



**Resource Management Law Association  
of New Zealand Inc.**

# **Resource Management Law Association of New Zealand Inc.**

**Submission on the**

## **Civil Fees Review: A public consultation paper**

**2 November 2012**

**From:** The Resource Management Law Association of New Zealand Inc.  
C/- 4 Shaw Way  
Hillsborough  
Auckland 1041  
Phone: (09) 626 6068  
Email: karol.helmink@xtra.co.nz

### **Executive summary**

1. The Resource Management Law Association of New Zealand Inc. ("**RMLA**") is a forum for all professionals and others with an interest in resource management and the environment in New Zealand. The core objectives of the RMLA are to promote, within New Zealand:
  - a. An understanding of resource management law and its interpretation in a multi-disciplinary framework;
  - b. Excellence in resource management policy and practice; and
  - c. Resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.
2. The RMLA welcomes the opportunity to submit on the public consultation paper circulated by the Ministry of Justice for the civil fees review ("**Consultation Paper**"). Our members have a substantial interest around improving the effectiveness of resource management

processes. Reflecting that focus, the submission comments solely on the fee proposals for the Environment Court as set out in the Consultation paper.

3. As a starting point, the RMLA considers that open access to RMA processes, including the Environment Court, is a cornerstone of the RMA which must be preserved. As a result, any proposal to increase or introduce fees needs to be carefully considered to ensure that this access is maintained.
4. In relation to the proposals set out in the Consultation Paper, the RMLA is comfortable that the increases in and introduction of fees are reasonable, and will not create an unreasonable barrier to full participation by those who wish to engage in the process, particularly as the ability to waive fees remains available.
5. We have some concerns around the potential for fees for mediation, which are set out below. Mediation is a critical part of the RMA process, and the RMLA considers that it should remain "free". We also consider that some of the commentary in the Consultation Paper around direct referral may be overstated. A wide range of applications can be direct referred and we question whether direct referral processes are always as resource intensive as the Paper suggests. While applicants will welcome greater certainty around likely costs, some flexibility around fees for direct referral may need to be considered.

#### **Increase in fees**

6. The RMLA supports the policy of enabling participation in RMA proceedings and recognising their public law nature. As a result, it is our submission that any increase or introduction of fees should not undermine those principles.
7. However, the modest charges proposed in the Consultation Paper for hearing time, appeal filing fees, interlocutory applications, joining proceedings, and costs of judgments appear reasonable, particularly as the fees are proposed to be set at levels that are unlikely to prejudice participation in the process. In saying that, the proposed daily hearing fees in particular are a significant step and, given the fees that could accrue for a lengthy hearing, have perhaps the greatest potential to dramatically increase the costs associated with public participation in appeal proceedings.
8. The ability for the Court to waive fees is relevant here. Section 281A of the RMA provides that the Registrar of the Environment Court can waive, reduce or postpone the payment of any fees if persons are unable to pay the fee in whole or in part or the proceedings concern a matter of public interest and are unlikely to be commenced or continued if the fee is not waived. Provided that the modest fees proposed can continue to be waived where appropriate, then they should not act as a deterrent to engaging in the process. In that respect, and with particular reference to the proposed hearing fees, we consider that the Ministry may wish to review the scope of section 281A in order to satisfy itself that there is sufficient discretion for hearing fees to be waived, if necessary, to preserve access to the Court. The Consultation Paper confirms that "the current arrangements and access to justice mechanisms are considered to be appropriate, including fee waiver provisions (for all courts except the Employment Court)" (page 23), however it is not clear whether the review has considered the specific scope of those provisions in the Environment Court jurisdiction.
9. Modest fees may also ensure responsible participation in the process by all parties, including appellants and section 274 parties. Interlocutory applications, as an example, can take up a large amount of the Court's and parties' time, and should be used responsibly.

We therefore support in particular the proposed fees for interlocutory applications and for a party wishing to join a proceeding in the Environment Court. The introduction of fees for some matters such as joining under section 274 might also encourage greater co-ordination among potential parties, which could result in further efficiencies.

### **Direct referral**

10. The Consultation Paper states that "the level of complexity, numerous issues and number of parties involved with direct referrals mean these types of proceedings take time to resolve and are resource intensive" (page 62).
11. In our submission, direct referrals are not necessarily complex or resource intensive for the Court. Direct referrals can address a range of issues, and, can often be closely managed by applicants throughout the process. Direct referral applications may go to hearing because of the position of the parties, not necessarily the complexity of the issues.
12. We agree that direct referral should not be seen necessarily as a "cheaper" option than the usual "two-stage" (council / court) process, where an applicant pays the Council's costs. However, some discretion should remain so that an applicant in a directly referred process, who is not necessarily always a corporate entity or experienced litigant, is not unfairly left to carry all the costs incurred by other parties. The conduct of section 274 parties participating in directly referred proceedings can at times contribute significantly to costs for various reasons, including being disorganised (even when they are well-funded statutory entities), trade competition motivation, as well as simply being lay people. First instance nature of the proceedings requires some latitude to be given to section 274 parties, however.
13. In our view, some flexibility should be retained so that costs for direct referral, if standardised, can in appropriate circumstances still be reduced or apportioned to various parties where appropriate.

### **Mediation fees**

14. The Consultation Paper recommends introducing a fee of \$100 for mediation if a lower filing fee is set (option 2 in the Paper). Alternatively, there will be no mediation fee if its costs are absorbed in a higher appeal application fee (option 1).
15. The RMLA considers that mediation remain "cost free" or be incorporated into other fees so as to encourage parties to mediation. Mediation has long been emphasised as a voluntary process and while the proposed cost is low, the principle should be that it remains at no direct cost to participants so as to encourage mediation.
16. While a \$100 fee may seem low to many participants in the process, it could be such to dissuade some parties from entering into the process.
17. Therefore, out of the two options put forward in the Paper, the RMLA agrees with the Ministry of Justice and the Ministry for the Environment that option 1 is preferred, whereby a small portion of the cost of mediation is built into the application fee.

### **Conclusion**

18. The RMLA would welcome the opportunity to speak to officials regarding its submission, or answer any questions about it.

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'K. Helmink' written in a cursive style.

---

Signature of Karol Helmink on behalf of the Resource Management Law Association

**Date:** 2 November 2012

**Address for Service:** RMLA, C/- 4 Shaw Way, Hillsborough, Auckland 1041

**Telephone:** (9) 626-6068 or 027 272 3960

**Email:** karol.helmink@xtra.co.nz

**Contact Person:** Karol Helmink