VCAT fee provisions.

Consultation with the Supreme Court, County Court and VCAT as part of this RIS indicates the tiered structure is working effectively.

It is desirable to have consistency of fee categories across all courts (while recognising the position of each court within the court hierarchy).

New federal jurisdiction

The Court of Appeal’s 2020 decision in *Meringnage*³³ that VCAT is not a “court of a State” means that VCAT cannot hear cases based on the federal power for matters listed in sections 75 and 76 of the Australian Constitution. Federal jurisdiction applies in a number of situations, including proceedings:

- between states, residents of different states or a state and resident of another state
- where the Commonwealth is suing or being sued
- involving the Constitution or its interpretation, and
- under any laws made by the Commonwealth Parliament.

For example, federal jurisdiction often arises in residential tenancies proceedings where a rental provider (landlord) lives interstate.

The *Victorian Civil and Administrative Tribunal and Other Acts Amendment (Federal Jurisdiction and Other Matters) Act 2021* was introduced to provide access to justice for those who would have been excluded from VCAT proceedings. Now, the Magistrates’ Court hears these matters as part of its new civil federal jurisdiction under Part 3A of the *Victorian Civil and Administrative Tribunal Act 1998* (VCAT Act).

Despite now being a proceeding in the Magistrates’ Court, section 57B(3) of the VCAT Act provides that the fee payable for an application under Part 3A is the relevant fee payable to VCAT. The Magistrates’ Court charges the equivalent VCAT application fee to commence the proceedings. Once an application is made, the Magistrates’ Court may charge additional fees for other aspects of the proceedings (e.g., fees for hearing days and interlocutory applications) according to the fee structure in the Magistrates’ Court (Fees) Regulations. These are generally higher than the corresponding VCAT fees.

While charging higher fees once the proceeding has commenced in the Magistrates’ Court may be justified on the basis of the higher costs associated with proceedings in the Magistrates’ Court compared to VCAT, it may lead to equity issues. The current situation now means that, for

³² See section 140(2)(da), inserted by the *Justice Legislation Amendment (Access to Justice) Act 2018*

³³ *Meringnage v Interstate Enterprises Pty Ltd & Ors* [2020] VSCA 30



example, two different tenants that are pursuing identical claims against their landlords could pay different fees simply because one tenant can take their claim to VCAT while the other, whose landlord lives in another state, must have the matter heard by the Magistrates’ Court.

In many cases, there may be little practical difference in fees if claims are straight-forward and can be resolved on the first day of hearing. In this case, both tenants would pay the VCAT fee for the commencement of proceedings (\$66.30 for most claims), and there would be no additional hearing fees. If a warrant of possession is required, the Magistrates’ Court charges the corresponding fee otherwise payable at VCAT (\$115.70), as the fee for warrants in the Magistrates’ Court (\$67.64) is only for warrants to seizure of property.

VCAT advises that the vast majority of residential tenancy matters are resolved on the first day (typically less than one hour), and that other activities that attract fees are rare (e.g., witness usually appear voluntarily rather than by summons).

If a claim is more complex, the potential difference in fees becomes more significant. If the proceeding requires two or three days of hearings, summoning of witnesses, and an interlocutory application, the fees would be as follows:

Table 10: Fee comparison between VCAT and Magistrates’ Court

Fee item	Matter heard by VCAT	Matter heard by Magistrates’ Court
Commencement	\$66.30	\$66.30
Hearing fee	\$368.30 per day	\$626.80 per day
Summons of witness	\$24.10 per summons	\$51.10 per summons issued (+\$28.60 if a registrar prepares the summons)
Interlocutory application	nil	\$159.30

* Comparison uses fee values as at April 2022 (see Appendix A). Fees under both jurisdictions will increase from 1 July 2002 in line with indexation of fee units.

In the example above, if a matter required 3 days of hearings, summoning of 3 witnesses, and at least one interlocutory application,³⁴ the total fees payable at the Magistrates’ Court would be \$1,718.30, compared to only \$875.20 at VCAT.

Industrial Division

The Magistrates’ Court has developed a new model for disputes heard in the Industrial Division, including the resolution of unpaid wage claims. This provides a simplified, easy to access pathway that focuses on early intervention. The features of the model include truncated timelines for filing documents, a dedicated self-represented litigant co-ordinator and a mandatory pre-hearing conference before a specialised judicial registrar.

The process will be relatively more resource-intensive than other civil matters, such as using judicial officers from the beginning of a matter to draw on expertise, and quicker initiation of dispute resolution mechanisms. While this may cost more at the early stages of a claim, the

³⁴ For example, in some instances, legislation requires an application to be listed with a short time frame (2 days). Given one party is interstate, the provisions of the *Service and Execution of Process Act 1992* come into play and a person is required to make application to reduce the timeframe from the 14 days required under SEPA to the listing time frame of the urgent application. This imposes an additional fee on a person which is not really intended.



intention is that it will minimise the overall demand on court resources because matters will be resolved more quickly.

The Government made a commitment in 2018 to make it faster, cheaper and easier for workers to get the money they are owed by their employer through the courts. The Government stated that, for claims of up to \$50,000, court filing fees will be lowered, claims will be heard within 30 days and court processes will be simplified.³⁵

The Court's current fee structure does not have a threshold at \$50,000. Implementing this commitment will require choices about adding to the complexity of the fee structure, or else ensuring filing fees are lower for unpaid wage claims of any size (noting the jurisdictional limit of the Court of \$100,000; the Court advises that in any case, most unpaid wage claims would be less than \$20,000 and be able to be managed through the small claims processes). The Small Claims Division of the Industrial Division, which provides for less formal proceedings, deals with claims under \$20,000.

More generally, there is a question as to whether the Industrial Division should be a no fee jurisdiction (for employees) in order to promote access to justice and ensure that applicants are not dissuaded from bringing forward a claim due to cost pressures.

Update to civil procedures

The Magistrates' Court (General Civil Procedure) Rules 2020 and the Magistrates' Court (Miscellaneous Civil Procedure) Rules 2020 came into force on 1 October 2020 and were a significant update of the 2010 Rules. The changes included updated language to better reflect consistency with other courts and community standards, the inclusion of an interpreters' code of conduct and simplified forms. Processes in relation to Appropriate Dispute Resolution were also modernised, evidence can now be given by way of summary in all motor vehicle property damage claims, and rules in relation to medical reports in WorkCover matters were updated.

Judicial Registrar civil jurisdiction expanded

The jurisdiction of judicial registrars was expanded in 2020. They now have jurisdiction up to \$25,000 in general matters, including fencing disputes, and \$100,000 in motor vehicle property damage claims. The increased jurisdiction broadens the judicial resources available to respond to growing demands.

Technology changes and IT costs

Over the last ten years, the Court's ability to hear matters remotely has increased significantly, with 175 courtrooms now equipped with audio-visual technology.

Significant changes have also been made as a result of the Covid-19 and the pandemic resulting in changes in working practices.

In 2021, some temporary court processes and procedures implemented during the Covid-19 pandemic were made permanent to enable the Court to hear a wider range of matters remotely and make some decisions without an in-person hearing (by the *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021*). For example, new section 125A of the Magistrates' Courts Act allows the Court to determine civil matters without an oral hearing and entirely on the basis of written submissions and without the appearance of parties, if the court is

³⁵ See <https://www.premier.vic.gov.au/dodgy-employers-face-jail-wage-theft>



satisfied that it is in the interests of justice to do so. (Section 201 and new section 337A of the *Criminal Procedure Act 2009* provide similarly for criminal proceedings.³⁶)

Online hearings for civil matters are facilitated by the Court exercising its powers to do what is necessary to resolve a dispute, by dispensing with the requirements of the *Civil Procedure Act 2009* and the Magistrates’ Court General Civil Procedure Rules 2010 as they would ordinarily apply, and the Court giving any direction or imposing any term or condition for the conduct of the proceeding which it thinks will resolve the dispute.

To support the Court’s move to online operations, all judicial officers and staff received an IT equipment bundle consisting of a new laptop, keyboard, headset and accessories at a cost of \$3.6 million. Desktop computers at registry counters and in courtrooms were also updated.

Additional staff were recruited to assist with processing and managing online operations. The movement to online processing also increased expenditure on IT systems and printing costs.

The eDocs portal was launched in November 2020. eDocs allows external parties to lodge documents electronically with the court and make payment of fees relating to those documents.

The rollout of eDocs was brought forward to support the Court’s Covid-19 recovery and the Online Magistrates’ Court (OMC). All courts around the state hold hearings online via WebEx and there is a dedicated online list called the Online Magistrates’ Court based at the William Cooper Justice Centre. The Magistrates’ Court built dedicated facilities at the William Cooper Justice Centre to support the expansion of the OMC.

Proposed introduction of new case management system

In the 2022-23 financial year, the Court will be introducing a new case management system (CMS). It is envisioned that the CMS will reduce the effort required by a Registrar for some documents, including the certified extract.

2.3.4 Review of the current Regulations

Comparison of Magistrates’ Court Fees

The changes to the pricing structures at the Supreme Court, County Court and VCAT since the current Regulations were last made make it important to reconsider the level of Magistrates’ Court fees in the context of the civil justice hierarchy. The fees should reflect the Court’s position as an inferior court to the Supreme Court and County Court, and should not be higher than the fees set for superior courts. Similarly, regard should be had to the fees in VCAT. These considerations support matters being heard in the most appropriate forum. It also supports achieving consistency across courts and tribunals where feasible (e.g., in the definition of fee group classifications).

The table at Appendix A sets out the current Magistrates’ Court fees and their equivalent (or closest equivalent type) for VCAT, the County Court and the Supreme Court. This comparison shows:

- The absence of differential fees for concession and corporate fee payers in the Magistrates’ Court leads to a number of inconsistencies when comparing fees for user groups across jurisdictions. For example, in many instances, corporate entities may pay lower fees at the Magistrates’ Court than at VCAT, while concession fee payers in the County Court and

³⁶ The Justice Legislation Amendment (System Enhancements and Other Matters) Act also made changes to the *Evidence (Miscellaneous Provisions) Act 1958* allowing an accused person to appear before the Court by audio visual link in criminal matters.



Supreme Court pay fees that in some instances are lower than what they would pay at the Magistrates’ Court.

- Comparisons are difficult to assess in some cases because of differences in the way fees are charged for the first and subsequent days of hearing. In the Magistrates’ Court, there is no fee for the first day of hearing (it is intended to be recovered through the commencement fee). At VCAT, there is sometimes a fee for the first day of hearing, depending on the matter. At the County Court and Supreme Court, there are separate fees for the first day of hearings and subsequent hearing days.
- At VCAT, the County Court and the Supreme Court, the hearing fees per day increase as the number of hearing days increases. This does not currently occur for the Magistrates’ Court.
- Fees payable for mediation by a judicial officer at the Magistrates’ Court are currently higher than those charged for mediation at the County Court and Supreme Court for both standard and concession fee payers.
- For applications under the Judgment Debt Recovery Act, the fee payable to the Magistrates’ Court is higher than for any fee payer in the County Court or Supreme Court, however this only applies to applications by judgment debt creditors (debtors are exempt); the County Court and Supreme Court apply their lower fees to applications by either creditor or debtor.
- Fees payable at the Magistrates’ Court for registration of an interstate judgment are higher than all equivalent fees in the County Court and Supreme Court.

These observations do not necessarily mean the fees currently charged by the Magistrates’ Court are inappropriate. There may be other factors that explain why fees do not align with the other courts. However, insofar as the fees should reflect the hierarchy of the courts and consistent treatment across courts (e.g., to encourage matters to be heard in the most appropriate and efficient forum), these are the areas identified for reconsideration.

Consideration of a three-tiered fee structure

The Department sought to identify if other fees could be simplified. The Department noted that some of the current fees are differentiated based on the value of the claim (or in the criminal jurisdiction, the number of charges on the charge sheet). This differentiation does not occur for proceedings in the County Court or Supreme Court³⁷, but generally does for VCAT matters. Consultation with the Magistrates’ Court indicates that the value threshold of claims does play a significant role in the case management of proceedings, including use of the small claims division, which do have different cost implications for the Court. The Department was satisfied that the fee differentiation based on value thresholds should remain to reflect the level of complexity and effort required by the Court, instead of having fees that increase based on the length of the trial.

Streamlining fees

The Department also considered ways to streamline some fees (e.g., by consolidating a number of smaller fees into a single fee where a number of different activities were likely to occur together). However, the Court advises that the activities are sufficiently discrete and should continue to be charged separately.

³⁷ Although there are graduated fees based on monetary values in the Probate and Costs divisions of the Supreme Court



Consideration of first day hearing fees

The Supreme Court and the County Court have a separate fee for the first day of hearings. For the Magistrates' Court, the costs associated with the first day of hearing are factored into the commencement fee, as it would be expected that in most cases there would be at least one day of hearing associated with the proceeding. Separating a fee for the first day of hearings (and lowering the commencement fee by this amount) might improve transparency and consistency across jurisdictions, but it would add an additional fee calculation and time for payment without changing the overall fees payable. The Court advised that breaking up the commencement fee into a number of separate fees would be unnecessarily complicated and raise concerns that the fees would not achieve equity in terms of accessing justice. It is therefore not considered warranted at this time.

Application of fees to services for which no fee is currently charged

As part of the overall pricing review, the Department considered whether there were any services that the Court provides within the civil division for which it currently does not charge a fee. In relation to its jurisdictional functions, aside from the exemptions that are already explicitly stated in the current Regulations, the only activity identified was pre-hearing conferences. The Department does not believe it is appropriate to charge a fee for pre-hearing conferences as their purpose is to encourage resolution of matters that would otherwise draw on more of the Court's resources.

Setting fees for Road Safety Act applications

In relation to the criminal division, the Department considers that all applications under the Road Safety Act (other than those by police officers and those that request an extension of time) should pay a fee. Despite being heard in the criminal jurisdiction of the Court, the applications are not limited to proceedings in connection with an offence. Many of these applications are for appeals against administrative decisions (similar to the administrative division of VCAT), or otherwise deal with a person seeking a private benefit (e.g., applying to the Court as a necessary step to apply for a licence following a period of disqualification). These applications to the Court under that Act are not part of defending criminal charges or infringements, or otherwise about findings of guilt or imposing penalties. Importantly, there is no material difference in the nature of the benefit to the individual between the one application under that Act that does currently attract a fee and those that do not. The number of applications under that Act that do not currently attract a fee is significant. Therefore, setting an appropriate fee for these applications is reasonable.

No other new areas of fees were considered appropriate, or within the power of the Act to prescribe such fees.

Fee waivers and exemptions

The Department considers that the current fee exemptions for proceedings under the *Family Violence Protection Act 2008* and *Personal Safety Intervention Orders Act 2010* are effective in ensuring there are no barriers for these matters. Despite these proceedings comprising a significant proportion of the Court's work in the civil division, the rationale for these exemptions remains.

The Department is also aware that the current power for the Magistrates' Court to waive fees on the grounds of financial hardship (a power in the Act) is used only rarely,³⁸ and usually involves some time and effort by the Court to satisfy itself that the grounds for the fee waiver have been

³⁸ Melbourne Magistrates' Court processed 74 fee waiver applications in 2020 and 21 in 2021. Most metropolitan headquarter courts report up to five applications per year with the regional headquarter courts reporting one or two per year for the region. Nearly all of these applications are granted, however the Court provides guidance on the eligibility for waivers before a person makes an application.



made. This can involve collecting evidence and hearing arguments on why the ground applies. The Department therefore considered expanding the grounds for fee waivers or reductions, to be informed by the feedback from stakeholders. It was noted that the County Court (Fees) Regulations and the Supreme Court (Fees) Regulations include a wider range of criteria for fee waivers, based on more objective criteria that make it easier to determine whether the waiver should apply.

Feedback from stakeholder groups

To inform the development of the proposed Regulations and the preparation of this RIS, the Department undertook preliminary consultation with the Magistrates’ Court and a range of stakeholders. Comments on the effectiveness of the current Regulations and areas for change were invited from:³⁹

Law Institute of Victoria	Victorian Bar
Office of Public Prosecutions	Victorian Aboriginal Legal Service
Children’s Court of Victoria	Know More
Victoria Legal Aid	Federation of Community Legal Centres
Victims of Crime Commissioner	Justice Connect / Public Interest Law Clearing House
Law and Advocacy Centre for Women	Women’s Legal Service Victoria
Djirra	Association of Corporate Counsel Australia
Victoria Law Foundation	State Trustees Limited

The issues arising from those that provided a response were:

- The current fee exemptions for those experiencing financial hardship, and for other specific types of proceedings listed in the current Regulations, should be retained. There was no support for scaling back these exemptions.
- There was support for a lower concessional level of fees for those on lower incomes. Low-income status should not be limited to eligibility for other government concessions (e.g., having a health care card), as there may be situations where a person cannot access finances (e.g., a person awaiting a family law property settlement).
- While the potential for a corporate tier fee was not directly addressed, one community legal centre (CLC) specialising in consumer law suggested that for companies using the court to pursue debt recovery, there should not be any incentive to use the Magistrates Court over VCAT from an application fee perspective. The CLC noted that corporate fees in VCAT (which does have a corporate tier fee) are only slightly less for money claims than the Magistrates’ Court. They consider that VCAT is a cheaper and simpler jurisdiction to defend these types of debt recovery matters (particularly for CLC clients), and so a greater disincentive for corporates using the Magistrates’ Court rather than VCAT is required to reduce costs to individuals that need to defend such matters.
- Concern that, while access to VCAT was relatively affordable, if enforcement of a VCAT monetary order was required (e.g., to pay half the cost of a fence), it would need to be in

³⁹ The Department also worked with internal stakeholders of the Magistrates’ Court, Supreme Court, County Court, VCAT and Court Services Victoria, as well as the Department of Transport (the Magistrates’ Court (Fees) Regulations 2012 contain fees for applications under the *Road Safety Act 1986*. This Act is the responsibility of the Minister for Roads and Road Safety.



proceedings at the Magistrates’ Court. The higher fees charged by the Magistrates’ Court to enforce such orders undermines the benefit of using VCAT for resolving such disputes. More generally, there was concern about fees being charged for enforcement of judgment debts; it was suggested that any such fees should only be applied to the debtor as part of the enforcement order.

- A suggestion that victims of crime should not be required to pay any fees when pursuing a criminal act through a civil procedure. As also noted by VLRC,⁴⁰ access to civil remedies is an important part of the justice system for many victim-survivors, and for civil litigation to be a real justice option for victims, it needs to be accessible and effective. This should be the case for all victims of crime, regardless of alleged crime type. Many victims of crime already face significant barriers to justice via the criminal justice system, but this is particularly the case in sexual assault cases where there are few successful criminal outcomes. Accordingly, there should be no additional barriers to victims’ pursuit of justice via civil justice mechanisms, including through requiring victims to pay for application fees to commence civil proceedings, request a civil order or for enforcement measures.

2.4 Jury fees

2.4.1 Costs of holding jury trials

There are costs to the government⁴¹ associated with the use of juries in trials.

Payments to jurors and others attending for jury service

Persons called for jury service receive payment for their time. The amount of payment is set by the Attorney-General under section 51(4) of the Juries Act.⁴² Payments are made to each person who has attended for jury service in response to a summons, for each day the person attends court, whether or not the person has actually served as a juror.

The current payments are:⁴³

- \$40 per day for the first 6 days of the trial
- \$80 per day thereafter
- for each day of attendance at court in excess of 12 months – \$159 per day.

If a juror, on the last day of a trial, is required to serve for more than 8 hours (excluding the period of any adjournments for meals) the juror must be paid twice the amount for that day.

Jurors are also entitled to an allowance for reimbursement of some travel expenses.

For civil trials, the total amount of remuneration paid to jurors (those that actually serve on a trial jury) is about \$150,000 per annum. Additional payments to those that attend for jury service but who are not selected for a jury is around \$50,000 per annum.⁴⁴

⁴⁰ Victorian Law Reform Commission, Improving the Justice System Response to Sexual Offences, 12 November 2021.

⁴¹ While the costs are incurred by the courts, courts’ funding is provided through the state budget process and appropriations from Parliament.

⁴² Section 51(4) of the Juries Act provides that the Attorney-General, by notice published in the Victorian Government Gazette, may fix the rate of remuneration and allowances to be paid.

⁴³ Current remuneration and allowances are set out in the notice by the Attorney-General, published in Victorian Government Gazette No. S 19 Tuesday 31 January 2012. In addition to the payments made by the courts, the Juries Act requires that employers make up any difference between the payments made by the court and the amount that the person could reasonably expect to have received from the employer as earnings for that period had they not been performing jury service.

⁴⁴ Remuneration paid to those who serve on a jury is actual payments. Remuneration of those that attend court for jury service but not selected for a jury is an estimate only, due to the need to allocate these costs between civil and criminal jurisdictions. This allocation is based on Juries Victoria planning of 25 attendees for a civil jury trial, although in practice this may vary.



The following table shows the payments made to persons attending for jury service from 2016-17 to 2019-20. Data for 2020-21 was affected by the small number of jury trials due to Covid-19 restrictions, so has not been included.

Table 11: Payments to jurors for civil jury trials

	2016-17	2017-18	2018-19	2019-20
Payments made for those serving on a civil trial jury	\$147,073	\$159,205	\$116,729	\$148,790
Payments made to others attending for jury service but not selected for jury (proportion attributable to civil trials)	\$44,080	\$60,040	\$47,120	\$50,160
TOTAL	\$191,153	\$219,245	\$163,849	\$198,950

Other costs associated with administering jury trials

The Juries Commissioner is a statutory role established under the Juries Act, responsible for jury administration in Victoria through the operations of Juries Victoria.

Juries Victoria is responsible for providing a jury system that delivers outstanding service and inspires community confidence. This responsibility is met by working with Victorian courts to ensure the demand for juries is met and that the jury experience for citizens is valuable.

Juries Victoria 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 Court and the County Court.

In addition to costs associated with jury selection (such as processing and considering applications to be excused from jury service, providing proof of service, processing payments and expense claims, etc), Juries Victoria incurs other expenses, such as the costs of the Juror Support Program.⁴⁵

The total administrative costs of Juries Victoria (i.e., excluding payments to jurors) is around \$2.1 million per year.⁴⁶ These costs relate to all Juries Victoria functions, across both criminal and civil trials.

The share of this cost that is attributable to civil jury trials—in a ‘normal year’—is around \$154,000 per year. This cost is an estimate based on attributing total Juries Victoria costs between criminal and civil trials (in the three years prior to Covid-19, civil jury trials made up 14.7 per cent of total jury trials), and that civil trials only require six jurors, compared to criminal juries which require 12.⁴⁷

This method of estimating costs is a ‘top down’ approach. Rather than adding up the costs of all the individual tasks and activities associated with the jury selection process, it is accepted that all

⁴⁵ The Juror Support Program offers counselling and support to anyone attending for jury service (whether serving on a jury or not). It is provided by qualified and registered psychologists, and assists with any negative reactions or impacts from the jury experience.

⁴⁶ The recent years affected by Covid-19 have been ignored, as the costs are not representative of normal Juries Victoria activities. The total is based on the expenditure averaged across 2017-18 and 2018-19. It includes all recurrent expenditure items (e.g., staff) and allowance for depreciation/amortisation of capital expenditure. (Juries Victoria is part of the Supreme Court for annual reporting purposes.)

⁴⁷ Most of Juries Victoria’s work relates to pre-attendance activities (such as questionnaires, issuing summons, etc), the costs of which would reflect the proportional number of people needed for civil trials.



of Juries Victoria costs are necessarily incurred in making juries available, with this total cost to be apportioned between criminal and civil jurisdictions. Given the functions of Juries Victoria, this is a reasonable approach for the purposes of this RIS.⁴⁸

This gives a reasonable estimate of the additional administrative costs attributable to managing the jury process of around \$2,230 per civil jury trial.

There are also other costs incurred as a result of holding a jury trial. Jurors are entitled to compensation if they incur an injury while attending jury service, as if they were an employee. In practice, this is covered through WorkCover arrangements and a special appropriation.

There are costs to the Supreme Court and County Court associated with the collection of jury fees. However, this is usually managed as part of existing mechanisms for collecting other fees charged by the court for hearings, so is not considered a material additional cost. In particular, with the movement towards online management of cases, it has become easier for people to pay fees electronically and for the courts to be able to monitor when fees have been paid, reducing the administrative burden associated with fee collection. There is no material cost of enforcement of fee payment as under the Juries Act, the trial proceeds without a jury if a fee has not been paid.

There are also costs to Victoria Police (VicPol). Section 26 of the Juries Act requires VicPol to check that a person is not disqualified due to criminal activities. This involves a cost to government in funding VicPol to process these checks. VicPol advises that the direct costs⁴⁹ involved in undertaking the checks of potential jurors is around \$140,000 per annum for all jury activities, of which around \$11,000 would be attributable to the share of jurors used on civil trials. These costs have not been included in the amount to be recovered from jury fees, as they are too small, and the payment of jury fees to the court is not directly linked to VicPol activities.⁵⁰

Total costs of civil juries

The following table sets out the total direct financial costs associated with civil jury trials.

⁴⁸ When using a 'top-down' distributed costs method, it can be more difficult to demonstrate that the costs are efficient. Appendix D provides a comparison of jury fees charged in other states, which indicates Victoria's current jury fees are broadly in line with the fees charged in other states, ignoring the part of fees that aims to recover the payments to jurors (as payments to jurors varies widely across jurisdictions). However, comparisons with other states should be done with caution, as there may be different legislative requirements of the steps of jury selection, juror numbers, etc in other states.

⁴⁹ The direct costs relate to 1 FTE (VPS2) and 0.2 FTE (VPS3) that undertake the checks. The costs are based on the mid-point base salary for these staff levels, other salary related costs (e.g., superannuation and oncosts) and an allowance for contribution to corporate overheads. There may be other minor incremental costs to VicPol associated with the handling of the jury checks.

⁵⁰ It is noted that VicPol does not charge Juries Victoria for undertaking these checks, as it is a statutory duty to complete the checks under the Juries Act. However, if VicPol were to charge Juries Victoria based on the fee charged for National Police Checks (a fee of \$49.60 less the \$21 pass-through cost associated with ACIC that jury checks do not require = \$28.60), the total amount to be recovered would be in the order of \$1.5 million per annum, of which around \$120,000 would be attributed to the proportion of juror checks needed for civil trials.



Table 12: Costs to government of civil jury trials

	Average aggregate cost attributable to civil trials	Average per civil trial ⁵¹
Payments made to persons attending for jury service for civil trials	\$200,000	\$2,899
Administrative expenses of Juries Victoria attributable to civil trials	\$154,000	\$2,232
Total costs	\$354,000	\$5,130

The costs considered in this RIS are limited to the direct financial costs to the courts of making juries available for civil trials. There are other less tangible or unquantified costs that are not measured in this RIS, such as the additional burden on the court of jury trials (e.g., use of court space, time of court officers while juries are selected, the judge having to give directions to juries, court time during a trial dealing with matters relating to the jury). In particular, matters that were set down for trial by jury but do not proceed on the day of trial have implications for court time that was set aside; while this time is not used for the particular trial, it is usually too late to reschedule other proceedings to make use of the court’s time.

This RIS also does not consider the burden on the community of jury trials. Attendance for jury service can be disruptive on people’s lives. Only some travel costs are able to be reimbursed. Employers are required to make up any lost income while a person attends for jury service, which is a direct cost, but in many cases may also involve additional payments to backfill staff. Some people with no regular income will not be fully compensated for their time by the payments able to be made to jurors. However, while these burdens in some cases might be significant, this RIS is limited to setting fees that can only recover government costs.

2.4.2 The need to recover the costs of civil jury trials

The Juries Act provides a power to require fees to be paid by the party that requires a civil matter to be tried by a jury.⁵²

Unlike the issues around access to the Magistrates’ Court discussed above, the availability of jury trials for civil proceedings is not considered a fundamental necessity to providing justice.

The right to trial by a jury was historically based on the principle that limits should be placed on the power of the state over people’s lives. In the criminal jurisdiction, trial by jury has been seen historically as an important safeguard in terms of standards of justice. This view has been reflected to some degree in the civil sphere, although it is notable that the right to elect trial by jury exists in relation to only a subset of civil matters, with some states no longer allowing any jury trials for civil matters. It is now generally regarded that access to a jury trial in civil matters is entirely of a private benefit to the party requesting the use of a jury. The community as a whole obtains no additional benefit if a civil matter is tried by jury compared to if it were tried by a judge

⁵¹ This is the average per civil jury trial held (69 civil jury trials each year across this period). Some costs are also attributable to parties who request a jury, but cancel the request before the trial commenced (e.g., if the matter is settled). This is why the Act requires the initial jury fee to be paid at the time of requesting the jury, and that refunds are only provided where the request is cancelled at least 14 days before the scheduled trial date. Because revenue is retained from those that cancel jury requests within 14 days, the costs to be recovered from each trial is less than indicated in the table.

⁵² No fees are payable if the court, on its own motion, orders that a jury is required in a civil trial.



alone. 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.

This is why the Juries Act allows for fees to be charged for the use of juries in civil trials, but not for criminal trials (where the right to a jury trial remains without fee).

The private nature of the benefits of juries in civil matters suggests that a high degree of cost recovery is warranted.

In relation to the Government's *Pricing for Value Guide*, the relevant Pricing Principles identified for the setting of jury fees were:

- | | |
|---|---|
| 1 | Agencies should aim to recover the full costs of service provision to promote efficient consumption |
| 2 | The cost of service provision should be borne by those who benefit from the service |

Fees have for some time been charged to the party requesting the use of a jury to recover the full cost associated making a jury available for a civil trial. The policy rationale for this is:

- The party that gives rise to the need for jury trial for civil matters should bear the additional costs of such a request. This is consistent with the 'user pays' principle. As noted above, it is regarded that neither the community as a whole, nor the integrity of the justice system, obtains additional benefit from the use of juries for civil matters; therefore, requiring the party that requests use of a jury to pay any additional costs is consistent with the 'beneficiary pays' principle.
- Charging fees at full recovery of costs sends an appropriate price signal of the taxpayers' resources used in jury trials, providing a suitable disincentive for the over-use of juries which may occur if parties do not face this cost. Full cost recovery therefore promotes the efficient use of court and taxpayer resources.

To the extent that a departure from full cost recovery-based fees could be justified in this area, it is on the basis 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. The Department does not consider this to be the case. Preliminary consultation with stakeholders did not identify any views that the government should be bearing a share of costs of jury trials for civil matters.

As allowed by the Juries Act, fees have historically been charged for:

- the initial setting a proceeding down for trial by jury
- additional fees for each day of trial beginning with the second day of trial

(i.e., the fee for the setting down of a matter for trial by jury is intended to also relate to the costs of the first day of trial, including payments made to persons who attend court for jury service that may not be selected to be a juror).

In general terms, the current 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 current Regulations prescribed the following fees:



Table 13: Fees in the Juries (Fees) Regulations 2012

Fee	Prescribed fee units	Value of fee in 2012 (1 fee unit = \$12.53)	Value of fee in 2022* (1 fee unit - \$15.29)
Fee on setting a proceeding down for trial by a jury	54.3 fee units	\$680.40	\$824.80
Fee 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	\$81.40 per juror per day <i>(\$488.40 for usual 6 person jury)</i>	\$98.70 per juror per day <i>(\$592.20 for usual 6 person jury)</i>
If a trial exceeds 6 days, fee for each day of the trial in excess of 6 days	12.9 fee units for each member of the jury	\$161.60 per juror per day <i>(\$969.60 for usual 6 person jury)</i>	\$196.00 per juror per day <i>(\$1,176.00 for usual 6 person jury)</i>

* Fees shown will be the fee value from 1 July 2022, in line with automatic increases of fees across government each 1 July.

2.4.3 Data on jury fees revenue

The fees last set in 2012 were calculated to reflect costs in 2012. The fees are expressed in terms of a number of fee units, which means that the actual amount of the fee increases in line with the value of a fee unit, which is generally increased each year by the Treasurer to reflect increased costs of service delivery.⁵³

The following table shows the actual revenue collected from jury fees up to 2020, and a notional revenue amount for the current financial year had a 'normal' number of jury trials been held.

Table 14: Revenue collected from jury fees

Court	2017-18	2018-19	2019-20	2020-21*
Supreme Court	\$169,563.10	\$178,568.80	\$186,126.80	\$190,780
County Court	\$500,227.30	\$497,046.00	\$306,644.80	\$465,625
Total	\$669,790.40	\$675,614.80	\$492,771.60	\$656,407

* The figure for 2020-21 is not actual revenue collected, but a notional revenue figure if there had been a 'normal' level of jury trials, based on the average number of trials and duration between 2017 and 2020.

Revenue from jury fees is not retained by the courts, but forms part of the consolidated revenue of the state.

The above revenue includes payments made for requesting a jury trial, including where the trial ultimately does not proceed (e.g., where parties settle the case before the date scheduled for the

⁵³ The setting of the value of a fee unit by the Treasurer each year takes account of price and wage inflation, as well as incentives for agencies to make efficiency improvements. The setting of the fee unit value may also take account of other factors – for example in 2020-21 the value of the fee unit was not increased from the previous year as part of the government's responses to the impact of Covid-19 on the economy and community.



commencement of the trial). The Juries Act provides for refunds of jury fees paid prior to trial only where the request is cancelled at least 14 days before the scheduled trial date.

The data suggests that fees collected from jury fees exceeds the direct (quantified) costs of making juries available for civil trials. Based on the data available, the amount of over-recovery is in the order of \$300,000. However, the exact magnitude is uncertain, as the apportioning of costs to civil trials is based on the proportion of civil trials, which is highly variable from year to year.

The trend toward over-recovery is because the amounts that were set in 2012 to include recovery of payments to jurors have increased in line with the increase in fee units, while the amount of remuneration paid to jurors has not increased over that period.

Further, the structure of fees set in 2012 sought to recover a high share of costs through the daily fee for days 2 to 6 (even in 2012 these were set at more than double the amount paid to jurors on those days), while the fee for the requesting of a jury (which is intended to also recover costs associated with the first day of trial) was less than the amount paid to all persons attending for jury service on the first day.⁵⁴

The combined impact of this structure is that, as the fees that relate to days 2 to 6 are higher than the amounts paid to jurors, the burden of over-recovery falls disproportionately on longer jury trials. This means that fees charged for longer jury trials are likely to be cross-subsidising the costs of shorter (i.e., 1-2 day) jury trials.

2.4.4 Other matters considered in setting jury fees

As noted above, the jury fees should be set at full cost recovery to ensure that the costs associated with the use of jury trials for civil matters are met by those that give rise to the costs (i.e., the party that requests the jury trial), and that the fee acts as an effective price mechanism to guide the efficient use of court resources.

Based on advice from the courts, the Department understands that:

- jury fees in most cases are not a dominant factor in a party's decision whether or not to request a jury trial. Rather, such a decision is most likely influenced by how sympathetic or receptive a jury is likely to be to that party's case on liability (in a personal injury action) and/or the assessment of damages
- the level of jury fees is unlikely to have a material influence on other court objectives (e.g., incentives to resolve matters quickly and avoid trials where practical), as the jury fees are only a small component of overall costs to parties of going to trial, and in general much less than the amounts being claimed
- the value of jury fees has little impact on the choice of court or tribunal in which a party may choose to commence proceedings. Other factors predominate this decision—for example, complexity of case, perceived expertise of judiciary or quality of case management, overall costs liability/recovery. Therefore, the jury fees are unlikely to distort incentives people have for commencing proceedings in the most appropriate forum
- the current fee structure is relatively simple to understand and to calculate the appropriate fee. While the Juries Act specifies that the daily jury fees must be paid at the start of each day's hearing from the second day⁵⁵, the Juries Act (and the current Regulations) are silent on when

⁵⁴ Given the need to ensure sufficient numbers of people are available for empanelment for each trial, on average Juries Victorian aims to have around 25 people attend for jury service for each jury trial. Despite only 6 people are selected to form a jury, the attendance payment is made to all that attend in response to a jury summons. Therefore, under the current remuneration rates, a total of \$1,000 is paid to persons attending for jury service attributable to each trial, which is higher than the current jury request fee of \$816.10 (despite that fee having increased each year since 2012 while the payments for jury attendance have not).

⁵⁵ Juries Act, section 24(3).



the initial payment for requesting a jury trial must be paid; this is not something that can be set in the Regulations, but is a matter for each court to manage according to its own Rules and practices.

In 2021, some temporary court processes and procedures implemented during the Covid-19 pandemic to allow for particular activities to be undertaken remotely, were made permanent. The *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021* made permanent changes to the *Juries Act 2000* around summoning jurors to attend jury service in civil trials by electronic means, and changes to empanelment of jurors so that jurors can be socially distanced in the courts and attend court by audio visual link. On advice from the courts, these changes are not expected to have a material impact on future costs of juries.



3. Objectives

3.1 Overview

This Chapter describes the specific outcomes the government intends to achieve through making the proposed Regulations. The objectives of the proposed Regulations are to address the issues identified in the previous chapter, within the context of the relevant legislation and other government policy objectives.

3.2 Pricing strategies

To inform the development of the proposed Regulations, the Department undertook a pricing review as required by the *Pricing for Value Guide*, in particular application of the Pricing Playbook.

The pricing review concluded that the appropriate pricing strategies (relevant for this RIS) are:

- Fees should be set for the services provided by the Magistrates’ Court to recover a proportion of its costs of providing those services. The appropriate proportion should be assessed in relation to the relevant Pricing Principles (see 3.3.5 below). Consistent with the head of power in the Magistrates’ Court Act, the scope of costs is limited to the costs associated with proceedings⁵⁶, or providing access to information.⁵⁷ The pricing strategy included making better use of differentiation of fees between different court users.
- Fees should be set for parties requesting a jury for civil proceedings in the County Court or Supreme Court, to reflect the full cost to the taxpayer of making juries available for civil proceedings (see 3.4 below).

Other pricing opportunities (e.g., for other services provided by the courts) are outside the scope of this RIS.

3.3 Magistrates’ Court fees

3.3.1 Objectives of Act

The purpose of the Magistrates’ Court Act is to, inter alia, provide for the fair and efficient operation of the Magistrates’ Court, and to allow for the Magistrates’ Court to be managed in a way that will ensure:

- fairness to all parties to court proceedings
- the prompt resolution of court proceedings
- that optimum use is made of the Court’s resources.⁵⁸

These are consistent with the general objectives of the justice system in Victoria.

3.3.2 Hierarchy of courts

The position of the Magistrates’ Court in the Victorian courts’ jurisdictional hierarchy is an important consideration in setting the new fees. The fees must reflect the Court’s position as an inferior court to the Supreme Court and County Court, and should not be higher than the fees set for superior courts. Similarly, regard should be had to the fees in VCAT. These considerations

⁵⁶ See Magistrates’ Court Act section 22(1) and section 140(1)(a) and (b).

⁵⁷ See Magistrates’ Court Act section 18(3) and section 140(1)(c).

⁵⁸ Magistrates’ Court Act, section 1.



support matters being heard in the most appropriate forum. It also supports achieving consistency across courts and tribunals where feasible (e.g., in the definition of fee group classifications).

The Magistrates’ Court jurisdictional limit of \$100,000 in civil matters is also a relevant consideration, particularly when ensuring that the fees are proportionate to the benefit being sought.

3.3.3 Gender equality

The *Gender Equality Act 2020* commenced on 31 March 2021. The objectives of the Act include to promote, encourage and facilitate the achievement of gender equality and improvement in the status of women, to eliminate systemic causes of gender inequality in delivery of services, and to enhance economic and social participation by persons of different genders.

This legislation introduced a new requirement for the Victorian Public Service to undertake a Gender Impact Assessment (GIA) when developing or reviewing any policy, program or service that has a direct and significant impact on the public. A GIA critically assesses the effect that a policy, program or service may have on persons of different genders, to ensure that policies can be developed in a way that meets the needs of different genders and addresses gender inequality. This includes, where practicable, taking into account that gender inequality may be compounded by intersectional disadvantage or discrimination on the basis of characteristics such as aboriginality, age, disability, ethnicity, gender identity, race or sexual orientation. The Act requires organisations to consider these when developing strategies and measures to promote gender equality.

As part of remaking the proposed Regulations, the Department will prepare a GIA that demonstrates that the needs of different gender intersectionality groups have been considered.

3.3.4 Other policy objectives

As noted in the previous Chapter, the Government made a commitment in 2018 to make it faster, cheaper and easier for employees to get the money they are owed by their employer through the courts. The Government stated that, for claims of up to \$50,000, court filing fees will be lowered, claims will be heard within 30 days and court processes will be simplified.

3.3.5 Pricing for value guide and fee-setting objectives

As part of the review of fees, the Department considered the *Pricing for Value Guide* and the associated Pricing Principles (see section 2.2 of this RIS).

Following on from the discussion of private and public benefits and cost sharing discussed in section 2.3.2 of this RIS, the Department has determined the relevant Pricing Principles are:

1	Agencies should aim to recover the full costs of service provision to promote efficient consumption
2	The cost of service provision should be borne by those who benefit from the service
3	Services creating broad benefits for the community should be priced to support efficient consumption
5	The price of services should not limit access to those with a lower ability to pay
6	Users should pay for differentiated service based on the value created by that differentiation
8	Pricing should support positive behaviours
11	Pricing structures should be easy to understand and simple to administer



These Pricing Principles translate into a set of clear fee-setting objectives that encompass the broader objectives of the Court itself, the position of the Court within the court system, and other policy objectives. These fee-setting objectives are:

- Access to justice is to be safeguarded.
- The fee structure should support and enable efficient court operations. This includes supporting matters being heard in the most appropriate forum (the fee structure should reflect the role of the Magistrates' Court in Victoria's civil justice system), as well as encouraging the most expedient and efficient way to resolve matters.
- Fees should be applied equitably. This reflects both the fairness of the sharing of costs between court users and taxpayers, but also fairness between different users of court services. In particular, where a policy of full cost recovery is not the preferred outcome, fees should reflect the relative ability to pay of different parties, and the relative willingness to pay.
- Fees should be easy for users to understand and for the Magistrates' Court to administer.

3.4 Jury fees

Consistent with the Pricing Principles, and the nature of the problem discussed in Chapter 2, the objective of the proposed Juries (Fees) Regulations is to recover the full cost to government associated with making jury trials available in civil matters. Full cost recovery in this instance is consistent with fairness and efficiency, and would not have any adverse outcomes in terms of access to justice.



4. Options for Magistrates' Court fees

4.1 Overview

This Chapter describes a number of feasible options to meet the objectives described in the previous chapter. It also assesses the impacts of those options and identifies a preferred option.

The setting of fees is authorised under section 140 of the Magistrates' Court Act.

The Department identified three options to be assessed in detail in this RIS:

- **Option 1:** retain the current fee structure and amounts (in fee units)
- **Option 2:** change the fee structure to include corporate and concession fees, adjust some fees to better align with the Court's status within the court hierarchy, and expand the fees for applications and appeals under the Road Safety Act. Fees would also be reduced for filing of wage claims in the Industrial Division and for some matters previously heard in VCAT, and the criteria for fee waivers would be expanded. The combined impact of these changes would result in a 40 per cent increase in fee revenue collected by the Court.
- **Option 3:** retain the current fee structure but increase all fees by 40 per cent (to achieve the same level of overall cost recovery as Option 2).

These options are described and assessed in more detail below.

The Department also identified other options, but did not consider these to be feasible as they do not align with the policy objectives discussed in the previous chapter. These other options were:

- Changing the fee structure as in Option 2, but increasing all fees by a further 20 per cent. This would mean that the corporate fee would effectively be set at 100 per cent cost recovery. This option would have increased revenue collected by the court by 68 per cent to \$38.4 million per year. However, setting corporate fees at full cost recovery is not consistent with the principle that there is some public value in all cases heard by the Court, and that taxpayers should therefore bear a portion of the costs of proceedings, even for corporate litigants. Further, increasing fees by this amount would mean that the fees for the Magistrates' Court would be around the same or higher than the corresponding fees in the County Court, which is not consistent with the Court's position within the state's court system.
- Setting fees to recover the entire costs of the civil jurisdiction. This option would increase fees by 250 per cent, to recover an additional \$57 million per annum. As with the option above, this option was considered unfeasible because setting some fees above cost recovery is inappropriate due to the public value in all cases heard. Further, this option would involve considerable cross-subsidisation from those that pay fees to those that do not.

4.2 Option 1: retain the current fees

A feasible option is to continue the fees in the current Regulations.

The current fees are as shown below, at the values that will apply from 1 July 2022. The fees would continue to be expressed in terms of fee units, and would automatically increase in line with the Treasurer's decision on the value of a fee unit each year.



Table 15: Current fees for Magistrates' Court

Fee	Fee amount (fee units)	Fee amount in 2022-23 ⁵⁹
Fees payable in criminal division		
Filing charge sheet for a single charge	5.7	\$87.20
Filing a charge sheet for multiple charged	8.6	\$131.50
Enforcement agency lodging information in relation to a single infringement	5.7	\$87.20
Enforcement agency lodging information in relation to multiple infringements	8.6	\$131.50
Filing an application under section 31B of the Road Safety Act 1986 for a licence eligibility order ⁶⁰	7.7	\$117.70
Fees payable in civil division		
Fee for commencement of civil proceedings (filing a complaint, counter-claim or third party notice)		
Claims less than \$1000	10.2	\$156.00
Claims \$1000 to \$10,000	21.3	\$325.70
Claims \$10,000 to \$40,000	32.4	\$495.40
Claims over \$40,000	48.6	\$743.10
Fees for mediation (per session) with Registrar	18.1	\$276.70
with Judicial Registrar	31.4	\$480.10
Fee for hearings (per day, excluding first day)	41.7	\$637.60
Fee for requesting an Order	3	\$45.90
Fee for issuing warrant to enforce order	1.2	\$18.30
Fee for filing summons for oral examination	7	\$107.00
Fee for interlocutory application	10.6	\$162.10
Fee for application by judgment debt creditor	5.6	\$85.60
Fee for application for an attachment of earnings order under Order 72 of the Rules	10	\$152.90
Fee for application to register interstate judgment	4.8	\$73.40
Fees payable in criminal and civil divisions		
Issue of orders or certificate	1.4	\$21.40
Issue of summons or subpoena to witness	3.4	\$52.00
Preparation of summons, warrant, certificate by Registrar	1.9	\$29.10
Search/inspect database	1.71	\$26.10
Photocopying or printing	-	60 cent/page

This option is expected to result in fee revenue of around \$23 million per year.

The level of cost recovery under Option 1 is as follows:

⁵⁹ Table shows dollar amounts of fees that will apply from 1 July 2022 under the current Regulations. From 1 July 2022, the value of one fee unit is \$15.29. The Monetary Units Act allows the actual fee charged to be rounded to the nearest 10 cents.

⁶⁰ Current fee item 1.6 would need to be removed in any case as it refers to a repealed section of the Road Safety Act.



Table 16: Cost recovery under Option 1

Division	Rate of cost recovery
Criminal Division	0.2%
Civil Division	28.2%
Total Magistrates' Court	9.0%

These rates of cost recovery average across all proceedings in the Court, including proceedings where fees are not payable and those users that are exempt from paying fees. Limited to only civil proceedings for which fees are paid, the rate of cost recovery for an individual civil matter is around 40 per cent under the status quo.

4.3 Option 2: Changed fee structure

Option 2 changes the fee structure to address the issues identified in Chapter 2. In particular:

- A three-tiered fee structure is introduced for most civil jurisdiction fees. Unless otherwise changed as noted below, the current fee amount has been used as the standard fee, with the corporate fee double the standard fee and the concession fee half the standard fee. The definitions and relativities used for this are the same as used in the County Court and the Supreme Court, to ensure the fee categories are easy to understand and apply consistently across courts.

Proposed fee payer categories

A **concession** fee payer means a person who holds a current health care card within the meaning of the Commonwealth *Social Security Act 1991*.

A **standard** fee payer means a natural person (other than a natural person acting in the capacity of a statutory office holder), an entity which is a not-for-profit organisation, an entity that has a turnover of less than \$200,000 in the financial year before the financial year in which a fee is to be paid, or the executor or administrator of a deceased estate.

A **corporate** fee payer means an entity other than a standard fee payer or a concession fee payer.

The resulting change in the break-down of fee payers is as follows:

Table 17: New fee categories

Current fee payers ⁶¹	Proposed fee payers
99% of fee payers pay the same rate	45% will pay corporate rate
	43% will pay the standard rate (the same as the current fee or lower)
	11% will pay the concession rate ⁶²
<1% have fees waived under the Act	1% will have fees waived

⁶¹ These percentages relate to proceedings where fees are usually charged. There are other types of matters, such as family violence and personal safety matters, for which fees are never payable; these are excluded from the table.

⁶² 59% of concession card holders are female, so this change is a positive in terms of improving gender impacts. (DSS Demographics - December 2021, published on data.gov.au February 2022; accessed 10 April 2022)



- Reduce fees for applications by judgment debt creditors (and remove the current exemption for judgment debt debtors, who will now also pay the application fee), reduce the fee for application to register an interstate judgment, and reduce the fee for issue of summons or subpoena to witness, to better fit in the comparison to the equivalent fees charged by the County Court and Supreme Court
- Expand the fees charged for applications to the Magistrates’ Court under the Road Safety Act. These applications create a private benefit for the applicant (such as regaining a driver licence or return of vehicle) and it is appropriate that applicants make a contribution to the costs of the Court, given the large number of applications under that Act. It is not intended at this stage to set the fee to recover the entire cost to the Court of hearing such applications, which in some instances amounts to a full merit-based review of a decision. For simplicity, and to reflect that this will be a new fee, it is proposed to set this fee at the current fee for the filing of a single charge sheet in the criminal division, and review the fee after two years. As the proposed fee is small (less than most fees that are payable in the civil division), it is not considered necessary to provide a concessional rate for this fee.

The fees under Option 2 are as shown below. The fees would continue to be expressed in terms of fee units, and would automatically increase in line with the Treasurer’s decision on the value of a fee unit each year.

Table 18: Fees proposed under Option 2

Fee	Fee amount in fee units (Fee value in 2022-23) ⁶³		
Fees payable in criminal division			
Filing charge sheet for a single charge	5.7 (\$87.20)		
Filing a charge sheet for multiple charges	8.6 (\$131.50)		
Enforcement agency lodging information in relation to a single infringement	5.7 (\$87.20)		
Enforcement agency lodging information in relation to multiple infringements	8.6 (\$131.50)		
Filing an application under the Road Safety Act 1986, other than for extension of time	5.7 (\$87.20)		
Fees payable in civil division			
	Corporate	Standard	Concession
Fee for commencement of civil proceedings (filing a complaint, counter-claim or third party notice)			
Claims less than \$1000	20.4 (\$311.90)	10.2 (\$156.00)	5.1 (\$78.00)
Claims \$1000 to \$10,000	42.6 (\$651.40)	21.3 (\$325.70)	10.7 (\$163.60)
Claims \$10,000 to \$40,000	64.8 (\$990.80)	32.4 (\$495.40)	16.2 (\$247.70)

⁶³ Table shows dollar amounts of fees based on the value of one fee unit applicable from 1 July 2022: \$15.29..



Claims over \$40,000	97.2 (\$1,486.20)	48.6 (\$743.10)	16.2 (\$247.70)
Fees for mediation (per session) with Registrar or Judicial Registrar	36.2 (\$553.50)	18.1 (\$276.70)	9.1 (\$139.10)
Fee for hearings (per day, excluding first day)	83.4 (\$1,275.20)	41.7 (\$637.60)	20.9 (\$319.60)
Fee for requesting an Order	6 (\$91.70)	3 (\$45.90)	1.5 (\$22.90)
Fee for issuing warrant to enforce order	2.4 (\$36.70)	1.2 (\$18.30)	1 (\$15.30)
Fee for filing summons for oral examination	14 (\$214.10)	7 (\$107.00)	3.5 (\$53.50)
Fee for interlocutory application	21.2 (\$324.10)	10.6 (\$162.10)	5.3 (\$81.00)
Fee for application by judgment debt creditor	4.9 (\$74.90)	2.4 (\$36.70)	1.2 (\$18.30)
Fee for application for an attachment of earnings order under Order 72 of the Rules	20 (\$305.80)	10 (\$152.90)	5 (\$76.50)
Fee for application to register interstate judgment	2.7 (\$41.30)	1.3 (\$19.90)	1 (\$15.30)
Fees payable in criminal and civil divisions			
Issue of orders or certificate	1.4 (\$21.40)		
Issue of summons or subpoena to witness	2.7 (\$41.30)		
Preparation of summons, warrant, certificate by Registrar	1.9 (\$29.10)		
Search/inspect database	1.7 (\$26.00)		
Photocopying or printing	60 cents/page		

The exceptions to the above would be:

- A lower commencement fee for employees suing for unpaid wages. In 2018, the Government made a commitment to lower filing fees for claims of unpaid wages up to \$50,000. To avoid introducing a new threshold amount that would be in addition to the existing monetary thresholds used by the Court, and recognising the practices of the Court to hear wage claims as small claims, the Department considers it appropriate to set a lower commencement fee that would apply to any wage claim matters heard in the Industrial Division. Under this option, the commencement fee would be set at 10 fee units (\$152.90) or 5 fee units for a concession fee payer (\$76.50).
- Federal jurisdiction matters previously heard by VCAT and now heard by the Magistrates' Court would only be liable for the corresponding VCAT fees (if any) for the equivalent activity. This seeks to ensure that parties proceeding to the Court (because VCAT lacks jurisdiction to hear their federal jurisdiction matter) are not worse off in terms of the total amount of fees payable.



In addition to these fee changes, there would be a wider group of people eligible for a fee waiver (to adopt the same criteria currently used in the County Court and Supreme Court fees regulations). This wider group will include:

- people legally represented in the proceeding under a pro bono scheme administered by or on behalf of the Victorian Bar, the Law Institute of Victoria, or Justice Connect
- people legally represented in the proceeding on a pro bono basis by a member of the Federation of Community Legal Centres Vic
- people who have been granted legal aid under a legal aid scheme established under the law of the Commonwealth or of a State or Territory for the proceeding
- people serving a sentence of imprisonment or who are otherwise detained in a detention facility, however described
- people under the age of 18 years.

Consideration was given to even wider fee waivers. However, the Department considers that at this time it is appropriate to align fee waivers with those used in the County Court and Supreme Court, rather than introduce additional waivers in only the Magistrates’ Court. If the mid-term evaluations of the Supreme Court and County Court fees in 2023 identify the need for additional waivers, changes to waivers in the Magistrates’ Court can be considered at that time.

Option 2 is not driven by an objective to change the level of overall cost recovery, although as a consequence of the fee changes, the revenue expected to be collected is likely to change.

It is difficult to reliably estimate the revenue impact, as the Court does not have data available on the types of applicants (i.e., the likely number of concession and corporate fee payers, or those eligible for waivers) or individual application types to allow the revenue impacts to be determined.

However, the Department believes that the following are the likely indicative changes to overall revenue collection from the fee changes.

Table 19: Revenue changes under Option 2

Fee change	Change in total fee revenue per year	Percentage change contribution to total revenue
Change to 3-teir fee structure ⁶⁴	+\$9.0 million	+39%
Expand fee waivers ⁶⁵	-\$135,400	-0.6%
Expand fees for applications under the Road Safety Act ⁶⁶	+\$257,100	+1.1%
Net change in total fee revenue	+\$9.1 million	+40%

⁶⁴ This is based on the assumption that currently corporate fee payers make up 45 per cent of total fee payers. There is no accurate data on the corporate status of current fee payers, so this assumption is conservative based on the Court’s experience and analysis of the types of matters heard by the Court. Of those that are not corporate fee payers, 21 per cent are assumed to be eligible for the new concession rate, reflecting the proportion of eligible concession card holders in the total Victorian population (based on DSS data for December 2021 and ABS population data for September 2020).

⁶⁵ The experience of the County Court and Supreme Court is that fees are waived under the criteria that would be applied in this option in 0.6% and 1.3% of proceedings respectively. This revenue projection assumes a waiver rate of 1.3%.

⁶⁶ Based on Court data of the number of applications or appeals that would become subject to the proposed fee.



The other changes to the fees are expected to have negligible impact on the total revenue.⁶⁷ As such, Option 2 would increase overall fee revenue by around \$9.1 million per year (40 per cent) to result in total fee revenue of \$32.0 million per year.

The level of cost recovery under Option 2 is as follows:

Table 20: Cost recovery under Option 2

Division	Rate of cost recovery
Criminal Division	0.4%
Civil Division	39.3%
Total Magistrates’ Court	12.6%

These rates of cost recovery average across all proceedings in the Court, including proceedings where fees are not payable and those users that are exempt from paying fees. Limited to only civil proceedings for which fees are paid, the rate of cost recovery for an individual civil matter is around 40 per cent for standard fee payers, and 80 per cent for corporate fee payers.

4.4 Option 3: Increased revenue objective

The third option focuses only on the benefits of increasing the level of cost recovery. Under Option 3, the current fee structure would be retained (as per Option 1), but all fee amounts would be increased by 40 per cent—to achieve the same increase in total fee revenue as Option 2. This would allow cost recovery to increase, but in a way that would be simpler to implement.

The fees under this option are shown on the following page.

Given the way this option has been designed, like Option 2, it would result in an increase in total fee revenue of around \$9.1 million per year (40 per cent increase).

⁶⁷ For example, the lower fee for applications from judgment debt creditors would be broadly offset by requiring applications from debtors to also pay a fee; the number of proceedings under Part 3A of the VCAT Act that result in a material difference in the fees actually paid is expected to be very small.



Table 21: Fees under Option 3

Fee	Fee amount (fee units)	Fee amount in 2022-23 ⁶⁸
Fees payable in criminal division		
Filing charge sheet for a single charge	8.0	\$122.00
Filing a charge sheet for multiple charges	12.0	\$184.10
Enforcement agency lodging information in relation to a single infringement	8.0	\$122.00
Enforcement agency lodging information in relation to multiple infringements	12.0	\$184.10
Filing an application under section 31B of the Road Safety Act 1986 for a licence eligibility order	10.8	\$164.80
Fees payable in civil division		
Fee for commencement of civil proceedings (filing a complaint, counter-claim or third party notice)		
Claims less than \$1000	14.3	\$218.30
Claims \$1000 to \$10,000	29.8	\$455.90
Claims \$10,000 to \$40,000	45.4	\$693.60
Claims over \$40,000	68.0	\$1,040.30
Fees for mediation (per session) with Registrar	25.3	\$387.40
with Judicial Registrar	44.0	\$627.10
Fee for hearings (per day, excluding first day)	58.4	\$892.60
Fee for requesting an Order	4.2	\$64.20
Fee for issuing warrant to enforce order	1.7	\$25.70
Fee for filing summons for oral examination	9.8	\$149.80
Fee for interlocutory application	14.8	\$226.90
Fee for application by judgment debt creditor	7.8	\$119.90
Fee for application for an attachment of earnings order under Order 72 of the Rules	14.0	\$214.10
Fee for application to register interstate judgment	6.7	\$102.70
Fees payable in criminal and civil divisions		
Issue of orders or certificate	2.0	\$30.00
Issue of summons or subpoena to witness	4.8	\$72.80
Preparation of summons, warrant, certificate by Registrar	2.7	\$40.70
Search/inspect database	2.4	\$36.60
Photocopying or printing	-	84 cents/page

The level of cost recovery under Option 3 is as follows:

⁶⁸ Table shows dollar amounts of fees based on the value of one fee unit applicable from 1 July 2022: \$15.29.

*Table 22: Cost recovery under Option 3*

Division	Rate of cost recovery
Criminal Division	39.5%
Civil Division	0.3%
Total Magistrates' Court	12.6%

These rates of cost recovery average across all proceedings in the Court, including proceedings where fees are not payable and those users that are exempt from paying fees. Limited to only civil proceedings for which fees are paid, the rate of cost recovery for an individual civil matter is around 56 per cent under Option 3.



4.5 Assessment of feasible options

4.5.1 Assessment framework

The three options have been assessed using a multi-criteria analysis (MCA), using the following criteria. These draw on the fee-setting objectives identified in Chapter 3.

Table 23: Assessment criteria descriptions and weightings

Criterion	Weighting
<p>Access to justice</p> <p>Fees should not be a barrier to a person accessing the court system. Higher fees may be a barrier—see the discussion at section 2.3.2 of this RIS for further detail. (Although access to justice also needs to be considered in relation to access to the Magistrates’ Court vis-à-vis access to other ways of resolving dispute, and hence has some interaction with the efficient operation of the overall court system.)</p>	40%
<p>Support and enable efficient court operations</p> <p>In general, fees that send an appropriate price signal support more efficient use of resources. If fees are too low, it may result in too many disputes coming to the Court for resolution where the costs of resolving the dispute approach or exceed the amount being disputed or claimed. This is not an efficient outcome. However, efficient operations in this context also encapsulates the relativity of fees between different courts, as one court’s efficiency may be at the expense of lesser efficiency across the court system as a whole.</p>	30%
<p>Fairness of fees between different users</p> <p>Fairness encompasses the objective that those with a greater ability to pay a fee should make a higher contribution to the costs of a service than those with less ability to pay.</p> <p>Fairness also means that people in the same situation should not be treated differently.</p>	20%
<p>Easy to understand and administer</p> <p>Fees should be capable of being easily communicated, calculated and collected. While for an organisation like the Magistrates’ Court there will inevitably be a lot of detail in the number of different fees, it is desirable that these be defined with clarity and certainty.</p> <p>This criterion also reflects consistency in fee structure and definitions across different courts, so that court users do not have to unnecessarily be concerned about changing definitions if a matter is transferred or appealed to a different court.</p>	10%

The first three criteria are the primary explicit objectives in the Magistrates’ Court Act, and are most relevant to a number of the Pricing Principles. They are therefore the most important criteria and have been given a high weighting.

The fourth criterion is important and should be taken into account, but should not of itself be the dominant driver of setting fees. It therefore has a smaller weighting in the overall assessment.

Each of the three feasible options has been scored against each criterion above. The score can range from -10 to +10, with the scores then weighted by the above weightings. The scores reflect how well the option improves (a positive score) or worsens (a negative score) each criterion objective relative to the base case.



Base Case

Options for setting fees for the Magistrates’ Court are assessed against a base case. In this instance, the base case is the situation where no new regulations are made, meaning there would be no fees charged by the Court.

4.5.2 Assessment of options against criteria

Option 1 (continue the current fees)

The Department considers that the current fees are in general effective, despite the opportunities for change outlined in Chapter 2. The scoring of the status quo (Option 1) was as follows.

Table 24: MCA scores for Option 1

Criterion – Assessment	Score	Weighted score
<p>Access to justice</p> <p>While the charging of any fees creates some impediment to accessing justice, the current fees do not appear to be a large barrier to people accessing justice (noting that for many cases, VCAT remains a feasible alternative, as well as non-judicial alternative dispute resolution options). Court fees are generally only small relative to other costs parties incur when bringing proceedings (notably, legal advice and/or representation). However, as the fees are likely to have some impact relative to the base case, a negative score is still appropriate as there are likely a small number people who have not pursued matters due to the court fees.</p>	-3	-1.2
<p>Support and enable efficient court operations</p> <p>The current fees make a substantial contribution to the objective of cost recovery (\$23 million per annum or 28% of the total costs of the civil division are recovered, or around 40% of the costs of the individual civil proceedings). Further, the current levels do not appear to lead to any significant irregularities of fees between different courts within the court system (i.e., situations where the fees paid in the Magistrates’ court are higher than those paid in higher courts, or lower than in VCAT, noting the small number of situations discussed in Chapter 2).</p>	+6	+1.8
<p>Fairness of fees between different users</p> <p>The current fees do not have any particular concern as to promoting fairness beyond the overall level of fees. Aside from a very small group that is exempt from paying fees due to financial hardship (a provision in the Act), treating all fee payers the same in relation to their ability to pay is no different from the base case.</p>	0	0
<p>Easy to understand and administer</p> <p>While there are a large number of fees for different situations, they are relatively easy to communicate, calculate, and collect. As noted in Chapter 2, there are a number of areas where the drafting could improve clarity.</p>	-2	-0.2
TOTAL SCORE		+0.4



Option 2

Table 25: MCA scores for Option 2

Criterion – Assessment	Score	Weighted score
<p>Access to justice</p> <p>Similar to Option 1, except that the three-tier fee structure ensures that people with arguably greater need to access to justice (as there may be fewer alternatives available to them) can do so at lower cost. The Department notes that females make up almost 60 per cent of the group that will be eligible for concessional fees, which reduces gender inequality.</p>	-2	-0.8
<p>Support and enable efficient court operations</p> <p>The fees increase the overall level of cost recovery from court users, as well as make a number of adjustments based on equivalent fees in other courts, to ensure the fees promote appropriate use of resources across the court system. The introduction of the three-tier fee structure to align with VCAT, the County Court and Supreme Court also supports consistency and efficiency across the court system.</p>	+8	+2.4
<p>Fairness of fees between different users</p> <p>This option specifically introduces different fees for different users based on ability to pay, and improves fairness in a number of other matters (such as the new federal jurisdiction, pursuit of unpaid wage claims, and consistency in fees for applications under the Road Safety Act).</p>	+2	+0.4
<p>Easy to understand and administer</p> <p>Similar to option 1, except a number of drafting improvements would be made to make fees clearer (and hence easier for the court to apply).</p>	-1	-0.1
TOTAL SCORE		+1.9



Option 3

Table 26: MCA scores for Option 3

Criterion – Assessment	Score	Weighted score
Access to justice Similar to Option 1, but higher fees across the board would result in a larger barrier to access to justice for more people.	-4	-1.6
Support and enable efficient court operations Similar to Option 1, but higher fees would increase the level of overall cost recovery. While higher cost recovery is usually aligned with improved efficiency, the increase in cost recovery to the amount under this option would exacerbate the irregularities of the current fees relative to the fees payable at VCAT, County Court and Supreme Court, reducing efficiency of the court system as a whole if fee differences drive decisions about where proceedings are commenced. ⁶⁹	+6	+1.8
Fairness of fees between different users Same impacts as Option 1 (no change on the base case).	0	0
Easy to understand and administer Same impacts as Option 1.	-2	-0.2
TOTAL SCORE		0.0

⁶⁹ A court will usually transfer a matter to a more appropriate court, however the commencement of proceedings and then transfer itself uses court resources, which would be avoided if the court's fee were consistent with its position within the court system hierarchy.



4.5.3 Summary of MCA results and preferred option

Table 27: Summary of MCA scores and assessment of all options

	Option 1	Option 2	Option 3
Access to justice	-3	-2	-4
Efficiency	6	8	6
Fairness	0	2	0
Simplicity	-2	-1	-2
Total score	0.4	1.9	0.0

The MCA assessment indicates that Option 2 is the superior option.

Implementing a three-tiered structure better supports the Court's role within the civil justice system in Victoria. Under this option, fee levels for most Standard fee payers (individuals and small businesses) would either remain broadly unchanged or lower than the current fees. The new Concession Fee would be automatically available to applicants who hold a current Commonwealth Health Care Card, recognising that Health Care card holders have already been assessed as having limited means to pay a full fee. A fee waiver would continue to be available to litigants who can demonstrate to the satisfaction of the Court that full payment of the fee would cause financial hardship. The proposed model of differentiated fees increases equity for litigants, as the option better reflects the capacity of litigants to pay for the services provided by the Court, according to their means to pay.

The Department notes that in most cases, the fees to be paid to the Court will be much smaller than other legal costs that a party incurs when bringing a matter to court. For example, legal costs (paid to legal representatives) are typically much higher. This is why the Department considers that the proposed fees are unlikely to result in a material change in the number of cases brought to the Court. That said, there may be situations where a person brings a matter to court without legal representation (i.e., self-represented); these are more likely to be individuals, and therefore there is a risk that reducing court fees paid by individuals could result in an increase in the number of cases. This of itself is consistent with improving access to justice, but risks efficiency of the court system if it results in an increase in trivial or vexatious claims. The Court has sufficient powers to deal with such trivial matters quickly, to avoid wasting the Court's time on vexatious litigation.

The introduction of fees for a wider range of applications to the Court under the Road Safety Act is not expected to adversely impact on the policy settings of road safety. The relatively small amount of the proposed fee is not expected to materially inhibit a person accessing the Court to resolve genuine matters under the Act but may serve to discourage frivolous applications. A fee waiver on the grounds of financial hardship will be available.

While increased revenue was not the driving motivation of Option 2, it is expected to result in higher fee revenue collected, while also expanding the scope for fee waivers.

The Department therefore considers Option 2 should be reflected in the proposed Regulations.

Outside of the impacts assessed above, it is noted that the proposed fees do not have a material impact on competition, as the fees of themselves do not restrict competition in any market. Indeed, having a well-resourced and efficient court system available to resolve disputes supports competitive markets.

The proposed fees also do not create a disproportional impact on small business. Small businesses will mostly fall within the definition of 'standard' fee payer, so the proposed



Regulations recognise that small businesses will have a more limited means to pay fees than larger corporations that will pay the corporate fees. The turnover threshold for defining a corporate fee payer (over \$200,000 per year) was based on analysis that showed, in 2017, around 60 per cent of actively trading businesses in Australia had a turnover of less than \$200,000.⁷⁰ This figure has not change materially since that threshold was set for the County Court and Supreme Court, and hence the same threshold is proposed for the proposed Regulations to maintain consistency of definition for corporate fee payers across all courts.

4.6 Conclusion

Option 2 was found to be the preferred option, based on a multi-criteria assessment. The preferred option (which is contained in the proposed Regulations) involves a new fee structure to introduce concession, standard and corporate fee categories, and widens the range of fee payers that will be eligible for fee waivers.

⁷⁰ Australian Bureau of Statistics, *Counts of Australian Businesses, including Entries and Exits* (latest release August 2021)



5. Jury fees

5.1 Overview

This Chapter assesses the impacts of the proposed new fee structure for the use of juries in civil trials. It also discusses why alternative approaches are not feasible.

5.2 Reference for setting fees

The proposed Regulations re-set the jury fees, informed by cost data in recent years.

The setting of fees is authorised under section 90 of the Juries Act.

The current fees are expressed in terms of fee units. These are designed to automatically increase each year in line with changes to the value of fee units determined annually by the Treasurer. However, only part of the costs of juries are administrative costs (i.e., court staff and resources) that would be expected to increase in nominal terms as a result of price and wage inflation. The largest part of the costs of juries are the payments to jurors. These are set by the Attorney-General and published by notice in the Victorian Government Gazette.⁷¹ These payments do not automatically increase each year. This means the costs associated with payments to jurors only change if the Attorney-General makes a decision to do so. This RIS makes no assumption about what might happen to juror payments in the future.

This means, while the problem to be addressed by the proposed Regulations is to recover the full costs associated with juries used in civil trials, the actual amount of payments to jurors in the future (which currently comprise more than half total costs) will depend on separate decisions by the Attorney-General, and therefore not able to be predicted without pre-empting those decisions.

If the fees were to continue to be expressed entirely in automatically increasing fee units, there would be two potential approaches:

- To set fees (entirely in fee units) so that fee revenue matches the costs of juries now (in 2022), knowing that the fee amounts will automatically increase in the future while juror payments may not. This would cause a gradual departure from appropriate cost recovery over time if juror payments remain at their current level.
- To set fees (in fee units) to try to match total fee revenue collected over the next ten years with the anticipated total costs over the next ten years. If this were based on the assumption that juror payments are not changed in this period (i.e., remain relatively flat in dollar terms), the automatically-increasing jury fees would need to be set at an amount lower than the current costs now, and allowed to increase to higher than actual costs in the future, to achieve full cost recovery in aggregate over the period. Hence, fees would under-recover costs in the early years and over-recover costs in the later years, but revenue would equal costs across the period as a whole. But if it turned out that juror payments were increased at any time in the next ten years, the fees would under-recover costs over the period.

The Department considers neither of these options is satisfactory. The Department proposes to express the fees as a combination of fee units (reflecting the part of costs that relate to administrative costs of Juries Victoria) and a component that would refer to the gazetted notice that sets the amount of juror payments that applies at the time of the trial.

Therefore, part of the fee amount would be linked to the actual payments made to jurors, and if the amount of juror payments changes in the future, the revenue collected through fees would

⁷¹ This is the amount paid to jurors by the court (funded through the state budget). Jurors are also entitled to have their employers make up any difference between the payment and their normal wages while attending for jury service.



automatically adjust to reflect that change. The payments to jurors are expressed in a legislative instrument, published in the Victorian Government Gazette, and are therefore able to be easily ascertained at any time. While this approach makes the description of the fees in the Regulations more complex, the courts will be able to easily calculate the fee applicable and publish fee amounts on its website.⁷² A similar approach is used in Queensland (see Appendix D).

5.3 Proposed structure of jury fees

The Act allows jury fees to be structured as an upfront fee for setting down a trial by jury, and a daily fee (commencing from the second day of trial). Consistent with the Government’s Pricing Principles and the pricing strategy discussed in Chapter 3, this is proposed to continue, to best match fees charged with the costs incurred. All other Australian states and territories have jury fees structured as an upfront amount plus daily fees.

As required from the data on costs, it is proposed to re-balance the allocation of costs between the upfront component and the daily component. Currently, the fees tend to under-recovery pre-trial costs and over-recover daily (days 2-6) costs.

To better align fees to the costs, the following fee structure and amounts are proposed:

*Table 28: Current and proposed Jury Fees**

Fee Component	Current fee (fee amounts from 1 July 2022)	Proposed fee (fee amounts from September 2022)
Fee to set down matter for jury trial (includes costs of first day of trial)	54.3 fee units = \$824.80	40 fee units + 25 ⁷³ x amount paid as remuneration to a person attending for jury service = \$611.60 + (25 x \$40 ⁷⁴) = \$1,611.60
Days 2-6	6.5 fee unit per day per juror = \$98.70 per juror per day = \$592.20 per day	4 fee units + amounts paid to jurors as remuneration, per day per juror = \$61.20 + (\$40 per juror x 6 jurors) per day = \$301.20 per day
Days 7+	12.9 fee units per day per juror = \$196.00 per juror per day = \$1,176.00 per day	4 fee units + amounts paid to jurors as remuneration, per day per juror = \$61.20 + (\$80 per juror x 6 jurors) per day = \$541.20 per day

* Fee amounts based on value of fee unit (\$15.29 for 2022-23 financial year) and the current remuneration payments made to jurors under the notice gazetted by the Attorney-General in 2012. Fee values are shown for 2022-23 to compare the fee amounts for when the proposed Regulations will commence.

⁷² Published fee amounts are already revised each year when the value of fee units is changed.

⁷³ This ensures that the fees recover all payments made to jurors for the first day of the trial, plus payments made to those that attend for jury service but not selected to serve on the jury. Of those people attending for jury service on a particular day, 25 of those are notionally required for each civil jury trial scheduled.

⁷⁴ \$40 is the current payment for persons attending for jury service up to and including day 6 of a trial.



The amounts in the proposed fee structure that will continue to be expressed in fee units reflect the recovery of administrative costs of Juries Victoria attributable to civil jury trials. They are based on the average costs per civil trial, and take account of revenue collected from those that request a jury but ultimately do not proceed with the trial.

The following table shows how the proposed fee structure would change the amount paid depending on trial length. It shows that shorter trials will pay slightly higher fees in total under the proposed Regulations, while longer trials (any trial of 3 days or more) will pay lower fees in total. As well as reducing the overall revenue collected from fees, this corrects a current cross-subsidisation of longer trial to shorter trials.

Table 29: Fee payments for trial lengths (fee values in 2022-23)

Trial length	Fees payable under current Regulations	Fees payable under proposed Regulations
Total cost for a 2-day trial	\$1,417	\$1,913 (increase of 35%)
Total cost for a 6-day trial	\$3,786	\$3,118 (decrease of 18%)
Total cost for a 10-day trial	\$9,082	\$5,584 (decrease of 39%)

5.4 Estimated revenue impact

The proposed Regulations are expected to result in total revenue collected of \$492,292 per year (full year amount), a decrease of 25 per cent from the case if the current fee structure continued.

This total revenue reflects fees paid for those that use jury trials of \$366,498 per year (a decrease of around 38 per cent from the current Regulations) and fees paid by those that request a jury trial but cancel the request within 14 days of the trial date of \$125,794 (an increase of 96 per cent).⁷⁵

This revenue estimate is based on no changes made to the amount of remuneration paid to jurors. As fee amounts will be linked to these payments, the impacts on fee revenue resulting from changes to juror payments in the future was also considered.

The table below shows possible revenue impacts under different scenarios, compared to the case if the current Regulations continued.

⁷⁵ The Act only allows refunds to be made where a jury request is cancelled at least 14 days prior to the scheduled start of the trial. This is because within 14 days, work has already commenced to make the jurors available for a scheduled jury trial, and cancellation within 14 days requires additional work to change planning requirements, such as cancel or change the dates for summons jurors.



Table 30: Potential revenue in 2032 under the proposed fee structure

Scenario		Fee revenue in 2032	Percentage difference from current Regulations
Fees revenue if current Regulations continued unchanged		\$762,596	
Fees revenue under proposed new fee structure	If juror payments not changed	\$527,300	34% lower
	If juror payments rise in line with inflation (assumed 2.5% p.a.)	\$594,591	25% lower
	If juror payments double by 2032	\$903,446	18% higher

5.5 Other impacts

As jury fees are essentially voluntary—it is a choice by an individual party if they wish to have a matter heard by a jury—the setting of jury fees does not raise any competition or small business impacts. Juries in civil trials are not considered an essential element of providing access to justice; parties can still access justice without a jury.

On the same basis, setting of jury fees does not of itself raise any issues of having a disproportionate impact on any disadvantaged groups.

5.6 Alternative approaches

As noted above, the proposed fee structure has been designed to achieve full cost recovery, avoid cross-subsidisation within the fee structure allowed under the Act, and ensure sustainability over time. No alternative options were identified that meet these objectives.

New South Wales has differential fees for individuals or corporate entities (see Appendix D). However, it is noted that the jury fees in New South Wales are generally below cost recovery.⁷⁶ Where fees are intended to be set at full cost recovery, there is no need to differentiate between users, unless there is a clear policy intention for cross-subsidisation between different groups.

The Department also considered whether there were options to use jury fees to drive other behavioural changes. It was concluded that the level of jury fees is not a strong driver of a party's desire to use a jury or the conduct of the trial, and therefore—beyond appropriate price signals through full cost recovery—there is no further opportunity to set jury fees to influence other outcomes.

5.7 Administrative fee for cancelled jury requests

Under the Juries Act, if a party requests a jury for a civil trial, but then cancels the request at least 14 days before the scheduled commencement of the trial, they are able to apply for a refund of any fees paid under the Act for requesting the jury. The Act does not provide for refunds if a request for jury is cancelled within 14 days of the trial date.

Cancellation of a request for a jury may occur, for example, if parties settle a matter before the trial date, or a party may change their mind about the need for a jury.

⁷⁶ It is also noted that the use of juries in civil cases in NSW is more limited than in Victoria, and usually only occurs in defamation cases.



The courts do not have data on the number of jury request cancellations that result in a refund. However, it is understood that cancellation at least 14 days prior to the date a trial is listed to commence is not common (it is more common for disputes to be settled closer to the trial date); further, depending on which party requests the jury, it is possible for a request to be made and cancelled before any jury fee has been paid.

If a refund of jury fees paid does occur, the Act allows the court to deduct from the refund an administrative fee. The intention is to retain part of the fees to cover any costs already incurred because of the request for a jury.

Advice from Juries Victoria indicates that cancellation of a request for a jury at least 14 days prior to the schedule trial date means that there are very little costs incurred associated with making a jury available for the trial. Finalisation of requesting a particular number of people to attend or jury service usually occurs within less than 14 days before the trial date. Therefore, any activities undertaken by Juries Victoria are not yet linked to a particular trial 14 days out from a trial, and juror planning can be adjusted to make jurors already on jury lists attend on a later date for another trial.

The costs incurred and attributable to cancelled requests for juries is therefore limited to the costs associated with accepting the original request and processing the payment of the fee, and informing Juries Victoria of the cancellation.

On this basis, the administrative fee that is deducted from a refund of jury fees has traditionally been a nominal amount—4.6 fee units under the current Regulations (\$70.30 from 1 July 2022).⁷⁷

It is proposed to continue this fee at the same rate. Noting that in practice the administrative fee is only charged in the very small number of cases where the jury request is cancelled at least 14 days before trial, the total revenue associated with this administrative fee is less than \$2,000 per year.

⁷⁷ The administrative fee was \$45 in 2001, and since the linking of fees to fee units since 2004, this fee has increased only as a result of the annual automatic indexation of fees.



6. Implementation, enforcement and evaluation

6.1 Overview

Better practice regulatory assessment includes consideration, at the time of making regulations, of how the regulations will be implemented and enforced, and a plan for how the effectiveness of the regulations will be reviewed after they are made. This Chapter describes the steps for the implementation, enforcement and evaluation of the proposed Regulations.

6.2 Implementation

The courts regularly publish the latest information on fee amounts (e.g., when fee amounts change every 1 July resulting from increases to fee units). When the proposed Regulations commence, the courts will update published information about fee amounts to enable parties to find out the correct fee amounts to be paid. This will be managed by the Magistrates’ Court in relation to the Magistrates’ Court (Fees) Regulations and by the Supreme and County Courts in relation to the Juries (Fees) Regulations.

In addition, the proposed Magistrates’ Court (Fees) Regulations introduce new classifications for concession and corporate entities. The Magistrates’ Court will need to set up a new system to be able to determine which classifications apply to a party. Key steps to be taken by the Court include:

- updating online information systems, hard copy forms and brochures
- updating filing portal and case management systems
- communications plan for court and users
- information for magistrates, registrars and court staff about the new fee structure
- training for relevant staff about the new fee waiver categories.

This approach has already been introduced at VCAT, the County Court and the Supreme Court with no implementation issues identified. The classifications in the proposed Regulations have deliberately been aligned to the systems used in those other courts to provide for a clear and consistent approach across the court system.

However, the Magistrates’ Court is currently in the process of introducing a new case management system (CMS) which will need to be modified to support the new fee structure if the proposed Regulations are made. The Department will continue working with the Court over the coming months to determine implementation requirements and timeframes for the commencement of the new fee structure.

6.3 Enforcement

No new enforcement arrangements are required. The courts already have systems in place to charge and collect the fees set out in the Regulations. In general, fees are collected upfront (i.e., at the time of commencing proceedings, filing an application), and therefore the required activity does not occur unless the relevant fee has been paid. Daily fees (e.g., for hearings or use of juries) are required to be paid before the trial commences each day. If a daily jury fee is not paid, the court may direct the trial to proceed without a jury.

6.4 Evaluation

Consistent with the Victorian Government’s commitment to better regulation and a culture of continuous improvement, departments must evaluate all regulations. While all regulations are



reviewed every ten years due to the automatic sunseting, for high impact regulation (where the impacts are greater than \$8 million per annum), a mid-term evaluation needs to be taken within three to five years after implementation. This is to ensure that regulations are achieving their intended outcomes, no unintended consequences are observed, and opportunities for adjustment can be considered.

Given over \$32 million in fees are estimated to be raised per year, the Magistrates’ Court (Fees) Regulations will be independently reviewed by September 2027 to assess the impact of the new fee structure and fee amounts.

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

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

The evaluation will take account of a range of factors that might affect Court operations other than the impact of the revised fee schedule. These might include, for example, any changes to the jurisdiction of the Magistrates’ Court in the future, changes to the role of other bodies responsible for dispute resolution (for example, VCAT), and changes in external factors that could be expected to be reflected in the volume of matters being heard by the Court.

Primarily, the evaluation will test the hypothesis that the revised fee schedule introduced in the 2022 regulations will progressively deliver better outcomes, than the current fee schedule. Key fee-setting principles include effectiveness, efficiency, simplicity and equitable outcomes as informed by the following:

- supporting the Magistrates Court’s role in Victoria’s civil justice system (‘effectiveness’) as measured by:
 - feedback from Court users
 - maintenance or increase in the volume and proportion of matters commenced at the Court, and
 - lower levels of vexatious or frivolous claims (that detract time from dealing with genuine matters).
- improving ‘efficiency’ as measured by:
 - the impact of the new and revised fees on access to the Court’s case management services,
 - comparison of movements in average costs of resolving matters as reported in the Report on Government Services each year
- ease of use (‘simplicity’) of fees and fee structures that are easier for users to understand, and for the Magistrates’ Court to administer, as measured by:
 - increased user satisfaction with the fees structure compared to the existing fee structure
 - increased staff satisfaction with fees processing
 - decreases in complaints regarding the fee schedule, and
 - a decrease in problems with processing fees reported by registry staff.
- improving access to justice (‘equity’) as measured over the period by:

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

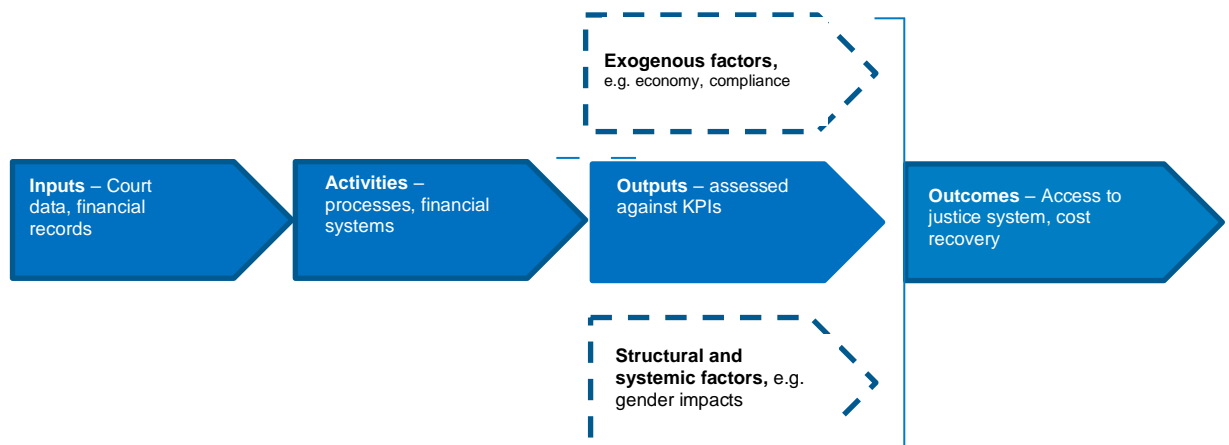
The preliminary consultation established the baseline data for the proposed evaluation, and also identified gaps in the data. Information and data for the evaluation will be drawn from several sources such as:

- the Magistrate Court’s case management system data
- the Court’s financial management system data
- stakeholder consultation⁷⁸ on the strengths and weaknesses of the revised fee schedules
- judicial officer and staff satisfaction surveys, and
- Court user satisfaction surveys, which will be designed carefully to ensure that they reflect satisfaction in relation to the issues about which information is being sought.

The data gaps included collecting better information on the types of Court users. The Department will work with the Court to develop ways to capture new data about the different characteristics of Court users.

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

The evaluation will follow the regulatory program logic model illustrated below:



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

⁷⁸ Preliminary consultation has already revealed the need for improved data collection. In its submission, the Victoria Law Foundation highlighted “the need for people-centred court data, including collection of improved demographic information about litigants so as to provide the opportunity for analysis about the operation, role and impact of various aspects of Victoria’s civil justice system, including fees. Better data would also support monitoring and evaluation of fee settings, and a stronger evidence base for periodic regulatory review”.



In addition, the County Court (Fees) Regulations 2018 and the Supreme Court (Fees) Regulations are due for a mid-term evaluation in 2023. These sets of regulations introduced the three-tier fee structure into those courts in 2018. Any outcomes from the review of those regulations that is pertinent to the new fee structure or fees relativities between the courts will be considered in relation to the Magistrates’ Court at that time.

Appendix A: Fees across the Victorian court system

Note: Fee amounts are the current fee values for 2021-22 (1 fee unit = \$15.03). From 1 July 2022 all fee values will automatically increase in line with the new fee unit value (1 fee unit = \$15.29) as determined by the Treasurer (Victorian Government Gazette G16, 21 April 2022). {Table ignores where fee waivers/exemptions apply}

Fee	Current Magistrates' Court Fees	VCAT ⁷⁹	County Court	Supreme Court (Common Law/trial Division)
Fee for commencement of civil proceedings (filing a complaint, counter-claim or third party notice)	\$153.30 to \$730.46 (depends on value of claim. Claims up to \$100,000)	Concession: nil to \$165.30 Standard: \$66.30 to \$494.50 ⁸⁰ Corporate: \$94.70 to \$706.40 (depending on matter and the value of claim)	Concession: \$260.00 Standard: \$736.50 Corporate: \$1,472.90	Concession: \$311.10 Standard: \$753.00 Corporate: \$1,506.00
Fees for mediation (per session)	\$272.04 with Registrar \$471.94 with Judicial Registrar	n/a	Concession: \$139.80 Standard: \$281.10 Corporate: \$563.60	Concession: \$154.80 Standard: \$311.10 Corporate: \$620.70
Fee for hearings (per day, excluding first day)	\$626.75	Concession: nil to \$165.30 Standard: \$368.30 to \$1104.70 ⁸¹ Corporate: \$94.70 to \$706.40	Concession: \$260.00 Standard: \$526.10 to \$1,653.30 Corporate: \$1,052.10 to \$3,306.60 (for standard and corporate, fees increase with number of days) [includes first day]	Concession: \$311.10 Standard: \$622.20 to \$1,886.30 Corporate: \$1,244.50 to \$3,772.50 (for standard and corporate, fees increase with number of days)
Fee for requesting an Order	\$45.09	na		
Fee for issuing warrant to enforce order	\$18.04	na		Concession: \$34.60 Standard: \$70.60 Corporate: \$139.80

⁷⁹ VCAT charges a range of different fees depending on the nature of the matter and the specific legislation under which a claim is made. The fees in this table generally refer to the Civil Claims List as the closest comparison to the claims in the Magistrates' Court.

⁸⁰ For some VCAT Lists, higher fees are payable where the amount claimed is more than \$100,000. The fee for claims up to \$100,000 has been included in the table for a better comparison with the jurisdiction of the Magistrates' Court.

⁸¹ For some VCAT matters, hearing fees increase based on the number of hearing days required. In most cases the first day of hearing does not incur a fee, however there are some matters where a fee is also charged on the first day of hearing. Those are generally not comparable to the Magistrates' Court (e.g., for claims over \$100,000).



Fee	Current Magistrates’ Court Fees	VCAT ⁷⁹	County Court	Supreme Court (Common Law/trial Division)
Fee for filing summons for oral examination	\$105.21	na	Concession: \$260.00 Standard: \$563.60 Corporate: \$1,127.30	
Fee for interlocutory application	\$159.32	Concession: \$33.10 to 165.30 Standard: \$66.30 to \$378.80 Corporate: \$94.70 to \$541.10	Concession: \$260.00 Standard: \$563.60 Corporate: \$1,127.30	Concession: \$291.60 Standard: \$584.70 Corporate: \$1,167.80
Fee for application by judgment debt creditor	\$84.17	na	Concession: \$18.00 Standard: \$36.10 Corporate: \$73.60 (fee paid by debtor and creditor)	Concession: \$18.00 Standard: \$36.10 Corporate: \$73.60 (fee paid by debtor and creditor)
Fee for application for an attachment of earnings order under Order 72 of the Rules	\$150.30	na	Concession: \$260.00 Standard: \$563.60 Corporate: \$1,127.30	
Fee for application to register interstate judgment	\$72.14	na	Concession \$15.00 Standard: \$24.00 Corporate: \$46.60	Concession: \$18.00 Standard: \$36.10 Corporate: \$73.60
Issue of orders or certificate	\$21.04	For order: nil For certificate: Concession: \$30.10 Standard and Corporate: \$78.20	\$15	
Issue of summons or subpoena to witness	\$51.10	Concession: \$8 Standard and Corporate: \$24	Concession: \$22.50 Standard: \$45.10 Corporate: \$90.20	Concession: \$30.10 Standard: \$60.10 Corporate: \$188.70



Appendix B: Applications to the Magistrates’ Court under the Road Safety Act 1986

Section	Application
12	<p>If the Secretary decides to—</p> <ul style="list-style-type: none"> (a) refuse an application for registration of a motor vehicle or trailer other than a refusal under section 16AH; or (b) refuse to register a motor vehicle or trailer unconditionally under this Part; or (c) cancel or suspend the registration of a motor vehicle or trailer other than— <ul style="list-style-type: none"> (i) a suspension in accordance with Part 8 of the Fines Reform Act 2014 under section 9AA; or (ii) a cancellation under section 16AE— <p>the applicant or owner may, in accordance with the regulations, appeal against that decision to the Magistrates’ Court.</p>
15A	<p>The holder of an authorisation granted under regulations made under item 9 of Schedule 2 [vehicle tester authorisations] may appeal to the Magistrates’ Court against a decision of the Secretary to suspend or cancel that authorisation or to disqualify the holder of the authorisation from applying for a further authorisation.</p>
16E	<p>If the Secretary decides to—</p> <ul style="list-style-type: none"> (a) refuse to enter a vehicle on the register of written-off vehicles; or (b) amend, or refuse to amend, an entry on the register of written-off vehicles; or (c) refuse to remove an entry from the register of written-off vehicles— <p>a person referred to in subsection (2) may appeal against that decision to the Magistrates’ Court in accordance with the regulations</p>
26	<p>If the Secretary decides to—</p> <ul style="list-style-type: none"> (a) refuse an application for a driver licence, a driver licence variation, a learner permit or a learner permit variation; or (b) in accordance with section 24(2), suspend, cancel or vary in any way a driver licence or learner permit or disqualify a person from obtaining a driver licence or learner permit— <p>the applicant, holder or person may, in accordance with the regulations, appeal against that decision to the Magistrates’ Court</p>
26A	<p>If a police officer decides to forbid a person to drive a motor vehicle under section 62 or take any other action under that section, the person in respect of whom the action has been taken may, in accordance with the regulations, appeal against that decision to the Magistrates’ Court</p>
31B	<p>An application to the Magistrates’ Court for a licence eligibility order</p>
33	<p>If the Head, Transport for Victoria decides to refuse to grant an authority [Driving instructor authorities], the applicant may appeal against the refusal to the Magistrates’ Court</p>
46H	<p>The holder of a driver licence or learner permit may appeal to the Magistrates’ Court against the suspension of his or her driver licence or learner permit by the Secretary under section 40(2)(a) or (3)(a), 41 or 41A(1) or (3).</p> <p>The holder of an overseas licence or an unlicensed driver may appeal to the Magistrates’ Court against his or her disqualification from driving and from obtaining a driver licence or learner permit by the Secretary under section 46A(1)(b)</p>
46I	<p>A person, other than an unlicensed driver, who appeals under section 46H against a suspension or disqualification may apply to the Magistrates’ Court for a stay of the suspension or disqualification until the appeal is determined</p>
50AAAC	<p>This section applies to a person in respect of whom the Secretary has decided not to remove an alcohol interlock condition on an application made by him or her under section 50AAAB for the reason specified in subsection (2) or (2A).</p>



Section	Application
	A person may apply to the Magistrates' Court for a direction to the Secretary that the applicant was not responsible for the failed attempt referred to in subsection (2) or the failure of, or failure to undertake, the alcohol breath test referred to in subsection (2A), as the case may be
50AAAF	A person may apply to the Magistrates' Court for a direction to the Secretary that the person has provided evidence, prescribed by the regulations, that is sufficient to establish that the person is not engaging in hazardous or harmful alcohol use and is not dependent on alcohol
67	If a traffic infringement notice (other than a notice to which section 89A applies) is not served by delivering it personally to the person to whom it was issued, and that person is not in fact aware that it has been issued, the person may apply to a registrar (within the meaning of the Fines Reform Act 2014) or a registrar (within the meaning of Schedule 3 to the Children, Youth and Families Act 2005) of the Children's Court, as the case may be, to have an extension of time of 28 days to deal with the notice in accordance with this Act. If an application is made under subsection (1) to a registrar within the meaning of the Fines Reform Act 2014, the registrar must refer the application to the Magistrates' Court constituted by a magistrate.
84O	If a motor vehicle is impounded or immobilised under this Division, a person whose interests are substantially affected by the impoundment or immobilisation of the motor vehicle may apply to the Magistrates' Court for an order that the motor vehicle be released on the ground that the impoundment or immobilisation is causing, or will cause, exceptional hardship to the applicant or any other person
84ZB	A person with an interest in the motor vehicle may make an application to the Magistrates' Court for an order that compensation be paid in accordance with subsection (4)
84ZQAD	If the Chief Commissioner of Police gives notice under section 84ZQAC(1) of an intention to deem a motor vehicle to be abandoned under section 84ZQAB(2), a person substantially affected by the proposed sale or disposal of the motor vehicle may apply to the Magistrates' Court for an order that the motor vehicle is not abandoned.
84ZO	A person may apply to the Magistrates' Court for an order authorising the person to inspect the report given under subsection (1)
85S	A person whose driver licence or learner permit is suspended under this Part may appeal against the decision to suspend the driver licence or learner permit to the Magistrates' Court
89B	If a traffic infringement notice that is issued in respect of a drink-driving infringement, a drug-driving infringement or an excessive speed infringement is not delivered personally to the person to whom it was issued, and that person is not in fact aware, before the notice takes effect as a conviction, that it had been issued, the person may apply to a registrar within the meaning of the Fines Reform Act 2014 or a registrar (within the meaning of Schedule 3 to the Children, Youth and Families Act 2005) of the Children's Court, as the case may be, to have the time for objecting to the notice extended. If an application is made under subsection (1) to a registrar within the meaning of the Fines Reform Act 2014, the registrar must refer the application to the Magistrates' Court constituted by a magistrate.
89BA	If— <ul style="list-style-type: none"> (a) a person is issued with a traffic infringement notice in respect of an excessive speed infringement; and (b) the infringement notice is not delivered personally to the person and the person is not in fact aware, before the notice takes effect as a conviction, that it had been issued— the person may apply to a registrar within the meaning of the Fines Reform Act 2014 or a registrar (within the meaning of Schedule 3 to the Children, Youth and Families Act 2005) of the Children's Court, as the case may be, to have the time for giving a statement under section 84BE(1) extended. If an application is made under subsection (1) to a registrar within the meaning of the Fines Reform Act 2014, the registrar must refer the application to the Magistrates' Court constituted by a magistrate.



Appendix C: Benchmark comparison of 'other' Court fees

Preparation of documents by a Registrar

State	Description	Fee
WA	For the issue of a summons or court hearing notice	\$25.80
SA	For issuing and administering an investigation or examination summons under the <i>Magistrates Court Act 1991</i>	\$60.50

Searching database, inspecting a database, retrieving a document

State	Description	Fee
NSW	Retrieving, providing access to and furnishing a copy of any document	Standard fee: \$13, plus \$7 for each 10 pages after the first 20 pages
QLD	Inspecting records within four years of filing claim (not payable by parties)	\$16.20
	Inspecting records more than four years from filing of claim (including parties)	\$27.95
WA	For searching any record or proceeding other than a search by or on behalf of a party to the proceedings in the Court's civil jurisdiction.	\$55.50
SA	For each request to search and/or inspect a record of the Court	\$26.25
Tas	Fee for inspection of records or other documents held in registry	\$16.50
C/wealth	Freedom of Information, Search and retrieval	\$15 per hour

Photocopying or printing any document

Description	Fee per page*
Freedom of Information (Access Charges) Regulations 2014 (VIC)	20 cents
Freedom of Information (Charges) Regulations 2019 (C'th)	10 cents
Health Records Regulations 2012	20 cents
Victorian Civil and Administrative Tribunal (Fees) Regulations 2016	60 cents
County Court (Fees) Regulations 2018	60 cents
Supreme Court (Fees) Regulations 2018	60 cents
Public Record Office Victoria	82 cents (\$16.30 Standard sized document – for every 20 pages)
Supreme Court of NSW	40 cents (\$5.00 minimum)
Local Court NSW	\$13, plus \$7 for each 10 pages after the first 20 pages
Tasmania Magistrates' Court	\$1.65
WA Magistrates, Copies of documents or exhibits	\$2.30

*A4 black and white copy



Appendix D: Jury fees in other Australian jurisdictions

The following table compares the current arrangements for payments to jurors and fees charged for jury trials across Australian states and territories (as at 1 March 2022, based on fee values at that date).

	Payments to jurors	Fees paid by party requesting jury trial
Victoria (current)	<p>\$40 per day for the first 6 days \$80 per day thereafter plus travel allowance (reimbursement based on kilometres travelled)</p> <p>(Note: employers are also required to make up any difference between these payments and what a person could expect to have received if they had been available for work while attending for jury service.)</p>	<p>\$816.10 request for trial jury</p> <p>Second and subsequent days \$97.70 per juror per day up to 6 days \$193.90 per juror per day after 6 days</p>
NSW	<p>If the trial you are sitting on goes for between 1 and 10 days, you get \$106.30 per day, however if the trial goes on for 11 days or longer, you get paid \$247.40 for each day thereafter, if you are employed. If you are not employed, you continue to receive \$106.30 per day. As a juror you are also paid a travel allowance, calculated on the distance from your postcode to the courthouse at 30.7 cents per kilometre.</p> <p>In NSW a civil jury consists of four people. The use of juries in civil cases is limited, and in New South Wales usually only occurs in defamation cases.</p>	<p>Requisition for jury trial - \$1207 (person), \$2414 (corporation)</p> <p>Second and subsequent days. \$549 per day (person) \$1098 per day (corporation)</p> <p>(These are generally less than recovery of costs)</p>
Queensland	<p>Currently the allowance for attending court each day or part day is \$43.75.</p> <p>If empanelled as a juror, the juror receives \$126.30 each day or part day, plus addition to meal allowances (\$15.35 for lunch and \$26.05 for dinner).</p> <p>An additional \$43.75 after the 20th weekday.</p> <p>Reimbursement of travel expenses are paid in addition.</p>	<p>\$873.10 plus the amount of payments and reimbursement to jurors (including reserves, but not those attending for service but not serving)</p> <p>Full (and direct) cost recovery of payments to juror; lump sum upfront to cover other costs.</p>
Tasmania	<p>Reimbursement of lost wages, up to AWE (a maximum of \$257.84 per day from 1 July 2020)</p> <p>Unemployed persons are paid \$25.00 for each half day they attend court; \$40.00 for each of the first three full days they attend and \$50.00 for each full day they attend thereafter.</p> <p>+ transport reimbursement + meals allowance (and extra childcare)</p> <p>In civil trials, the jury consists of seven people.</p>	<p>No fees are charged in Tasmania for requesting a trial by jury.</p>
Western Australia	<p>In WA an employer, whether in Government or in the private sector, has a legal responsibility to continue to pay their employee their usual wage while the employee is attending jury duty. The employer can apply to be reimbursed for this amount.</p> <p>Otherwise, a person may claim an attendance fee. This fee is \$10 for half a day, \$15 a day if the service is greater than half a day, but less than 3 days, and \$20 for each day after the third day.</p> <p>A travel allowance is also available. This is usually the costs of public transport, or where public transport is not available, 37.5 cent per kilometre.</p>	<p>If trial by jury is ordered in a civil trial, the party that applied for the order must pay the summoning officer \$1,195 for summoning the jurors. The prescribed amount of \$147 for an officer of the court to attend on the jury for the first day of the trial and for each day thereafter.</p>