Regulatory and Cost Recovery Impact Statement: Updating the Protection of Personal and Property Rights Act property thresholds and the Private Manager Examination Fee

Coversheet

Purpose of Document	
Decision sought:	Analysis produced to inform Cabinet decisions on policy for updating property thresholds and the Public Trust's Private Manager Examination fee under Protection of Personal and Property Rights law.
Advising agencies:	Ministry of Justice
Proposing Ministers:	Minister of Justice
Date finalised:	16 July 2024

Problem Definition
The Protection of Personal and Property Rights Act 1988 (PPPR Act) includes income and asset thresholds that determine the process for administering property on behalf of adults lacking in decision-making capability (the represented person). The thresholds are to balance protection of a represented person's property with reducing the burden on the person administering the property on their behalf. The thresholds are out of date due to inflation and now capture low incomes and smaller assets. This means more people than originally intended fall above the thresholds and the appointment of Property Managers is often required. Where the Property Manager is an individual, the Public Trust is required to examine a Property Manager's annual financial statements via a process called a 'Private Manager Examination' or PME. A fee for this service is paid by the person whose property is being managed. This fee was intended to represent the full cost of the PME service at the time it was set but has not been updated in over 30 years leading to increasing government subsidy for Public Trust to meet the cost. Increasing the PME fee without updating the thresholds would mean the new fee applies to more cases than originally intended with the costs borne by people represented under the PPPR Act.

Executive Summary
This Regulatory and Cost Recovery Impact Statement sets out analysis for two proposals:

- Part A – covers increasing income and asset thresholds that determine the process for administering property on behalf of a person not fully able to manage their own affairs (section 11 of the PPPR Act 1988), and
- Part B - covers increasing the Public Trust's 'Property Manager Examination' (PME) fee (regulation 6 of the Protection of Personal and Property Rights Regulations 1988).

The regulatory impact analysis elements relate to the threshold increases covered at Part A and the cost recovery analysis elements relate to the PME fee increase covered at Part B.

Overview of Part A – Increasing income and asset thresholds

The PPPR Act sets income and asset thresholds that determine the process for administering property on behalf of people who are lacking in decision-making capability (referred to in this document as a "represented person"). If a represented person's income and assets are below the thresholds a Property Administrator can be appointed. If above, a Property Manager must be appointed. Property Managers have the additional responsibility of filing annual statements with the Family Court. If the Property Manager is an individual (known as a Private Property Manager) these statements must be examined by the Public Trust for a charge of $132.00 per hour that is recoverable from the represented person's estate. Public Trust spend an average of 2.25 hours per examination. The different processes recognise that greater scrutiny is needed where a represented person needs assistance with higher value property.

The thresholds are out of date due to inflation and now capture lower incomes and smaller assets than originally intended. This means more represented people have income and assets above the thresholds and the appointment of Property Managers is often required.

After considering a range of options for each threshold we recommend:

- increasing the income threshold from $20,000.00 to $38,800.00 with a staged increase to $45,000.00 over 5 years, and
- increasing the asset threshold from $5,000.00 to $15,000.00.

The Ministry of Justice's preferred approach to increasing the income threshold aligns with the recommendation in the Cabinet paper.

Increasing the threshold is expected to enable more people to be appointed as Property Administrators thereby reducing the administrative requirements on parents or relatives who would not otherwise choose to undertake a Property Manager role. There is a risk that the threshold increases could be seen as reducing protections against misuse of represented peoples' property. On balance, we think the proposed income threshold will mean the level of scrutiny over property, and the costs borne by represented people for this oversight, are proportionate to its value.

The Cabinet paper recommends increasing the asset threshold from $5,000 to $25,000. The Ministry's preferred approach differs to this. The Ministry's preferred approach is to increase the asset threshold to $15,000, which is slightly greater than required to allow for inflation. We consider that an increase to $15,000 better reflects current day savings balances and funding for assets disabled people are likely to own (for example, for vehicle modifications) that may not have been available when the thresholds were originally set.

Overview of Part B – Increasing the Public Trust's Property Manager Examination Fee

Under the PPPR Act, Public Trust are responsible for the examination of all financial statements submitted to the court by Private Property Managers (Property Managers who are not trustee corporations). This function is known as a 'Private Manager Examination'

(PME) and provides independent scrutiny for represented people who face the greatest risk of financial exploitation or abuse.

The prescribed amount Public Trust may charge clients for the PME service has not changed in 36 years and no longer reflects the quality and the cost of this mandated service. Consequently, this has required increasing government subsidy for Public Trust to meet the costs that cannot be recovered from clients irrespective of the client's capacity to afford services. Public Trust have advised that increasing PME fees would enable the continuation of services and deliver better value for money.

The Ministry's preferred approach is to increase the $132.00 per hour PME fee to $299.82 per hour. This is to recover the full cost of the service in line with the original policy intent, as the benefit of the service is largely private, benefitting the represented person. The Ministry would then discontinue funding for PMEs.

The Ministry of Justice's (Ministry) preferred approach to increasing the PME fee does not align with the recommendation in the Cabinet paper. The Cabinet paper recommends increasing the PME fee threshold to $247.27 per hour, which will require Public Trust to seek efficiencies across their service delivery to negate losses. If Public Trust cannot achieve efficiencies, net losses from PMEs are a transfer of costs from the Ministry to Public Trust, misallocating social policy costs within the Crown.

Based on the 2022/23 financial year we would expect these changes to impact at least 2,561 Private Property Manager appointments.

The equitability of this fee increase is dependent on the income and asset thresholds being increased too, as higher thresholds would mean fewer represented people would require Property Managers by law. This would ensure that PMEs and their fees are only required where the property requiring management is of higher value.

Limitations and Constraints on Analysis

Time and Budget sensitivity

The proposals in this document make changes to settings that are overdue for updating. The timing of these changes is to better support a Budget 2024 initiative that creates savings of $1.633m per annum by amending the contracted services that the Public Trust delivers. A new contract between the Ministry and the Public Trust that reflects the savings is anticipated to take effect from 1 July 2024. To support these savings as soon as possible, the proposals are to be implemented by 3 October 2024 with most of the analysis occurring ahead of Budget announcements. We were authorised to undertake limited consultation with the Public Trust as the provider of PMEs ahead of Budget announcements and with the Acting Principal Family Court Judge. However, time and budget sensitivity constraints meant that any further consultation to inform analysis and test the assumptions underpinning it has not been possible. This includes consulting with organisations that advocate for people represented under the PPPR Act. We have aimed to consider the views of those who were not consulted throughout this analysis. This includes considering views shared in correspondence to the Minister of Justice on the need to update the thresholds. This correspondence was from a relative of a represented person who is acting as a Property Manager and from the Law Association. The Ministry also received correspondence from the Family Law Section of the New Zealand Law Society, which stated that the thresholds have not kept pace with inflation, benefit increases and the current value of property in New Zealand. We have also considered submitters' feedback on the Law Commission's review of Adult Decision Making Law.

The Legislation Design and Advisory Committee's *Legislation Guidelines: 2021 edition* state that consultation is one of the principal mechanisms through which the Government (via Ministers and government agencies) discharges its responsibility to make informed decisions to act in good faith towards Māori. A failure to effectively engage with Māori on these proposals could be viewed as inconsistent with the principles of the Treaty of Waitangi. The impact analysis in this document and the population impacts section of the Cabinet paper for these proposals outlines the Māori interest.

Assumptions due to lack of data

Our analysis assumes that higher value property is more attractive to people who would seek to take advantage of it and can be more complex to manage so requires a higher level of scrutiny. This assumption has been made in the absence of data that incidences of misuse of property are greater where its value is higher.

Our analysis assumes increasing the thresholds means proportionately more Property Administrators will be appointed. We think this is a reasonable assumption and have relied on this in the absence of quality data on the income and asset levels of people represented under the PPPR Act. Without this data, we cannot model how the proposed thresholds will impact the distribution of Property Managers versus Property Administrators.

The Public Trust has provided information on its costs, which we have partially relied on in proposing a new PME fee. However, the cost information provided was not specific to the PME service but instead relates to a range of similar services the Public Trust provides.

We are aware some people choose to be appointed as Property Managers even where a represented person has assets and income below the thresholds. We assume that increasing the fee for PMEs will lead to more Property Administrator appointments when eligible.

Range of options considered

The range of options considered for increasing the thresholds and PME fee have been constrained. Options for increasing the asset threshold has been constrained by a decision by the Minister of Justice to increase the threshold to $25,000. We have still included an option of $15,000.00 as this option had been assessed ahead of the Minister's decision above.

Three options were considered for increasing the PME fee. One of them was full cost recovery and the other two were partial cost recovery. Our analysis has been constrained by the decision made by the Minister of Justice to opt for a fee increase to $247.27. As Budget 24 funding to stop topping up the PME service has already been agreed, we have not considered options for the Ministry of Justice to partially subsidise the PME rate, as there will be no funding to do so within the appropriation.

Assumptions on original policy intent of private manager examination fees

Section 46 of the PPPR Act states that Public Trust will not be liable for expenses or fees relating to PMEs, and that fees will be charged to the represented person's property unless the court orders otherwise. We therefore assume that the prescribed fee was sufficient for full cost recovery when prescribed in 1988, and intended to be paid by the represented person.

Since fees were set in 1988, Public Trust has become an autonomous Crown entity that returns profit to Treasury. We believe that PMEs being a profit generating activity for the Crown is not aligned with the original intent, as it would result in taxation which was not possible at the time of prescribing fees. We therefore assume that a prescribed fee above cost recovery is not aligned with the original policy intent.

Dependencies

The proposals to update the thresholds and the PME fee are interdependent. Increasing the Property Administrator thresholds results in increased eligibility for this appointment, which does not require PMEs. Conversely, increasing the PME fee without updating the

Property Administrator thresholds would result in PME fees being charged to more represented people than intended. Updating the PME fee and thresholds together ensures that the settings align. The analysis of each proposal has therefore been informed by the other.

Contract negotiations

The Ministry anticipates the Minister of Justice entering into a new contract with Public Trust effective 1 July 2024. Budget-sensitivity has constrained negotiations, and Cabinet decisions on increasing the PME fee will occur after the new contract has been entered. The Ministry is working with Public Trust to update the services it is contracted to provide under a new contract. We cannot be certain on how the new contract will differ from the current contract until it has been signed. References to current funding arrangements with Public Trust may not reflect future funding arrangements.

Responsible Manager(s) (completed by relevant manager)

Kathy Brightwell

Deputy Secretary Policy (Acting)

Signature: KBrightwell

Date signed out: 16 July 2024

Donella Gawith

Group Manager, Commissioning and Service Improvement

Signature:

Date signed out: 16/07/2024

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Justice
Panel Assessment & Comment:	A Regulatory Impact Analysis Quality Assurance Panel from the Ministry of Justice reviewed the combined Regulatory Impact Statement and Cost Recovery Impact Statement. The Panel considers that the information and analysis partially meets quality assurance criteria. The Impact Statement is comprehensive, clear and concise, and makes good use of the available evidence to build a convincing case. The Panel noted that the consultation on the options was limited to the Public Trust and that broader consultation is preferable. Nevertheless, within the constraints clearly outlined in the Impact Statement, the analysis can be relied on for decision making.

Part A – Updating income and asset thresholds for Property Managers

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The Protection of Personal and Property Rights Act protects those unable to manage their own affairs

1. The PPPR Act provides for the protection and promotion of the personal and property rights of persons aged 18 years and over, who are not fully able to manage their own affairs and where no enduing power of attorney is in place. The court does this by making orders for people who are lacking in decision-making capability (referred to as a "represented person" in this document).

2. A Property Administrator or Property Manager can be appointed via a court order to support someone who is incapable of making decisions about their property or income, or who is incapable of communicating these decisions. People who act as Property Administrators or Property Managers will often be a relative of the represented person, such as a spouse, sibling, child, or parent. In practice, this enables them to do things like manage the represented person's bank accounts and pay expenses from the represented person's funds.

Income and asset thresholds determine whether a Property Administrator or Property Manager is appointed

3. Section 11 of the PPPR Act sets income and asset thresholds that help determine whether a Property Administrator or Property Manager can be appointed. The thresholds are $20,000 for income and $5,000.00 for items of property or assets. Property Administrators can be appointed to administer any of the represented person's annual income and any item of property or asset valued under the thresholds. For a person to administer assets and income over the thresholds, the court must appoint a Property Manager.

4. The differences between the two roles are set out in the table below:

	Property Administrator	**Property Manager**
Income Thresholds	Under $20,000.00	Over $20,000.00
Asset threshold	Under $5,000.00 (single asset)	Over $5,000.00 (single asset)
Authorisation	Appointed under section 11 of the PPPR Act via a *Personal Order*	Appointed under section 31 of the PPPR Act via a *Property Order*
Responsibilities	Can only administer the property specified in the order. Only one person can administer the property. Where the thresholds are exceeded, Property Administrators could be	Can manage the entirety of the represented person's property. Role can be shared between two people. Where income and assets are under the thresholds, Property Managers can still be appointed where they think

	appointed to only administer a proportion of the income or specific assets that are below the thresholds.	managing the entire property or sharing the role with another person would be beneficial.
Role oversight	The court must review orders every three to five years.[1]	The court must review orders every three to five years.[2] Need to prepare and file annual statements in the court. Where these are filed by an individual rather than a Trustee Corporation (referred to as a 'Private Property Manager'), the statements must be examined by the Public Trust. This is called a 'Private Manager Examination' or PME. Public Trust can charge $132.00 per hour for the PME, which can be recovered from the represented person's estate.

5. We assume that higher value property may be both more attractive to people who would seek to take advantage of it and can be more complex to manage. The differences between the Property Manager and Property Administrator roles recognise that a higher level of scrutiny is needed where a person needs assistance with property or income that has substantial value compared to lower value property or income (such as payments of benefits). The threshold settings balance protection of a represented person's property with reducing the burden on the person administering the property on their behalf. The income threshold was originally intended to cover lower incomes, including payment of benefits.[3] The rationale for the asset threshold, beyond that it was intended to cover low value or small items of property, is unclear.

The income and asset thresholds have not been updated as intended

6. The thresholds were designed to be updated from time to time via Order in Council, but this has not happened in a consistent manner. The income threshold was changed once from $10,000.00 to $20,000.00 in 1997. This new threshold was higher than the annual rate of superannuation at the time, which was around $13,274 from 1 April 1998.[4] This buffer was likely to allow for inflation to future proof the legislation. The asset threshold was increased in 1997 from $1,000.00 to $2,000.00 and again in 2007 to $5,000.00. These increases were more than required to allow for inflation since the rates were last set.[5]

Applications for orders under the Act are increasing and this impacts court timeliness

[1] Orders usually need to be reviewed every three years, but reviews can be extended to up to five years after the first appointment (see sections 86 (7) and 87(8) of the PPPR Act).
[2] Ibid.
[3] From explanatory note for clause 11 of the introductory version of the Protection of Personal and Property Rights Bill. This stated "Clause 11 seeks to provide for the case where the person needs assistance with a small item of property but does not need the full panoply of a property order. One example would be a benefit payable under the Social Security Act 1964. The Court can appoint anyone to administer the benefit without a property order."
[4] Based on single person, living alone superannuation category gross weekly rate of $255.57 (the category with the highest rate) as at 1 April 1998 see: workandincome.govt.nz/map/deskfile/nz-superannuation-and-veterans-pension-tables/at-1-april-1998-01.html
[5] An adjustment based on changes in the Consumers Price Index between Q1 in 1988 to Q1 in 1997 would increase $1,000 to $1,298.03 (29.8 percent increase). An adjustment based on changes to the Consumer Price Index between Q1 1997 to Q1 2007 would increase $2,000 to $2,461.70 (23.1 percent increase).

7. Of active applications in the Family Court, active applications under the PPPR Act saw the highest volume and percentage increase in the past year with 2,148 active applications as at end of April 2024.[6] The appointment of both Property Managers and Property Administrators per year has also increased over time:

Order type	**Number of orders made**	
	2004	**2023**
Interim order to administer Property	15	87
Order to Administer Property	178	774
Appointment of temporary Property Manager	98	375
Appointment of Property Manager	592	1,715

8. There were 5,775 orders for Property Managers and 618 orders for temporary Property Managers in force as at 31 March 2024. The above figures are likely reflective of New Zealand's aging population. The Public Trust have also reported that increases in orders could be due to increasing cases of dementia and aged residential care facilities and financial institutions often requiring an order under the PPPR Act or an Enduring Power of Attorney.

9. Property Managers are required to file annual financial statements in the Family Court. The court management of this procedure involves sending reminders for filing of statements and reviewing the statements filed. Where statements are filed by Private Property Managers, the court provides the documents to the Public Trust for a PME. The process is largely undertaken by Court Registry Officers and does not require hearings. However, where statements are deficient, they may need to be referred to a Judge. Increases in orders for Property Manager appointments can therefore impact the caseload and timeliness in the Family Court.

A Law Commission review could result in recommended changes to the PPPR Act

10. The Law Commission is currently looking at ways the PPPR Act could be updated and improved in its Review of Adult Decision-making Capacity Law (He arotake i te ture mō ngā huarahi whakatau a ngā pakeke). The Law Commission released its second Issues paper in April 2024, which included submitter feedback that the income and asset thresholds are thought by some to be too low. This paper seeks feedback on a range of issues, including on decisions about property management and when financial reporting should be required. The Law Commission intends to provide a final report in early 2025, which will likely include recommendations to change the PPPR Act.

11. The proposals in this document are interim changes to the PPPR Act that are still beneficial while we await the Law Commission's report. The interim changes support an agreed Budget 24 initiative and are relatively fast fixes for known issues.

What is the policy problem or opportunity?

The income and asset thresholds are out of date.

12. The income threshold has not kept pace with the benefit rates and low-income levels it was originally intended to sit above. The income threshold now falls below the level of New Zealand Superannuation, other benefits, and what is considered a low income in

[6] Based on April 2024 Court Timeliness dashboard update to Ministers.

New Zealand under the Child Poverty Reduction Act 2018 ($25,184.50 in 2023).[7] The asset threshold has also remained static since 2007 while the value of assets has increased with inflation.[8]

Outdated thresholds mean Property Managers are required where this may be disproportionate to the value of property and burdensome

13. The outdated thresholds mean income and assets that are now low in value are subject to the level of scrutiny originally intended for higher value property. The requirements of Property Managers can be burdensome for relatives who hold orders for represented people and would not otherwise choose to be a Property Manager. This burden may be disproportionate to the value of the represented person's estate.

14. It is particularly burdensome for relatives who have provided caregiving services for a disabled person their whole lives, where the disabled person has a birth injury, disability, or has suffered a traumatic incident that means it is unlikely the person will ever regain decision-making capacity. In these circumstances, some relatives may feel they must "prove" to the court through filing of financial statements that they are not misappropriating money or assets owned by the person in their care.

Appointing Property Mangers when not needed can erode the value of represented people's estates

15. People represented under the PPPR Act include people with age related illnesses and disabilities, and people with disabilities that impact their decision-making capacity. Where a Property Manager is appointed, the value of the represented person's estate is reduced through the fees paid to the Public Trust for PMEs. Part B of this document assesses increases to this fee. Increasing the PME fee without updating the thresholds will mean the new fee applies to more cases than originally intended and disproportionately reduces the value of estates even further. The total fees could be around $556.36 per examination based on a new fee of $247.27 per hour and an average of 2.25 hours per examination. Increasing the PME fee without adjusting the thresholds will mean the costs of the increased fee are more likely to fall on represented people.

16. Represented people may rely on benefits or other government payments for support including:

- New Zealand Superannuation – the highest rate of superannuation is for a single person, living alone and is $31,546.84 per year before tax. People receiving superannuation may also receive supplementary assistance of around $3,328 per year.[9]
- Supported Living Payment – assistance for people who have a health condition or disability or who are caring for someone with a health condition or disability. The highest rate of Supported Living Payment for an individual is a sole parent rate of $33,613.84 per year before tax. Recipients of the Supported Living Payment may also receive supplementary assistance of around $5,148.00 per year.[10]

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[7] See section 10 of the Child Poverty Reduction Act 2018 defines low income as 50% of median equivalised disposable household income before housing costs. In 2023, a low income would be $25,184.50 based on the median person-centred household disposable income before housing costs for 2023 ($50,369) – see tab 10 at stats.govt.nz/methods/child-poverty-statistics-year-ended-june-2023-technical-appendix/

[8] As an example, mobility scooters on Mobility Centre NZ retail for between $2,995,00 – $11,995.00. Source: https://www.mobilitycentre.co.nz/product-category/mobility-scooters-power-chairs/mobility-scooters/

[9] Based on the approximate average supplementary assistance a single person receiving New Zealand Superannuation receives from Work and Income as at 1 April 2024.

[10] Based on the approximate average supplementary assistance a recipient of the Supported Living Payment received from Work and Income as at 1 April 2024.

- Loss of Potential Earnings (LOPE) payments – payments under the Accident Compensation Act 2001 for people who were injured before the age of 18 which means that they will be unable to work. LOPE payments are 80% of minimum wage and currently are $38,521.60 per year before tax.

Section 2: Deciding on thresholds to address the policy problem

What objectives are sought in relation to the policy problem?

17. The objective is to update the thresholds so the processes to administer represented people's property are appropriate for its value. This realigns the thresholds with their original intent under the PPPR Act.

What criteria will be used to compare options to the status quo?

18. The following criteria have been used to assess the options for increasing income and asset thresholds:

    - **Protection** - protect against the misuse of funds that belong to represented people by ensuring that decisions made about their property are subject to scrutiny and promote the rights and interests of those not able to fully manage their own affairs.
    - **Reduce administrative burden** - reduce the requirements on people administering property on behalf of others by allowing more people to be Property Administrators as opposed to Property Managers.
    - **Suitability in the short-term** – allow for increases in inflation, benefits, and other government payment rates in the short-term until the outcomes of the Law Commission's review of adult decision-making law can be considered.
    - **Proportionality of costs and oversight to property value** – balances the level of oversight of Property Managers and the costs to represented people for this oversight (the PME fee) with the value of their property.
    - **Easy to implement** – changes can be easily implemented by government and people administering property on behalf of another (i.e., changing to be a Property Administrator should they become eligible).

What scope will options be considered within?

19. The Minister of Justice decided to increase the asset thresholds from $5,000 to $25,000 in June 2024. This decision has limited the range of options we have considered for increasing the asset threshold. We have still included an option of $15,000.00 as this option has been assessed ahead of the Minister's decision above.
20. The Law Commission's review has influenced the options we have considered. For example, we have ruled out more significant changes to process that would benefit awaiting the outcomes of the Law Commission's review. For example, reassessing the need for having different processes for people with lower value property, excluding benefits from the thresholds all together, or changing the reporting requirements on Property Managers. The possible length of the Law Commission's review and any changes in response was factored into the development of options and how long new thresholds should last.
21. We have also ruled out of scope the following options:

    - updating other thresholds in the PPPR Act that appear to be out of date. For example, the threshold under which Property Managers can purchase a home or make other dealings with real property ($120,000.00). Work to update the other thresholds would be valuable to ensure they are up to date. However, these changes are not straight forward as most thresholds are meant to parallel thresholds in succession legislation, and because the changes to the amounts would be substantial they would benefit from consultation.

- changes that would link the income threshold to a benefit, such as superannuation, so the amount would be self-adjusting and increases with increases in that benefit. This is based on legal advice that the PPPR Act provides the power to prescribe a specific amount not the method of determining the amount.
- options that would increase the income threshold to amounts that fall below current levels of benefits and assistance as this would be out of step with the original intent of the Act. We recognise that this makes the options for income thresholds look like considerable increases, but this reflects that the income threshold has not been updated since 1997. We are aware that the variety of payments, including supplementary assistance on top of core benefits, could be greater than when the PPPR Act came into force. However, we think it would align with the original intent to also include these.

22. Some options include a three percent buffer to allow for inflation. This is based on an average of past increases in the Consumers Price Index (CPI) over the past 10 years (between Q4 2014 and Q4 2023). We consider CPI suitable compared to other measures (e.g., wage inflation or average increases to minimum wage). This is because CPI is a factor considered in both increases to minimum wage and benefits. It is also because average increases in other measures have been greater than CPI so would come with greater risk of misuse of represented person's property. CPI has been used as a benchmark for previous comparable income/asset threshold increases in the past (e.g., legal aid income eligibility threshold changes in 2016-2018).

Income thresholds

What options are being considered?

Option One – Status Quo – maintaining the current income threshold of $20,000.00

23. Under this option the income threshold would remain $20,000.00 as set in 1997. This amount does not reflect inflation since it was last set and falls below the level of benefits and government assistance commonly received by people represented under the PPPR Act. Proportionally more people, including relatives, will need to be appointed as Property Managers to administer this income on behalf of the represented person and prepare annual financial statements. Proportionally more represented people will be impacted by increases in the Public Trust's PME fee, which may be disproportionate to the value of the property being administered.

Option Two – Increasing to $40,000.00

24. Under this option the income thresholds would double to $40,000.00 ($38,766.40 rounded up). This amount brings the thresholds up to a level just above the highest benefit and assistance rates we expect people represented under the PPPR Act could receive ($38,766.84 a year before tax rounded up). That is the Supported Living Payment for a sole parent plus the average supplementary assistance for a recipient of the Supported Living Payment. This is consistent with original intention of the income thresholds, which was to be above benefits.

25. In addition, this amount:

- is above other benefits and payments people represented under the Act might commonly receive, including:
    - Loss of Potential Earnings payments - $38,521.60 per year before tax, and
    - New Zealand Superannuation for a single person living alone plus the average supplementary assistance received by a single person receiving New Zealand Superannuation - $34,874.84 a year before tax.
- is above what is considered a low income in New Zealand under the Child Poverty Reduction Act 2018 ($25,184.50 in 2023), and
- allows for increases in inflation since the threshold was last set in 1997 - an adjustment based on changes in the Consumer Price Index between Q4 in 1997 to Q4 in 2023 would increase $20,000.00 to $37,208.90 (an 86 percent increase).

26. While this option would not be future proof for all benefits and payments and supplementary assistance, it would still cover the current rates of Superannuation for a single person living alone and the current rate of a Supported Living Payment for a single person without children with an inflation buffer of 5 years at 3 percent.[11]

Option Three -$38,800.00 with a staged increase to $45,000.00 over 5 years

27. This option is the same as option two but with a buffer to allow for inflation staged over 5 years. This would involve an initial increase to $38,800.00 with a gradual increase to $45,000.00 over five years. This will mean the threshold is not too much greater than benefits each year and enhance protection of represented people's assets. Five years was considered a suitable period to allow for any work that may result from the Law Commission's review of adult decision-making law. The yearly increases will be 3 percent to align with estimated increases to CPI as per the table below:

Until 31 March 2025	Until 31 March 2026	Until 31 March 2027	Until 31 March 2028	Until 31 March 2029	From 1 April 2029 onwards
$38,800	$40,000.00 ($39,964.00 rounded up)	$41,200.00 ($41,163.00 rounded up)	$42,400.00 ($42,398.00 rounded up)	$43,700.00 ($43,669.00 rounded up)	$45,000.00 ($44,979.83 rounded up)

28. Analysis of the above options is included in the table on the following page. Due to limited consultation stakeholder support for the options is unknown. We have, however, aimed to consider the views of those who were not consulted during our analysis. A number of people and organisations have expressed support for increasing the thresholds. This includes correspondence to the Minister of Justice from a relative of a represented person who is acting as a Property Manager, and from the Law Association. The Ministry of Justice has received correspondence from the Family Law Section of the New Zealand Law Society, which stated that the thresholds have not kept pace with inflation, benefit increases and the current value of property in New Zealand.

[11] Annual rate of Superannuation for a single person, living alone is $31,546.84 gross per year, with an inflation buffer of 5 years at 3 percent this is $36,571.43. The annual rate of a Supported Living Payment for a person 18 and over is $24,203.40, with an inflation buffer of 5 years at 3 percent this is $28,058.37.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo - $20,000.00	*Option Two – $40,000.00*	*Option Three - staged increase to $45,000.00 over 5 years [preferred option]*
Protection	0 • Offers most protection as even low value incomes are subject to the level of scrutiny intended for higher incomes. However, because of changes to inflation and benefits, this level of protection is higher than originally intended and disproportionate to the value of property involved.	- • Offers less protection against misuse of funds compared to the status quo as more people can be appointed as Property Administrators with fewer financial reporting requirements. This could be seen to fail to protect the interest of represented people. While the threshold may still be considered low, it is still the represented person's income and can be misappropriated continuously. • Is the most conservative option apart from the status quo so may be the safest increase for represented people.	- - • Offers less protection against misuse of funds than Option Two as even more people will be able to appoint Property Administrators with fewer financial reporting requirements. The gradual yearly increases mean the threshold should not be too much higher than the benefits and incomes they are intended to cover.
Reduces Administrative Burden	0 • The outdated thresholds mean income that is now low in value is subject to the level of scrutiny originally intended for higher value property. The requirements of Property Managers can be burdensome for relatives who would not otherwise choose to be a Property Manager.	+ • More people can be Property Administrators reducing the administrative burden on people who would need to take on Property Manager role under the status quo. These people will not need to prepare annual financial statements.	++ • Even more people could apply to be Property Administrators without the need to prepare annual financial statements.
Suitability in the short-term	0 • Has become out of step with the original intent of the Act as the threshold is now below the benefits and compensation available to represented people, which it was intended to cover.	+ • This amount would only be up to date in the very short-term, potentially one year because benefits and payments are annually reviewed. While it would not be future proof for all benefits and payments, the amount would cover the current rates of superannuation for a single person living alone and the current rate of a supported living payment for a single person without children with an inflation buffer of 5 years.	++ • This will last longer than Option Two as it includes a buffer to allow for inflation and adjustments to benefits and payments for a five-year period which take effect gradually. There is a precedent for previous increases to allow for inflation. • Most benefits are adjusted each year for annual inflation. However, adjustments to New Zealand Superannuation rates for couples must also consider the net average wage.[12] If adjustments are needed for net average wage it could mean the inflation buffer erodes quicker than expected.
Proportionality of costs and oversight to property values	0 • Will be more likely that Property Managers will be appointed so the level of scrutiny of the income and associated PME fee is likely disproportionate to the income level. In addition, the represented person will need to pay for the increased PME fee (expected to be around $556.36 on average per examination) thereby reducing the value of their estates even further.	+ • More people can apply to be Property Administrators reducing the number of Property Managers appointed and therefore the number of PMEs the Public Trust needs to undertake. Where Property Managers are required the value of assets will be more proportionate to the level of oversight and increased PME fee. This balance may be short-term as benefits and compensation payments are annually reviewed.	++ • More people can apply to be Property Administrators reducing the number of Property Managers appointed and therefore the number of examinations the Public Trust needs to undertake. The Public Trust's increased fee will apply in even fewer cases. This will be longer term as the option allows for inflation and adjustments to benefits and compensation.
Ease of implementation	0 • Requires no changes.	- • Slightly more effort for government to implement than no change at all. Forms prescribed in the Family Court Rules will need to be updated	- -

[12] Couple rates for New Zealand Superannuation and the Veterans Pension are required to remain within 66 and 72.5 percent of the net average wage. In addition, the single rates of these benefits must be a set percentage of the couple rates.

		alongside changes to the Act and Regulations. Websites will need to updated and the changes communicated. It could be that the effort is disproportionate because the changes are likely to quickly become out of date. • Property Orders are reviewed every three to five years. The changes may better suit people with orders coming up for review not long after the new threshold comes into effect, so it is timely for them to change to a Property Administrator if eligible. For others, the threshold may become out of date before their orders come up for review, unless they seek to change to be a Property Administrator early.	• Would be more difficult to implement as it may involve yearly updates such as to websites to reflect the increases prescribed in legislation. • It may be that the gradual increases are out of step with increases to benefits and compensation. This misalignment may become confusing to members of the public and people acting as Property Managers and Property Administrators.
Overall assessment	**0**	**+**	**++**

Example key for qualitative judgements:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

29. As per the above table, option three is assessed as the best one. It will mean processes under the PPPR Act to administer property, whether via a Property Administrator or Property Manager, are realigned to be appropriate to income values of the current day. The option will align with the original intent of the PPPR Act as it sets the threshold above the benefits and payments a represented person is likely to receive. In turn, this will allow more people to act as Property Administrators reducing the burden of people administering a represented person's property where it is appropriate. The option will mean the level of scrutiny over administration of the income and costs of the increased PME fee is more proportionate to the value of a represented person's income. These benefits will be likely be maintained in the short-term due to the five-year inflation buffer, however we note this depends on real adjustments to benefits and government payments. This buffer means implementation will be easier for both government and people who administer property for others. Any effort to implement will be worthwhile as the changes will not quickly become out of date as benefits and other payment rates change. It also provides more time for people to consider changing to be Property Administrators where existing orders to be Property Managers come up for review.

30. We are aware an increase to $45,000.00 is considerable and may come with concerns about the misuse of represented people's property. The increase reflects that the threshold has not been updated since 1997. However, to mitigate concerns and ensure the threshold is not too much greater than benefits in the first few years of operation, we propose implementing as a gradual increase. This would mean an initial increase to $38,800.00 with gradual increases to $45,000.00 over five years and is covered in more detail in the implementation section below. There will still be safeguards to protect property of represented people when either a Property Administrator or Property Manager are appointed, such as regular reviews of orders, and the ability for others to challenge an order or appointment.

31. We undertook limited consultation with the Public Trust. Its view was that all options would address the core issue with the income threshold being less than benefits or other entitlements represented people receive, but it indicated a preference for the gradual implementation approach.

32. We also consulted the Acting Principal Family Court Judge (PFCJ) on the proposed increases to the thresholds. The Acting PFCJ was supportive of increasing the thresholds, including increasing the income threshold to sit above the benefits and government payments people represented under the PPPR Act will likely receive. The Acting PFCJ considered that increases to the thresholds may ease caseloads in the Family Court and take pressure off the registry.

Asset thresholds

What options are being considered?

Option One – Status Quo – maintaining the current asset threshold of $5,000.00

33. Under this option the asset threshold would remain as $5,000.00 as set in 2007. This amount does not reflect inflation since it was last set and falls below government assistance for assets that people with disabilities may need, such as modified vehicles. People, including relatives, will need to be appointed as Property Managers to administer assets over $5,000.00 in value on behalf of the represented person and prepare annual financial statements. Proportionally more represented people will be impacted by increases in the Public Trust's PME fee, which may be disproportionate to the value of the property being administered.

Option Two – Increasing the asset threshold to $15,000.00

34. This option is a 200 percent increase to the current threshold to cover more smaller value assets represented people might own. For example, it is above the average balance of a savings account ($13,150 at November 2023)[13] and the median listing price for a used car on Trade Me ($13,950.00 in 2022).[14] It also better accounts for government assistance for assets, represented people might need. For example, Ministry for Disabled People/Whaikaha can provide funding assistance towards the purchase of a modified vehicle of up to $12,165.00 (including GST) to people with long term disabilities not covered by ACC.

35. This option also allows for inflation since the rate was last increased in 2007 ($7,689.81)[15] plus an inflation buffer of 5 years at 3 percent ($8,914.82).

36. This amount is the asset threshold proposed by the Public Trust in correspondence to the Associate Minister of Justice.

37. This amount aligns with the current probate threshold. Under the Administration Act 1969 and the Administration (Prescribed Amounts) Regulations 2009, if a person's estate is small (under $15,000.00) court approval is not required to manage the estate after their death. This threshold is to allow for the efficient distribution of small estates while ensuring that for larger estates the will maker's wishes are given effect to and there is protection from personal liability for the executors of the will. We acknowledge there are similarities with this threshold as it also sets a level of assets when more oversight is required and is useful to consider. However, the intention of this option is not aligning the amount to the probate threshold. We have not identified evidence that the original policy intent was to align these amounts.[16] The asset threshold balances protection of living persons from the misuse of their funds with reducing administrative burden on people managing property. In contrast, the probate threshold is for the efficient management of a deceased person's assets. Misuse of funds will have a greater impact on living persons. In addition, as the probate threshold was set in 2009, so it may be due for an update. Select Committee have recently considered a petition to

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13 RBNZ (2023). Stats Insight: Bank Deposits November 2023. www.rbnz.govt.nz/-/media/project/sites/rbnz/files/statistics/series/shared/s42-45-46/stats-insight-bank-deposits-november-2023.pdf

14 NZ Herald (2021). Trade Me: Median price for used cars spikes $3500 in two years. www.nzherald.co.nz/business/trade-me-median-price-for-used-cars-spikes-3500-in-two-years/TATHQEUEAWCH63DFAVJ7CJFK2Q/#:~:text=The%20cost%20of%20buying%20a,in%20July%202019%20to%20%2413%2C494.

15 Based on increases in CPI between 2007 Q1 to 2024 Q1 on the Reserves bank's inflation calculator, $5,000 in in 2077 would now be $7,689.81.

16 Not long after the 2007 increase to the asset threshold to $5,000, the probate threshold was set to $15,000 the Administration (Prescribed Amounts) Regulations 2009.

increase the probate threshold and recommended this amount be adjusted to inflation (increasing to just over $20,000.00).[17]

38. Analysis of the above options is included in the table on the following page. Due to limited consultation, stakeholder support for the options is unknown. However, as detailed above, we have aimed to consider the views of those who were not consulted during our analysis by looking at correspondence to the Minister of Justice and the Ministry of Justice from a relative of a represented person who is acting as a Property Manager, the Law Association, and the Family Law Section of the New Zealand Law Society.

Option Three – Increasing the asset threshold to $25,000

39. This option is a 400 percent increase to the current threshold to cover even more assets represented people might own. This could potentially include modified vehicles although the prices of these vary considerably. It more than allows for inflation since the threshold was last set.

40. This is the amount the Minister of Justice has proposed. It would align more closely with Select Committee's recommended increase to the probate threshold discussed above, noting this threshold has a different purpose.

17 Select Committee report is available here: selectcommittees.parliament.nz/view/SelectCommitteeReport/50b54f7d-5651-4a27-2cbc-08dc6d5e2639

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo - $5,000.00	*Option Two - $15,000.00 [Ministry of Justice's preferred option]*	*Option Three - $25,000*
Protection	0 • Offers most protection as even low value assets are subject to the level of scrutiny originally intended for higher value assets.	- • Offers less protection against misuse of funds as more people will be able to be appointed as Property Administrators with fewer financial reporting requirements. This could be seen to fail to protect the interest of represented people.	- - • Offers less protection against misuse of funds as even more people will be appointed as Property Administrators with fewer reporting requirements. Represented people may rely solely on benefits for support, therefore, if their assets are misappropriated it may take many years of saving to replace them. • This increase may be seen as inconsistent with the United Nations Convention on the Rights of Persons with Disabilities, which requires appropriate and effective measures to ensure persons with disabilities are not arbitrarily deprived of their property.
Reduces administrative burden	0 • The outdated thresholds mean assets that are now low in value are subject to the level of scrutiny originally intended for higher value property. The requirements of Property Managers can be burdensome for relatives who hold orders for represented people and would not otherwise choose to be a Property Manager.	+ • Reduces administrative burden on people taking on the Property Manager role. These people could apply to be Property Administrators without the need to prepare annual financial statements. • There may be items of property that still fall above the threshold, such as some modified vehicles. However, these may not be the small items of property or low value assets originally intended to fall below the threshold.	++ • More likely to encompass a wider range of assets and items of property than Option Two. This means even more people could apply to be Property Administrators without the need to prepare annual financial statements.
Suitability in the short-term	0 • Has become out of step with original intent as the value of represented person's assets have increased over time.	+ + • The amount is slightly greater than required to allow for inflation. However, it better reflects current day savings balances and funding for vehicle modifications for disabled people that may not have been available when the thresholds were originally set.	+ • The amount is much greater than required to allow for inflation since the amount was last set and over 50 percent of the proposed income threshold, so could be seen to be higher than originally intended. • It may be beneficial to wait until the outcome of the Law Commission's Review of Adult Decision-making Capacity Law before increasing by such a large amount. The review may make recommendations on the thresholds and will likely have a stronger evidence base for any change.
Proportionality of costs and oversight to property values	0 • Will be more likely that Property Managers will be appointed so the level of scrutiny of the property and associated Private Manager Examination (PME) fee is likely disproportionate to the property's value. In addition, represented people will need to pay for the increased PME fee (expected to be around $556.36 on average per examination) reducing the value of their estates even further.	+ • Where Property Managers are appointed the level of scrutiny of the asset is likely to be more proportionate to its value. • While the new PME will only apply to the management of higher value assets, it may still be seen as disproportionately high compared to the management of assets valued at $15,000.	+ • Where Property Managers are appointed the new PME fee will only apply to the management of higher value assets so the fee will be more proportionate to the assets' value. • However, there may be an imbalance between the level of oversight over an asset and its value - assets of $25,000 may be significant to represented people so management of these assets may benefit from greater scrutiny.
Ease of implementation	0 • Requires no changes.	-	- • Requires same changes as Option Two.

		• Slightly more effort to implement than no change at all. Forms prescribed in the Family Court Rules will need to be updated alongside changes to the Act and Regulations. Websites will need to be updated and the changes communicated.	
Overall assessment	**0**	**++**	**+**

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Ministry's preferred option: Option Two - increasing the asset threshold to $15,000

41. The Ministry of Justice's preferred option is Option Two - increasing the asset threshold to $15,000. The option sets an amount that is above average saving balances and government assistance provided for assets represented people might need. It also allows for inflation since the amount was last set. In turn, this will allow more people to act as Property Administrators reducing the burden of people administering a represented person's property. The option will mean the level of scrutiny over administration of assets and the increased PME fee are more proportionate to the value of a represented person's assets.

42. Option Two is more conservative than Option Three, so may be more suitable in the absence of consultation. A more conservative increase may also be more suitable in the short-term when the Law Commission may soon make recommendations that impact the thresholds. Option Two better aligns the level of oversight of Property Managers with the property's value. This realigns the thresholds with their original intent under the PPPR Act. While the threshold could be increased further, this amount still emphasises the need to protect represented people's assets.

Cabinet paper recommendation: Option Three - increasing the asset threshold to $25,000

43. The Cabinet paper recommends Option Three – increasing the asset threshold to $25,000. This would mean even more people can act as Property Administrators rather than Property Managers. The Property Administrator role has no reporting requirements, reducing the administrative burden on relatives of people represented under the PPPR Act. The size of the increase will likely mean fewer instances where a PME fee needs to be recovered from the represented person's estate. This could help ensure that the cost of a new PME fee is more proportionate to the value of the asset.

44. However, the increase will provide less protection against the misuse of funds that belong to represented people, and the level of oversight of Property Managers may not reflect the significant value of assets to represented people on low incomes. The primary purpose of the PPPR Act is to provide protection for and promote the rights and interests of those not able to fully manage their own affairs. This increase may signal a shift in the balance of policy objectives towards placing greater weight on reducing administrative burden, rather than protecting represented people's property.

What are the marginal costs and benefits of the option?

45. We have assessed the costs and benefits of the proposed options in the Cabinet paper of increasing the income threshold to $45,000.00 staged over 5 years (Option Three), and increasing the asset threshold to $25,000 (Option Two):

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Represented People	Ongoing – proportionately fewer Property Managers appointed leading to less scrutiny overall of the administration of represented people's property. This could expose more represented people to financial abuse.	Medium	Low – based on assumption that increased thresholds will lead to proportionately fewer Property Managers.
Total monetised costs		N/A	N/A
Non-monetised costs		Medium	Low
Additional benefits of the preferred option compared to taking no action			
Public Trust	Ongoing – will have proportionately less PME's to examine than if the thresholds were not changed. The change will support the Public Trust to meet demand for PME's as the population ages and more Property Managers are appointed.	Medium	Low – benefit based on assumption that increased thresholds will lead to proportionately fewer Property Managers.
Property Managers who can now choose to be Property Administrators	Ongoing – people, including family and relatives of represented people, will face less administrative burden where they can choose to act as Property Administrators instead of Property Managers.	High	Low - benefit based on assumption that increased thresholds will lead to proportionately fewer Property Managers.
Represented People	Ongoing – a higher portion of represented people could have	Medium	Low - benefit based on assumption that

	Property Administrators appointed so their estates will not be depleted by the fees for PME's – likely to be around a $556.36 per annum.		increased thresholds will lead to proportionately fewer Property Managers.
Family Court	Ongoing – will receive proportionately fewer applications for Property Managers leading to proportionally fewer filings of financial reports.	Low	Low - benefit based on assumption that increased thresholds will lead to proportionately fewer Property Managers.
Total monetised benefits		N/A	N/A
Non-monetised benefits		Medium	Low

46. Whaikaha - the Ministry of Disabled People have noted concerns that increases to the thresholds will likely mean that a greater number of disabled people will not be safeguarded against their property being misused by others.

47. We have not been able to consult, including consultation with Māori, on the proposals. This could be viewed as inconsistent with the principles of the Treaty of Waitangi. In the absence of consultation, we have aimed to consider the impacts on Māori. Māori are currently disproportionately affected by experiences of impairment that may affect decision-making. For example, Māori experience dementia at both higher rates and more rapidly increasing rates than non-Māori. Māori are also disproportionately affected by other health conditions such as diabetes, cardiovascular disease, strokes and a history of traumatic brain injuries that, in their later stages, can affect decision-making.[18] Despite this, Māori are underrepresented in accessing many health and disability services, including decision-making arrangements under the PPPR Act.[19]

48. The Law Commission, in its Second Issues Paper for its Review of Adult Decision-Making Capacity Law, suggests that by enabling arrangements that are more accessible and culturally relevant for Māori, the barriers experienced by Māori in accessing those arrangements will be reduced, and greater equity of outcomes promoted.[20] Enabling access to less formal arrangements for managing low value property, such as appointment of Property Administrators, may assist tāngata whaikaha Māori (disabled people who are Māori) to more easily remain within social and whānau support structures that may best enable them to participate in decisions about their property.

49. Enabling access to less formal arrangements for managing low value property may better enable Māori to live in accordance with the concept of whanaungatanga, the

[18] The Law Commission (2024). *He Arotake i te Ture mō ngā Huarahi Whakatau a ngā Pakeke Review of Adult Decision-Making Capacity Law*. Second Issues Paper. See: huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf
[19] Ibid.
[20] Ibid.

notion of relationship, kinship and family connection.[21] By enabling Māori who look after low value property on behalf of a represented person the ability to participate in a less formal process, fewer whānau caregivers will feel they need to "prove" to the court (through filing of financial statements) that they are not misappropriating money or assets owned by their family member; thus removing a potential stressor on that relationship.

How will the new arrangements be implemented?

50. The proposed updates to the thresholds require an Order in Council to amend the PPPR Act. The changes are expected to come into effect from 3 October 2024.

51. It is unknown whether the change in thresholds will mean existing Property Managers will seek to change to be Property Administrators. There is a potential for a peak in applications from Property Managers wanting to change their appointments to Property Administrators when the changes come into effect or when their annual statements are due for filing. However, we expect that the natural point for most Property Managers to change appointments would be when their order comes up for review (every 3 to 5 years). If Property Managers choose to end their appointment early, they will still need to file a final financial statement so would not entirely avoid reporting requirements or the increased PME fee.

52. Implementation will require updates to Family Court forms and information sheets. This includes updates to forms prescribed under the Family Court Rules 2002. Amendments to prescribed forms are intended to be made alongside amendments to thresholds after consultation with the Principal Family Court Judge.

53. Communications will be organised to make the public aware of the changes, including updates to the Ministry website.

How will the new arrangements be monitored, evaluated, and reviewed?

54. Issues with the updated thresholds could be identified through management of the contract with the Public Trust and the Ministry's relationship with the Family Court. The new thresholds will eventually become out of date. The thresholds will be subject to the Ministry's ongoing regulatory stewardship functions. However, whether the thresholds are at an appropriate level will be difficult to monitor without better data. Subject to negotiations, the new contract with the Public Trust provides an opportunity to obtain better data on income and asset levels of represented people.

55. The need for future reviews of the thresholds will depend on the outcomes of the Law Commission's Review of Adult Decision-making Law. This may lead to recommendations that affect property administration and financial reporting requirements under the PPPR Act.

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[21] A Douglass. *Mental Capacity: Updating New Zealand's Law and Practice* (Report for the New Zealand Law Foundation, Dunedin, July 2016) http://www.lawfoundation.org.nz.

Part B – Updating Public Trust's Private Manager Examination Fee

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

Private Property Managers must file annual financial statements for audit

56. All Property Managers appointed under the PPPR Act must file annual financial statements with the court. This includes both Property Managers appointed in their individual capacity (Private Property Managers) and Trustee Corporations who act as Property Managers. Property Administrators are exempt from PMEs as the value of property and income under management does not justify mandated examination.
57. Statements filed by Private Property Managers (individuals appointed to the position of Property Manager, as opposed to a Trustee Corporation appointed to the position) must then be examined by Public Trust or by a qualified auditor appointed by Public Trust under section 46 of the PPPR Act.[22] This is called a Private Manager Examination (PME).
58. Private Property Managers are subject to PMEs as there is a greater risk of financial exploitation (when compared to a Trustee Corporation) because:

- it is easier for Private Property Managers, who may be related to the represented person, to portray self-benefiting decisions as having been in the represented person's interest,
- Private Property Managers may have little experience with fiduciary duties and inadvertently make decisions detrimental to the represented person, and
- trustee corporations, all of which are currently licensed financial market supervisors, have legislated regulatory and compliance requirements that offer confidence in their fiduciary responsibility.

PMEs serve an important protective function under the PPPR Act

59. Public Trust are the most practical provider of mandated fiduciary services such as PMEs as they are New Zealand's sole Crown entity trustee corporation and must have regard to government policy and ministerial direction.
60. Public Trust's responsibility to undertake PMEs helps achieve the purpose of the PPPR Act; to protect and promote the personal and property rights of persons who are not fully able to manage their own affairs. Public Trust's independent examination of activities by those responsible for managing a represented person's property helps ensure powers granted under the PPPR Act are not being misused. Independent scrutiny can also reassure friends and family of the represented person that their interests are being looked after.

[22] Public Trust are one of five trustee corporations under the Trustee Companies Act 1967. Trustee corporations are uniquely permitted to undertake a range of fiduciary obligations as a corporate entity, including acting as a Property Manager, due to their compliance requirements and rights of indemnity.

PMEs involve looking at transactions made with the represented person's property

61. The PME involves examining:

- an initial statement recording the represented person's assets and liabilities at the date of being appointed a Private Property Manager

- a statement that records and updates all assets and liabilities 12 months after appointment and every 12 months thereafter until the appointment ends, and

- a final statement recording all assets and liabilities at the discharge date of the court order with a summary of receipts and payments for the period which the Private Property Manager was appointed.

62. Once the above statements are examined, Public Trust submit a report to the court outlining whether the statement is correct and, if not, how it is deficient. Questionable transactions will be highlighted for the court to consider further.

63. On average, Public Trust spends 2.25 hours on PME services per Private Property Manager each year, with total hours varying according to the complexity of the represented person's affairs.

Public Trust charge a fee for the PME service, which is set out in legislation

64. PMEs offer increased protection for a represented person's property but come with administrative and financial costs. Public Trust can charge a fee for the PME service, which is prescribed in the Protection of Personal and Property Rights Regulations 1998 (the Regulations). This ensures that government can adjust the PME fee from time-to-time. Government regulation of the fee mitigates the risk of Public Trust seeking profits at the expense of protection to better achieve their legislated objectives. PME fees are charged hourly, ensuring charges to a represented person align to the services received. The current prescribed fee is $132.00 per hour. The fee is intended to support Public Trust to recover the cost of their requirement to conduct PMEs.

65. Under the Public Trust Act 2001, one of the Public Trust's principal objectives is maintaining financial viability in the long term. Public Trust also have sole responsibility for providing PMEs under the PPPR Act. Discussions within the Ministry during the implementation of the PPPR Act demonstrate the policy intent of the prescribed fee to be full cost recovery at a minimum, and that the represented person would bear the cost of PMEs unless the court decides otherwise.

The Ministry currently 'tops up' the Public Trust's costs of examining financial statements

66. Under the contract ending 30 June 2024, there are two ways the Ministry subsidises the cost of PMEs:

- if a person has under $20,000.00 qualifying assets, the Ministry covers the full cost of PMEs at Public Trust's 'Level One' standard hourly rate of $272.00 per hour with a 10 percent discount ($244.80).[23]

[23] Qualifying assets are all assets excluding KiwiSaver and the owner-occupied home or home occupied by a partner. A home includes a licence to occupy or occupation rights agreement with a retirement village or similar. Assets gifted away (or placed into a family trust) by the client within the last 5 years are also to be included as the client's qualifying assets.

- If a person has more than $20,000.00 of qualifying assets, the represented person is charged the capped rate ($132.00 per hour) and the Ministry fund an additional $115.27 per hour ($247.27 in total) to closely match the 'Level One' discounted rate.

What is the policy problem or opportunity?

67. There are three policy problems and opportunities with the way PME fees are charged:

    - PME fees are outdated, having been set in 1988 when the Act was enacted,
    - an increased demand for PMEs requires consideration of a more sustainable long-term funding model, and
    - Budget 2024 decisions mean that the Ministry will no longer subsidise the cost of the PME service.

Private manager examination fees have not kept pace with inflation or commercial rates

68. The $132.00 per hour PME fee was intended to represent the full cost of the PME service when it was set in 1988. It was designed to be updated from time to time to account for inflation and increases in cost to provide services (cost-to-serve), but 36 years have passed without an update to reflect changes in inflation and the labour market.

69. The outdated PME fee necessitates government funding for Public Trust to meet their legislated objective around financial sustainability. The prescribed PME fee is now less than half the cost of delivering the service and requires government subsidy to meet costs that cannot be recovered from represented people.

PMEs have increased in demand and complexity in recent years

70. PME demand is outpacing demand for other services Public Trust is contracted by the Ministry to provide. Total hours spent conducting PMEs increased by 139 percent between the 2017/18 and 2022/23 financial years.[24] In comparison, Public Trust's hours spent directly managing or administering property under the PPPR Act increased by 64 percent during this period, while hours spent administering estates decreased by 67 percent. Consequently, PMEs are increasingly the driver of costs for Ministry contracted services.

71. This demand can partly be attributed to increased Property Manager appointments, but the average time spent on PMEs per client is also increasing.[25] Public Trust advised that lengthier PMEs are the result of increasingly complex assets to be examined, and increased rates of financial exploitation, which require more extensive examination.

The current funding situation is unsustainable due to Budget 2024 decisions

72. Starting from 1 July 2024 as part of the Budget 2024 Initiative *Public Trust Contractual Threshold Amendment*, the Ministry will discontinue all PME funding, including covering the full cost for people with less than $20,000.00 in qualifying assets.

[24]According to Public Trust's publicly available annual service reports.

[25] PME hours are up by 46% in the 2023/24 financial year while PME reports completed are up only 22% in the same period.

73. Relying on the $132 prescribed fee alone without any supplementary funding would result in significant loss to Public Trust.[26] Unlike other services that the Ministry contracts Public Trust to undertake, Public Trust are required to accept PME clients by law. If PME services use up most of the funding in the contract Public Trust has with the Ministry, Public Trust can refuse other contracted services to ensure they are adequately funded for mandated PMEs.

74. With PMEs accounting for 67 percent of clients eligible for Ministry funding in the 2022/23 financial year, there is a risk that discretionary services for the remainder of clients will stop if PMEs continue to be funded under the status quo. Discretionary services at risk of being refused include:

- direct provision of Property Administrator and Property Manager services for clients with affected decision-making capacity, and
- enduring power of attorney services in relation to property for clients with affected decision-making capacity.

75. These services are important for the Ministry to fund as they involve people who have few assets and involve Public Trust directly representing a person who has no one suitable to represent them. Public Trust have acknowledged that stopping fiduciary services for this vulnerable group is neither fair nor practical and have made a provision for an estimated $1.1m (including GST) of unfunded costs in the 2023/24 financial year to be met out of their operating surplus. However, Public Trust have advised that future arrangements must aim to address these unfunded costs to ensure the sustainability of services.

76. Delivering unfunded services conflicts with one of the Public Trust's key objectives of operating as an efficient business and maintaining long-term financial viability. The opportunity loss from allocating resources to unfunded services instead of commercial ones undermines Public Trust's capacity to operate as efficiently as comparable businesses.

Increasing the PME fee will align it with its original intent

77. Increasing the PME fee will help address these issues of sustainability and cost-recovery. Public Trust have previously advised the Associate Minister of Justice, Hon Nicole McKee, that increasing the PME fee would enable the continuation of services. This would support the reprioritisation of funding to Public Trust's more vulnerable clients.

78. According to the Auditor-General's 2022/23 annual report, audit fees in the Public Sector have not kept up with audit costs for some time. Key cost drivers are increased complexity, changing professional standards, and high wage inflation reflecting labour shortages in the accounting and audit professions.[27]

79. The Ministry identified realigning the PME fee to full cost recovery as a way to support a Budget 2024 initiative. This initiative creates ongoing savings of $1.633m (excluding

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[26] Because Public Trust are required to deliver PMEs and can anticipate how much the Ministry will be charged in relation to this service, Public Trust may refuse current and new clients to prevent mandated but unfunded service delivery. This contractual provision has not been exercised before.

[27] The Office of the Auditor General. The Need for Sustainable Audit Fees: oag.parliament.nz/2023/annual-report/highlights/audit-fees

GST) per annum by amending the contracted services that Public Trust delivers. We calculate that approximately $1.428m (excluding GST) of these savings could be achieved by increasing the PME fee to a full cost recovery and user pay model so that limited government funding is not relied upon to meet the significant gap between the PME fee and service delivery cost. The remaining savings will be achieved through adjusting eligibility for Ministry funded services in the contract currently being negotiated with Public Trust.

80. These savings are dependent on the increased PME fee, as under-funded service delivery impacts the dividend Public Trust may distribute to Crown under section 43 of the Public Trust Act. Because the fee increase is expected to take effect on 3 October 2024, the first year's savings will be impacted.

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

Recovering cost from people who use services ensures they remain sustainable

81. Unless the court orders otherwise, PME fees are charged to the represented person's estate. It is considered reasonable to charge a fee to recover the costs of service as Property Manager appointments are intended for those with income or property of high value, who will be better placed to pay a fee to ensure their property is monitored.

82. We consider a user charge remains appropriate because it prevents taxpayers from paying for services which have a largely private benefit, in this case the protection of people's property.

83. A prerequisite for requiring the service is that a person fully or partially lacks decision-making capabilities. Therefore, the PME criteria seeks to reflect what would be in the best interest of the represented person, given they are unable to make those decisions themselves. The thresholds assessed in Part A of this document determine at what point Property Managers should be appointed, and consequently when PME examinations are necessary for Private Managers. The preferred thresholds are set at a level where the risk of misuse of property outweighs the costs of the PME fee. The increased thresholds proposed in Part A will likely mean proportionately more Property Administrators are appointed. As a result, we expect that the represented people who are required to have Property Managers and pay for PMEs will generally have higher value assets and income and will better be able to afford a higher fee.

84. We consider that updating PME fees so that clients are paying the full-service delivery cost would align with the original policy intent, ensure Public Trust are not expected to deliver services at a loss and that the cost is met by the represented people who benefit from the service. Updating the fees in line with the original policy intent will support the Ministry's contract with Public Trust to focus on those who face greater barriers to accessing services.[28]

[28] In the 2022/23 financial year, PME clients were the majority of Public Trust's Ministry funded clients and 59% had greater than $20,000 qualifying assets. The number of clients with greater than $20,000 qualifying assets for the other Ministry funded services were 0% and 16% respectively. Despite this, PMEs are prioritised for funding as they cannot be refused.

Section 2: Deciding on a fee for Private Manager Examinations

Cost Recovery Principles and Objectives[29]

The objectives of the cost recovery proposal

85. The primary objective is to align the PME fee with the original policy intent by allowing full cost recovery from the represented person's estate. This is to ensure the value of the PME service to represented people aligns with the amount Public Trust may charge.

Principles and criteria for the cost recovery proposal

- **Protection:** The fee supports an effective PME service, which protects the value of represented peoples' property.
- **Equity (also described as fairness):** The fee is being paid by the appropriate people. Represented people who benefit from PMEs bear the cost of services and cross-subsidy between service users is minimised.
- **Efficiency:** The fee should be no higher than necessary to conduct a quality PME. The design of the fee should incentivise efficiency, keeping costs down and the quality of the service high.
- **Sustainability:** The fee supports the sustainability of Public Trust and government funded non-commercial fiduciary services.
- **Simplicity:** The fee is consistently applied and allows for a simple cost-recovery process for Public Trust.
- **Aligns with Ministry funding objectives:** The Ministry funds non-commercial fiduciary services where funding overcomes barriers to accessing services.

86. These principles and criteria will be used to assess the fee and to ensure its effectiveness.

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

87. Under the current funding arrangements, PMEs are projected to create a $1,027,960.62 loss (including GST) for Public Trust per annum.

S9(2)(b)(ii)

[29] A principle is a general rule that should be used to guide cost recovery design, a feasible option must meet the stated principles. An objective is more of a goal that a specific cost recovery proposal should meet, the recommended option does not need to meet <u>all</u> of the objectives.

S9(2)(b)(ii)

Assumptions for financial estimates

88. Public Trust was unable to provide PME specific costings, as the way the costs of service are calculated by Public Trust involves drawing on delivery costs across their Retail Business Unit (RBU). The RBU delivers trustee, estate management, estate administration and PME services to Ministry funded and retail clients.

89. S9(2)(b)(ii)

90. The options are based on 10 months of data from the 2023/24 financial year. These projections assume this is an accurate reflection of the RBU's service delivery in future years.

Option 1 - Updating fees in-line with the current cost-to-serve

91. This option involves increasing the prescribed fee for PMEs to $299.82 per hour based on information provided to the Ministry by Public Trust. Public Trust consider this rate is a fair and equitable reflection of its cost-to-serve.

92. The $299.82 per hour fee is comparatively lower than if the PME fee was adjusted to increases in CPI since it was last set in 1988. We believe the 127% fee increase is reasonable given the 36 years since fees were prescribed.

In addition to the commonly shared assumptions for financial estimates outlined above, the following additional assumptions underpin this option

93. Assumptions underpinning the accuracy of the expenses calculation also apply to this fees option, S9(2)(b)(ii)

96. If these assumptions are incorrect, Option 1 could generate profit.

S9(2)(b)(ii)

Option 1 is the only full cost-recovery option

97. We have considered two options below which partially align with the original policy intent of cost-recovery. These options offer greater protection by decreasing the rate at which a represented person's assets are diminished by PME fees but may result in losses to Public Trust from not collecting a fee equivalent to their cost-to-serve.

98. A PME fee below the cost-to-serve would be expected to be recovered through Public Trust creating efficiencies across their RBU, S9(2)(b)(ii)

99. Unrecovered losses S9(2)(b)(ii) will impact the dividend Public Trust may distribute to Crown under section 43 of the Public Trust Act 2001. This would reduce the savings the government is expected to realise from the Budget 2024 initiative compared to implementing a PME fee that enables full cost-recovery.

Option 2 – Reflecting the current rate at which PMEs are funded

100. Option 2 would increase the PME rate to the current rate at which PMEs are funded for represented people with over $20,000.00 in qualifying assets, which is $247.27 (including GST) per hour; an 87% increase to the current prescribed rate.

101. As discussed earlier in this RIS, the $247.27 rate is intended to closely match the Public Trust's 'Level One' rate of $272.00 (including GST), with the 10% discount for government funded clients applied ($244.80 including GST). This is the rate of PME funding for represented people with fewer than $20,000.00 qualifying assets, which is fully funded by the Ministry.

102. The fees structure in the contract between the Ministry and Public Trust, including the Level One rate, are also based on service delivery costs within the RBU. S9(2)(b)(ii)

Option 3 – Greatest protection from erosion of assets but reduced sustainability

104. We have considered a PME fee of $200 (including GST) as an option for mitigating the impact on represented people resulting from the significant 'jump' in fees proposed in Options 1 and 2, a consequence of the prescribed fee not being updated in 36 years.

105. Option 3 could offer the most protection of erosion of assets as a represented person's assets would diminish at a slower rate, but this option is projected to cause nearly $1.15m (including GST) in losses for Public Trust per annum.

106. Delivering PMEs at this rate may create pressures on Public Trust's ability to deliver their various services across the RBU. This could be mitigated by seeking further efficiencies across the RBU, but we are unable to confirm if this is plausible at the scale required.

Full cost recovery PME fees compared to the status quo

	Status quo	Full cost recovery ($299.82 per hour)	Current rate of PME funding ($247.27 per hour)	Partial cost recovery ($200.00 per hour)
Protection *The fee supports an effective PME service, which protects the value of represented peoples' property.*	0 • Monitoring of Private Property Managers through the PME service is subsidised by government. This protects the person's property by keeping the fees that are taken out of their estate low.	- - • Significantly less protection as the increased fees, without any government subsidisation, will erode property significantly quicker.	- • Moderately less protection as the increased fees without any government subsidisation will erode property moderately quicker.	- • Less protection as the increased fees without any government subsidisation will erode property quicker.
Equity/Fairness *The fee is being paid by the appropriate people. Represented people who benefit from PMEs bear the cost of services and cross-subsidy between service users is minimised.*	0 • PMEs benefit represented people by checking their property is being managed well. Because of the outdated fee, beneficiaries of the service are subsidised irrespective of their capacity to self-fund PMEs. Taxpayers are required to subsidise a service they may not require or be able to access. • Government funding is prioritised for PME clients who Public Trust legally cannot refuse. Non-mandated services for clients with greater need may be refused to ensure funding is available for PME clients. This can give rise to a perception that the funding model is inequitable.	+ • The cost of delivering services is charged directly to the property being protected, with no subsidisation from government, making the process fully user pays. • Ministry funding (that would otherwise have paid for PMEs) can be reprioritised towards clients with the greatest need/lowest means.	+ • The cost of delivering services is charged directly to the property being protected, with no subsidisation from government, making the process primarily user pays. • Ministry funding (that would otherwise have paid for PMEs) can be reprioritised towards clients with the greatest need/lowest means.	+ • The cost of delivering services is charged directly to the property being protected, with no subsidisation from government. The user is paying a contribution towards the full cost of the service. • Significant unfunded service costs are expected to be cross subsidised by profitable areas of Public Trust's service delivery, unfairly impacting clients of those services.
Efficiency *The fee should be no higher than necessary to conduct a quality PME. The design of the fee should incentive efficiency, keeping costs down and the quality of the service high.*	0 • Costs aren't fully recovered for the PME service despite the government subsidy. • Unfunded service delivery risks the ability to provide quality services efficiently. • Partial cost recovery still requires sufficient government funding to be available.	+ + • Fees are sufficient to meet the cost of delivering a quality service.	+ • This fee is consistent with Public Trust's current cost recovery but does not enable full cost recovery. • Public Trust would have to seek efficiencies within their RBU or wider service delivery to ensure commercial sustainability if delivering PMEs at this rate.	- • Fees are not sufficient to meet the cost of delivering a quality or minimum service without using additional funding or cross subsidies to supplement the difference between the service cost and the fee collected.
Sustainability *The fee supports the sustainability of Public Trust and government funded non-commercial fiduciary services.*	0 • Undermines the sustainability of more essential non-mandated fiduciary services as government funding is prioritised for PME clients who cannot be refused as the service is legally mandated. • Total compensation for PMEs is below full cost recovery despite government subsidies. • Ministry funding is available for recovering outstanding PME debt, mitigating the risk of unfunded PMEs. Therefore, Public Trust have greater certainty that they will be able to recover some costs of PME services as this will be partly recovered via Ministry funding rather than recovering from individuals.	+ + • Fees enable full cost recovery, supporting the sustainability of PMEs. • Commercial sustainability of Public Trust improved as PMEs are no longer required to operate at a loss (provided that the fees are successfully enforced). • Ministry funding for PME debt recovery will stop. Public Trust may be required to enforce debt recovery to recover their costs from some clients (and will need to use other Ministry funding to do so). This is the highest proposed fee and is expected to result in the greatest non-compliance.	+ • Fees do not enable full cost recovery. • Commercial sustainability of Public Trust improved as PME funding is no longer limited to availability of government funding, however, the option requires Public Trust to achieve efficiencies across the RBU to maintain commercial sustainability. This could create issues further down the line if no further funding is supplied and efficiencies cannot be created. • Ministry funding for PME debt recovery will stop. Public Trust may be required to enforce debt recovery to recover their costs from some clients.	- • Fees will not enable full cost recovery to support the sustainability of PMEs, as currently these are subsidised by the Ministry of Justice, and they no longer will be under this option. • Commercial sustainability of Public Trust not improved as the fee is not enough to cover the cost of the service, so PMEs will continue to operate at a loss. • Ministry funding for PME debt recovery will stop. Public Trust may be required to enforce debt recovery to recover partial costs of the service from some clients.

			• The current rate of PME funding was set at the beginning of the 2023/24 financial year. Due to wage inflation, it is likely to be increasingly lower than the 'break-even' rate Public Trust would expect for this service in future years	
Simplicity *The fee is consistently applied and allows for a simple cost-recovery process for Public Trust.*	0 • Complex subsidy structure with different Ministry funding eligibility criteria, placing an administrative burden on Public Trust.	+ • Allows for simple and consistent cost-recovery while minimising administrative costs. • A higher fee may require Public Trust to take enforcement action against people should the fee not be paid.	+ • Allows for simple and consistent cost-recovery while minimising administrative costs. Some additional costs will need to be absorbed elsewhere or recouped through efficiencies. • A higher fee for clients may require Public Trust to take enforcement action against people should the fee not be paid.	+ • Allows for simple and consistent partial cost-recovery. For full cost recovery, top up costs to the rate will need to be covered elsewhere. • A higher fee may require Public Trust to take enforcement action against people should the fee not be paid.
Aligns with Ministry funding objectives *The Ministry funds non-commercial fiduciary services where funding overcomes barriers to accessing services.*	0 • The Ministry fund Public Trust to deliver services to clients irrespective of the client's ability to afford services.[32]	+ • Allows the Ministry to focus its funding on services for clients who would otherwise face barriers to accessing services.	+ • Allows the Ministry to focus its funding on services for clients who would otherwise face barriers to accessing services. • However, any shortfall created by the new fee may need to be funded from Public Trust's contract with the Ministry if efficiencies and savings cannot be realised elsewhere in Public Trust's service delivery.	- • Allows the Ministry to focus on funding services for clients who would otherwise face barriers to accessing services –however, some top-up funding may be required to be used for PMEs as the rate will not reflect the full cost of the service. This may impact other services the Ministry contracts Public Trust to provide.
Overall assessment	0	+ +	+	-

[32] To achieve the desired level of protection and not undermine Public Trust's commercial sustainability.

Impact analysis

Impacts on service users of Option 2 (Minister's preferred option)

107. Represented people with fewer than $20,000.00 qualifying assets are currently fully funded by the Ministry for required PME services. This subsidy will stop under the new contract with Public Trust and these individuals will transition to paying a higher hourly rate. Represented people with greater than $20,000.00 qualifying assets will see an 87% increase (under option 2: the Minister's preferred option) to their current $132.00 per hour fee. In the 2022/23 financial year there were 2,561 PME clients, with 59 percent having greater than $20,000.00 qualifying assets.[33]

108. With Public Trust's average time spent on PMEs per client of 2.25 hours, we expect a $556.36 per annum cost (including GST) for those with Private Property Manager appointments. We expect a greater portion of this cost to be borne by those with more valuable assets due to the increased complexity of their PMEs.

109. PME demand has increased significantly during the 2023/24 financial year, and the portion of PME clients with greater than $20,000.00 qualifying assets has increased too. We assume the increased Property Administrator eligibility thresholds under this proposal will reduce demand but expect overall demand to continue rising due to New Zealand's aging population.

110. The increased thresholds will keep costs in line with the original policy intent by increasing the value of property and income that can be managed under the PPPR Act without the court requiring financial statements to be submitted.

111. We are aware of Property Manager appointments where the represented people are below the current $5,000.00 property threshold for requiring a Property Manager. Those who are eligible for Property Administrator appointments who retain Private Property Managers following the fee increase may have their property reduced at a rate that undermines the original policy intent of protection. Clients with assets between the current thresholds, and the Minister's preferred $25,000.00 asset threshold, could see PME fees erode between 2 and 12 percent of their remaining property each year.

Impacts on the Ministry of Option 2 (Minister's preferred option)

112. The Ministry intends to continue funding Public Trust to represent people as Property Administrator and Property Manager in the new contract, ensuring protection under the PPPR Act remains accessible to vulnerable clients. Because Public Trust are a trustee corporation, their Property Manager clients do not require PMEs and the associated fees.

113. Public Trust charged the Ministry $0.821m (including GST) for PMEs in the last 6 months.[34] Based on this period's demand, we would expect PMEs to cost the Ministry $1.642m per annum into future years if the fee is not changed. The fee increase will enable a user-pays model and the discontinuation of Ministry funding for PMEs, creating lasting savings for the Ministry.

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[33] From Public Trust's publicly available 2022/23 Annual Report.

[34] This figure was calculated using the previous 6 funding reports sent to the Ministry from Public Trust. This covered the period between September 2023 and March 2024, except for October 2023 which the Ministry didn't receive.

114. With PMEs being mandated and accounting for a significant portion of the Ministry's appropriation for Public Trust's services, enabling a user-pays model will ensure the sustainability of other service provision.

115. We believe the proposed fee is equitable as it is closer to Public Trust's cost for delivering PMEs and enables a user-pays model, ensuring taxpayers are not required to subsidise a private service that beneficiaries can afford.

Impacts on Public Trust of Option 2 (Minister's preferred option)

116. The fee increase will improve the sustainability of Public Trust's PME services as the user-pays model will not rely on limited government funding. Public Trust's overall sustainability issue will not be addressed as the fee doesn't eliminate the forecasted annual shortfall.

Impacts on government savings initiative of Option 2 (Minister's preferred option)

117. S9(2)(b)(ii), S53(g)(i)

S9(2)(g)(i)

If Public Trust is directed to continue providing services and bear the losses as a result, the net costs of providing these under-funded services, and the transition costs, are effectively a policy expense transferred from the Ministry to Public Trust (a commercial entity). The burden of this social policy cost is therefore misallocated within the Crown. This may reduce the ongoing $1.633m (excluding GST) per annum savings that a full cost recovery PME fee enables.

Consultation

Limited consultation

118. Public Trust were the only stakeholder consulted for this proposal due to budget-sensitivity and time constraints. Its views have informed the fee proposed.

Conclusions and recommendations

119. We recommend increasing the PME fee to $299.82 per hour GST inclusive, enabling full cost recovery from represented people. This would reflect the original policy intent by accounting for inflation and labour market changes in the 36 years since PME fees were first prescribed.

120. Increasing PME fees to align original policy intent would:

- improve the sustainability of PMEs and enable Public Trust to achieve commercial sustainability while delivering mandated services.
- improve the equitability of PMEs by ensuring taxpayers are not funding a private service where the service users could fund services themselves.
- enable a simple and consistent PME charging practice that no longer requires splitting charges between represented people and the Ministry.
- enable the Ministry to direct funding towards people with the greatest need.
- create lasting savings for the Ministry as Public Trust will no longer require government top ups for PMEs.

Implementation plan

Implementing the fee increase

121. The proposed changes will be made by amending the prescribed fee in Regulation 6 of the PPPR Regulations and will be implemented by 3 October 2024. Public Trust have advised that they can implement the fee increase by 3 October 2024.

122. The Ministry will seek to negotiate a new contract with Public Trust effective 1 July 2024 that no longer includes funding eligibility for PMEs. Without government subsidies Public Trust will absorb any additional costs that are not recovered through seeking efficiencies across the RBU's services. Subject to negotiations with Public Trust, the contract will include improved data collection and reporting requirements to support future monitoring of services delivered under the PPPR Act.

123. Once considered by Cabinet, communications will be organised to make the public aware of the changes, The Ministry anticipates collaborating with Public Trust on communications with key stakeholders and those impacted by the changes.

Debt recovery

124. Some Private Property Managers are unwilling to pay PME fees, or feel they are unable to do so when the represented person has minimal assets or income. Public Trust educate Private Property Managers as to their function and how PMEs serve a represented person's welfare but cannot ensure they will be paid for the service each time.

125. Under current contract arrangements, Public Trust can invoice the Ministry for outstanding PME debt once 90 days have passed since the client was first invoiced. When this contract expires on 30 June 2024, we anticipate that PME debt recovery will not be included in future arrangements.

126. If outstanding PME debt is removed from the contract, Public Trust may be required to pursue enforcement measures. This may create negative perceptions of Public Trust and the PPPR Act itself. Enforcement could also result in fewer Property Managers renewing their appointment when it expires.

127. When consulted, Public Trust advised that the courts could aide PME debt recovery. When submitting PME reports to the court, Public Trust could note whether the previous year's PME fees were paid. When next considering reappointment for Property Manager, a Judge could consider ordering any outstanding fees be paid.

Monitoring and evaluation

128. The fee is a static amount so will likely fall behind Public Trusts costs to deliver PME services again. Any need to update the fee could be identified through management of the contract with Public Trust and the Ministry's ongoing regulatory stewardship functions.

129. The Law Commission's review of adult decision-making law may lead to recommendations that affect financial reporting requirements under the PPPR Act including the PME fee.