



COVERSHEET

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| Ministers | Hon Dr David Clark Hon Aupito William Sio | Portfolio | Commerce and Consumer Affairs Courts |
| Title of Cabinet paper | Motor Vehicle Traders Register Fees and Motor Vehicle Disputes Tribunal Levy: Proposed Amendments | Date to be published | 16 May 2022 |

List of documents that have been proactively released

| Date | Title | Author |
|--------------|---|---|
| March 2022 | Motor Vehicle Traders Register Fees and Motor Vehicle Disputes Tribunal Levy: Proposed Amendments | Office of the Minister of Commerce and Consumer Affairs |
| March 2022 | Review of Motor Vehicle Traders Register Fees and Motor Vehicle Disputes Tribunal Levy – Cost Recovery Impact Statement | MBIE & MoJ |
| March 2022 | Review of Motor Vehicle Traders Register Fees and Motor Vehicle Disputes Tribunal Levy – Summary of submissions | MBIE & MoJ |
| 6 April 2022 | Motor Vehicle Traders Register Fees and Motor Vehicle Disputes Tribunal Levy: Proposed Amendments DEV-22-MIN-0070 | Cabinet Office |

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

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Office of the Minister of Commerce and Consumer Affairs

Office of the Minister for Courts

Cabinet Economic Development Committee

Approval to amend Motor Vehicle Traders Register Fees and Motor Vehicle Disputes Tribunal Levy

Proposal

- 1 This paper seeks Cabinet's approval to amend the Motor Vehicle Traders Register fees as prescribed in the *Motor Vehicle Sales Regulations 2003* and Motor Vehicle Disputes Tribunal levy, as prescribed in the *Motor Vehicle Sales (Motor Vehicle Disputes Tribunals Funding Levy) Regulations 2003*.

Executive Summary

- 2 The Motor Vehicle Traders Register Regime protects purchasers of motor vehicles by minimising the number of unregistered, non-compliant, and banned traders in the marketplace. The Act requires registration of traders who sell more than six vehicles or import more than three vehicles a year. Traders are required to display consumer information notices to give consumers accurate information about vehicles that are for sale.
- 3 The Motor Vehicle Disputes Tribunal aims to provide a level playing field to deal with disputes between consumers and motor vehicle traders, if a consumer believes there is a breach of the *Consumer Guarantees Act 1993*, the *Fair Trading Act 1986* and/or the *Motor Vehicle Sales Act 2003*.
- 4 Agencies routinely review the level at which Government sets fees and levies to minimise under and over recovery. While they are reviewed regularly, the fee and levy set for the Motor Vehicle Traders Register (MVTR) regime and the Motor Vehicle Disputes Tribunal (the Tribunal) respectively, have not been adjusted since 2003. Fees and the levy are paid on registration and then once annually per trader to remain registered (for those that meet the minimum vehicle sales or import levels).
- 5 In November 2021 Cabinet approved for the Ministry of Business, Innovation and Employment (MBIE) and the Ministry of Justice (MoJ) to consult publicly on adjustments to the fee and levy levels [CAB-21-MIN-0467 refers]. For the MVTR fees, three options were proposed in order to:
 - 5.1 better ensure that traders are paying fully for the costs of these services given the benefits they receive from a well-regulated environment;
 - 5.2 sustainably fund the services provided; and

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- 5.3 meet new cost pressures which would improve services and the integrity of the motor vehicle trading regime.
- 6 In the case of the levy, an increase of \$97.11 (GST exclusive) was proposed to ensure the Tribunal can be funded sustainably.
- 7 Officials have analysed consultation submissions and recommended an adjustment to both the fees and the levy:
 - 7.1 In the case of the MVTR fees, I propose that the adjusted fees be based on a tiered approach, with varying fees on the basis of both different user (individual trader or company) and transaction (registration or renewal) types.
 - 7.2 In the case of the Tribunal levy, I propose that the levy be adjusted to the level consulted on, with all users charged the same amount when they pay a registration or renewal fee, for the Tribunal.
- 8 Subject to Cabinet decisions, the amended fees and levy would be expected to come into force from 1 August 2022 and amended regulations would be promulgated before that date.

Background

- 9 The *Motor Vehicle Sales Act 2003* (the Act) governs the trading of motor vehicles in New Zealand to promote and protect the interests of consumers of motor vehicles. The Act established the MVTR regime (the Regime), and the Tribunal.

The Motor Vehicle Traders Register

- 10 The Regime protects purchasers of motor vehicles by minimising the number of unregistered, non-compliant, and banned traders in the marketplace. The Act requires registration of traders who sell more than six vehicles or import more than three vehicles a year. Traders are required to display consumer information notices to give consumers accurate information about vehicles that are for sale.
- 11 The Act requires applications for registration or renewal of registration to be accompanied by a fee. The fees are prescribed in the *Motor Vehicle Sales Regulations 2003*. When the Regime was established, the decision was made to fully recover costs from users, including costs associated with enforcement and education programmes for traders and consumers [CAB Min (01) 17/4A refers].
- 12 The Motor Vehicle Traders Register Memorandum Account (Memorandum Account) in Vote Business, Science and Innovation was established in 2003 to manage the level of revenue collected against expenditure for each financial year and ensure that over time, MBIE does not over or under recover the costs of the Regime.

- 13 Traders, whether a company or individual, are charged the same fee of \$405.33 (GST exclusive) for an application to be registered, and the same amount for an annual renewal if they wish to continue trading¹. The fee has been reviewed but not changed since the Regime was introduced in 2003, however, the cost of running the Regime has now increased since the fee was set. Increasing enforcement activities, in particular of online vehicle sales which require greater scrutiny, has resulted in higher costs associated with the Regime.
- 14 In addition to increased cost, volumes of registrations have declined, leaving MBIE to recoup costs from fewer registrants. The decline has been on average 15 per cent per year since 2016/17. As of 30 June 2021, the Memorandum Account reached a deficit position of \$0.889 million, and is forecast to increase to a \$1.297 million deficit position by 30 June 2022.
- 15 While consumers benefit from a well-regulated vehicle sales market, traders derive a private benefit from a registration system that ensures they are not disadvantaged by competing against traders who may have lower standards of quality and service. MBIE considers that full cost recovery, as agreed by Cabinet when the Regime was established, continues to be appropriate.

The Motor Vehicle Disputes Tribunal

- 16 The Tribunal, which is administered by MoJ, aims to provide a level playing field to deal with disputes between consumers and motor vehicle traders, if a consumer believes there is a breach of the *Consumer Guarantees Act 1993*, the *Fair Trading Act 1986* and/or the *Motor Vehicle Sales Act 2003*².
- 17 The Act established the power to set a Motor Vehicle Disputes Tribunal levy to partially recover costs incurred by the Tribunal from all registered traders. The levy is prescribed in the *Motor Vehicle Sales (Motor Vehicle Disputes Tribunals Funding Levy) Regulations 2003*³.
- 18 Registered motor vehicle traders are currently charged a levy of \$112.89 (GST exclusive) per trader as a club good⁴ to recover costs of the Tribunal. The Tribunal also charges a fee of \$50 (GST inclusive) to complainants who access the Tribunal (approximately 450 applications per annum) to support cost recovery⁵. Costs have increased since the levy was introduced in 2003, with recent deficits in administering the Tribunal having to be funded from MoJ Crown revenue baselines.

¹ The current and proposed fees and levy are set out at Appendix One.

² The Tribunal deals with disputes relating to registered motor vehicle traders and can also deal with disputes in instances where a trader is not registered but meets the criteria for registration.

³ The balance of the costs is funded by the Crown through the *Specialist Courts, Tribunals and Other Authorities Services* departmental appropriation and a \$50 (GST inclusive) fee paid by complainants who access the Tribunal.

⁴ Government collects levies charged to a particular group to help fund a service like a Tribunal so that the cost of that function is spread across the whole group, whether or not individual members of the group access the service.

⁵ This fee is out of scope of this review as it set at standard rates for MoJ tribunal services.

- 19 Traders are charged the levy and fee together at the point of initial registration and registration renewal, and MBIE then passes the levy portion on to MoJ through a monthly payment.

Proposal

Motor Vehicle Traders Register fees

- 20 The Minister of Commerce and Consumer Affairs proposes to increase MVTR fees to ensure full recovery of the annual costs of running the MVTR regime, meet the new cost pressures that have arisen since the fee level was established in 2003, and address the deficit position of the Memorandum Account.

Recovery of annual costs

- 21 Under forecast registration volumes, revenue from transactions in the MVTR regime are not sufficient to fully recover costs. Surpluses in previous years that have accumulated in the Memorandum Account were utilised to meet the gap between costs and revenue (annual deficits) until 2019/20, when the Memorandum Account went into a deficit position. The current level of fees will not recover annual costs in future years.

New cost pressures

- 22 The proposed fee changes also reflect an increase in appropriation of \$0.502 million per annum to meet new cost pressures, which would improve services and integrity of the motor vehicle trading regime, as follows:
- 22.1 Monitoring and compliance functions: Due to developments in how the market operates and the increase in online trading, MBIE would hire additional personnel to undertake monitoring and compliance activity. Increased enforcement activity would likely lead to a corresponding increase in legal advice and costs required to support prosecutions under the Act.
 - 22.2 Information Technology (IT) system upgrades and enhancements: System upgrades are required to replace the current registration platform and modernise the register to modern standards. This is necessary to maintain appropriate levels of information security and protect against growing cybersecurity threats, as well as simplifying and improving the usability of the platform for both traders and consumers.
 - 22.3 Indirect costs: The proposed fees also include a component of indirect costs related to the increase in depreciation and capital charge, due to capital investment into the IT system as noted above, and a portion of MBIE overheads related to the additional staff hired⁶.

⁶ Capital for the system upgrades would be funded from within MBIE's capital baseline.

Recovery of the memorandum account deficit

- 23 As a result of increased enforcement activity and declining registration volumes, the Memorandum Account is now in a deficit position and is trending downward (forecast as \$1.297 million by 30 June 2022). When the MVTR regime was established, Cabinet was informed that the over or under recovery of the Memorandum Account would be incorporated into proposed fee changes in future years.
- 24 The proposed fees have been set at a level to recover the deficit of \$1.297 million over a five-year period, or \$0.259 million per year. Five years is considered appropriate to spread the cost of recovery, while also ensuring the Memorandum Account is tracking back towards a zero balance.
- 25 Both Option Two and Option Three for the fee structure (see paragraph 29) proposed a differential fee between registrations and renewals. The additional Memorandum Account cost recovery has been added to the renewal component of the fee.

Changes to MVTR fee structure

- 26 Currently, motor vehicle traders pay an annual single fee. Initially it is paid with the application for registration. In subsequent years it is paid with the application for renewal of registration. There is no difference in the fee charged between an individual trader and a company selling motor vehicles.
- 27 The cost model developed during the fees review highlighted the varying costs incurred in processing registrations and renewals, and companies versus individual traders. For the latter, additional administration is required to check and register multiple directors of a company.
- 28 In setting fees, one of the important principles is ensuring they are set and managed in a way that is administratively fair and equitable⁷. Fees should also be justifiable and transparent, so that fee payers understand how the direct and indirect costs have been allocated to the different fee types.
- 29 Three options for the fee structure were considered and consulted on:
- 29.1 **Option One:** Increased flat fee – one single fee across all transaction types (registration and registration renewal) and users (individual traders and companies);
- 29.2 **Option Two:** Differential for activity type – two different fees on the basis of transaction types for registration and renewals, reflecting a different level of administrative effort across these activities. The fee for each transaction type would be the same for all users (individual traders and companies); or

⁷ Controller and Auditor-General Tumuaki o te Mana Arotake. (2021) *Setting and administering fees and levies for cost recovery: Good practice guide*. Office of the Auditor-General. Page 8.

29.3 **Option Three:** Tiered fees – four different fees on the basis of both different user (individual trader or company) and transaction (registration or renewal) types.

- 30 While consultation feedback did not demonstrate a preferred fee structure amongst submitters (see paragraphs 53 – 54), I consider that a continuation of the current flat fee structure does not reflect the variation in costs incurred in administering the Register.
- 31 I propose to amend the Regime to introduce Option Three – the tiered fee structure. This would allow for a more equitable distribution of costs to reflect the administrative effort required for a registration or renewal transaction, and between individual and company registrations or renewals. Volumes are projected at 3,200 traders, with approximately 480 individual traders, and just over 2,700 companies.
- 32 The change in the charging model would not have an impact on the ease of navigation and simplicity for traders; as they would continue to be charged once annually when they apply for renewal, for the fee, and the Tribunal levy.
- 33 Implementation of Option Three (the tiered fee structure), as a departure from the flat fee structure, would require some IT changes to the MVTR system. However, there is no significant delivery risk associated with implementing a new fee structure.

Proposed MVTR fees: Tiered fee structure

34 Table 1 below outlines the proposed changes to fees, reflecting the tiered fee structure.

Table 1 – Proposed fee payable by traders

| Fee category | Proposed fee <i>(GST exclusive)</i> |
|---------------------------------------|--|
| Registration application - individual | \$432.00 |
| Registration application - company | \$863.00 |
| Renewal - individual | \$401.00 |
| Renewal - company | \$802.00 |

Motor Vehicle Disputes Tribunal levy

- 35 I propose to increase the Tribunal levy from \$112.89 to \$210.00 to ensure continued partial cost recovery of this club good service and maintain access to justice for consumers should a dispute occur.
- 36 The Tribunal has been subject to cost pressures since the levy was introduced, with an average annual growth rate in costs of 3.4 per cent.

- 37 The legislation requires the Tribunal to hear the matter in the location closest to where the transaction took place. In the past, this has meant the purchaser would have to travel to the hearing. Remote participation has meant that this travel is no longer required, and purchasers are no longer disadvantaged if a vehicle has been purchased from a location other than where they live. This has resulted in more hearings occurring and fewer claims being withdrawn. These increased volumes, as well as other general inflationary cost increases, has led to cost pressures for the Tribunal.
- 38 The proposed levy of \$210.00 reflects the departmental costs to MoJ for delivering this service but does not seek to fully recover the Crown costs incurred to pay Tribunal members' sitting fees. As MoJ receives a level of Crown funding to support the tribunals it manages, the levy covers the departmental costs that are specifically related to the Motor Vehicle Disputes Tribunal.

Total payment by traders

- 39 Since traders pay the fee and levy together as one transaction, Table 2 (below) shows the total charge payable by traders upon registration and annual renewal, compared to the current total fee and levy. The forecast volume of traders in each fee category is also set out in Table 2.

Table 2 – Proposed MVTR fees and Tribunal levy structure

| Fee category | Volume of traders (forecast) | GST exclusive | | | |
|---------------------------------------|------------------------------|---------------|---------------|-----------------------------|----------------------------|
| | | Proposed fee | Proposed levy | Proposed total fee and levy | Current total fee and levy |
| Registration application - individual | 235 | \$432.00 | \$210.00 | \$642.00 | \$518.22 |
| Registration application - company | 714 | \$863.00 | \$210.00 | \$1,073.00 | \$518.22 |
| Renewal - individual | 247 | \$401.00 | \$210.00 | \$611.00 | \$518.22 |
| Renewal - company | 2,004 | \$802.00 | \$210.00 | \$1,012.00 | \$518.22 |

Outcome of public consultation

- 40 In November 2021, Cabinet agreed to release a discussion document on options for the adjustments to the fees and levy for public consultation [CAB-21-MIN-0467 refers]. The consultation document was published on MBIE's website on 17 January 2022, with consultation running for a period of six weeks. Information about the consultation was also provided directly to all registered traders and some industry bodies.

- 41 The consultation webpage was viewed almost 900 times over the course of the consultation period. A total of 16 submissions were received from the public, with 12 of these being from current motor vehicle traders and three from industry bodies.
- 42 A summary of consultation submissions is attached at Appendix Two. Generally, submissions covered several themes:
- 42.1 motor vehicle traders are subject to cost pressures from other regulatory regimes, and wider contextual factors;
 - 42.2 some submitters questioned the benefits of the regulatory regime;
 - 42.3 on fee structures, there was a range of feedback regarding the varying fees for companies and individual traders, and some suggested alternative ways to structure the fees; and
 - 42.4 some submitters questioned the fairness of a single levy for all traders regardless of whether they have ever needed to attend the Tribunal, and of the scale of their business.

Response to consultation feedback

Fee and levy adjustments would increase cost pressures for traders, but the motor vehicle market is strong

- 43 Understanding the degree of price sensitivity traders would have to the proposed fee and levy increases is challenging, given that there have been no changes to the charges since they were first set in 2003.
- 44 Motor vehicle traders are experiencing a range of cost pressures arising from COVID-19 business interruptions, changes in government policy and import issues (costs and delays). Some submitters specifically highlighted the Clean Car⁸ Discount and mandated Electronic Stability Control⁹ as regulatory changes which have impacted their businesses.
- 45 But evidence suggests that, excepting periods of lockdown, the motor vehicle sector has performed strongly over the last two years. Motor vehicle and parts retail trade increased in both sales volume and value between 2019 and 2021¹⁰. Consumer demand has remained robust, with 2021 being the biggest year on record for new car registrations in New Zealand¹¹. The strength of consumer demand suggests that the cumulative impact on motor vehicle

⁸ The Clean Car Discount provides rebates for zero and low emission light vehicles and came into effect from 1 July 2021. The Motor Trade Association has commented that the global supply of low emissions vehicles is limited and there will be competition for that supply.

⁹ The electronic stability control (ESC) mandate came into effect in 2015 for new imported vehicles and from 2020 for used imported vehicles. It mandates that imported vehicles must have ESC fitted.

¹⁰ Stats NZ Tauranga Aotearoa. (2022, March 2). Retail Trade Industry Data. Stats NZ Tauranga Aotearoa. https://statisticsnz.shinyapps.io/retail_trade_dashboard/

¹¹ Damien O'Carroll. (2022, March 2). Record-setting 2021 a huge year for new car sales. *Stuff.co.nz*. <https://www.stuff.co.nz/motoring/127441675/recordsetting-2021-a-huge-year-for-new-car-sales>

traders of recent regulatory interventions, in addition to the proposed fee and levy increases, would be manageable.

- 46 The extent to which traders may pass on to consumers any additional costs associated with the fee and levy adjustments is difficult to estimate. Data collected through the MVTR regime does not provide information on the scale of traders' operations and the volume of vehicles sold each year, across which any increases for consumers might be shared.
- 47 However, officials have estimated, using indicative sales volumes, the impact of the proposed increases for a small, medium and higher volume trader. This is set out at Table 3.

Table 3 – Indicative impact on vehicle sale price if increase is passed to consumer

| | Proposed total fee and levy increase (compared to status quo) | Increase per vehicle sale if proposed fee/levy increase is passed directly to consumer | | |
|---------------------------------------|---|--|--|--|
| | | Minimum volume trader - annual import of 3 vehicles | Medium volume trader – 100 vehicles per year | High volume trader – 500 vehicles per year |
| Registration application - individual | \$123.78 | \$41.26 | \$1.24 | \$0.25 |
| Registration application - company | \$554.78 | \$184.93 | \$5.55 | \$1.11 |
| Renewal – individual | \$92.78 | \$30.93 | \$0.93 | \$0.19 |
| Renewal - company | \$493.78 | \$164.59 | \$4.94 | \$0.99 |

- 48 Officials consider that the proposed increase in charges is proportionate, given the length of time since the fees and levy were introduced, and the ongoing growth in the motor vehicle sales market.
- 49 Officials acknowledge the risk, raised by some submitters, of cost pressures from higher MVTR fees and levy resulting in an increase in avoidant behaviour and a greater number of unregistered traders in the market, with traders disincentivised from registering due to the higher charges.
- 50 Risks of avoidant behaviour would be mitigated through ongoing monitoring and compliance activity, and a further review of fees in three to five years would provide evidence of any changes in the market that may be attributable to the Motor Vehicle Traders regime.

Value of the regulatory regime

- 51 A small number of submitters stated that they do not receive any benefits from being registered traders and questioned the increased charges. Some submitters highlighted the number of unlicensed traders who are operating illegally and expressed concern that nothing was being done about them.
- 52 The Registrar has increased compliance activity to deal with non-compliant individuals and companies in recent years. In particular, online vehicle sales have changed the market, requiring increased scrutiny. In 2019/20, the Registrar referred 31 matters relating to unregistered traders for prosecution, and 44 in 2020/21. Increased funding through adjusted fees would support further service improvements and regulatory activity that would help to provide a level playing field for registered motor vehicle traders.

Feedback on the proposed MVTR fee structures was mixed

- 53 There was no strong consensus between submitters on the proposed fee structure options. While one submitter accepted that a fee difference between companies and individuals is reasonable, another noted that all registered traders benefit from registration, so they preferred one fee for both individuals and companies. Other submitters commented that while they are registered as a company on the MVTR, their business has small turnover and so should not be charged the same fee as the larger companies. Officials' analysis suggests that differentiating between companies and individuals reflects a more equitable distribution of the costs incurred by MBIE.
- 54 Some submitters suggested alternative options for structuring MVTR fees, such as setting fees relative to a trader's annual turnover. MBIE has assessed the suggestions proposed by submitters against the Treasury guidance on setting charges in the public sector and has concluded that the service offered would not be efficient, meeting the needs of stakeholders and representing value for money if these suggestions were adopted¹². Any potential benefits derived from the implementation of such proposals would be overridden by the additional administrative effort for both traders and MBIE to collect information on sales volumes or turnover.
- 55 One submitter suggested that a wholesale review of the Act may be required. MBIE is not aware of any reasons necessitating an overhaul of the Act, and do not deem this necessary to support this review of the MVTR fees and Tribunal levy.

Fairness of the Tribunal levy

- 56 Some submitters suggested that the Motor Vehicle Disputes Tribunal was biased towards consumers, or that they had never needed to attend the Tribunal and therefore should not be charged the levy. A few submitters wanted the levy to reflect that if a company has a higher turnover, they are more likely to require the Tribunal's services. Two submitters also stated that

¹² The Treasury Te Tai Ōhanga. (2017). *Guidelines for Setting Charges in the Public Sector*.

the Tribunal filing fee was too low and should be raised to recover the costs so that applicants pay for the costs, rather than the levy which is paid by traders. Others suggested mechanisms to disincentivise appearances at the Tribunal through a varied levy structure.

- 57 The Tribunal filing fee is out of scope for this review, as it is set at standard rates across the tribunal services. The filing fee was set via a significant review process along with all other filing fees across courts and tribunals, with access to justice a key consideration.
- 58 As the Tribunal is a 'club good', a tiered levy for individuals and companies is not considered appropriate. The likelihood of a matter being brought to the Tribunal is equally possible for all types of traders. As such, a distinction on the levy amount by incorporation type was not considered appropriate or equitable. Further, introducing a tiered levy would require an increased level of administration within MoJ, which would not be proportionate to the levy amount and the costs to administer the Tribunal service.

Implementation

- 59 Subject to Cabinet decisions, the amended fees and levy would be expected to come into force from 1 August 2022 and amended regulations would be promulgated before that date.

Financial Implications

Motor Vehicle Traders Register

- 60 The revenue resulting from the adjusted fees would fund the appropriation increase of \$0.502 million in the *Commerce and Consumer Affairs: Registration and Provision of Statutory Information* departmental appropriation within Vote Business, Science and Innovation. The costs related to the increase in the appropriation are detailed in paragraph 22.
- 61 The fee structure has an added component to recover the existing deficit in the Memorandum Account, which would contribute to the balance reaching nil by 2024/25.

Motor Vehicle Disputes Tribunal levy

- 62 The revenue resulting from the revised levy would fund the appropriation increase of \$0.319 million in the *Courts, Tribunals and Other Authorities Services, including the Collection and Enforcement of Fines and Civil Debts Services Multi-Category Appropriation* within Vote Courts.

Legislative Implications

- 63 MVTR fees are prescribed in the *Motor Vehicle Sales Regulations 2003*, and the Tribunal levy is prescribed in the *Motor Vehicle Sales (Motor Vehicle Disputes Tribunals Funding Levy) Regulations 2003*. In order to adjust the fees and levy, these regulations must be amended.

Impact Analysis

- 64 The regulatory impact analysis requirements apply to the proposals in this paper. A Cost Recovery Impact Statement (CRIS) has been prepared. This is attached as Appendix Three.
- 65 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Cost Recovery Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the CRIS meets the criteria necessary for Ministers to make informed decisions on the fee proposals in this paper.

Climate Implications of Policy Assessment

- 66 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirmed that the CIPA requirements do not apply to this proposal as there is no direct emissions impact.

Population Implications

- 67 There are no significant population implications in this proposal.

Human Rights

- 68 There are no human rights implications in this proposal.

Consultation

- 69 These proposals were prepared jointly by MBIE and MoJ. The Treasury and the Ministry of Transport have been consulted. The Department of the Prime Minister and Cabinet has been informed.

Communications

- 70 Subject to decisions being approved by Cabinet, all currently registered motor vehicle traders would be contacted to advise them of changes to the fees and levy.

Proactive Release

- 71 This paper, including the summary of submissions and the CRIS set out in Appendices 2 and 3, will be proactively released within 30 business days of decisions being confirmed by Cabinet.

Recommendations:

The Minister of Commerce and Consumer Affairs and Minister for Courts recommend that the Committee:

1. **note** that the Ministry of Business, Innovation and Employment and Ministry of Justice consulted on proposed changes to Motor Vehicle Traders Register fees and Tribunal levy in January and February 2022;

Motor Vehicle Traders Register

2. **agree** that the annual renewal fee for companies and individuals in recommendation 5 include a component to recover, over a five-year period, the \$1.297 million deficit in the Motor Vehicle Traders Register Memorandum Account;
3. **agree** to the increase in spending for costs of monitoring and compliance functions, IT system upgrades and enhancements and a level of overheads to support the efficiency and effectiveness of the Motor Vehicle Traders regime, to be recovered from fees;
4. **agree** that the fee structure for the Motor Vehicle Traders Register should be tiered, by individual and company, and by registration application and renewals;
5. **agree** that the fees payable by motor vehicle traders when they apply to register or renew on the Motor Vehicle Traders Register will be as follows on and from 1 August 2022:

| Fee category | Proposed fee (GST exclusive) |
|---------------------------------------|---------------------------------|
| Registration application - individual | \$432.00 |
| Registration application - company | \$863.00 |
| Renewal - individual | \$401.00 |
| Renewal - company | \$802.00 |

6. **approve** the following changes to appropriations to give effect to the policy decisions in recommendations 3, 4, and 5 with no corresponding impact on the operating balance and net core Crown debt;

| Vote Business, Science and Innovation Minister of Commerce and Consumer Affairs | \$m – increase/(decrease) | | | | |
|---|---------------------------|---------|---------|---------|--------------------|
| | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 & outyears |
| Departmental Output Expense: Commerce and Consumer Affairs: Registration and Provision of Statutory Information (funded by revenue other) | - | 0.502 | 0.502 | 0.502 | 0.502 |

7. **note** that with these fee changes the Motor Vehicle Traders Register Memorandum Account is expected to reach a nil balance by 2024/25, but will be reviewed annually and will inform the next fees review planned within the next three to five years;

Motor Vehicle Disputes Tribunal levy

8. **agree** to the increase in cost pressures from increases in staffing to meet higher transaction volumes, technology changes resulting in increased hearing volumes and other general inflationary cost increases, in order to maintain access to justice for consumers should a dispute occur, to be recovered from the levy;
9. **agree** that the Motor Vehicle Disputes Tribunal levy payable by motor vehicle traders when they apply to register or renew on the Motor Vehicle Traders Register on and from 1 August 2022 is increased to \$210.00 (excluding GST);
10. **approve** the following changes to appropriations to give effect to the policy decisions in recommendations 8 and 9 with no corresponding impact on the operating balance and net core Crown debt;

| Vote Courts Minister for Courts | \$m – increase/(decrease) | | | | |
|--|---------------------------|---------|---------|---------|--------------------|
| | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 & outyears |
| Multi-Category Expenses and Capital Expenditure: | | | | | |
| Courts, Tribunals and Other Authorities Services, including the Collection and Enforcement of Fines and Civil Debts Services MCA | | | | | |
| Departmental Output Expense: Specialist Courts, Tribunals and Other Authorities Services (funded by revenue other) | - | 0.319 | 0.319 | 0.319 | 0.319 |

11. **note** that MBIE will continue to collect the Tribunal levy on behalf of MoJ and pay it over to them on a monthly basis;

Authorisation for drafting instructions and minor or technical changes

12. **invite** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendations 5 and 9 above;
13. **authorise** the Minister of Commerce and Consumer Affairs to make decisions on any minor or technical matters that may arise during the drafting process;

Publicity

14. **note** that, subject to any redactions as appropriate, this paper, the summary of submissions and the Cost Recovery Impact Statement will be proactively released on MBIE's website within 30 working days of Cabinet's approval;

Final approval

15. **note** that the Minister of Commerce and Consumer Affairs will seek final approval of the regulations from the Cabinet Legislation Committee in the second quarter of 2022.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs

Hon Aupito William Sio

Minister for Courts

Appendix one: Current and proposed fee and levy options

Table 1: Current and proposed options – split by fee and levy

| Options by fee type and levy Category | \$ (excluding GST) | | | |
|--|--------------------|-------------------|--------|----------|
| | Current fee/levy | Proposed fee/levy | Change | % Change |
| MVTR fee | | | | |
| Option 1 - Single fee approach | | | | |
| Individual | | 758.00 | 352.67 | 87% |
| Company | | 758.00 | 352.67 | 87% |
| Option 2 - Activity differential approach | | | | |
| Application- Individual & Company | 405.33 | 756.00 | 350.67 | 87% |
| Renewal - Individual & Company | | 760.00 | 354.67 | 88% |
| Option 3 - Tiered by user/activity approach | | | | |
| Application- Individual | | 432.00 | 26.67 | 7% |
| Application- Company | | 863.00 | 457.67 | 113% |
| Renewal - Individual | | 401.00 | (4.33) | (1%) |
| Renewal - Company | | 802.00 | 396.67 | 98% |
| MVTR Disputes Tribunal levy | | | | |
| Tribunal levy | 112.89 | 210.00 | 97.11 | 86% |

Table 2: Current and proposed options – total overall payment (fee and levy combined)

| Total Fee paid (MVTR fee & Tribunal levy) Category | \$ (excluding GST) | | | |
|---|--------------------|---------------------|--------|----------|
| | Current fee & levy | Proposed fee & levy | Change | % Change |
| Option 1 - Single fee approach | | | | |
| Individual | | 968.00 | 449.78 | 87% |
| Company | | 968.00 | 449.78 | 87% |
| Option 2 - Activity differential approach | | | | |
| Application- Individual & Company | 518.22 | 966.00 | 447.78 | 86% |
| Renewal - Individual & Company | | 970.00 | 451.78 | 87% |
| Option 3 - Tiered by user/activity approach | | | | |
| Application- Individual | | 642.00 | 123.78 | 24% |
| Application- Company | | 1,073.00 | 554.78 | 107% |
| Renewal - Individual | | 611.00 | 92.78 | 18% |
| Renewal - Company | | 1,012.00 | 493.78 | 95% |

Appendix two: Cost Recovery Impact Statement – Motor Vehicle Traders Register Fees and Motor Vehicle Disputes Tribunal Levy Review

Appendix three: Summary of submissions: Consultation on Motor Vehicle Traders Register Fees and Motor Vehicle Disputes Tribunal Levy Review



Review of Motor Vehicle Traders Register Fees and Motor Vehicle Disputes Tribunal Levy

SUMMARY OF SUBMISSIONS

Introduction

The Ministry of Business, Innovation and Employment (MBIE) and the Ministry of Justice (MoJ) jointly released a discussion document on 17 January 2022 to seek feedback on proposed adjustments to the Motor Vehicle Traders Register fees and Motor Vehicle Disputes Tribunal levy. Consultation closed on 25 February 2022.

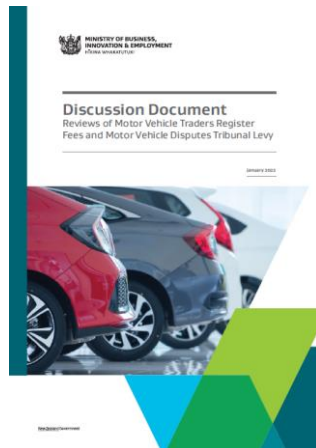


Image: Discussion document cover

Prompting questions were provided throughout the discussion document (see Annex One for the full list of questions). Some submitters addressed the questions and others provided more general comment on the proposals.

The consultation process resulted in a total of 16 submissions. 12 submissions were from motor vehicle traders, three from representative bodies and there was one other submission.



12 motor vehicle traders (75 per cent of total submissions)



3 representative bodies (19 per cent of total submissions)



1 other submission (6 per cent of total submissions)



Overall themes

Of the 16 submissions, 8 motor vehicle trader submission directly opposed the increase in charges. Submissions from representative bodies were supportive of cost recovery in principle but had comments and suggestions about how to recover the fees, as well as feedback on the proposed changes. Most motor vehicle trader submissions responded to the discussion document in general and there were very few who answered the specific questions posed in the discussion document.

Motor Vehicle Traders have been impacted by other costs and regulatory changes, and some don't see the benefit of registration

Six of the submitters stated that their businesses have been impacted by a variety of factors, including COVID-19, supply chain disruption, minimum wage increases, as well as other regulatory changes (examples given were mandated Electronic Stability Control, and the Clean Car Programme). They saw the proposed fees increase as another government change that they will have to deal with and stated that these costs would likely be passed on to consumers.

Four of the submitters stated that they do not receive any benefits from being registered traders, so queried why should they have to pay an increased fee. As an example, a few mentioned the number of unlicensed traders who are operating illegally and expressed concern that nothing was being done about them. One submitter noted that an increase in fees would further drive up the cost of doing business, making registered traders less competitive against those who are unregistered.

Comment on proposed company/individual differential and alternative ways to structure the fees

One submitter accepted the proposed fee difference between individuals and companies, noting that companies were more likely to have an established yard and sell many more cars than an individual operating out of their home. Another submitter noted that all registered traders benefit from registration, so they preferred one fee for both individuals and companies. The submissions from representative bodies also differed between each other about the use of a different fee based on entity type. One opposed the different fee for both transaction and entity type; one accepted the different fee for transaction type but not entity type; and the third accepted the different fee for both entity and transaction type.

Some submitters stated that even though their business is a company, it has small turnover and so should not be charged the same as larger motor vehicle trading companies. Six of the submissions suggested that the fee should be set based on annual turnover or number of sales.

Several other comments were made about different ways to structure fees. One of the submissions from a representative body stated that the entire system needs to be overhauled.

One submitter suggested that fees should be related to whether or not the motor vehicle trader had lost a Motor Vehicle Disputes Tribunal case in the past year. This could be a way to reward compliance for those who have not lost a dispute at the Tribunal. Another submitter made a similar suggestion; that traders who frequently appear before the Tribunal should be charged higher fees, as they should pay directly for the services that they are directly benefiting from. This feedback was also reflected in the submissions from representative



bodies, who were concerned about the small number of licensed traders who disproportionately appear before the Tribunal.

Comment on proposal to recover memorandum account deficit as well as additional activities and services

With regard to the activities and services that are proposed to be funded by the fee increases, only one submitter expressed concern. They stated that fees shouldn't be increased for both recovery of the Memorandum Account deficit as well as the IT upgrade and increased monitoring and enforcement. Instead, they wanted more cost cuts in government, and for the scheme to be funded from other taxes on the Motor Vehicle Industry. It was unclear which 'other taxes' they were referring to.

The representative bodies' submissions accepted the proposed recovery of the deficit as well as the other proposals. They also suggested that there should be more information and education activities for traders to ensure they are aware of their obligations under the *Fair Trading Act 1986* and *Consumer Guarantees Act 1993*. A submission from a representative body stated that it has been too long since the last fees review, and they should be undertaken every five years to ensure that costs are not doubled as 'a way to make up for past inaction'.

Comment on the Motor Vehicle Disputes Tribunal

Finally, some submitters discussed their experience with the Motor Vehicle Disputes Tribunal, saying either that it was biased towards consumers, or that they had never needed to attend the Tribunal and therefore should not be charged the levy. This feedback was also repeated in the representative bodies' submissions, and one suggested that if a trader does have to appear before the Tribunal multiple times, they should be charged additional costs.

Four submitters wanted the levy to reflect that if a company has a higher turnover, they are more likely to require the Tribunal's services.

Six of the submitters on the Tribunal levy also stated that the Tribunal dispute filing fee was too low and should be raised to recover the costs so that applicants pay for the costs, rather than the levy which traders pay. Another submitted that the filing fee should be tiered in a similar way to the Disputes Tribunal where it is based on the value of the claim.

Other comments

A few of the submissions were related to out-of-scope matters, and have not been included in this summary. They have been referred to the appropriate area/agency.

ANNEX ONE: SUMMARY OF QUESTIONS

General questions

- 1 What is the overall impact of the MVTR fees and Tribunal levy at their current levels on your business?
- 2 What would the overall impact of the proposed adjusted fee and levy levels be on your business?
- 3 Are there any particular adjustments to the proposed fees that you think should be reconsidered? If yes, which fees and why?
- 4 Do you think the reasons for adjustments to the fees and levy are clear and understandable? If not, why not?

Motor Vehicle Traders Register

- 5 Do you agree with the criteria used to assess the options for changes in MVTR fees? Why/why not?
- 6 What is your view on creating a different fee for a MVTR registration and a renewal of a registration?
- 7 What is your view on creating a different fee for individual traders and companies across all fees?
- 8 There are three options outlined for changes in fees for the MVTR. Which option would you prefer and for what reasons?
- 9 Are there any other options that should be considered? Why?
- 10 What is your view on the period over which the memorandum account deficit is recovered? Should it be shorter or longer?
- 11 Do you have any concerns about the memorandum account deficit recovery? If so, what are they?
- 12 What is your view of the activities and services (eg an IT upgrade and increased monitoring and enforcement) that are proposed to be funded by the fee increases (ie will they benefit your business and/or the sector)?

Motor Vehicle Disputes Tribunal

- 13 What impact would the proposed Tribunal levy adjustment have on your business?

Stage 2 Cost Recovery Impact Statement

Review of Motor Vehicle Traders Register Fees and Motor Vehicle Disputes Tribunal Levy, 2022

Agency Disclosure Statement

The Ministry of Business, Innovation and Employment (MBIE) and the Ministry of Justice (MoJ) prepared this Cost Recovery Impact Statement (CRIS).

It provides an analysis of options to adjust the fees charged to recover the costs of the Motor Vehicle Traders Register (MVTR) administered by MBIE, and to adjust the levy that partially funds the costs of the Motor Vehicle Disputes Tribunal (the Tribunal) administered by MoJ. The fee and levy are paid by motor vehicle traders at the point of registration or annual renewal of registration under the *Motor Vehicle Sales Act 2003* (the Act).

The Motor Vehicle Traders regime (the regime) was established under the Act in 2003. Routine reviews of the fee and levy settings have occurred, but no adjustments have been considered necessary until a review of the fee and levy was conducted in 2021/22.

MBIE's analysis focused on the costs to the Registrar of Motor Vehicle Traders (the Registrar) and recovery of these costs through fees. MBIE's options analysis focused on sustainably funding the regime, while ensuring that registered traders continue to meet an appropriate portion of the cost of administering the MVTR regime commensurate to the benefit they receive.

MoJ's analysis of the proposed Tribunal levy increase draws on the principles of cost recovery and the purpose of setting levies to ensure that the levy for the Tribunal is set at an appropriate level to continue to provide a contribution for the running of the Tribunal's services (a club good). Only one cost option other than the status quo was proposed for consultation as Tribunal costs are intended to only be partially recovered from motor vehicle traders. Any changes to other fees contributing to the cost of the Tribunal are out of scope of the review.

In developing the funding options, MBIE has been guided by principles set out in the Treasury's *Guidelines for Setting Charges in the Public Sector* (The Treasury, 2017) and the Office of the Auditor-General's *Charging Fees for Public Sector Goods and Services* (Office of the Auditor General, 2021). Consideration has been given to who will benefit and to what extent (ie equity across those who benefit) from the regulation of motor vehicle traders through the MVTR regime.

MBIE reviewed and analysed the potential impacts of the charges on registered motor vehicle traders. Unforeseen impacts and the levels of price sensitivity some traders will experience as a result of an increase in charges are challenging to understand. This is because influences on motor vehicle trade, such as the importing environment and consumer demand, are changing rapidly through COVID-19 related fluctuations, and because this would be the first adjustment to the fees and levy charged to registered motor vehicle traders since the establishment of the regime. Monitoring and evaluation will capture any unforeseen or unintended impacts and prompt any necessary changes.

All references to fees, levy and budgets in this document are GST exclusive.

MBIE's Regulatory Impact Analysis Review Panel has reviewed the CRIS prepared by MBIE. The Panel considers that the information and analysis summarised in the CRIS meets the criteria necessary for Ministers to make informed decisions on the fee proposals in this paper.

Duncan Connor

Registrar of Motor Vehicle Traders

Ministry of Business, Innovation and Employment

17 March 2022

Carl Crafar

Chief Operating Officer

Ministry of Justice

17 March 2022

Executive summary

Background

1. The Act introduced the MVTR regime and the Tribunal to promote and protect the interests of consumers in relation to motor vehicle sales.
2. Under the Act, all persons selling more than six vehicles or importing more than three vehicles a year are required to register and to renew their registration annually. The Registrar is responsible for the oversight of the MVTR, as well as education and enforcement of the Act, and to maintain a public searchable register of all motor vehicle traders.
3. When purchasing a vehicle from a registered motor vehicle trader, consumers are able to see accurate information about the vehicle through the display of a Consumer Information Notice on the vehicle or online. Consumers are able to make a claim to the Tribunal if there is a dispute with a motor vehicle trader¹.

Funding

4. The MVTR operates on a full cost recovery basis as there is a clearly attributable benefit to a defined group (ie registered motor vehicle traders).
5. The Tribunal is partially funded through the levy imposed on registered motor vehicle traders. In addition to this, there is a filing fee charged to complainants when making a claim to the Tribunal, and a level of Crown funding. MoJ is responsible for reviewing the appropriateness of the levy and making any adjustments necessary².
6. The fee and levy are paid by users (motor vehicle traders) on their application for registration or annual renewal of registration under the Act. MBIE collects the levy on behalf of MoJ and pays this to MoJ monthly.

Problem

7. MBIE and MoJ undertook a review of the MVTR fees and Tribunal levy respectively, to determine the appropriate levels for recovery of annual costs of running the MVTR regime and Tribunal.
8. MBIE's review identified that the current level of the fee was not fully recovering costs due to a sustained decrease in registration volumes and a level of increased costs in compliance activity. In addition, the MVTR Memorandum Account had reached a deficit position in 2019/20.
9. The Tribunal has been subject to cost pressures since the levy was introduced, with an average annual growth rate in costs of 3.4 per cent.
10. The legislation requires the Tribunal to hear the matter in the location closest to where the transaction took place. In the past, this meant the purchaser would have to travel to

¹ The Tribunal deals with disputes relating to registered motor vehicle traders and can also deal with disputes in instances where a trader is not registered but meets the criteria for registration.

² Any adjustment to the Tribunal levy however is overseen by the Minister of Commerce and Consumer Affairs as the responsible Minister for the Act.

the hearing. Remote participation means that travel is no longer required, and purchasers are no longer disadvantaged if a vehicle has been purchased from a location other than where they live. This has resulted in more hearings occurring and fewer claims being withdrawn. The increase in volume, as well as other general inflationary cost increases, led to cost pressures for the Tribunal. Recent deficits in the Tribunal have been funded from MoJ's baselines.

11. In addition, both agencies identified the need for additional budget to maintain the appropriate level of service.

Consultation

12. In January 2022 MBIE and MoJ released a discussion document to consult on three proposed options for the MVTR fees:
 - a. **Option 1: Increased, flat fee³** – retaining the current flat fee structure for all motor vehicle traders and for all transaction types at the point of registration application or annual renewal;
 - b. **Option 2: Differential between activity fees** – implementing a differential fee, based on the types of transactions and reflecting a different level of administration required for each; or
 - c. **Option 3: Tiered fees** – implementing a tiered fee across four levels on the basis of different types of motor vehicle traders (individual traders or companies) and the type of transaction.
13. For the Tribunal levy, only one option was considered as an alternative to the status quo: increasing the existing annual levy on traders by \$97.11, from \$112.89 to \$210.00. All registered motor vehicle traders would continue to be charged the same levy at the time of their initial registration or renewal, as a club good.
14. Public consultation on the discussion document took place between 17 January 2022 to 25 February 2022. A summary of the submissions has been produced, and MBIE and MoJ commentary on broad themes is included in the Consultation section later in this impact statement.
15. MBIE considered the feedback and proposes implementing the following:
 - MVTR fees be increased, and the tiered option for fees be introduced;
 - the MVTR appropriation to increase by \$0.502 million per annum from 2022/23;
 - the Tribunal levy be increased to \$210.00 per paid transaction; and
 - the Tribunal appropriation to increase by \$0.319 million per annum from 2022/23.

³ Referred to as the 'single fee' in Ministry of Business, Innovation & Employment Hīkina Whakatutuki. (2022) *Discussion Document: Reviews of Motor Vehicle Traders Register Fees and Motor Vehicle Disputes Tribunal Levy*.

16. The proposed combined increase in charges is as follows:

Table 1: Proposed MVTR fees and Tribunal levy structure

| Fee category | Proposed fee | Proposed levy | Proposed Total fee and levy | Current total fee and levy |
|---------------------------|--------------|---------------|-----------------------------|----------------------------|
| Registration – individual | \$432.00 | \$210.00 | \$642.00 | \$518.22 |
| Registration – company | \$863.00 | \$210.00 | \$1,073.00 | \$518.22 |
| Renewal – individual | \$401.00 | \$210.00 | \$611.00 | \$518.22 |
| Renewal – company | \$802.00 | \$210.00 | \$1,012.00 | \$518.22 |

17. Subject to Cabinet decisions, the proposed charges would be expected to come into force from 1 August 2022 and amended regulations would be promulgated before that date.

18. MBIE will review the fees again in three to five years, depending on the balance in the Memorandum Account. MBIE will invite MoJ to review the levy in conjunction with MBIE's reviews but can review the levy independently as and when required.

Authority to set MVTR regime fees

19. The Act provides that regulations can prescribe fees (section 144). The Act requires applications for registration, or renewal of registration, to be accompanied by a fee (section 31(2)(b) and section 39(1A)(b)). The MVTR fees are set in the *Motor Vehicle Sales Regulations 2003*.

20. The Registrar plays a key role in promoting and protecting the interests of consumers in relation to motor vehicle sales. The Registrar administers and maintains the register, makes decisions to accept or decline applications for motor vehicle trader registration, cancels registrations and bans traders in accordance with the provisions of the Act.

21. The Registrar is also responsible for regulatory compliance activities in respect to the offences detailed in sections 95 to 119 of the Act. Offences relate to banned persons, investigating odometer tampering and motor vehicle traders who are trading illegally. Complaints about problems with a vehicle purchased can be referred either to the Commerce Commission or the Tribunal.

22. The Act sets out the criteria for who must register as a motor vehicle trader. The MVTR is a public register that holds essential information about registered traders and their businesses.

Authority to set the Tribunal levy

23. The Act provides that regulations can impose a levy for the costs of the administration of the Tribunal (section 143). The Tribunal levy is set in the *Motor Vehicle Sales (Motor Vehicle Disputes Tribunals Funding Levy) Regulations 2003*.

24. The Tribunal, administered by MoJ, provides an avenue for making claims where disputes between consumers and motor vehicle traders occur in relation to vehicle purchases from a registered trader (or a trader that meets the criteria for registration

but is not registered). The Tribunal can require a trader to provide a refund, pay repair costs or other costs, or void a contract.

Status quo

Motor Vehicle Traders Register fee

Funding of the MVTR regime

25. When the MVTR regime was established in 2003, Cabinet decided that costs would be fully recovered from motor vehicle traders through annual registration fees (new applications and renewals) [CAB Min (01) 17/4A refers].
26. MBIE collects these fees prior to services being delivered.
27. The cost of administering and maintaining the MVTR regime was budgeted at \$1.300 million per year in 2003. The costs included the ongoing maintenance of the register, enforcement of the Act, an initial one-off education campaign and subsequent level of education and information programmes for traders and consumers. Fees have not been adjusted since the regime was introduced in 2003 – no adjustment was required until a deficit developed in 2019/20.
28. At the start of the regime, MBIE set the annual fee at \$405.33 for registration and renewal for all traders (company or individual). The fee was based on projection of the estimated number of registrations and renewals each year.

Memorandum Account

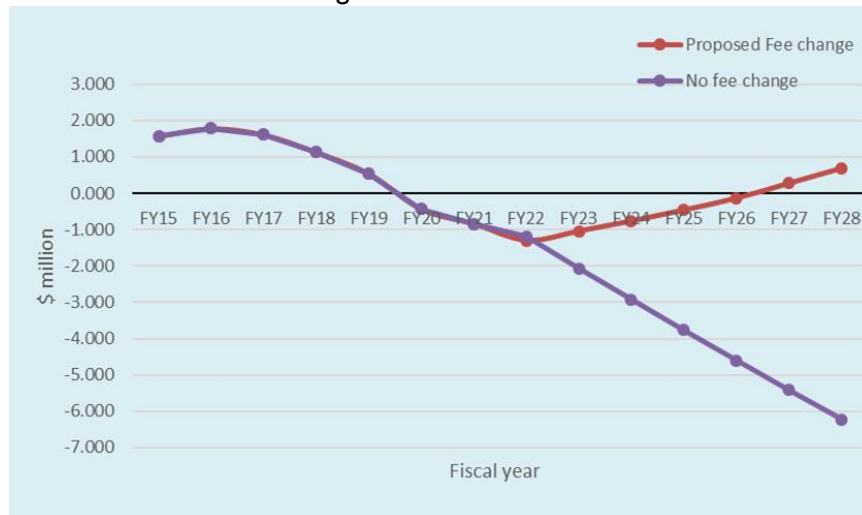
29. A MVTR Memorandum Account was established to record the annual revenue received against annual expenditure, resulting in a cumulative balance either in surplus or deficit to ensure that the fee would not over or under recover costs over the long-term.
30. The level of revenue collected was greater than the actual cost incurred from 2003/04 to 2015/16. This resulted in an increasing surplus in the Memorandum Account, with a balance reaching \$1.609 million by 30 June 2017.
31. In 2017/18, the Registrar increased monitoring and compliance activity as a response to changes in the market, which included an increase in online vehicle sales.
32. Accordingly, the base budget of \$1.300 million was raised to \$1.667 million to reflect the increased level of enforcement and IT support costs. These increased costs were able to be covered through the level of registration volumes (which had been rising) and the Memorandum Account surplus.
33. From 2016/17, although the level of renewals remained stable, the number of new registrations began declining on average by 15 per cent each year (from 1,975 in 2016/17 to the now stable forecast of 950). The declining registration levels resulted in the Memorandum Account not recovering the full cost annually leading to a subsequent reduction in the surplus and eventual deficit position in 2019/20⁴.
34. In 2020/21, MBIE commenced a review to analyse the operating model of the regime. The review considered systems improvement and an increased level of compliance,

⁴ In setting the fees, an average of 950 registration applications and 2,250 renewals to the MVTR per annum was used.

with increased investigation and enforcement work required for the future. The recovery of deficit position of the Memorandum Account was also taken into consideration.

35. Based on the findings of the review, which forecast declining registrations over time, the deficit cannot be recovered without a fee change.
36. Figure 1 illustrates the situation if the status quo is maintained and the fee is not adjusted. It is forecast that there will be a deficit of about \$0.300 million to \$0.500 million a year.

Figure 1: Motor Vehicle Traders Register memorandum account 2014/15 – 2027/28



37. An adjustment of the fee structure is now necessary to provide for additional costs to meet the future requirements of the MVTR regime and to recover the cumulated deficit.

Motor Vehicles Disputes Tribunal levy

38. In 2003, the Act established a new Tribunal managed by MoJ, to settle disputes under the Act. Cabinet agreed to the introduction of the Tribunal levy to partially recover costs of the Tribunal from all registered traders.
39. To contribute to the costs for the Tribunal, all registered motor vehicle traders are currently charged a levy of \$112.89 when they apply before a registration or renew their annual registration. The levy is charged as a club good, regardless of whether traders access the Tribunal's services. Cabinet agreed that the levy would contribute to the cost of running the Tribunal, rather than a full cost recovery model.
40. The Tribunal also charges a fee of \$50 (GST inclusive) to complainants who access the Tribunal to support cost recovery⁵. Costs have increased since the levy was introduced in 2003. The balance of the costs is funded by the Crown which supports the tribunals system. Traders are charged the levy and fee together at the point of initial registration and registration renewal. MBIE then passes the levy portion on to MoJ through a monthly payment. Crown funding is approximately \$0.500 million per annum for Tribunal sitting fees and related expenses.

⁵ This fee is out of scope of this review because it is a filing fee that applies to all tribunals managed by MoJ. Approximately 450 Tribunal applications are received per annum.

41. MoJ reviews its costs to administer the Tribunal on a regular basis to ensure the levy is set at an appropriate level.

Cost Recovery Principles and Objectives

Cost Recovery Principles – Review Process

42. MBIE and MoJ applied the following principles to determine the proposed fee structure and levy.

Transparency and consultation

43. MBIE and MoJ jointly issued a discussion document seeking feedback on adjustments to the fee and levy. The document outlines the way that the fee and levy are collected, how the funds for services delivered by the Registrar and Tribunal are used, and the drivers of the costs that MBIE and MoJ are incurring. In the case of the Register, the Memorandum Account trends are included in the document and the reasons for the deficit are explained.

Cost Recovery Principles – MVTR fee setting

44. MBIE applied the principles of ‘Authority’ and ‘Effectiveness’ to determine how costs will be recovered through fees.

Authority

45. The Registrar has the authority to set and collect fees. The Act provides that regulations can prescribe fees (section 144). The Act requires applications for registration, or renewal of registration, to be accompanied by a fee (section 31(2)(b) and section 39(1A)(b)). The MVTR fees are set in the *Motor Vehicle Sales Regulations 2003*. When the Register was established, Cabinet decided to fully recover costs from motor vehicle traders, including costs associated with enforcement and education programmes for traders and consumers.

Effectiveness

46. The fee changes proposed are adequate to recover costs to resolve the Memorandum Account deficit issue, while also anticipating expenditure for increased monitoring and compliance, IT costs and service improvements. The discussion document outlines that a staged approach to increasing MVTR fees over time was considered but ruled out as it would require more frequent reviews.

Cost Recovery Principles – Tribunal levy setting

47. MoJ applied the principles of ‘Authority’ and ‘Effectiveness’ to determine how costs of the Tribunal will be recovered through a levy.

Authority

48. The Act gives authority to collect a levy for a contribution to the delivery of the Motor Vehicle Disputes Tribunal services (section 143). The levy is set in the *Motor Vehicle Sales (Motor Vehicle Disputes Tribunals Funding Levy) Regulations 2003*.

Effectiveness

49. The Tribunal levy change proposed is adequate to recover departmental cost increases that have occurred since the levy was set. These include IT costs and service improvements to improve access to justice. It does not seek to fully recover all costs incurred by the Crown in delivering the Tribunal.

Objectives of cost recovery proposal – MVTR fee setting

50. MBIE has applied the following objectives to analyse the three options to determine how costs are to be recovered through fees.

Fairness (equity)

51. The fairness of how costs (and therefore fees) are distributed among motor vehicle traders. In particular, the proposals are assessed to ensure charges provide a level playing field for all users and that the users/third parties are paying fully for the costs of the services they receive.

Efficiency

52. Options for cost recovery have been assessed with regard to the cost of compliance, how easy the charges are for motor vehicle traders to navigate, and how easy they are for MBIE to implement.
53. In determining fees, MBIE ensured that the annual budget of the MVTR regime would be recovered in addition to the incurred deficit in the Memorandum Account being recovered over a five-year period.

Objectives of cost recovery proposal – Tribunal levy setting

54. In determining the levy amount to be recovered from registered motor vehicle traders, MoJ has applied the following objectives:

Fairness (equity)

55. Levy setting should not create any unnecessary barriers on access to justice for consumers and users.

Efficiency

56. Options have been assessed having regard to compliance costs, on how easy the levy is for motor vehicle traders to navigate, and how easy it is for MoJ to implement.

Policy Rationale: Why a user charge? And what type is most appropriate?

The Motor Vehicle Traders Register

57. The rationale for the existing regime of, full cost recovery through fees on annual user activity, was set when the regime was established in 2003. The cost of running the

regime and volume of users changed over time, resulting in the need to adjust the fee. The outputs (ie the services carried out by the Registrar to promote and protect the regulatory system) also expanded and evolved over time.

58. When policy decisions were made to introduce the regime, it was intended that the cost of operating the MVTR regime would be fully recovered from users through annual fees. Fees are charged on an activity basis – at the point of a new registration application, or at renewal of registration. To date, the regime has operated on the basis of a single fee per activity, per trader, with no differentiation.
59. Under the Treasury and the Office of the Auditor-General principles for setting public sector charges, the Crown only provides funding where it is considered there is a general public benefit without a clearly attributable benefit to individual users or a defined group.
60. While consumers benefit from a well-regulated vehicle sales market, traders derive a private benefit from a registration system that ensures they are not disadvantaged competing against traders who may have lower standards of quality and service.
61. Consumers benefit from protections afforded by the Act, although they do not benefit as directly as traders. Consumers' purchases are protected when they purchase from registered traders that are subject to monitoring and enforcement. Consumers also have access to accurate information about those enforcement actions, and about motor vehicle traders in general. Consumers, and traders that are not registered have the ability to apply to the Tribunal where a breach of their rights may have occurred.
62. Consideration has also been given to how the proposed changes will incentivise or create barriers to intended user behaviour based on the existing policy rationale (see Impact Analysis).
63. Full cost-recovery from users (new or existing registered motor vehicle traders) as intended when the regime was established therefore continues to be appropriate.

The Motor Vehicles Disputes Tribunal Levy

64. In relation to the levy, the availability of a dispute resolution mechanism to deal with any complaints is a club good for all motor vehicle traders. When the regime was established, Cabinet decided that traders should contribute to the costs of this service.
65. The Tribunal's costs were intended to be funded from levy revenue, a filing fee paid by complainants and existing Crown funded baselines from Tribunals administered by the then Department of Courts (now MoJ). The appropriateness of the levy and its contribution towards costs was intended to be regularly reviewed and re-evaluated as necessary.
66. MoJ does not propose to change the original policy intent.
67. The \$50 filing fee (GST inclusive) at the time of making a claim to the Tribunal is out of scope of this review, as it is set at standard rates across the tribunals system.
68. Since the levy was introduced in 2003, the Tribunal has been subject to cost pressures from staff increases to meet higher volumes of transactions, technology changes that have resulted in increased volumes of hearings and the impacts of general inflationary cost increases.

Table 2: Tribunal annual departmental expenses

| Expense type | Cost \$ |
|-------------------------|----------------|
| Personnel | 397,890 |
| Other operating | 46,200 |
| Depreciation | 48,084 |
| Corporate support costs | 198,280 |
| Total | 690,454 |

- 69. The cost above was divided by 3,200 transaction volumes as depicted in Table 5 below to derive the unit cost.
- 70. Cost recovery is focussed on ensuring departmental resources can be made available to deliver the Tribunal. Recent deficits have been funded from MoJ baselines. However, MoJ has not received additional Crown funding to deliver on these increased requirements and costs of the Tribunal. MoJ cannot continue to reprioritise funding from other Tribunals and Special Authorities to bolster the Motor Vehicles Dispute Tribunal. A review of the levy is necessary to prevent a decrease in the level of service of the Tribunal.

The level of the proposed fee and its cost components (cost recovery model)

The Motor Vehicle Traders Register – Breakdown of costs

- 71. In reviewing the MVTR regime operating model, an increase in the current annual budget has been included in the overall cost that needs to be recovered from the fees.
- 72. The revenue and expenditure for the MVTR regime over the five years to 2021/22 (actual and forecast) is shown in the Table 2 below.

Table 3: MVTR revenue and expenditure over a five-year period⁶

| Financial year | 2017/18 (000) | 2018/19 (000) | 2019/20 (000) | 2020/21 (000) | 2021/22 (\$000) |
|---|------------------|------------------|------------------|------------------|--------------------|
| Total revenue | \$1,447 | \$1,316 | \$1,312 | \$1,293 | \$1,215 |
| Total expenditure | \$1,928 | \$1,962 | \$2,285 | \$1,691 | \$1,623 |
| Personnel | \$416 | \$252 | \$285 | \$137 | \$133 |
| Other operating | \$1,132 | \$1,288 | \$1,431 | \$640 | \$629 |
| Depreciation | \$9 | \$34 | \$72 | \$65 | \$51 |
| Corporate support costs | \$371 | \$387 | \$497 | \$849 | \$810 |
| Surplus / (deficit) | (\$481) | (\$646) | (\$973) | (\$398) | (\$408) |
| Memo account balance - opening | \$1,609 | \$1,128 | \$483 | (\$491) | (\$889) |
| Ending balance-surplus/(deficit) | \$1,128 | \$483 | (\$491) | (\$889) | (\$1,297) |

The Motor Vehicle Traders Register – Fees to cover service costs

Cost model assumptions

73. The cost model was developed based on an existing model used by MBIE in developing reviews of other regulated occupation regimes, including Electrical Workers Fees Review and the Licensed Building Practitioners scheme review, implemented in January 2019.
74. This model was updated to reflect the activities delivered by the Registrar to meet the obligations of the MVTR regime under the Act. The key activities identified are registration, renewal of a registration, education for consumers and traders, managing complaints and investigations, enforcement and prosecutions and management/administration support.
75. The budget of \$1.667 million was allocated across expense items. Where expenses could not be directly charged against an activity, an allocation percentage based on staff time or volumes was used to allocate cost to activity.
76. For personnel costs, each person's time was allocated across the activities to allocate salaries and other staff related costs.
77. The expenditure on non-fee based activities was allocated back to the cost of the registration and renewal activities in order to achieve full cost recovery of the regime. The allocation was based on which service benefited most from the indirect activity and is summarised in Table 3.

⁶ 2021/22 revenue is forecast at the current fee level.

Table 4: Allocation of indirect costs to fee bearing activities

| Non-fee activity | Applied to activity |
|----------------------------|-------------------------------------|
| Education | 100% registration |
| Compliance and enforcement | 100% renewal |
| Management/support | Based on % volumes in each activity |

78. The total cost of activity was then divided by the annual forecast volumes to derive a unit cost on which to base the fees.

Table 5: Forecast volumes used to derive unit cost⁷

| Fee type | Volumes |
|-----------------------------|--------------|
| Registrations - individuals | 235 |
| Registrations - companies | 714 |
| Renewals - individuals | 247 |
| Renewals - companies | 2,004 |
| Total | 3,200 |

Design options

79. MBIE consulted on three options for the fees paid by new and registered motor vehicle traders to support full cost recovery of the regime and to recover over a five-year period the cumulated deficit of \$1.297 million forecast as of 30 June 2022.

Option One - increased, flat fee

80. This option proposes to maintain the a single, flat fee structure, with no differential between individuals and companies, and no differential between registration and renewal activities.

Table 6: Proposed MVTR fees - increased, flat fee

| Fee type | Current fee | Unit cost | Base fee | Plus cost to recover memo account | Final fee | Change in fee |
|----------------------|-------------|-----------|----------|-----------------------------------|-----------------|---------------|
| <i>Registrations</i> | | | | | | |
| Individuals | \$405.33 | \$677.82 | \$678.00 | \$80.00 | \$758.00 | \$352.67 |
| Companies | \$405.33 | | \$678.00 | \$80.00 | \$758.00 | \$352.67 |
| <i>Renewals</i> | | | | | | |
| Individuals | \$405.33 | | \$678.00 | \$80.00 | \$758.00 | \$352.67 |
| Companies | \$405.33 | | \$678.00 | \$80.00 | \$758.00 | \$352.67 |

⁷ Based on the forecast for 2022/23, as the projection for growth is flat.

Option Two - Differential between activity fees

81. This option proposes a differential between a registration application and renewal activity, reflecting a different level of administrative effort across these activities. The fee for each transaction type would be the same for all users (individual traders and companies).

Table 7: Proposed MVTR fees - differential between activity

| Fee type | Current fee | Unit cost | Base fee | Plus cost to recover memo account | Final fee | Change in fee |
|----------------------|-------------|-----------|----------|-----------------------------------|-----------------|---------------|
| <i>Registrations</i> | | | | | | |
| Individuals | \$405.33 | \$756.28 | \$756.00 | - | \$756.00 | \$350.67 |
| Companies | \$405.33 | | \$756.00 | - | \$756.00 | \$350.67 |
| <i>Renewals</i> | | | | | | |
| Individuals | \$405.33 | \$644.76 | \$645.00 | \$115.00 | \$760.00 | \$354.67 |
| Companies | \$405.33 | | \$645.00 | \$115.00 | \$760.00 | \$354.67 |

Option Three - Tiered fees

82. This option proposes to increase the fees to recover costs based on the administrative effort across the categories. A tiered fee would also be introduced between an individual and company application for both registration and renewals. This is on the basis that company registrations require additional administrative effort to process than individual registrations, given the number of directors. From the total cost of each activity a per director unit cost was derived.

83. Based on current data that each company has on average, two directors, the company rate was twice that of an individual. The result of this approach has decreased the unit cost of the registrations and renewals for individuals, with an offsetting increase for companies. This shift of cost reflects the additional effort to review and manage company registrations with multiple directors.

Table 8: Tiered differential between individuals and companies and activity

| Fee type | Current fee | Unit cost | Base fee | Plus cost to recover memo account | Final fee | Change in fee |
|----------------------|-------------|-----------|----------|-----------------------------------|-----------------|---------------|
| <i>Registrations</i> | | | | | | |
| Individuals | \$405.33 | \$431.50 | \$432.00 | - | \$432.00 | \$26.67 |
| Companies | \$405.33 | \$863.00 | \$863.00 | - | \$863.00 | \$457.67 |
| <i>Renewals</i> | | | | | | |
| Individuals | \$405.33 | \$341.13 | \$341.00 | \$60.00 | \$401.00 | (\$4.33) |
| Companies | \$405.33 | \$682.25 | \$682.00 | \$120.00 | \$802.00 | \$396.67 |

84. Options one and two propose an overall increase in fees that would recover the deficit in the Memorandum Account. However, the different structure of each option means that the costs have been recovered differently according to user and transaction.
85. Options two and three propose a different fee between registration and renewal. The additional Memorandum Account deficit component has only been added to the renewal component of the fees for these two options. This is in recognition that new entrants to the regime (traders registering for the first time) did not benefit from the past investment into increased monitoring and compliance and service enhancements that has resulted in the current Memorandum Account deficit⁸.
86. If the proposed fee changes are implemented on 1 August 2022, the position of the Memorandum Account is forecast to move to a surplus position within the 2026/27 financial year.

The Motor Vehicle Traders Register – appropriation increase to cover operational costs

87. MBIE will be seeking Cabinet approval to an increase in appropriation for the regime of \$0.502 million per annum from 2022/23.
88. MBIE has identified that the cost drivers to meet the operational needs of the MVTR regime have changed over time. The identified cost pressures are for:
 - Monitoring and compliance functions;
 - IT system upgrades and enhancements; and
 - Indirect costs associated with the activities above.
89. If an increase in appropriation is not approved, MBIE will be unable to increase enforcement activity through monitoring and compliance, and experience a decrease in servicing registration and renewal applications.
90. Improvements to the IT system to support an improved customer experience will be impacted.

Monitoring and compliance functions

91. The Registrar identified significant levels of potential unregistered trading. Some individuals may be trading motor vehicles in direct competition with registered traders without fulfilling the statutory requirements of the Act. As a result, motor vehicle traders are disadvantaged by competing against traders who may have lower standards of quality and service.
92. In turn, the Registrar further identified the need to increase market surveillance and compliance activities. Improvements will modernise the MVTR and increase compliance activity, which are required in order to perform the statutory functions effectively and to maintain the credibility of registered and compliant traders in the sector.
93. If fees are increased, MBIE would hire additional personnel to undertake monitoring and compliance activity, previously delivered through an external contract. Increased

⁸ In subsequent years, new entrants to the market will be charged the renewal fee and will therefore be contributing towards the recovery of the memorandum account.

enforcement activity will likely lead to a corresponding increase in legal advice required to support prosecutions under the Act. An increase of \$0.178 million per annum is required to deliver on a more robust enforcement strategy.

94. Table 8 below summarises the types of compliance activity undertaken in recent years by the Registrar and the results. It also highlights that many of the notifications received by the Registrar resulted in an assessment that an offence had been committed.

Table 9: Summary of compliance activity⁹

| Compliance activity | Financial year | | |
|---|---------------------------------------|---------------------------------------|----------------------|
| | 2018/19 | 2019/20 | 2020/21 |
| Investigation completed - No offence committed | 4 | 3 | 13 |
| Investigations referred for the consideration of prosecution | 66 | 31 | 44 |
| Prosecutions results | 35 Court convictions ¹⁰ | 16 Court convictions ¹¹ | 11 Court convictions |

95. The cost of this enforcement activity has contributed to the current deficit position. A sustainable level of cost recovery is required to ensure continued protection for consumers and deliver regulatory functions.

IT upgrades and system enhancements

96. IT systems upgrades are required to replace the current registration platform and modernise the register to current standards. This is necessary to maintain appropriate levels of information security and protect against growing cybersecurity threats, as well as to simplify and improve the usability of the platform for both traders and consumers. The capital investment will be funded from within MBIE's existing capital baseline.

Indirect costs

97. In addition to an increase of ongoing annual support costs, there are indirect costs related to depreciation and capital charge incurred due to the capital investment of the IT system. An increase of \$0.324 million per annum is required to support the overall IT system upgrades.

The Motor Vehicles Dispute Tribunal levy

98. The current annual forecast of the Tribunal is \$0.690 million funds the processing of applications and running the Tribunal.¹² The Tribunal's costs include personnel roles (case managers, service managers, legal and research, administration support and

⁹ 2019/20 compliance activity was affected by MBIE's ability to regulate during COVID-19 lockdowns from March 2020.

¹⁰ The total fines in 2018/19 in respect of all sentencings was \$238,500, with the average sentence being over \$6,800.

¹¹ The total fines in 2019/20 in respect of all sentencings was \$79,925, with the average sentence being over \$4,995.

¹² This does not include Crown costs in relation to delivery of the Tribunal.

Court taker) as well as travel expenses, training and general MoJ overhead costs related to running the Tribunal.

99. The proposed change in levy is an increase of \$97.11 to \$210.00, to be paid at the point of registration application or renewal on the MVTR.

Impact analysis

100. As users of the regulatory system, traders will be directly impacted by an adjustment to MVTR fees and the Tribunal levy. Consumers who trade, buy and sell to traders may also be impacted to the extent that traders choose to specifically pass this increase in cost to consumers.

Impact of the consulted options on motor vehicle traders

101. The consulted options for fee changes and their percentage change from the current rates for each fee structure option are set out in Table 10.

Table 10: Proposed changes to MVT regime fees and levy

| Category | Current fee/levy | Proposed fee/levy | Change | Change % |
|---|------------------|-------------------|----------|----------|
| MVTR fee | | | | |
| <i>Option 1: increased, flat fee</i> | | | | |
| Individual | | \$758.00 | \$352.67 | 87% |
| Company | | \$758.00 | \$352.67 | 87% |
| <i>Option 2: Activity differential approach</i> | | | | |
| Application- Individual & Company | | \$756.00 | \$350.67 | 87% |
| Renewal - Individual & Company | \$405.33 | \$760.00 | \$354.67 | 88% |
| <i>Option 3: Tiered by user and activity</i> | | | | |
| Application- Individual | | \$432.00 | \$26.67 | 7% |
| Application- Company | | \$863.00 | \$457.67 | 113% |
| Renewal - Individual | | \$401.00 | (\$4.33) | (1%) |
| Renewal - Company | | 802.00 | 396.67 | 98% |
| MVTR Disputes Tribunal levy | | | | |
| Tribunal levy | 112.89 | 210.00 | 97.11 | 86% |

102. Table 11 compares the current overall payment (fee and levy combined) by traders with the proposed options.

Table 11: Proposed changes to MVT regime fees and levy combined

| Category | Current fee/levy | Proposed fee/levy | Change | Change % |
|---|------------------|-------------------|----------|----------|
| <i>Option 1: increased, flat fee</i> | | | | |
| Individual | | \$968.00 | \$449.78 | 87% |
| Company | | \$968.00 | \$449.78 | 87% |
| <i>Option 2: Activity differential approach</i> | | | | |
| Application- Individual & Company | \$518.22 | \$966.00 | \$447.78 | 86% |
| Renewal - Individual & Company | | \$970.00 | \$451.78 | 87% |
| <i>Option 3: Tiered by user and activity</i> | | | | |
| Application- Individual | | \$642.00 | \$123.78 | 24% |
| Application- Company | | \$1,073.00 | \$554.78 | 107% |
| Renewal - Individual | | \$611.00 | \$92.78 | 18% |
| Renewal - Company | | \$1,012.00 | \$493.78 | 95% |

103. Understanding the degree of price sensitivity traders will have to the proposed fee and levy increases (and the risk of any resulting avoidant behaviour) is challenging, given that there have been no changes to the charges since they were first set in 2003. Moreover, the scale of impact of any adjustments will vary significantly between traders, given the varying size of traders' operations in the market, and the fee structure proposed.

104. Traders are experiencing a range of cost pressures arising from COVID-19 business interruptions, changes in government policy and import issues (costs and delays). Most notably, the increased cost of shipping in the last two years has been well-publicised and some analysts do not expect prices to return to pre-COVID levels¹³.

105. The Electronic Stability Control (ESC) mandate, introduced in 2015 for new imported vehicles and in 2020 for used imported vehicles, limited the supply of vehicles to those fitted with ESC, resulting in increased competition for those vehicles in the import and resale markets. Motor industry bodies have raised concerns about the introduction of the Clean Car Standard and its impact to the from global competition for supply of low emissions vehicles and increased costs.

106. Despite these cost pressures, evidence suggests that, excepting periods of lockdown, the motor vehicle sector has performed strongly over the last two years. Motor vehicle and parts retail trade increased in both sales volume and value between 2019 and

¹³ Sam Sachdeva. (2022, March 17). *Pre-COVID supply chains may never return*. Newsroom., <https://www.newsroom.co.nz/pre-covid-supply-chains-may-never-return-official>

2021¹⁴. Consumer demand remains robust and 2021 was the biggest year on record for new car registrations in New Zealand¹⁵.

107. It should also be noted that the increase in charges will apply differently according to the fee structure proposed. Under option three, individual traders, who may be more exposed to additional cost pressures than traders registered with company status, will see a smaller increase in the annual fee and levy charge (24 per cent increase for a registration application, and 18 per cent increase for a registration renewal).
108. An increase in charges, as set out in the consulted options, is proportionate given the length of time since the fees and levy were introduced and the ongoing growth in the motor vehicle sales market.
109. Nevertheless, the risk of avoidant behaviour resulting from any increases will be mitigated through ongoing monitoring and compliance activity. A further review of fees in three to five years would consider any evidence of changes in the market that may be attributable to these fee and levy increases.

Impact of the consulted options on consumers

110. An effective and modern regulatory regime ensures the continued promotion and protection of the interests of consumers in relation to motor vehicle sales. Consumers can feel confident that the number of unregistered, non-compliant and banned traders in the marketplace is minimised. Consumers can also access the Tribunal for a determination if issues occur.
111. While the regime is based on a user (trader) pays basis, the extent to which traders may pass on any additional costs associated with the fee and levy adjustments to consumers is difficult to estimate. However, given the size of the maximum proposed fee and levy increase of \$554.78, the impact is small when spread across the vehicles sold each year. For a higher volume trader selling 200 vehicles per year, assuming the additional cost from the proposed fee and levy increase is passed directly to consumers, this constitute an increase of less than \$3 per sale. For a low volume trader selling the minimum number of six vehicles to be sold or three imported per year to require registration, MBIE assume that the greatest impact on price paid by consumers would be less than \$200 (based on the minimum import of three vehicles).

Other options considered to mitigate cost impacts

Meeting additional MVTR costs from within existing MBIE baselines

112. If fees are not adjusted, the MVTR cannot operate on a full cost recovery basis. This would be a departure from the policy position agreed by Cabinet and stipulated in legislation when the regime was introduced in 2003 to recover MVTR costs in full from users. In providing for the cash deficit of the regime, MBIE would sacrifice the ability to invest these funds in capital investments. It would not be appropriate for MBIE to reprioritise Crown revenue as the MVTR is a cost recovered activity, and Crown revenue would distort the tracking of under and over recovery in the Memorandum Account.

¹⁴ Stats NZ Tauranga Aotearoa. (2022, March 17). *New Zealand Retail Trade*. https://statisticsnz.shinyapps.io/retail_trade_dashboard/

¹⁵ Damien O'Carroll. (2022, March 17). *Record-setting 2021 a huge year for new car sales*. Stuff NZ. <https://www.stuff.co.nz/motoring/127441675/recordsetting-2021-a-huge-year-for-new-car-sales>

Extending the length of time for recovery of the MVTR Memorandum Account deficit

113. As currently proposed, the fees are set at a level to recover annual operating cost and over a five-year period the current cumulated deficit of the Memorandum Account. The Memorandum Account could be recovered over a shorter or longer period than the five years provided for in the proposed options. Extending the time for recovery of the deficit would result in a smaller fee increase being required, although the impact of this for each registered trader would be small. MBIE considered a five-year period to be long enough to spread the cost of recovery, while ensuring the Memorandum Account tracks toward a zero balance.

A staged approach to increasing fees

114. A phasing of fee adjustments over a longer period of time could mitigate the impact of cost increases for traders. However, this would require more frequent reviews to the fees and uncertainty for traders about the levels of adjustments that may be required. A staged approach would result in steep recovery over time with shifting costs.

Set MVTR fees proportionate to volume of sales

115. Some submitters suggested that fees could be calculated according to sales volumes, with traders with a larger market share paying higher fees. However, this would not be feasible or cost-effective for MBIE to administer as it would require the collection and verification of additional data in the MVTR registration and renewal processes that are not required by the Act.

116. MBIE assessed this suggestion against the Treasury guidance on setting charges in the public sector and has concluded that the service offered would not be efficient, meeting the needs of stakeholders and representing value for money if these suggestions were adopted¹⁶. Any potential benefits derived from the implementation of such proposals is likely to be overridden by the additional administrative effort for both traders and MBIE to collect information on sales volumes or turnover.

Not increase the MVTR budget by \$0.502 million as proposed

117. The regime overall had only one budget increase of \$0.300 million since its establishment in 2003, 19 years ago. There is an expectation that government systems are maintained with modern technology with security system to prevent cyber-attacks, yet still maintain ease of use for users, registered traders and public searching of the register. There is also a policy objective to ensure a level playing field of traders for consumers and investigation and enforcement of the Act is key to this policy objective. Accordingly, MBIE does not see this budget increase as unjustified.

Pursue other sources of funding for the Tribunal

118. Other Tribunals administered by MoJ are partially or wholly funded by registration fees. This is because by design, Crown revenue should not be wholly subsidising a dispute resolutions process for a private industry. If the Tribunal was to be funded from MoJ baseline funding, this would result in other MoJ services being compromised if there is no increase in appropriation to cover the shortfall. Therefore, MoJ does not recommend an alternate option to funding the Tribunal from a greater proportion of Crown funding

¹⁶ The Treasury Te Tai Ōhanga. (2022, March 17). *Guidelines for Setting Charges in the Public Sector*. <https://www.treasury.govt.nz/publications/guide/guidelines-setting-charges-public-sector-2017-html>

(collected from taxpayers and filing fees paid by complainants to access the Tribunal) or to wholly fund the Tribunal from baseline funding.

Consultation

119. MBIE and MoJ invited feedback from affected individuals, businesses and the public on the three proposed options for MVTR fee increases, and the proposed increase in the Tribunal levy.
120. MBIE published a consultation document on 17 January 2022 and invited written submissions on the fee and levy adjustments over six weeks. MoJ linked its website to the consultation page. All registered traders were invited by email to make a submission and key stakeholders were contacted to alert their networks to the consultation.
121. The consultation webpage was viewed almost 900 times over the course of the consultation period. A total of 16 submissions were received. Twelve submissions identified as motor vehicle traders and three submissions were received from representative bodies.
122. MBIE and MoJ analysed the submissions, set out in the Summary of submissions document. Responses from submitters covered broad themes, as highlighted below.
123. One submission suggested that a wholesale review of the regime and relevant legislation was required. No review is planned or proposed as the cost recovery model is considered fit for purpose.

Fee and levy adjustments will increase cost pressures for traders, but the motor vehicle market is strong

124. Some submissions highlighted that motor vehicle traders are subject to cost pressures from other regulatory regimes, and wider contextual factors. Factors included those outlined in the Impact Analysis above. Submissions also highlighted the Clean Car Discount and mandated ESC, for example.
125. As analysis of these impacts on traders has shown, understanding the degree of price sensitivity traders will have to the proposed fee and levy increases is challenging. This is because regime charges have not changed since they were first set in 2003, and the sector has experienced ongoing growth. For these reasons, MBIE and MoJ consider that the proposed increase in charges is proportionate.
126. Some submitters raised the risk of cost pressures from higher MVTR fees and levy resulting in an increase in avoidant behaviour and a greater number of unregistered traders in the market. Some stated that traders may be disincentivised from registering due to higher charges.
127. Risks of avoidant behaviour will be mitigated through ongoing monitoring and compliance activity, and a further review of fees in three to five years will provide evidence of any changes in the market that may be attributable to the Motor Vehicle Traders regime.

Value of the regulatory regime

128. A small number of submitters stated that they do not receive any benefits from being registered traders and questioned the increased charges. Some submitters highlighted

the number of unlicensed traders who are operating illegally and expressed concern that nothing was being done about them.

129. In recent years the Registrar increased compliance activity to deal with non-compliant individuals and companies. In particular, online vehicle sales have changed the market, requiring increased scrutiny. Table 8 above highlights that across the last three financial years to 2020/21, at the level of more serious compliance intervention, 141 investigations were referred for consideration of prosecution; 62 (44 per cent) resulted in court conviction where an offence had been committed.
130. Increased funding through adjusted fees will support further service improvements and regulatory activity to provide a level playing field for registered motor vehicle traders.

Feedback on the proposed MVTR fee structures was mixed

131. There was a range of feedback regarding the varying fees for companies and individual traders, although there was no strong consensus between submitters on the proposed fee structure options.
132. Submitters suggested alternative ways to structure the fees. One submitter accepted that a fee difference between companies and individuals is reasonable. However, another noted that all registered traders benefit from registration, and therefore preferred one fee for both individuals and companies. Other submitters commented that while they are registered as a company on the MVTR, their business has relatively small turnover and therefore should not be charged the same fee as the larger companies. Suggestions also included setting fees relative to a trader's annual turnover, an option that MBIE has ruled out after analysis (refer the Impact Analysis section above).
133. MBIE analysis on equitability of the MVTR fee structure is explored in the Conclusion section of this impact statement. In general, MBIE conclude that differentiating between companies and individuals reflects a more equitable distribution of the costs incurred by the agency in administering registration applications or renewals¹⁷.

Fairness of the Tribunal Levy

134. Some submitters questioned the fairness of a single levy for all traders regardless of whether they have ever needed to attend, and of the scale of their business.
135. Submitters suggested that the Tribunal was biased towards consumers, or that they had never needed to attend the Tribunal and therefore should not be levied to provide the club good to the benefit of poor performers. A few submitters wanted the levy to reflect that if a company has a higher turnover, they are more likely to require the Tribunal's services.
136. Two submitters also stated that the Tribunal filing fee was too low and should be raised to recover the costs so that applicants pay for the costs, rather than the levy which is paid by traders. The Tribunal filing fee is out of scope for this review, as it is set in line with other Tribunals administered by MoJ.

¹⁷ Companies make up approximately 87 per cent of motor vehicle traders registered on the MVTR; as at 1 March there are 3,024 registered motor vehicle traders, 2625 are companies.

Conclusions and recommendations

The Motor Vehicle Traders Register - Options

137. The proposed options for the MVTR fee structure were analysed against the principles and objectives as outlined in the Cost Recovery Principles and Objectives. A summary of this assessment against principles is set out in Table 12 below.

138. This assessment also incorporates feedback received through submissions.

Table 12: Analysis of options against principles of cost recovery

| | Status Quo <i>Existing fee (and levy) with no increase</i> | Option One <i>Increased, flat fee</i> | Option Two <i>Differential for transaction type</i> | Option Three <i>Tiered on basis of user and transaction type</i> |
|-------------------------------|--|---|---|---|
| Fairness of cost distribution | 0 Single fee | 0 Single fee | +1 Variation of fees for registrations or renewals reflects the fact that registrations take longer to process | +2 As well as varying by transaction type, varying fees by user type (individual or company) is reflective of the longer processing time for companies with one or more directors |
| Ease of navigation for users | 0 One annual charge for traders | 0 One annual charge for traders, increased | 0 One annual charge for traders | 0 One annual charge for traders |
| Ease of implementation | 0 No IT changes or implementation required | 0 No IT changes required for implementation | -1 IT changes required to implement fee structure | -1 IT changes required to implement fee structure |
| Overall assessment | 0 The status quo continues and costs are not fairly distributed | 0 Costs not fairly distributed. Easiest for MBIE to implement as the same flat fee structure continues | 0 Some cost variations for existing and new users, but not a fair distribution of costs between companies and individual users | +1 Preferred option – fairness across user and activity type, easy for users to navigate |

139. Option one, an increased, flat fee for all activities and users represents relatively unfair distribution costs, with individuals and small businesses incurring a greater proportion of costs with no additional benefit.

140. While submissions opposed an increase in general and showed no clear preference of option, fairness of cost distribution was a common theme. Submitters expressed an expectation for fees to more equitably reflect the differences in type of user, the size of their business or enterprise and the volumes of sales or imports.

141. Equity in the distribution of costs is key to an effective cost recovery regime. Users of the Register must meet an appropriate portion of the cost of administration commensurate to the benefit they receive.

142. There is additional administrative effort required in processing registrations and renewals for companies. Processing registrations and renewals requires undertaking due diligence on the individuals directing the entity. A company is likely to have two or more Directors, and therefore a duplicated effort is required in administration for this trader type. This increase in administration is reflected in modelling for a differentiated fee between companies and individuals. The cost of administering and maintaining a register is therefore more fairly distributed to companies by implementing a separate, tiered fee. Distribution of cost aside, each of the three options provide for a relatively similar fee-paying experience for traders. Registered traders will still have an annual fee payable to the Register, which will include a levy component. Some IT changes will be necessary to support a difference in fee type for options two and three.
143. Implementing a tiered fee structure will require some IT changes to the electronic register administered by MBIE. These changes can be delivered within the appropriation and do not create a significant risk to MBIE implementation. Initial IT changes would be required before any new charges are implemented by 1 August 2022.

The Motor Vehicles Disputes Tribunals levy

144. As the change to the Tribunal levy is a cost adjustment only, there are no additional implementation issues for MoJ by an increase to the levy.
145. The Tribunal filing fee is out of scope for this review, as it is set at standard rates across the tribunal services. The filing fee was set via a significant review process along with all other filing fees across courts and tribunals, with access to justice a key consideration.
146. A tiered levy for individuals and companies, similar to the fee structure proposed for MVTR fees is not considered appropriate as the Tribunal is a 'club good'. The likelihood of a matter being brought to the Tribunal is equally possible for all types of trader. A distinction on the levy amount by incorporation type was therefore not considered appropriate or equitable. Further, introducing a tiered levy would require an increased level of administration within MoJ, which would not be proportionate to the levy amount and the costs to administer the Tribunal service.

The Motor Vehicle Trading Regime – recommended option for implementation

147. Option three (a tiered fee based on the type of user and type of activity transaction) is proposed for implementation. A tiered fee structure best fulfils the criteria set out in the discussion document: equity in the distribution of costs, ease of fees to navigate for motor vehicle traders and relative ease of implementation (and by extension, administration) for MBIE.
148. While trader feedback in the consultation process generally opposed an increase in fees and did not highlight a strong preference for a particular option, emergent themes and suggested alternatives were taken into consideration.
149. While trader feedback expressed opposition to an increase in the levy, and proposed alternatives to how the levy be applied (including differentiated options similar to those proposed for MVTR fees), these were not assessed as being consistent with the objectives and principles of cost recovery.

150. Taking into account consultation feedback, an assessment against cost recovery principles and the criteria established for consultation, MBIE and MoJ have recommended that the Minister of Commerce and Consumer Affairs (in consultation with the Minister for Courts) seek Cabinet approval for:

- Implementing a tiered fee structure as this option best fulfils the criteria set out in the discussion document (equity in the distribution of costs, ease of fees to navigate for motor vehicle traders and ease of implementation for MBIE);

| Fee category | Proposed fee |
|---------------------------|--------------|
| Registration - individual | \$432.00 |
| Registration - company | \$863.00 |
| Renewal - individual | \$401.00 |
| Renewal - company | \$802.00 |

- Increasing the Commerce and Consumer Affairs: Registration and Provision of Statutory Information appropriation by \$0.502 million per annum from 2022/23 for the MVTR;
- Increasing the Tribunal levy from \$112.89 to \$210.00; and
- Increasing the Specialist Courts, Tribunals and Other Authorities Tribunals appropriation within the Courts, Tribunals and Other Authorities Services, including the Collection and Enforcement of Fines and Civil Debts Services MCA by \$0.319 million.

Implementation plan

151. The MVTR regime and Tribunal services are already established. Changes proposed in this document would be given effect by changes to the fees charged when a new applicant applies to join the register or when an existing registered trader chooses to renew their registration.
152. Subject to Cabinet approval, and the being Regulations drafted, the new structure and rates for the fees and levy would come into effect from 1 August 2022. The new fees for renewals would then be phased in as each registered motor vehicle trader decides whether to renew their registration on their annual anniversary date.
153. The primary implementation risk relates to the timing of the IT changes that are required at MBIE to introduce a differentiated fee structure within the electronic register. These changes would need to be actioned before the proposed 1 August 2022 implementation date.
154. MBIE and MoJ would develop a communications plan to communicate the changes to traders before implementation, and ensure all traders know how and when the fee changes would affect them.

Monitoring and evaluation

155. As part of the Registrar's responsibilities, over the next two to three years the Registrar would monitor application and renewal transactions, actual expenditure incurred, and

revenue collected and the resulting impact on Memorandum Account balance. MBIE will undertake a further fee review in three to five years, although this may occur earlier if it is clear that there is significant over or under recovery. The monitoring and evaluation would also allow MBIE to assess whether any avoidant behaviour is evident as the result of the change in fees. Should this occur, the enforcement approach for the regime would be adjusted accordingly.

Review

156. The evidence gathered during this monitoring period will inform any changes required at the next MVTR fees review which is scheduled to occur in three to five years. MBIE will consult with MoJ to determine if a levy review is required in conjunction with a MVTR fees review. MoJ can also review the levy independently as and when required.

Version control

| Other version | Date | Link |
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