

Report of the

Registrar of the Environment Court

For the 12 months
ended 30 June 2020

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

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INTRODUCTION

The Honourable Minister for Courts

Minister,

I have the honour to forward in terms of s.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 2020.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'H. Johnson', with a stylized, cursive flourish.

Harry Johnson,
Registrar
Environment Court.

1.0 Profile of the Environment Court

1.1 Members of the Court

Title	Appointed	Residence
Principal Environment Court Judge L J Newhook	Feb 2014	Auckland
Environment Court Judges		
Judge J R Jackson	Sept 1996	Christchurch
Judge J A Smith	May 2000	Auckland
Judge J E Borthwick	Nov 2008	Christchurch
Judge M Harland	Sept 2009	Auckland
Judge J Hassan	Nov 2013	Christchurch
Judge D A Kirkpatrick	Dec 2013	Auckland
Judge M Dickey	Nov 2018	Auckland
Alternate Environment Court Judges		
Judge C Doherty	Aug 2008	Christchurch
Judge C Fox	Sept 2009	Gisborne
Judge S Clark	July 2009	Hamilton
Judge J Kelly	Sept 2009	Christchurch
Judge P Kellar	Sept 2009	Dunedin
Judge G Rea	Feb 2011	Napier
Judge G Davis	April 2011	Whangarei
Judge S O'Driscoll	May 2013	Christchurch
Judge M Doogan	Oct 2018	Wellington
Judge L Harvey	Oct 2018	Rotorua
Judge C Thompson	Oct 2018	Wellington
Judge B P Dwyer	Dec 2019	Wellington

Title	First appointed	Re-appointed	Residence
Environment Court Commissioners			
Mr R Dunlop	March 2003	June 2016	Auckland
Mr K Prime	March 2003	August 2018	Bay of Islands
Ms K A Edmonds	Jan 2005	May 2015	Wellington
Mr D Bunting	Aug 2007	May 2018	Wellington
Ms A Leijnen	Jan 2011	June 2016	Auckland
Mr I Buchanan	Jan 2013	April 2018	Wellington
Mr J Hodges	June 2013	June 2018	Auckland
Hon Kate Wilkinson	May 2015		Christchurch
Ms Ruth Bartlett	June 2017	April 2018	Auckland
Mr J Baines	April 2019		Christchurch
Mr A Gysberts	April 2019		Auckland
Dr M Mabin	April 2019		Christchurch
Deputy Commissioners			
Commissioners			
Mr D Kernohan	Aug 2007	April 2018	Wellington
Ms G Paine	Dec 2016		Marlborough

Ms M Pomare	June 2017		Porirua
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1.2 Judicial Resources

Environment Judges

Environment Judge Brian Dwyer retired from the court in December 2019. The court was pleased to retain Judge Dwyer as an Alternate Environment Court Judge for a period of two years.

Environment Commissioners

Environment Commissioner Ross Dunlop relinquished his warrant in August 2019. Commissioner Dunlop was first appointed to the court in March 2003. Ross Dunlop was one of the courts more senior and experienced Commissioners who was highly regarded by his colleagues for his contribution to the work of the court.

1.3 The Registry

The Environment Court's registry falls within the Operations Service Delivery Group of the Ministry of Justice. The Manager Justice Services for the Environment Court holds the position of Registrar of the Environment Court and has reporting and budgetary responsibilities to the Regional Manager Northern, within the Operations and Service Delivery Group.

The Registrar and Deputy Registrars exercise quasi-judicial powers such as the consideration of certain waiver applications and, where directed to do so by an Environment Court Judge, undertake acts preliminary or incidental to matters before the court.

The court maintains registries in Auckland, Wellington and Christchurch. Each registry is led by a Service Manager (each of whom are Deputy Registrars and have all the powers, functions and duties of the Registrar of the Environment Court). Each registry provides client services and administrative support through case and hearing managers together with legal and research support to resident judges and commissioners to assist them in hearing and determining cases.

The court's Judicial Resources Manager co-ordinates the court's sitting programme. This follows directions from the Principal Environment Court Judge who, pursuant to s 251(2) of the Resource Management Act 1991 (RMA), is responsible for ensuring the orderly and expeditious discharge of the business of the court.

1.4 The Court's Jurisdiction

The Environment Court is a specialist court of record established under section 247 of the RMA. It's the primary environmental adjudicative body in New Zealand. It has jurisdiction over environmental and resource management matters. It can be characterised as follows:

- a presiding Judge and two Environment Court Commissioners sit together to hear and determine proceedings;
- it is required by law to act judicially; and
- it hears contesting parties to the proceedings before it and gives a determination which is binding upon them.

The role of the court under the RMA is to hear and decide:

- appeals on councils' decisions on proposed plans and policy statements and resource consent applications
- appeals on abatement notices and applications for enforcement orders
- applications for declarations
- inquiries in respect of water conservation orders.
- directly referred resource consent applications or notices of requirement
- proposals of national significance called in and directed to the court by the Minister for the Environment

Judges of the court also hold warrants as District Court Judges and sit in the District Court to hear prosecutions laid under the RMA. Judges may also chair boards of inquiry into matters of national significance RMA and independent hearing panels under special legislation. Judges are also appointed chairs of the Land Valuation Tribunals. Environment Commissioners are occasionally seconded onto board of inquiries and assist with independent hearing panels which includes use of their mediation expertise and as facilitators of expert witness conferencing.

The court currently comprises 20 (inc.11 alternate) Judges and 15 Commissioners (inc.3 deputies). Commissioners are appointed for a term of up to 5 years on either a full or part time (usually 75%) basis. Deputy Commissioners sit as required usually based on their specific expertise and undertake mediation.

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

Court hearings of appeals on council decisions are *de novo* hearings. This means they are conducted "afresh", so that the court will want to receive all the evidence and submissions presented to it.

A decision of the Environment Court can be appealed to the High Court on a point of law and beyond this, to the Court of Appeal and Supreme Court if leave is granted.

2.0 Highlights 2019/20

2.1 Annual Review 2018

The Principal Court Environment Judge, on behalf of members of the court, causes to publish a calendar year review of the work of the Environment Court. The Annual Review is complimentary to this report. The latest review spans the 2018 calendar year and provides commentary beyond the largely statistical focus of this report and can be found

on the court's web pages at www.environmentcourt.govt.nz/decisions-publications/annual-reports/

2.2 Direct Referral Process

The direct referral process allows resource consent applications, requiring authority and heritage protection authority requirements to be considered directly by the Environment Court. This fast-tracking process was included in the 2009 amendments to the RMA and was designed to allow some significant projects to be commence quicker than they might have otherwise by avoiding the need for a council hearing prior to an appeal to the court.

Over 2019/20, three matters were referred to the court directly pursuant to sections 87G of the RMA:

- Woolworths New Zealand Limited – application for resource consents to establish a residential and commercial mixed-use development in Halswell, Christchurch.
- Waka Kotahi NZ Transport Agency – application for resource consents relating to the Te Ahu a Turanga: Manawatū Tararua Highway project.
- Rotorua District Council – application for resource consents to enable upgrade of an existing wastewater treatment plant and a new discharge of treated wastewater.

2.3 Land Valuation Tribunals

In March 2017, the Environment Court Registries assumed responsibility for the administration of the Land Valuation Tribunals (LVTs) and Environment Judges were appointed chairs of the various tribunals. Since then, the backlog in the work of the tribunals has been effectively cleared. Much of the LVTs work relates to rating valuations. The tribunals have adopted a new practice of setting matters down on a timetabled hearing but allowing an opportunity for the parties to see if they can resolve the matter informally. This has proved to be particularly effective with very few objections needing a hearing.

As recorded in the Registrar's Report for the period ending June 2018, there is some inflexibility with the operation of the tribunals that would be assisted by some improvement to the workability of Land Valuation Proceedings Act 1948 (LVP).

Unlike matters before the Environment Court where any judge and any commissioner (subject to any conflicts and the oversight of the Principal Environment Court Judge) can adjudicate on any matter filed to be heard in the court, the process of appointment to the tribunal currently appoints individual tribunal chairs and members one of 18 tribunals and doesn't therefore offer the same flexibility of rostering judicial resources to the work of the tribunal nationally. We have, to some extent, been able to work with this restriction by the appointment of the Principal Environment Court Judge as a deputy chair of all 18 tribunals.

Meanwhile, pending improvement to the LVP, Environment Court Judge Jeff Smith has been asked by the Principal Environment Court Judge to maintain some oversight of Land Valuation matters and is aiming to introduce a Practice Note to provide guidelines and direction towards national consistency.

2.4 Involvement with Community

The Principal Environment Court Judge (and other members of the court) meet formally and informally with the professions that regularly engage with the court with a view to identifying areas for improvement in practice and process. Each year, the Judges and Commissioners routinely participate in numerous conferences and seminars to enhance awareness of recent developments in the court relating to both procedural and substantive law.

Details of members of the courts participation in community and international forum can be found in the afore-mentioned Annual Review 2018.

2.5 Judicial Education Conferences

The court has a commitment to continuing professional development amongst its members and both Judges and Commissioners through the court's Education Committee meet to discuss on going professional development needs.

The court held its annual judicial conference in Christchurch in October 2019. Included on the conference programme were sessions and presentations on the Christchurch planning for the recovery and rebuild post-earthquakes in 2010-11.

2.6 Overseas Delegations

There continues to be interest shown from overseas jurisdictions in New Zealand's Environment Court and a demand for sharing of knowledge within the international legal and judicial communities. An increasing international focus in improving environmental courts and tribunals is apparent and the court has a high reputation as a leading specialist environment court. In this regard, over the years, the court has hosted many delegations from officials and members of foreign jurisdictions interested to understand the court's role in environmental decision making and compliance. It's clear from these visits, that the court has much to offer in terms of examples of best practice and procedure.

3.0 Court's Performance

3.1 Case Management

The court has an overriding duty to ensure the efficient resolution of the matters before it. The RMA states that the Principal Environment Judge is responsible for the expeditious discharge of the business of the court. Therefore, in conjunction with the other Environment Court Judges, the Principal Environment Court Judge determines the day-to-day case-flow management strategy of the court. This strategy is reflected in the court's Practice Note. The Ministry of Justice supports the Principal Environment Court Judge in the execution of that strategy through its registry and administrative case management services. Some matters filed under the RMA are substantial in terms of their complexity, range and numbers of parties and issues, and are challenging to administer.

The court's principal methods of case management are:

(a) Cases that do not require priority attention are assigned to a Standard Track, under which the court issues standard directions for the management of each case. The directions may include that the case be managed through processes such as the

timetabling of procedural steps; progress reporting to the court; judicial conferences; and formal pre-hearing directions or rulings.

(b) Cases that the court agrees require priority attention are assigned to a Priority Track and case-managed by the court in accordance with steps expressly designed to produce an early result. Also, applications referred directly to the court will usually be placed on this track, because of the intense management that will be required.

(c) Subject to the court's agreement and for good cause, cases in which the parties agree that management might be deferred for a defined period are placed on a Parties' Hold Track, with case management being resumed (failing settlement or withdrawal of the proceedings) at the parties' request, or at the expiry of the deferral period, or otherwise at the court's direction.

(d) All cases, when lodged, are assigned by a Judge or the Registrar to one of the case tracks, and the parties are notified of the assigned track.

(e) Cases may be transferred from one track to another where circumstances warrant, at the court's initiative, or on the application of a party. Proceedings which the court decides require priority attention, including urgent applications for enforcement orders and declarations, will usually be placed in, or moved to, the Priority Track.

In summary, the Standard Track is for relatively straightforward cases, the Priority Track is for more urgent cases such as enforcement proceedings and cases where the court directs priority resolution; the Parties' Hold Track is used when parties are not actively seeking a hearing, for example to allow an opportunity to negotiate or mediate, or when a fresh plan variation or change needs to be promoted by a local authority to meet an issue raised in an appeal. Such cases are regularly reviewed by a Judge to assess whether they need to move to another track and be actively progressed.

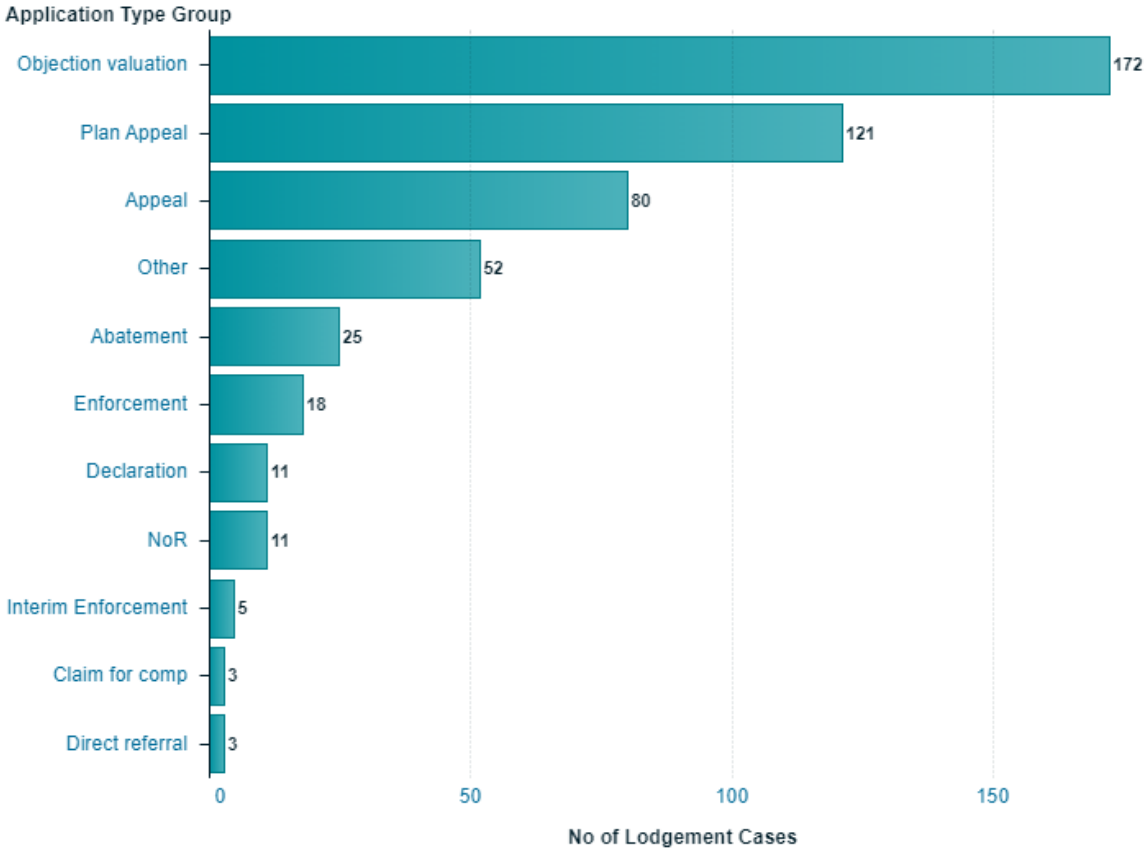
3.2 Case Statistics

The total number of lodgments (appeals and applications) filed in recent years have allowed the court to maintain a good overall clearance rate. Whilst plan appeal filings routinely fluctuate as planning instruments undergo changes, the increase in miscellaneous cases is largely attributable to the land valuation matters now filed with the court and included in its caseload numbers. The volume of resource consent appeals is closely linked to the volume of notified applications being processed by the local authorities and remains stable.

Over 2019/20 the court received a total of 501 new lodgments and determined 502. While case numbers are an indicator of the demand placed on court resources, they are not the only indicator. Other factors such as case size, number of parties, topics and complexity, influence the level of judicial intervention through case management, mediation, expert witness conferencing and ultimately any hearing that may be required.

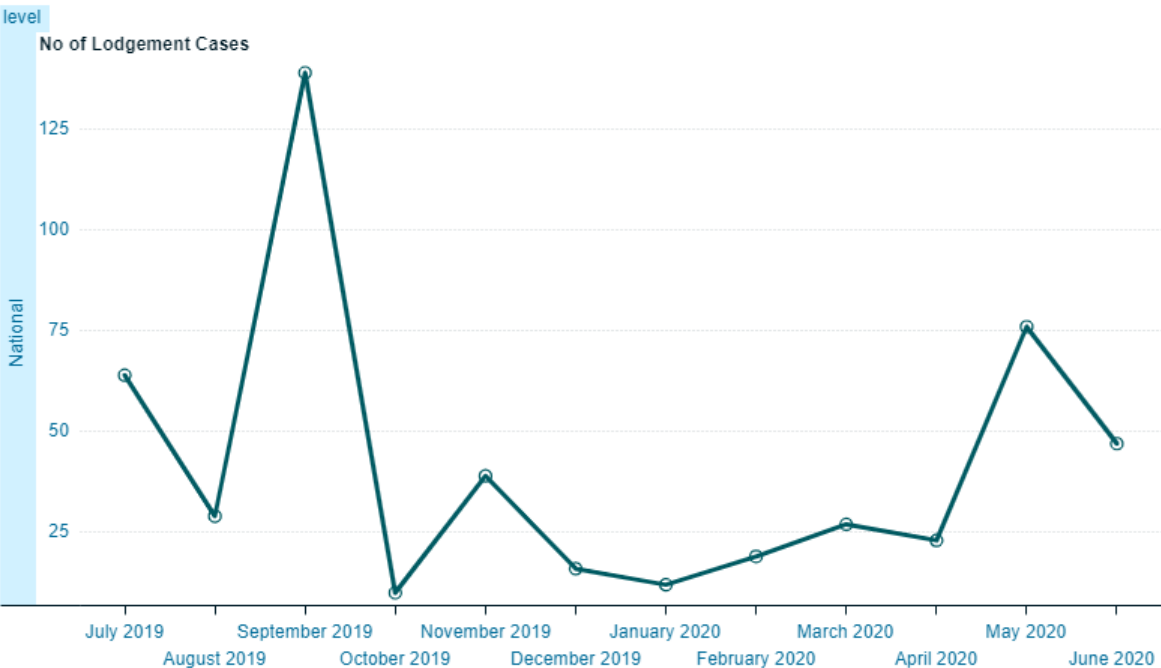
As at the end of June 2020, there was a total of 832 case lodgments outstanding.

Cases Filed by Application Type Group



Filing numbers are generally sporadic through the year with peaks being indicative of related plan or policy change appeals and or rating valuation objections.

Cases Filed



Equally, case lodgements are disposed at sporadic intervals, particularly so when topics on related plan appeals are determined simultaneously.

Lodgements Determined by Lodgement Outcome Date



4.0 Alternative Dispute Resolution

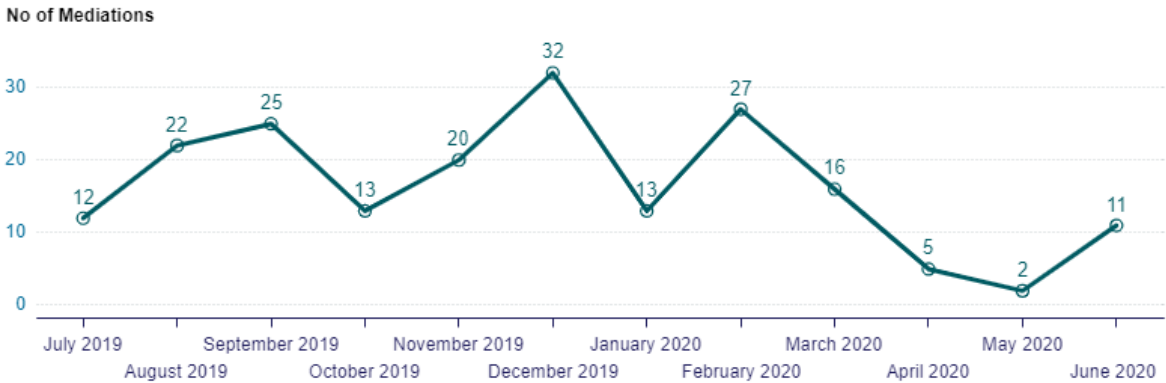
Section 268 of the RMA empowers the Environment Court to arrange mediation and other forms of Alternative Dispute Resolution (ADR). In 2017, RMA changes recognised the important role of mediation in the court's resolution of disputes and enabled the court to require attendance by parties at conferences and ADR unless the court grants leave otherwise.

Early intervention through mediation resolves a high number of cases or at the very least narrows the scope of issues in dispute. To encourage settlement of cases, the court can authorise its members (judges or commissioners) or other persons to conduct those procedures. Environment Commissioners are trained in mediation. Mediation is a process in which parties to the dispute, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement.

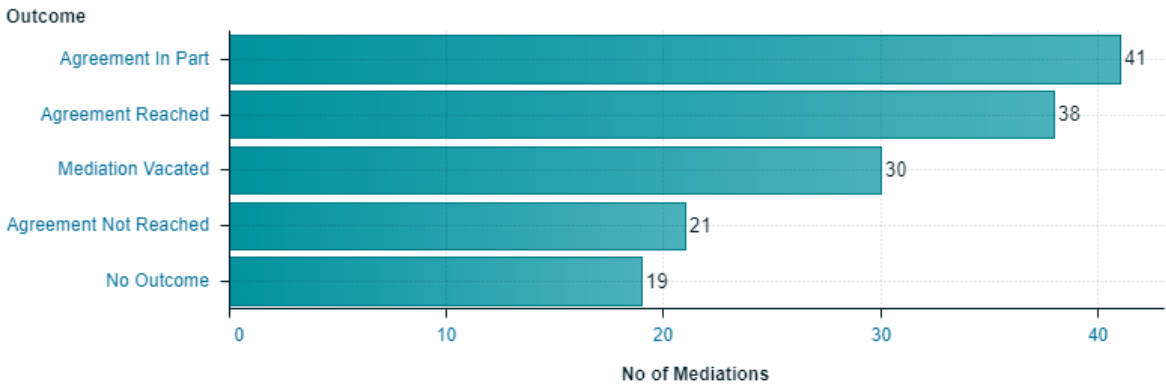
More broadly, mediation enables settlements in circumstances where informal negotiations have not been successful. It also allows issues to be narrowed which can in turn shorten hearings, even if settlement cannot be reached.

Court-annexed Mediation Volumes and Outcomes

No of Mediations by Event date



No of Mediations by Outcome



**Some mediation topics/events that occurred over 2019/20 have yet to record an outcome.*

**A single mediated topic may form part of a greater number of topics within a single lodgement or appeal.*

These tables do not capture as an outcome those matters that have subsequently settled or have been withdrawn but which settlement or withdrawal did not occur at the end of the mediation. Many cases settle within a few weeks after conclusion of mediation, anecdotally because of progress made during the mediation. The court’s case management database, not being a management tool, is not equipped to bring such information into the books. If the additional settlements were to be added to those recorded as settling by the end of the mediation session, the percentage recorded as resolved by mediation, would be higher than shown in the table.

5.0 Court Expenditure and Revenue

Expenditure and revenue of the court and registry during the 2019/20 fiscal year and in the previous year was:

	<u>2019/20</u>	<u>2018/19</u>
<i>Expenditure</i>		
Judges' Remuneration and Allowances	3,252,112	3,223,573
Commissioners' Fees	1,820,912	1,695,687
Staff Remuneration and other Personnel Costs	1,407,987	1,438,526
Judges' and Commissioners' travel costs	300,214	331,499
Staff travel costs	154,528	123,570
Commissioner training	6,794	35,696
Hire of venues for sittings and mediations	102,112	125,954
Telecommunications	29,205	22,998
Stores and stationery	15,725	18,590
Library and Information Services	3,452	4,424
Occupancy Costs, Utilities, Furniture and Equipment	1,807,933	1,762,598
Miscellaneous expenses	31,099	11,462
	<u>8,932,073</u>	<u>8,794,577</u>
<i>Revenue</i>		
Search fees	5,773	5,950
Sale of documents	69	1,205
Appeal and application fees	149,879	562,823
Scheduling fees	4,962	3,585
Hearing fees	13,606	7,519
Direct referral fees	278,368	760,053
Board of Inquiry	2,101	0
Miscellaneous	937	937
	<u>455,695</u>	<u>1,342,072</u>

