



Report of the

REGISTRAR OF THE ENVIRONMENT COURT

For the 12 months
ended 30 June 2004

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

CONTENTS

	Page
INTRODUCTION	3
1. PROFILE OF THE ENVIRONMENT COURT	4
1.1 Judges and Commissioners	4
1.2 Senior Administrative Staff	5
1.3 Judicial Retirement and Appointment	5
2. ADMINISTRATION OF THE ENVIRONMENT COURT	5
2.1 The Court's Jurisdiction	5
2.2 Proposed Legislative Change	6
2.3 New Zealand Environmental Law Committee	6
2.4 Additional Practice Note	7
2.5 Additional Dispute Resolution	7
3. WORKLOAD OF THE ENVIRONMENT COURT	8
4. RESOURCES	8
4.1 Current and Future Initiatives	8
4.2 Court Expenditure and Revenue	10

INTRODUCTION

The Honourable Minister for Courts

Minister,

I have the honour to forward in terms of section 264(1) of the Resource Management Act 1991, my report on the administration, workload and resources of the Environment Court, for the 12 months ended 30 June 2005.

Yours faithfully,

Harry Johnson, Acting Registrar, Environment Court

1. PROFILE OF THE ENVIRONMENT COURT

1.1 Judges and Commissioners

Principal Environment Judge

RJ Bollard

Residence

Auckland

Environment Judges

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

Christchurch
Wellington
Auckland
Christchurch
Wellington
Auckland

Alternate Environment Judges

JES Allin (until 2 May 2005)
JP Doogue (appointed 12 August 2004)
FWM McElrea
DFG Sheppard

Wellington
Auckland
Auckland
Auckland

Environment Commissioners

PA Catchpole
RM Dunlop
KA Edmonds (appointed 31 January 2005)
Dr AH Hackett (appointed as a Deputy Commissioner 01/01/05)
WR Howie
IGC Kerr (until December 2004)
CE Manning
HA McConachy
IG McIntyre (appointed as a Deputy Commissioner 01/01/05)
Dr DH Menzies
JR Mills
MP Oliver
K Prime
JD Rowan
Dr ID Stewart (appointed 22 November 2004)
Dr AJ Sutherland (appointed 31 January 2005)
SA Watson

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

Deputy Environment Commissioners

OM Borlase
Dr TW Fookes (appointed 1 November 2004)
Dr BR Gollop
R Grigg

Dunedin
Auckland
Whangarei
Akaroa

1.2 Senior Administrative Staff

Registrar

John Grant (Acting from 1 July 2004)
 Keith Lewis (from 27 September 2004)
 Harry Johnson (Acting from 21 March 2005)

Deputy Registrars

Harry Johnson	Auckland
Rachell Whitty (Acting)	Wellington
Brendan Fitzgerald	Christchurch
Michael Tinkler (from 13 June 2005)	Christchurch

Judicial Resources Manager

Tracey Chapman	Wellington
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1.3 Judicial Retirement and Appointment

Judge Joan Allin retired from the bench at the expiry of her Acting District Court Judge's warrant on 2 May 2005.

Judge JP Doogue was appointed an Alternate Environment Judge on 12 August 2004

1.3.1 Environment Commissioners Appointment and Retirement

Appointments were made to the office of Environment Commissioner and Deputy Environment Commissioner: K A Edmonds, Dr I D Stewart, Dr A J Sutherland and Dr T W Fookes.

The significant contribution to the Court's work made by Environment Commissioners Ian McIntyre, Dr Arthur Hackett whose warrants expired on 31 December 2004, is acknowledged. The Court is pleased to retain both Commissioners (as deputies) until 31 December 2005.

2. ADMINISTRATION OF THE ENVIRONMENT COURT

2.1 The Court's Jurisdiction

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

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

The Court's functions are to determine, among other things, appeals in respect of resource consents, designations and abatement notices, plan appeals¹ in respect of the content of regional and district planning instruments, applications for enforcement orders, and inquiries in respect of water conservation orders. The Court may also make declarations about the application and interpretation of resource management law. Judges of this Court also hold warrants as District Court Judges, and from time to time sit in the District Court to hear prosecutions laid summarily under the Resource Management Act.

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

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

2.2 Proposed Legislative Change

Changes have been proposed to Part XI of the Resource Management Act. Amongst other possible policy changes, there is a proposal to introduce a range of quasi-judicial Registrar's powers. The introduction of such powers are designed to further support improved case management initiatives taken by the Court. Further, the review of Civil Fees announced on 1 June 2004, by the Minister for Courts proposed an increase in filing fees and the introduction of hearing fees in the Environment Court. The introduction of fees awaits the primary legislation so that regulations can also confer power of waiver on the Registrar. The new fees, if and when introduced, would be intended to ensure that users contribute to the cost of operating the Court in a proportion appropriate to the private benefits involved in cases.

2.3 New Zealand Environmental Law Committee

The New Zealand Law Society's Environmental Law Committee meets approximately 3 times per year. The Principal Environment Judge, Registrar and representatives from the Ministry for the Environment are invited to attend Committee meetings where items on the agenda may be of interest to the Court or where the Court would wish to consult with Court stakeholders. The Committee provides a useful link between the Court, Government agencies, resource management groups and the legal profession.

During the year, the Committee has met twice. The Principal Judge and Registrar have attended to discuss the following Environment Court issues:

- The case for the introduction of a scale of costs into the Environment Court

¹ Formerly known as "references" but amended by the Resource Management Amendment Act 2003

- Comment and feedback on the introduction of case tracks into the case management regime
- The possible introduction of a standalone website for the Court
- Court workloads
- The introduction and review of digital evidence recording and access to transcripts
- Education issues identified by Environment Judges for NZLS CLE programme
- Discussion and consultation on a draft practice note covering mediation, expert witnesses and an amendment to the Practice Note on case management issued in early 2004
- Restorative Justice in the Environment Court.

2.4 Additional Practice Note

Over the last two years, the Court, in consultation with court users, has developed a new case management system supported by the "Case Management in the Environment Court" Practice Note introduced in April 2004 ([2004] NZRMA 237). The case tracking system has added certainty in approach and consistency between the three Registries.

On 31 March 2005, the Principal Environment Judge announced additional changes to the Environment Court's practice with the introduction of a further practice note which comprises three main parts - alternate dispute resolution (ADR), with particular attention directed to mediation; expert witnesses; and a consolidating amendment to the Case Management practice note referred to above (refer [2005] NZRMA 193).

The ADR part endorses and encourages resort to alternative means of resolving or reducing the scope of cases, without the need for a hearing (or for as lengthy a hearing) before the Court. The part goes on to provide a detailed guidance framework regarding the nature and conduct of Environment Court – annexed mediation. Importantly, it addresses issues that have arisen as the range of experience and skills of the Court's Environment Commissioners in the mediation field has developed and expanded.

The second part of the practice note concerns the introduction of a Code of Conduct for expert witnesses. Such a witness has a duty to the Court to assist the Court impartially on relevant matters within the expert's area of expertise, and not appear as an advocate for the party who engages the witness. The provisions are similar in many respects to the Code of the High Court, but incorporate various matters of particular relevance to presenting expert evidence in the Environment Court. The Code of Conduct provisions particularly relate to experts conferring together prior to the Court hearing with a view to reducing issues and promoting efficiency through what is colloquially termed "hot tubbing". How this area of the Court's announced practice develops will be of interest to the Court and experts before it alike.

2.5 Additional Dispute Resolution

In the last 12 months, the Court has undertaken mediation in some 350 cases. Often, cases required multiple mediations to progress issues and topics within individual and related appeals. Of those that have completed the mediation process, 89 cases have settled (with a consent order between the parties), 30 cases have been withdrawn and 11 have settled in part. The introduction of a case management

database in early 2006 will facilitate better monitoring, reporting and active management of cases in mediation.

3. WORKLOAD OF THE ENVIRONMENT COURT

It is considered that the caseload is now at a manageable level and the resources the Court has at its disposal enable it to manage the caseload more effectively. However, as will be highlighted further in this report, there are number of future legislative and policy implications that may impact on the Court's work over the coming years.

During the year 1086 cases were filed with the Court. The number of cases disposed was 1368 and the number of cases pending resolution now stands at 1566. This reduction in cases outstanding continues the downward trend in the Court's outstanding caseload which has developed over the last four years.

	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05
Filed	1221	1374	2192	1270	1346	1351	1069	1089	1086
Determined	1183	1191	1392	1166	1225	1676	1723	1399	1368
Outstanding	1931	2114	2914	3017	3137	2813	2158	1848	1566

4. RESOURCES

4.1 Current and Future Initiatives

The new initiatives delivered into the Court over the last 4 years have led to a reduction in delay and overall improved the ability of the Court to manage its workload.

Over the coming 2005/06 year, the Court aims to deliver a new database based upon the Case Management System (CMS) in place in both the District and High Courts. The introduction of the database will better assist the Court in monitoring and forecasting its work and will add to the efficiency gains already achieved in case management and provide more relevant and accurate management information on caseload. It is anticipated that the Environment Court will go live with the new database early in 2006.

The Court has had available since September 2003 a digital evidence recording ability. This has provided the Court (and parties to cases) with contemporaneous notes of evidence that reduces the time taken to hear cases and aids the Court in its deliberation of decisions. For the more complex and lengthy cases, there is anecdotal evidence that a substantial volume of hearing time is saved and therefore an element of compliance costs are reduced by the Court having a speedier hearing brought about by a contemporaneous transcript. Funding for this service will cease at the end of the 2005/06 financial year. The Ministry of Justice will be exploring options to continue this service beyond the next financial year.

There are a number of initiatives and issues that may effect and impact upon the Court's caseload over the coming years. A number of legislative and policy

proposals are at varying stages of development. It is not possible to predict at this stage the precise timing of, or the levels of, impact of these, but they all have potential to impact the work of the Court. The list below is not exhaustive but indicates the range of areas from which the Court can expect additional responsibilities:

- 1.1 Aquaculture Reform – The lifting of the moratorium in January 2005 on new applications for Marine Farms will have a range of implications, including: single process for aquaculture planning and consents through the RMA; creation and definition of Aquaculture Management Areas within regional coastal plans; consequential plan changes; and opportunities for appeals to the Court.
- 1.2 Foreshore and Seabed Act 2004 – This requires the establishment of Reserve Management Plans (leading to regional policy review with rights of appeal to the Court), and recognition, within the Resource Management Act, of customary activities.
- 1.3 Proposed amendment to the Resource Management Act 1991 – This may result in Ministerial call-in of matters of national significance to Boards of Inquiry (chaired by an Environment Judge or former or retired Environment Judge), or direct referral by the Minister to the Environment Court for consideration.
- 1.4 Notification Decisions – There is a proposal that the Environment Court have the jurisdiction to make declarations on decisions by consent authorities whether or not to notify resource consents.
- 1.5 National Policy Statements and Environmental Standards – It is proposed also that National Policy Statements and Environmental Standards should be included in local and regional policy statements and plans. This will mean consequential plan changes, and opportunities for appeals to the Court.
- 1.6 Climate Change – This relates to the inclusion of the effects of climate change as an integral part of Resource Management Act decision-making. This may result in the need for policy statement and plan reviews with consequential appeals to the Court.
- 1.7 Reviews of policy statements and plans – Likely increase in plan appeals to the Court during 2nd generation review of planning instruments by regional councils and territorial authorities.
- 1.8 Local Government (Auckland) Amendment Act – This will result in the integration of land transport and land-use provisions, contained in Auckland Regional Growth Strategies, into regional policy statements and district plans.

4.2 Court Expenditure and Revenue

Expenditure and revenue of the Court during the 2004/05 financial year and in the year previous was:

Expenditure	2004/2005	2003/2004
	\$	\$
Judges' salaries and allowances	1,711,301	1,504,800
Commissioners' fees and salaries	1,376,642	1,379,497
Staff salaries and wages	1,599,808	1,647,595
Judges' and Commissioners' travel costs	732,428	721,072
Digital Audio Recording and Transcription	706,300	943,602
Staff travel costs	72,960	92,710
Staff and Commissioner training	98,914	128,373
Hireage of venues for sittings and mediations	71,231	58,157
Telephone, postage and courier costs	151,273	119,259
Stores and stationery	61,152	82,825
Textbooks and periodicals	61,909	45,596
Maintenance of buildings, furniture and equipment	158,714	152,883
Utilities (power and rates)	104,180	81,901
Miscellaneous overheads	5,374	3,498
	6,912,186	6,961,768
Revenue		
	\$	\$
Sale of copies of Court decisions	9,638	16,994
Appeal and application lodgement fees	52,340	52,178
	61,978	69,172