

# LOCATION OF THE IMMIGRATION AND PROTECTION TRIBUNAL

## PURPOSE

- 1 This paper seeks to confirm the in-principle decision made by the Cabinet Business Committee (CBC) to locate the Immigration and Protection Tribunal (the Tribunal) with the Ministry of Justice (Justice), and to draw down the funding required to begin establishment [CBC Min (07) 21/12].
- 2 As requested by CBC, this paper reports back with further information on the differences between the cost of locating the Tribunal in Justice and the Department of Labour (the DoL).

## EXECUTIVE SUMMARY<sup>1</sup>

- 3 When making decisions on the Immigration Act review in November 2006, CBC deferred the decision on the location of the Tribunal pending further work [CBC Min (06) 20/14]. In September 2007, CBC then agreed in principle, to locate the Tribunal with Justice and requested a further report on the reasons for the difference in the costs of locating the Tribunal in Justice or the DoL [CBC Min (07) 21/11].
- 4 Since CBC requested a further report, Justice and the DoL have met to revise their cost models. As a result of the revision, the difference between the Justice and Labour cost models is now \$4.125 million over six years in comparison to the \$6.043 million difference presented to CBC in the paper, *Immigration and Protection Tribunal* [CBC (07) 196]. The total cost for establishing and supporting the Tribunal in Justice is now \$47.855 million and for Labour it is now \$43.730 million over 6 years.
- 5 The key reason for the difference in the cost models is due to the scale of establishing the Tribunal with Justice in comparison to the DoL. The Deportation Review Tribunal (DRT) (currently located with Justice) only has the equivalent of approximately two full-time members, and a single person responsible for providing secretariat support. In comparison, the Refugee Status Appeals Authority (RSAA), Residence Review Board (RRB), and Removal Review Authority (RRA), with 21 Members (equalling the equivalent of 15 full time Members) and 24 staff (including one vacancy) providing secretariat support, are located with the DoL.
- 6 There are greater operational establishment costs involved in transitioning the RSAA, RRB and RRA to Justice, and amalgamating them with the DRT, than transitioning the DRT to the DoL. The Justice cost model incorporates costs to both Justice and the DoL to manage that transition.

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<sup>1</sup> Please note: all costs are exclusive of GST and capital charge. All figures are rounded - this may result in some variance.

- 7 During the public submissions process on the *Immigration Act review: Discussion paper* almost 80 percent of the 95 submitters favoured the Tribunal being located with Justice on the basis that it would be perceived to be completely independent from immigration and refugee and protection decision-making. Submitters felt that clear separation would enhance public confidence in the independence and integrity of the appeal body.
- 8 We propose that CBC confirms its in-principle decision to locate the Tribunal with Justice. If confirmed, we propose that the Justice Tribunal reform programme (the reform programme) be specifically tasked to report back on the cost model of the Tribunal to Cabinet in the context of its work on the cost of tribunals generally. We further propose that the quarterly progress reports on the reform programme be copied to the Minister of Immigration (the Minister) and the Minister be consulted on the final report prior to its submission to Cabinet.
- 9 Both the Justice and the DoL cost models were built on agreed assumptions regarding the ongoing operating costs of the Tribunal. The assumptions were developed by the DoL during the policy development phase of the Immigration Act review in 2006. They were based on the highest number of potential appeals that may be lodged, heard and decided by the Tribunal. Regardless of where the Tribunal may be located, if actual appeals do not reach assumed levels, this would be reported in annual and financial reports and could result in reduced costs.
- 10 If the in-principle decision to locate the Tribunal with Justice is confirmed, this Cabinet paper seeks to draw down \$2.985 million in capital funding and \$11.279 million in operational funding. Combined with the Immigration Act review (non-Tribunal) draw down already agreed, this would represent a reduction from the Budget 2007 contingency funding of:
  - a) \$1.517 million in capital funding, and
  - b) \$1.900 million in operating funding.

## **BACKGROUND**

- 11 When making decisions on the Immigration Act review in November 2006, CBC deferred the decision on the location of the Tribunal pending further work [CBC Min (06) 20/14]. In September 2007, CBC then agreed in principle, to locate the Tribunal with Justice and requested a further report on the reasons for the difference in the costs of locating the Tribunal in Justice or the DoL [CBC Min (07) 21/11].

## **CHANGES IN COSTS SINCE FURTHER REPORT REQUESTED**

- 12 Since CBC requested a further report in September 2007, Justice and the DoL have met to revise the cost models of each agency. As a result of that revision, the total cost for establishing and supporting the Tribunal in the DoL has *increased* to \$43.730 million over six years. The DoL's costs increased due to incorrect assumptions made with regard to transcription costs. The total cost for establishing and supporting the Tribunal in Justice has consequently *decreased* to \$47.855 million over six years.

13 The difference between the DoL and Justice cost models is now \$4.125 million over six years. The difference has reduced by \$1.918 million from the cost models presented to CBC in September 2007 in the paper, *Immigration and Protection Tribunal* [CBC (07) 21/12].

*Table One: Difference between the DoL and Justice cost models*

	<b>07/08</b>	<b>08/09</b>	<b>09/10</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>Total</b>
<b>DoL</b>	4.542	1.980	2.738	1.187	0.051	(0.360)	10.138
<b>Justice model*</b>	6.405	2.708	2.938	1.565	0.520	0.127	14.263
<b>Difference +/-</b>	<b>1.863</b>	<b>0.728</b>	<b>0.200</b>	<b>0.378</b>	<b>0.469</b>	<b>0.487</b>	<b>4.125</b>

\* These figures represent costs to both Vote: Courts and Vote: Immigration and gross total operating includes capital charge

14 The DoL and Justice manage their business in different ways. The establishment and ongoing costs for each agency are not directly comparable. Commonality and consistency between the cost models has been sought and achieved where practicable and possible. Both models have been developed, however, to be consistent with each agency's business and best practice.

15 As there are currently 22 tribunals located with Justice, that agency's cost model is based on its extensive experience. Its cost model also ensures that the services and support that Justice will provide to the Tribunal are consistent with that of all other tribunals located with that agency.

16 The key reason for the difference in the cost models is due to the scale of establishing the Tribunal with Justice in comparison to the DoL. The Deportation Review Tribunal (DRT) (currently located with Justice) only has the equivalent of approximately two full-time members, and a single person responsible for providing secretariat support. In comparison, the Refugee Status Appeals Authority (RSAA), Residence Review Board (RRB), and Removal Review Authority (RRA), with 21 Members (equalling the equivalent of 15 full time Members) and 24 staff (including one vacancy) providing secretariat support, are located with the DoL.

17 There are greater operational establishment costs involved in transitioning the RSAA, RRB and RRA to Justice, and amalgamating them with the DRT, than transitioning the DRT to the DoL. The Justice cost model incorporates costs to both Justice and the DoL to manage that transition.

## **TOTAL COST**

18 Table Two summarises the costs of establishing the new Tribunal in the DoL and Justice. It details the gross and net operating costs, and the net capital costs.

Table Two: Cost comparison offsetting current baselines (\$m)

	Justice model (Years 0-5)	DoL model (Years 0-5)	Justice model (Outyears)	DoL model (Outyears)
<b>GROSS TOTAL OPERATING</b>	<b>46.109</b>	<b>42.069</b>	<b>7.068</b>	<b>6.570</b>
Offsetting DoL baseline	30.505	30.505	6.101	6.101
Offsetting Justice baseline	0.800	0.800	0.160	0.160
Offsetting fee revenue	2.287	2.287	0.457	0.457
Offsetting other revenue	1.240	1.166	0.224	0.212
<b>NET TOTAL OPERATING</b>	<b>11.278</b>	<b>7.311</b>	<b>0.127</b>	<b>(0.360)</b>
<b>NET TOTAL CAPITAL</b>	<b>2.985</b>	<b>2.827</b>	<b>-</b>	<b>-</b>
<b>TOTAL</b>	<b>14.263</b>	<b>10.138</b>	<b>0.127</b>	<b>(0.360)</b>

\* These figures represent costs to both Vote: Courts and Vote: Immigration

19 When the cost models were built the cost of the DRT, located with Justice, was approximately \$0.160 million per annum. The current cost of the appeal authorities located with the DoL was approximately \$6.101 million per annum<sup>2</sup>. The authorities were generating approximately \$0.457 million per annum in fee revenue. These amounts offset the net costs in the table.

## DETAILED COST COMPARISON

### Establishment costs

#### Capital establishment costs

Table Three: establishment capital cost comparison, year 0, 2007-08

Located with DoL		Located with Justice		Difference
				\$m
Hard fit out	1.070	Hard fit out	0.912	(0.158)
Soft fit out	0.405	Soft fit out	0.687	0.282
ICT	1.352	ICT	1.116	(0.236)
Other	0.000	Other	0.270	0.270
<b>Total Capital</b>	<b>2.827</b>	<b>Total Capital</b>	<b>2.985</b>	<b>0.158</b>

20 The difference in the capital establishment costs between Justice and the DoL is \$0.158 million. This difference has decreased by \$0.687 million since CBC requested a further report in September 2007. This is because the DoL will transfer the RSAA lease and assets to Justice, if the Tribunal is located there.

<sup>2</sup> The higher costs associated with the authorities located with The DoL relate to the volume of these appeals. There are, in comparison, very few deportation appeals lodged with the DRT.

## Operational establishment costs

*Table Four: establishment operational cost comparison, years 0-1, 2007/08 –08/09*

Located with DoL		Located with Justice		Difference
				\$m
Project management	0.784	Project management	1.903	1.119
Recruitment	0.069	Recruitment	0.389	0.320
Redundancies	-	Redundancies	0.306	0.306
Operating expenses	0.720	Operating expenses	1.208	0.488
Depreciation	0.147	Depreciation	0.015	(0.132)
<b>Total</b>	<b>1.720</b>	<b>Total</b>	<b>3.821</b>	<b>2.101</b>

21 As noted above, there is greater cost involved in transitioning the RSAA, RRB and RRA to Justice, and amalgamating them with the DRT, to form the new Tribunal. The Justice cost model therefore incorporates costs, to both Justice and the DoL, to manage that transition. The \$1.119 million difference in the establishment operational project management costs include:

- a) an additional \$0.852 million for project personnel in Justice, and
- b) \$0.267 million for the DoL to transition the RSAA, RRB and RRA to Justice.

22 The Justice cost model also provides \$0.306 million for redundancies in the DoL for current secretariat staff who do not wish to transition to Justice. The need to plan for potential redundancies consequently results in greater recruitment costs of \$0.320 million under the Justice cost model.

## **Ongoing operational costs**

*Table Five: ongoing operational cost comparison, years 1-5, 2008/09 – 12/13*

Located with DoL		Located with Justice		Difference
				\$m
Personnel	9.920	Personnel	10.277	0.357
Operating	26.929	Operating	28.306	1.377
Depreciation	2.334	Depreciation	2.466	0.132
<b>Total Operating</b>	<b>39.183</b>	<b>Total Operating</b>	<b>41.049</b>	<b>1.866</b>

23 The key difference in personnel costs between Justice and the DoL is due to the difference in pay and conditions in each agency's Collective Agreement. The difference amounts to \$0.357 million or \$0.071 million per annum over five years.

24 The difference in operating cost includes higher IT costs if the Tribunal was located with Justice including \$0.060 million per annum to maintain the IT interface between the Tribunal and the DoL.

25 The remainder of the difference in operating costs is due to the business models of Justice and the DoL. There are differences, for example, in corporate overhead expenses and contracts for telecommunication and library services. On a yearly basis, these operating differences equal \$215, 400.

## LOCATION OF THE TRIBUNAL

26 During the public submissions process on the *Immigration Act review: Discussion paper* almost 80 percent of the 95 submitters favoured the Tribunal being located with Justice on the basis that it would be perceived to be completely independent from immigration and refugee and protection decision-making. Submitters felt that clear separation would enhance public confidence in the independence and integrity of the appeal body.

27 The Law Commission made a useful and relevant point about independence in its report *Delivering Justice For All*:

"A number of tribunals are housed and resourced by departments who are directly affected by their decisions. While historically this may be understandable, it throws their independence and neutrality into question. Tribunals, like courts, must both be independent, and be seen to be independent. The perception is as important as the reality" (Chapter 7.1, paragraph 4).

28 Perceived independence is clearly important. This was demonstrated by the establishment of the Immigration Advisers Complaints and Disciplinary Tribunal. Originally, complaints and disciplinary matters for immigration advisers were going to be dealt with by the Immigration Advisers Authority, administered within the DoL. As a result of public submissions on the Immigration Advisers Licensing Bill during the Select Committee phase it was determined to establish the Immigration Advisers Complaints and Disciplinary Tribunal, which will be located with Justice<sup>3</sup>.

29 Locating the Tribunal with Justice would directly address the concerns raised in the public submissions, along with the Law Commission's concern about tribunals housed and resourced by departments that are directly affected by their decisions. Officials note, however, that administration by a neutral department is only one tool to safeguard the independence of tribunals. Other tools include robust appointment and removal provisions, and training and induction for both tribunal members and secretariat staff.

30 Locating the Tribunal with Justice would cost \$4.125 million more over six years than locating the Tribunal with the DoL. However, as Cabinet noted in April 2007, Justice is currently working with the Law Commission, and other key agencies, on a reform programme [CAB Min (07) 10/10 refers]. The aim, among other things, is to recommend a structure for all tribunals to ensure:

- a) public confidence in the tribunal system
- b) good access to tribunals
- c) consistent operation across tribunals, and

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<sup>3</sup> As the location of the Tribunal is not determined in the Immigration Bill, it has not been the subject of submissions during the Select Committee phase.

d) that government obtains value for money.

31 Government can reasonably expect that the reform programme will include a thorough review of the cost structure of establishing and operating all the tribunals located with Justice. It may identify potential savings and efficiencies. Any such savings and/or efficiencies could be applied to the Tribunal were it located with Justice.

32 We propose that CBC confirms its in-principle decision to locate the Tribunal with Justice. If confirmed, we propose that the reform programme be specifically tasked to report back on the cost model of the Tribunal to Cabinet in the context of its work on the cost of tribunals generally. We further propose that the quarterly progress reports on the reform programme be copied to the Minister and the Minister be consulted on the final report prior to its submission to Cabinet.

33 Both the Justice and the DoL cost models were built on agreed assumptions about the ongoing operating costs of the Tribunal. The assumptions were developed by the DoL during the policy development phase of the Immigration Act review in 2006. They were based on the highest number of potential appeals that may be lodged, heard and decided by the Tribunal. Regardless of where the Tribunal may be located, if actual appeals did not reach assumed levels, this would be reported in annual and financial reports and could result in reduced costs.

## CONSULTATION

34 Justice and the DoL have consulted with the Treasury on this paper. The Department of Prime Minister and Cabinet has been informed.

## FINANCIAL IMPLICATIONS

### Budget 2007 funding

35 Budget 2007 funding for implementing the Immigration Act has been agreed [CAB Min (07) 12/1 (27), CAB Min (07) 12/1 (14), CAB Min (07) 12/1 (29)]. The contingency represented funding for the implementation of the entire Immigration Act, not just the Tribunal.

*Table Six: Tagged items in contingency*

Implementation of the Immigration Act	\$m - increase/(decrease)				
	2006/07	2007/08	2008/09	2009/10	2010/11 & Outyears
Operating	-	3.936	4.647	4.919	3.463
Capital	-	6.668	0.800	-	-

36 Cabinet has agreed to the draw down of funding required to implement the Immigration Act, exclusive of the Tribunal [CAB Min (07) 37/4]. This funding is detailed in Table Seven below.

Table Seven: Funding for implementing the Immigration Act (non-Tribunal)

	\$m - increase/(decrease)				
	2006/07	2007/08	2008/09	2009/10	2010/11 & Outyears
Operating	-	0.516	1.763	1.777	1.660
Capital	-	1.500	1.466	-	-

37 If the in-principle decision to locate the Tribunal with Justice is confirmed, this Cabinet paper seeks to draw down \$2.985 million in capital funding and \$11.279 million in operational funding. Combined with the Immigration Act review (non-Tribunal) draw down funding already agreed, the funding being sought in this paper is less than the total funding set aside in the Budget 2007 contingency. There will be \$1.517 million in capital funding, and \$1.900 million in operating funding left in the contingency.

38 A key reason for not seeking to draw down the entire Budget 2007 contingency funding is the reduction in the capital cost for establishing an Information Technology (IT) interface between Justice and the DoL. A lower cost alternative has been developed since budget bids were made.

### Locating the Tribunal with Justice

39 If the CBC in-principle agreement was confirmed, and the Tribunal were to be located with Justice, this paper seeks approval for the following changes to appropriations to put into effect the decision:

	\$m – increase/(decrease)					
	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13 & Outyears
Operating Balance Impact	3.420	2.709	2.938	1.565	0.520	0.127
Debt Impact	2.985	-	-	-	-	-
No Impact	0.125	0.679	0.680	0.681	0.681	0.681
<b>Total</b>	<b>6.530</b>	<b>3.388</b>	<b>3.618</b>	<b>2.246</b>	<b>1.201</b>	<b>0.808</b>

40 The proposed changes to appropriations and projected balances of net assets for 2007/08 above will need to be included in the 2007/08 Supplementary Estimates.

41 A fiscally neutral adjustment (FNA) of baselines from the DoL to Justice will be required, depending on the timing of the implementation of the Tribunal. This FNA will not impact on the operating balance or debt.

### HUMAN RIGHTS IMPLICATIONS

42 There are no human rights implications.

## LEGISLATIVE IMPLICATIONS

43 There are no legislative implications.

## REGULATORY IMPACT AND BUSINESS COMPLIANCE COST STATEMENT

44 The principles of the Code of Good Regulatory Practice have been complied with. No Regulatory Impact Statement (RIS) has been prepared for this Cabinet paper as the proposals in this paper will not result in a government bill.

45 The regulatory impact of establishing the Tribunal was considered in the November 2006 *Immigration Change Programme: Immigration Act Review* Cabinet paper and RIS [POL (06) 380 and CBC Min (06) 20/14 refer].

## PUBLICITY

46 The Minister will make this Cabinet paper available on the DoL website with the suite of Act review papers. Some information in this paper may be withheld consistent with the provisions of the Official Information Act 1983.

## RECOMMENDATIONS

47 It is recommended that the Committee:

1. **note** that when making decisions on the Immigration Act review in November 2006, the Cabinet Business Committee deferred the decision on the location of the Immigration and Protection Tribunal pending further work [CBC Min (06) 20/14]
2. **note** that in September 2007, the Cabinet Business Committee agreed, in principle, to locate the Immigration and Protection Tribunal with the Ministry of Justice and requested a further report on the reasons for the difference in the costs of locating the Immigration and Protection Tribunal in the Ministry of Justice or the Department of Labour [CBC Min (07) 21/11]

### *Location of the Immigration and Protection Tribunal*

3. **note** that establishment and ongoing costs for the Ministry of Justice and the Department of Labour are not directly comparable but that commonality and consistency across both cost models was sought and achieved where practicable and possible
4. **confirm** the in-principle decision that the Immigration and Protection Tribunal be located with the Ministry of Justice [CBC Min (07) 21/12]
5. **agree** that the Tribunal reform programme be specifically tasked to report back to Cabinet on the cost model of the Immigration and Protection Tribunal in the context of its work on the cost of tribunals generally
6. **agree** that the quarterly progress reports on the Tribunal reform programme be copied to the Minister of Immigration
7. **agree** that the Minister of Immigration be consulted on the final report on the Tribunal Reform programme prior to its submission to Cabinet

*Financial implications*

Budget 2007

8. **note** that a contingency has been set aside for the maximum costs of implementing the Immigration Act, through Budget 2007, [CAB Min (07) 12/1 (27), CAB Min (07) 12/1 (14), CAB Min (07) 12/1 (29)]:

Implementation of the Immigration Act	\$m - increase/(decrease)				
	2006/07	2007/08	2008/09	2009/10	2010/11 & Outyears
Operating	-	3.936	4.647	4.919	3.463
Capital	-	6.668	0.800	-	-

9. **note** that Cabinet has already agreed to the draw down of the following funding from the Budget 2007 contingency which was required to implement the Immigration Act, exclusive of the Immigration and protection Tribunal [CAB Min (07) 37/4]:

	\$m - increase/(decrease)				
	2006/07	2007/08	2008/09	2009/10	2010/11 & Outyears
Operating	-	0.516	1.763	1.777	1.660
Capital	-	1.500	1.466	-	-

10. **note** the funding being sought in this Cabinet paper is less than the total funding set aside in the Budget 2007 contingency.

11. **note** there will be \$1.517 million in capital funding, and \$1.900 million in operating funding left in the contingency

Draw down of funding for the Immigration and Protection Tribunal

12. **agree** to funding for the Immigration and Protection Tribunal located with the Ministry of Justice:

	\$m – increase/(decrease)					
	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13 & Outyears
Operating Balance Impact	3.420	2.709	2.938	1.565	0.520	0.127
Debt Impact	2.985	-	-	-	-	-
No Impact	0.125	0.679	0.680	0.681	0.681	0.681
<b>Total</b>	<b>6.530</b>	<b>3.388</b>	<b>3.618</b>	<b>2.246</b>	<b>1.201</b>	<b>0.808</b>

13. **approve** the following changes to appropriations to put into effect the decision to locate the Immigration and Protection Tribunal in the Ministry of Justice:

	\$m – increase/(decrease)					
	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13 & Outyears
<b>Vote Courts</b>						
<b>Minister of Courts</b>						
Departmental Output Expense: Specialist Courts, Tribunals and Other Authorities Services (funded by revenue Crown)	3.343	2.436	3.061	1.688	0.643	0.250
(funded by revenue Other)	0.005	0.455	0.456	0.457	0.457	0.457

	\$m – increase/(decrease)					
	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13 & Outyears
<b>Vote Justice</b> Net Asset Schedule for the Ministry of Justice: Capital Injection	2.835	-	-	-	-	-
<b>Vote Immigration</b> <b>Minister of Immigration</b> Departmental Output Expense: Services to Increase the Capacity of New Zealand Through Immigration (funded by revenue Crown)	0.089	0.224	0.045	0.045	0.045	0.045
Departmental Output Expense: Services to Position New Zealand as an International Citizen with Immigration-Related Interests and Obligations (funded by revenue Crown)	0.108	0.273	0.056	0.056	0.056	0.056
<b>Vote Labour</b> Net Asset Schedule for the Department of Labour: Capital Injection	0.150	-	-	-	-	-
<b>Total Operating</b>	<b>3.545</b>	<b>3.388</b>	<b>3.618</b>	<b>2.246</b>	<b>1.201</b>	<b>0.808</b>
<b>Total Capital</b>	<b>2.985</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

14. **agree** that the proposed changes to appropriations and projected balances of net assets for 2007/08 above be included in the 2007/08 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply

15. **note** that a fiscally neutral adjustment of baselines from the Department of Labour to the Ministry of Justice will be required, depending on the implementation of the Immigration and Protection Tribunal, with no impact on the operating balance or debt, and

*Publicity*

16. **note** that the Minister of Immigration intends to make this Cabinet paper available on the Department of Labour website with the suite of Immigration Act review papers and that information in this paper may be with-held consistent with the provisions of the Official Information Act 1982.

Hon Clayton Cosgrove  
Minister of Immigration

Hon Rick Barker  
Minister for Courts