



**NEW ZEALAND
INTELLECTUAL
PROPERTY OFFICE**

Intellectual Property Fees Review

Discussion Document

June 2018



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

New Zealand Government

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How to have your say

Submissions process

The Intellectual Property Office of New Zealand (IPONZ) seeks written submissions on the issues raised in this document by 5pm on **Monday 30 July 2018**. IPONZ is a group within the Ministry of Business, Innovation and Employment (MBIE).

Your submission may respond to any or all of these issues. We also encourage your input on any other relevant issues.

Please include your name and (if applicable) the name of your organisation in your submission. Please include your contact details in the cover letter or e-mail accompanying your submission as well. Consider using our [Submission Template](#) which includes the consultation questions and space for other comments.

You can make your submission by:

- sending your submission as a Microsoft Word document to: ***mail@iponz.govt.nz***.
- mailing your submission to:

Intellectual Property Office of New Zealand
PO Box 9241
Marion Square
Wellington 6141
New Zealand

Please direct any questions that you have in relation to the submissions process to: ***mail@iponz.govt.nz***.

The information provided in submissions will be used to inform Government decisions on the proposals outlined in this document. We may contact submitters directly if we require clarification of any matters in submissions.

If you would like to meet directly with IPONZ and / or MBIE officials, then please make your request well before submissions close. The closing date for submissions is **30 July 2018**.

Publication and release of submissions

IPONZ intends to post all written submissions on MBIE's website at <http://www.mbie.govt.nz/about/our-work/have-your-say>, except for material that is confidential or private, or may be defamatory. IPONZ will consider you to have consented to such posting by making a submission, unless you clearly specify otherwise in your submission. Submissions may also be released under the Official Information Act 1982.

If you have any objection to the publication or release of any information in the submission, please set out clearly which part(s) you consider should be withheld, together with the reason(s) for withholding the information.

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If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version (excluding the confidential information) for publication on our website.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including IPONZ. Any personal information you supply to IPONZ in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that IPONZ may publish.

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Submissions are also subject to the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. IPONZ will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

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Executive summary

IPONZ has carried out a review of fees for patent, trade mark, and design services. This discussion document outlines the findings of the fees review and proposes changes to trade mark and patent fees.

Below is a summary of the findings of the fees review and proposed changes to trade mark and patent fees.

We have also prepared two short documents that summarise the fee changes proposals at a high level. You can access these summary documents by clicking the links below:

- [Summary of Proposed Changes to Patent Fees](#)
- [Summary of Proposed Changes to Trade Mark Fees](#)

Findings

The fees review has found that changes to trade mark and patent fees are required to address a range of issues and opportunities. The key findings of the fees review are summarised below.

Finding 1: Trade mark and patent revenue should be rebalanced

IPONZ reviewed overall revenue levels for patent, trade mark, and design services, and found that:

- The costs of implementing the new patents regime are forecast to continue exceeding revenue, resulting in significant annual deficits;
- Trade mark revenue is forecast to continue exceeding costs, resulting in significant annual surpluses;
- If current fees are maintained, trade mark services would cross-subsidise patent services;
- Parity between trade mark and patent services can be restored by setting fees at levels that make each Intellectual Property (IP) regime's revenue roughly proportional to its share of IPONZ expenses; and
- Design fees do not require change.

Finding 2: The memorandum account should reduce at a steady rate

IPONZ reviewed the need for fee changes to address the current surplus in the IPONZ memorandum account, and found that:

- Under current fees, the memorandum account surplus is projected to peak in 2018/19 at around \$30m and then reduce relatively quickly to \$7.5m by July 2024;
- There is a risk that the memorandum account could fall into deficit, which can be mitigated by increasing IPONZ revenue moderately and rebalancing trade mark and patent revenue;
- A memorandum account balance of \$10m in July 2024 would be an appropriate target for the forecast reduction in the memorandum account surplus.

Finding 3: The patent fee structure should be refined

IPONZ carried out a detailed review of the fee structure for patent services, finding that:

- the overall design and policy intent of the patent fee structure is sound and should be maintained or strengthened;
- fees for examinations and restorations are relatively low compared to other patent fees;
- there is significant variation in cost of patent examinations and amendments; and
- fees for services under the Patents Act 1953 may be a factor inhibiting innovation.

Finding 4: The trade mark fee structure could be improved

IPONZ also carried out a detailed review of the trade mark fee structure, finding that:

- simplifying pre-application advice services would make them more effective; and
- the efficiency of the trade mark system could be improved by incentivising applicants to make less time-consuming types of applications.

Objectives and assessment criteria

IPONZ has identified a set of objectives and assessment criteria for fee changes, based on the findings above. The fee change objectives are:

- Objective 1: Restore parity between revenue from trade mark services and patent services
- Objective 2: Ensure a steady reduction in the memorandum account surplus
- Objective 3: Maintain or enhance the current design of the patent fee structure
- Objective 4: Better reflect the cost of individual patent services
- Objective 5: Improve the efficiency and effectiveness of the trade mark system

IPONZ considered a range of options for achieving these objectives. IPONZ has used the following criteria to assess which options would be most appropriate:

- Effectiveness – fees should contribute to the effectiveness of IPONZ and the IP regimes it administers.
- Efficiency – fees should be set at a level that is economically efficient.
- Equity – fees should be as fair as possible.
- Simplicity and consistency – fee structures should be kept as simple and consistent as possible.

Proposals

IPONZ has developed a suite of changes to trade mark and patent fees that would meet the objectives above and address the findings of the fees review. An overview of these fee changes and their expected impacts is provided in Part C of this discussion document.

There are four main proposals for change to trade mark and patent fees:

- Proposal 1: increased patent renewal and maintenance fees;
- Proposal 2: increased and new fees for high-cost patent services;

- Proposal 3: new trade mark application fee options; and
- Proposal 4: simplified options for pre-application trade mark advice.

For each proposal, IPONZ has considered a range of potential options. Detailed analysis of these options is provided in Part D of this discussion document. As a whole, the fee change proposals are expected to:

- Rebalance trade mark and patent revenue and ensure a steady reduction in the memorandum account;
- Increase fee costs for patent applicants and patent holders without adverse effects on innovative activity;
- Reduce fee costs for trade mark applicants and trade mark holders; and
- Increase the complexity of the patent fee structure and the trade mark structure overall while making them more effective, efficient and equitable.

Implementation, monitoring and evaluation

IPONZ proposes that the fee changes described in this document would take effect in early 2019, subject to Cabinet approval. IPONZ would monitor and evaluate the impacts of any fee changes by carrying out a fees review in 4-5 years' time, in accordance with Treasury guidance.

Introduction

About this discussion document

1. This discussion document contains proposals to change the fees for patent and trade mark services provided by the Intellectual Property Office of New Zealand (IPONZ). Any changes to these fees would be given effect by amending the relevant regulations (Trade Marks Regulations 2003, Patents Regulations 2014, and Patents Regulations 1954).
2. The proposed fee changes have been developed as part of a review of fees for patent, trade mark, and design services. The proposed fee changes are expected to rebalance overall annual IPONZ revenue and better reflect the costs of delivering trade mark and patent services.
3. This document outlines the issues and options that have been considered in formulating the proposed fee changes, and asks for your feedback and comments. Your feedback will help the government decide whether to go ahead with the proposals in this document.

Background

4. This section provides background information on the Intellectual Property Office New Zealand (IPONZ), the drivers for the fees review, the scope of the fees review, and how IPONZ has approached the review.

IPONZ

5. IPONZ is a group within the Ministry of Business, Innovation and Employment (MBIE). IPONZ is responsible for administering New Zealand's intellectual property (IP) rights system. The IP rights administered by IPONZ are trade marks, patents, designs, plant variety rights and geographical indications.
6. IPONZ operates on a full cost recovery structure – that is, the funding necessary to operate is sourced from third party fees. Third party fees are used because the primary beneficiaries of the services provided by IPONZ are those who are granted IP rights. Third party fees for IP protection are a well-accepted cost of doing business.
7. Fee revenue covers the costs of IPONZ functions and services, including:
 - a. examining and registering trade marks, patents, designs, plant variety rights, and geographical indications;
 - b. conducting hearings on disputes relating to IP applications and registrations;
 - c. improving awareness of IP in the marketplace and how it can be commercialised; and
 - d. fulfilling obligations under IP related international treaties and free trade agreements.

Why a fees review is necessary

8. The Treasury recommends that fees for cost recovered services are reviewed every four to five years. The fees for trade marks were last reviewed in 2012, and fees for patents were last reviewed in 2013. IPONZ has two additional drivers for the current fees review.

Driver 1: memorandum account surplus

9. Total annual fee revenue is a function of application volumes, and varies from year to year. To smooth out these variances and avoid the need to adjust fees too frequently, IPONZ uses a 'memorandum account', against which IPONZ records its surpluses and deficits. If a significant surplus or deficit accrues, it is best practice to adjust fees so that the balance of the memorandum account trends toward zero over a reasonable period of time. This is consistent with the principle that cost-recovery regimes should not over or under recover fees from fee payers.
10. Since 2013, the IPONZ memorandum account balance has been accumulating a steady surplus. This surplus is projected to peak at around \$30 million by end of financial year (FY) 2018/19. Accordingly, one of the key drivers for the fees review was the need to ensure that the memorandum account surplus will trend steadily towards zero. Ensuring a steady trend implies avoiding both too slow a reduction in the memorandum account surplus, and too fast a reduction. Fee changes should be carefully balanced to minimise the potential for drastic fluctuations in fee levels in the future.

Driver 2: refining new fees under the Patents Act 2013

11. The Patents Act 2013, which replaced the Patents Act 1953, came into full effect in 2014. New patent fees were introduced as part of this change. At the time, IPONZ signalled that the next fees review may need to refine the new fees in light of experience. This need was the other major driver for the fees review. IPONZ now has enough data and practical experience to fully understand the costs of the regime and adjust patent fees accordingly.

Scope

12. The fees review covers patent, trade mark and design fees. Fees for plant variety right services and geographical indication services were excluded from the scope of the review because:
 - a. plant variety right services are partially funded by the Crown and are not covered by the IPONZ memorandum account;
 - b. a review of the plant variety rights regime is planned for 2018/19, which will include review of fees; and
 - c. fees for geographical indication services were set in 2017 and do not require review.
13. Annex 1 summarises the current fee structures for patent, trade mark, and design services.

Limited to 2019 - 2024

14. The overall scope of the fees review is to assess what fees should be charged between early 2019 and July 2024. As noted above, the Treasury recommends that fees be reviewed every 4 to 5 years. Accordingly, it is appropriate for the review to focus on setting fees that will be appropriate for the next 5.5 years, because fees should be reviewed again before July 2024.

'Cost to serve whole register' approach still appropriate

15. The current fee structures for trade marks, patents, and designs are all based on the 'cost to serve whole register' approach, rather than the 'cost to serve per unit' approach.

16. Under the ‘cost to serve whole register’ approach, fees are set to cover the overall expenses of each IP regime, with flexibility as to whether individual fees are above or below the cost to serve per unit. Under a ‘cost to serve per unit’ approach, the fee for each service would be set as close as possible to the estimated average cost of producing that service.
17. Previous fees reviews have considered whether the ‘cost to serve whole register’ approach is still appropriate. IPONZ did not include this question in the scope of the current fees review because it seems clear that the ‘cost to serve whole register’ approach is the most suitable way to set fees for trade marks, patents, and designs.
18. The ‘cost to serve whole register’ approach allows IPONZ to ensure that IP fees contribute to the underlying policy objectives of each IP regime. For example, the Patents Act 2013 and Trade Marks Act 2003 both allow IPONZ to set fees for renewal of IP rights at a level that provides an incentive for IP holders to allow their rights to lapse if they are not receiving sufficient benefit from their IP right. These provisions are intended to contribute to the efficiency and effectiveness of the trade mark regime and the patent regime.¹
19. A strict ‘cost to serve per unit’ approach would not allow these sorts of policy considerations to be taken into account when setting fees. At the same time, however, the cost to serve per unit is usually a key factor in determining individual fees. This is for two reasons: first, IPONZ is more likely to successfully cost recover at the register level when fees are set close to the cost to serve; second, this contributes to the broader aim of ensuring that individuals who receive the benefit of IP services pay the costs involved.

Approach

20. The fees review has been carried out in accordance with the Treasury’s ‘Guidelines for Setting Charges in the Public Sector’. This guidance requires that IPONZ take an ‘open book’ approach, providing transparent information about the costs covered by the proposed fees and why IPONZ considers those fees to be efficient and effective.
21. Accordingly, Annex 2 provides a full breakdown of the estimated costs recovered by the proposed fees. Some cost estimates are also included in Part D (Analysis of Individual Proposals). All cost estimates in this document are based on forecast expenses for financial year (FY) 2021/22.
22. To review the fees IPONZ has modelled revenue and expenses for the patent, trade mark, and design regimes. The models have been developed with assistance from Deloitte. Further information on this modelling is provided in Annex 3.

¹ For example, Section 243(2)(b) of the Patents Act 2013 allows for renewal and maintenance fees to be set to recover costs at a level that “provides an appropriate incentive ... for applicants to let patent applications become void or abandoned and patentees to let patents lapse if they do not receive, or will not receive, sufficient benefit from having the patent.”

Part A: Findings

23. The fees review has found that changes to patent and trade mark fees are required to address a range of issues and opportunities. The key findings of the fees review are:
- a. Finding 1: Trade mark and patent revenue should be rebalanced;
 - b. Finding 2: The current memorandum account surplus should be reduced at a steady rate that avoids or mitigates the risk of falling into deficit;
 - c. Finding 3: The patent fee structure should be refined to better reflect the relative costs of patent services; and
 - d. Finding 4: The trade mark fee structure could be amended to make trade mark services more efficient and effective.
24. This section sets out these findings in detail. At the end of the section there is an opportunity for you to share any information that might help refine these findings.

Finding 1: Patent and trade mark revenue should be rebalanced

25. IPONZ has found that revenue should be rebalanced so that each IP regime recovers an appropriate proportion of their costs. The key findings that have led to this conclusion are:
- a. The costs of implementing the new patents regime are forecast to continue exceeding revenue, resulting in significant annual deficits;
 - b. Trade mark revenue is forecast to continue exceeding costs, resulting in significant annual surpluses;
 - c. If current fees are maintained, trade mark services would cross-subsidise patent services;
 - d. Parity between trade mark and patent services can be restored by setting fees at levels that make each IP regime's revenue roughly proportional to its share of IPONZ expenses; and
 - e. Design fees do not require change.
26. Each of these findings is described in further detail below.

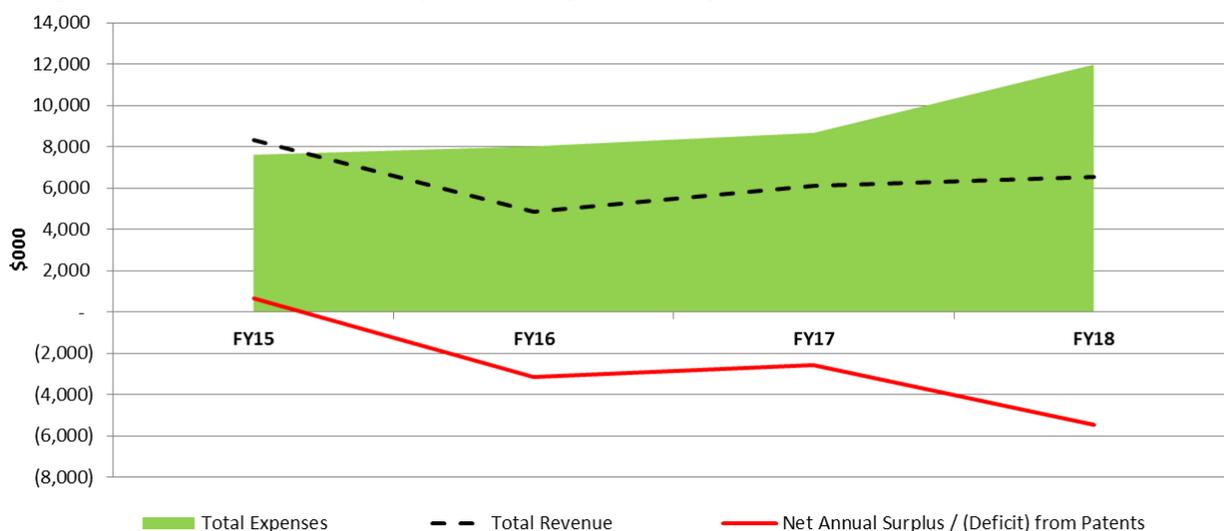
Finding 1A: Costs of new patents regime exceeding revenue

27. The implementation of the Patents Act 2013 required IPONZ to put in place a number of new processes and procedures. As a result, an initial increase to the patents workforce occurred ahead of the Patents Act 2013 coming into force (shown in Table 1 below). At that time, IPONZ noted that it would be necessary to have the new regime operating for several years in order to fully understand the personnel resourcing requirements.

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Total patents personnel	27	35	35	35	40	60

28. IPONZ has now had sufficient time to assess the operation of the new patents regime and the appropriateness of the associated fees. Overall, the costs of the new regime are higher than expected – since FY 2015/16 the patents regime has been operating at a deficit of around \$2.5m to \$5m per annum (shown in Figure 1 below). This is largely due to higher personnel costs, increasing overheads and a dip in renewal volumes.

Figure 1: Patent revenue and expenses 2014/15 to 2017/18



29. IPONZ continues to make operational changes to increase the efficiency and quality of its services in line with the international standard for quality management (ISO 9001:2015). However, the increased workload associated with examining applications under the Patents Act 2013 cannot be adequately addressed through incremental process improvements or upgraded IT systems. Accordingly, IPONZ has planned and budgeted for continued increases in staff numbers over the next three years (shown in Table 2 below).

	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24
Total patents personnel	60	65	68	<i>75</i>	<i>84</i>	<i>87</i>	<i>87</i>

Note: The figures in italics are forecasts of future personnel needs, not confirmed business plans. Actual needs will depend on demand for patent services.

30. With current fee levels, this increase in staff numbers would result in patent services continuing to operate at a significant annual deficit over the foreseeable future. For example, IPONZ forecasts patents revenue would need to increase by 125% in order for patent revenue to be equal to patent expenses in FY 2023/24. The actual increase to patent revenue proposed in this discussion document is approximately 75%, because of the need to reduce the memorandum account surplus (see Finding 2 below).

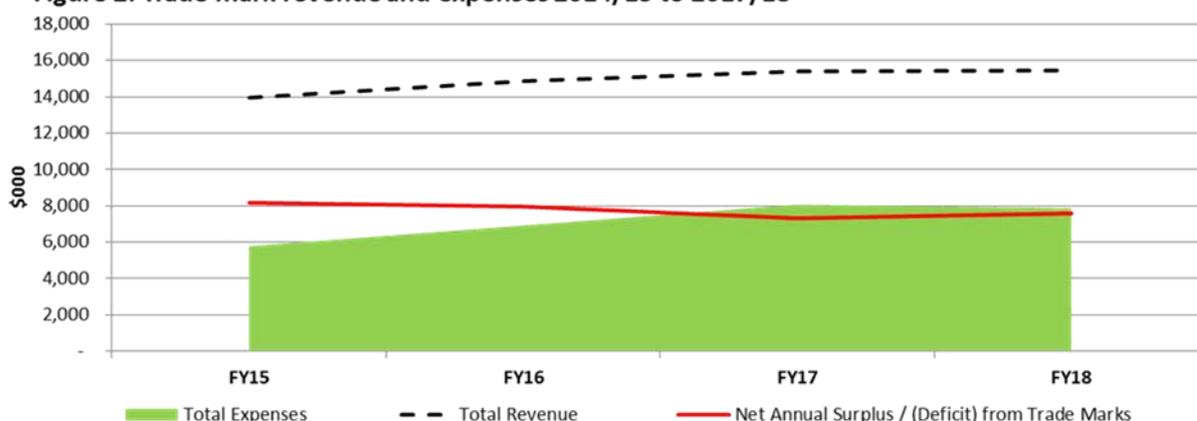
Finding 1B: Trade mark revenue is exceeding costs

31. Trade mark revenue is exceeding costs by a significant margin. IPONZ is planning to increase expenditure to improve the quality, efficiency and value of trade mark services. Despite these investments, the trade mark regime is forecast to continue operating at a significant annual surplus under current fees.

Trade mark revenue has exceeded costs

32. Trade mark services have been operating at a surplus as a result of higher than expected trade mark application volumes, and operational improvements that have improved the efficiency of trade mark services.
33. IPONZ last reviewed the fees for trade mark functions in 2012. At the time, IPONZ raised trade mark fees to avoid a forecast memorandum account deficit under the existing fees. Application volumes were expected to remain low for an extended period following the Global Financial Crisis (GFC). Also, a change in trade mark renewal timeframes from seven to ten years was expected to lower renewal volumes.
34. In 2012 New Zealand also signed up to the Madrid Protocol – an international treaty that allows a trademark applicant to seek registration in any of the countries that have joined the Madrid Protocol by filing a single application. Trade mark filing activity globally increased significantly after the system was implemented in New Zealand, exceeding any forecasting conducted by IPONZ or IP offices in other countries.
35. Overall, trade mark revenue has been much higher than expected. Trade mark application volumes recovered much faster than expected following the GFC as a result of the higher than anticipated international applications, and renewal volumes did not drop as much as expected. Figure 2 below shows the trend in trade mark revenue and expenses from FY 2014/15 to 2017/18.

Figure 2: Trade mark revenue and expenses 2014/15 to 2017/18



36. Around the same time, IPONZ made a number of operational improvements that improved the efficiency of trade mark services, including:
 - a. Improving IT systems to reduce the cost of processing trade mark applications;
 - b. Improving retention of experienced staff; and,
 - c. Developing better training and quality assurance processes (ISO certified).
37. As a result, IPONZ was able to examine 15% more trade mark applications in the last year (on a per class basis) without increasing personnel numbers.

Investing to improve trade mark services

38. IPONZ has steadily raised the quality, efficiency, and value of trade mark services over the years through a process of continuous improvement. This work has included implementing several international treaties and agreements, website upgrades, education resources, and streamlining the trade mark application process.

39. IPONZ has planned for increased expenditure to improve trade mark services further. Table 3 below shows the areas where IPONZ intends to invest in improvements and the expected benefits of these investments.

Table 3: Planned improvements to trade mark services		
Type	Planned improvements	Expected benefits
IT upgrades	Improving the user interface for the trade mark system	Improved customer experience
	Increasing automation of examinations	Increased examination capacity without increasing staff levels
Information & education	Improving New Zealand businesses' and entrepreneurs' understanding of trade marks and IP as a whole	Users of the trade mark system are better able to protect their IP and avoid infringing on others' rights
	Educating businesses about appropriate use of Māori language, symbols and other cultural taonga in trade marks and other branding	
International relations	Increasing engagement with overseas IP offices, including international attachés	Stronger international profile for NZ firms and IP services
Compliance and enforcement	Initial work towards stronger enforcement of trade marks (e.g. partnering with NZ Customs to stop counterfeit goods at the border)	Better protection of IP rights

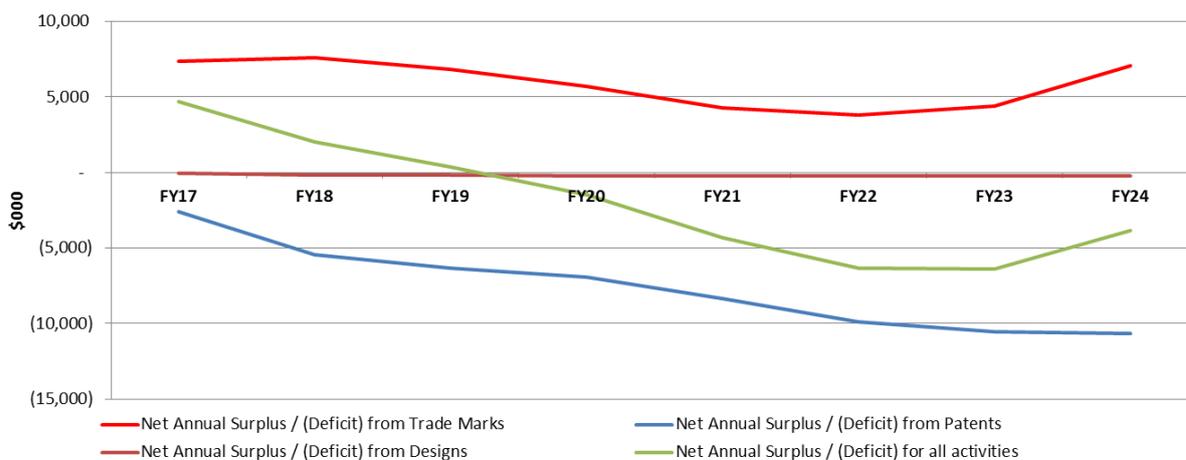
Trade mark regime forecast to operate at significant annual surplus

40. Despite the increased expenditure described above, the trade mark regime is forecast to operate at a significant annual surplus for the entire forecast period. In order for trade mark revenue to be equal to trade mark expenses in FY 2023/24, trade mark revenue would need to reduce by approximately 40%. The actual reduction in trade mark revenue proposed in this discussion document is approximately 37%, because of the need to ensure a steady reduction in the memorandum account surplus (see Finding 2C below).

Finding 1C: Status quo would lead to cross-subsidisation

41. As a result of Findings 1A and 1B, cross-subsidisation between trade mark and patent services will occur if current fees are maintained. Cross-subsidisation occurs when the fee revenue from one type of service is put towards the cost of providing another type of service. In effect, continuing under the status quo would mean that users of trade mark services would be paying some of the cost of patent services. Over time, IPONZ projects that the magnitude of the cross-subsidisation has the potential to be in the order of millions of dollars (see Figure 3 below).

Figure 3: Net annual surpluses / deficits for trade mark, patent and design services



42. Cross-subsidisation would be inequitable because there is relatively little overlap between patent fee payers and trade mark fee payers – IPONZ records show that around 1% of current IP holders have both a trade mark and a patent. Accordingly, fees should be changed to eliminate cross-subsidisation and restore parity between patent and trade mark services.

Finding 1D: Parity can be restored by making revenue proportional to expenses

43. Parity between trade mark and patent services can be restored by setting fees at levels that make each IP regime’s revenue proportional to its share of IPONZ expenses. This would eliminate cross-subsidisation and allocate costs fairly between patent fee payers and trade mark fee payers.
44. Trade mark services are projected to comprise 36.5% of total IPONZ expenses between July 2019 and July 2024. Trade mark revenue is forecast to make up around 63.5% of total IPONZ revenue across this period. Parity would be achieved if trade mark fees were decreased so that trade mark revenue makes up around 36-37% of total IPONZ revenue.
45. Patent services are projected to comprise 60% of total IPONZ expenses across the same period, and make up only 33.4% of total IPONZ revenue. A significant increase to patent fees would be required to make patent revenue proportional to patent expenses.

Finding 1E: Design fees do not require change

46. As part of the review, IPONZ assessed whether fees charged for design services are fit for purpose. IPONZ has not identified any issues or opportunities to improve the designs fee structure, and considers that there is no need for changes to the current fees.
47. Design services are forecast to incur 1.7% of total IPONZ costs and make up 1% of total IPONZ revenue. This means that IPONZ is recovering slightly less cost from design fee payers than is warranted. However, unit volumes, revenue and expenses for design services are very small in magnitude compared to patent and trade mark services.
48. Accordingly, any equity and efficiency benefits from rebalancing design revenue to match expenses would likely be outweighed by the cost of changing the fees. Amending the Designs Regulations 1954 would involve cost for government, and fee payers are likely to face some costs or inconvenience when complying with the new fees.

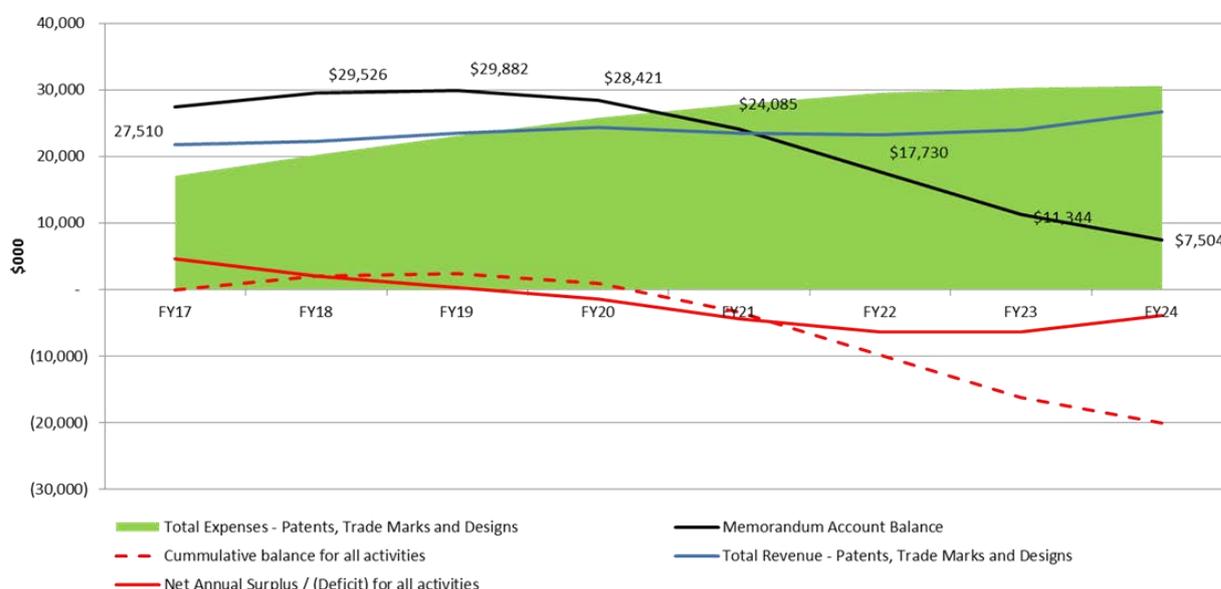
Finding 2: The memorandum account should reduce at a steady rate

49. As noted above, the current surplus in the IPONZ memorandum account was a key driver for the fees review. The review has found that:
- Under current fees, the memorandum account surplus is projected to peak in 2018/19 at around \$30m and then reduce relatively quickly to \$7.5m by July 2024;
 - There is a risk that the memorandum account could fall into deficit, which can be mitigated by increasing IPONZ revenue moderately and rebalancing trade mark and patent revenue;
 - A memorandum account surplus of \$10m in July 2024 would be an appropriate target for the forecast reduction in the memorandum account balance.
50. The findings in this section are based on a few different scenarios for future IPONZ revenue and expenses. The details of these scenarios are included in Annex 4.

Finding 2A: Memorandum account projected to reduce quickly under current fees

51. The current surplus in the IPONZ memorandum account is approximately \$29.5 million. This surplus is largely due to the higher than expected trade mark revenue described above (Finding 1B, paragraph 32-27).
52. The balance of the memorandum account is currently projected to peak in 2018/19 at around \$30 million, and then decrease to approximately \$7.5 million by FY 2023/24 (see Figure 4 below).

Figure 4: Projected IPONZ memorandum account balance 2016/17 to 2023/24



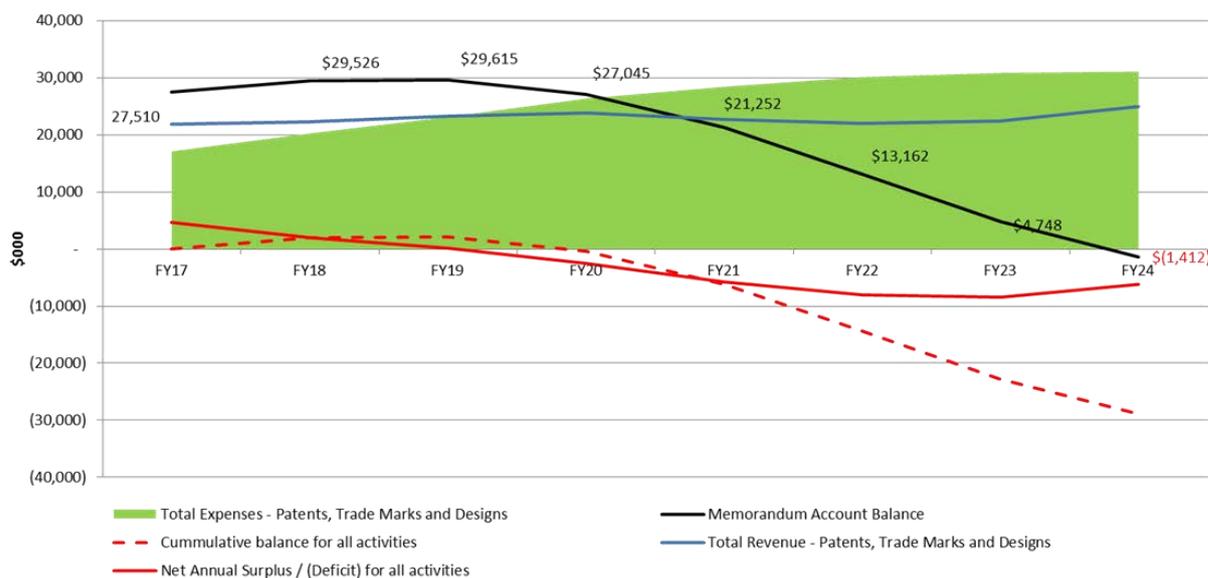
53. This forecast reduction in the memorandum account balance under the existing fees structure is due to:
- The increased cost pressures of the new patents regime (see Finding 1A, page 11);
 - The planned investments to improve the efficiency and effectiveness of trade mark services, such as increased international engagement and regulatory stewardship (see Finding 1B, page 12);

- c. A projected decrease in revenue from trade mark renewals as a consequence of lower trade mark application volumes during the Global Financial Crisis;² and
- d. A projected increase in corporate costs recovered by MBIE, such as IT services, business support and human resources.

Finding 2B: Risk of falling into deficit under status quo

54. Under current fees there is a risk that the IPONZ memorandum account could fall into deficit if expenses are higher than expected and revenue is lower than expected (see Annex 3 for details of this scenario). Figure 5 below shows the forecast trend in the memorandum account under this scenario.

Figure 5: Projected memorandum account balance under 'downside scenario'



- 55. If the memorandum account falls into deficit, IPONZ would have to raise fees to recover the deficit. The forecast deficit under this scenario is not significant, but the deficit would grow quickly if there was any delay in the completion of the next fees review.
- 56. IPONZ considers that a minor increase to annual revenue would make the forecast reduction more steady and mitigate the risk of a deficit. Increasing IPONZ annual revenue by 1.6% would mean that the memorandum account balance would not fall into deficit in the scenario modelled above.
- 57. The risk of a deficit can be mitigated further by rebalancing patent and trade mark revenue, as per Finding 1. Trade mark revenue is subject to more uncertainty than patent revenue because trade mark application volumes are more affected by changes in economic conditions. Also, the rebalancing of revenue means that revenue and expenses are more closely matched – if patent application volumes are higher than expected, IPONZ receives additional income that it can invest in meeting the demand.

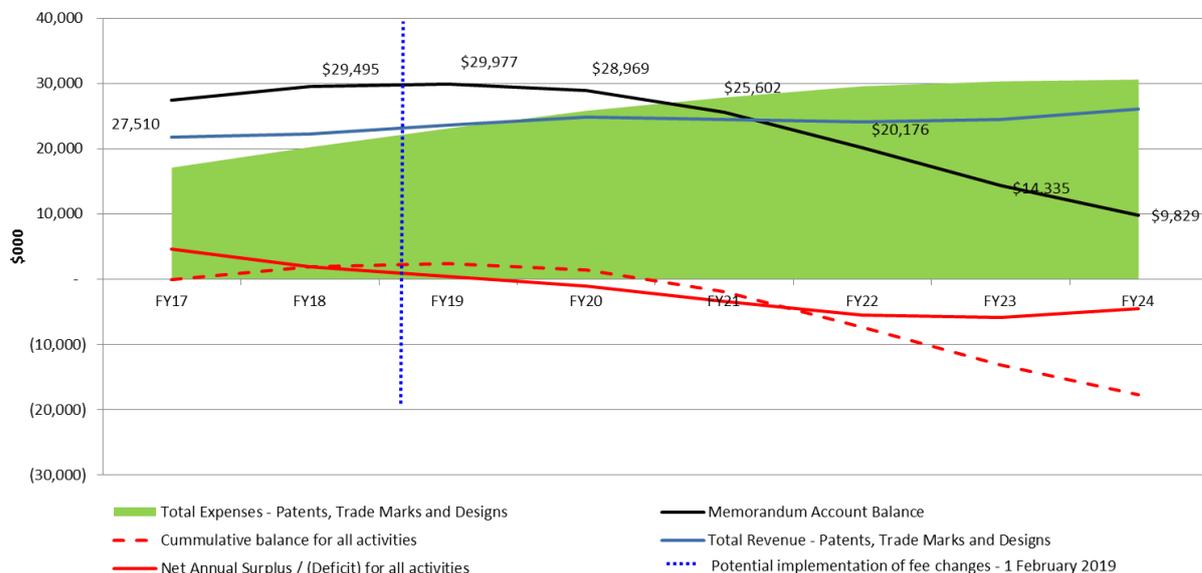
Finding 2C: reduction to \$10m by June 2024 would be an appropriate target

58. As a result of the review, IPONZ considers that a memorandum account balance of \$10m would be an appropriate target for the reduction in the surplus by June 2024, provided

² Trade marks require renewal every 10 years. Fewer number of trade mark applications were received following the GFC, which is expected to lower renewal volumes between 2020 and 2023.

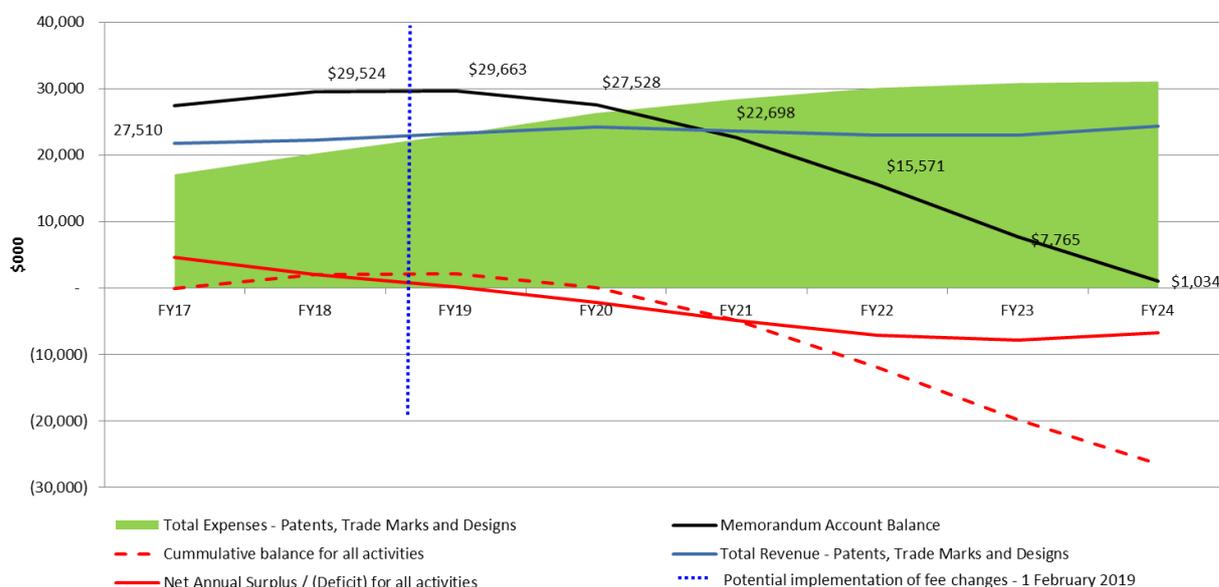
that revenue is rebalanced as per Finding 1. Figure 6 below shows the forecast trend in the memorandum account if these changes to overall revenue levels are made.

Figure 6: Projected memorandum account balance - revenue increased from Q1 2019



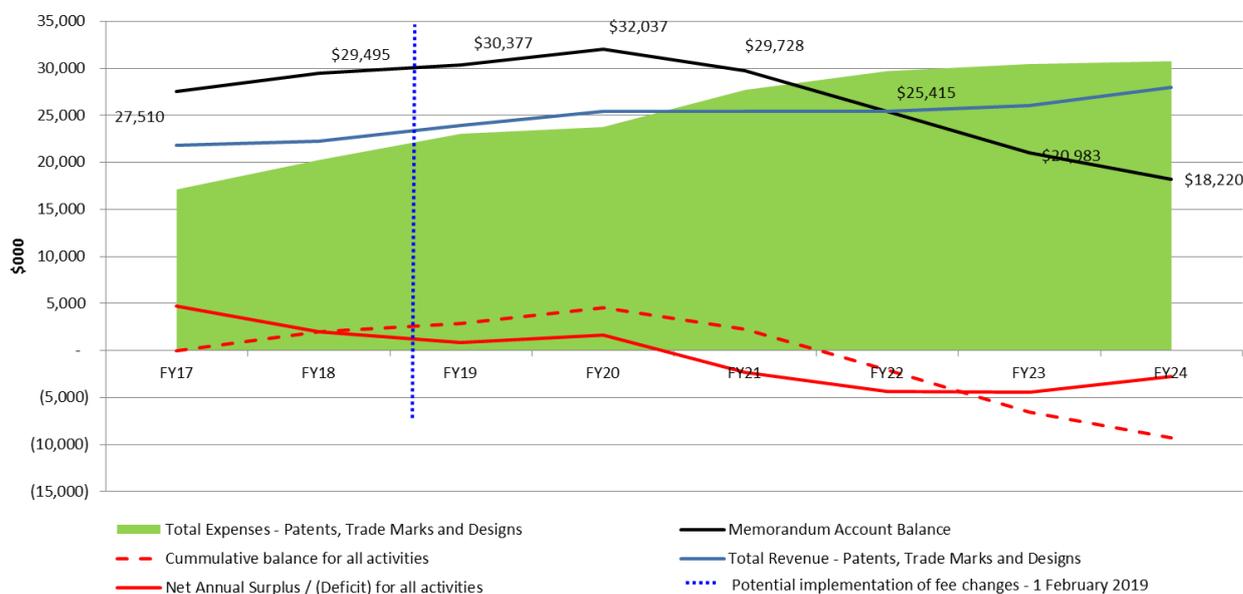
59. Aiming for a target account balance of \$10m would mitigate the risk of the memorandum account falling into deficit. Figure 7 below shows the forecast memorandum account balance if IPONZ revenue is lower than expected and expenses are higher than expected.

Figure 7: Memorandum account balance with increased revenue, 'downside scenario'



60. As shown in Figure 8 below, the target also ensures a significant reduction in the memorandum account is achieved, even if IPONZ revenue is higher than expected and expenses are lower than expected (see Annex 3 for details of this scenario).

Figure 8: Memorandum account balance with increased revenue, 'upside scenario'



61. Overall, IPONZ considers that targeting a memorandum account balance of \$10m would make the reduction in the memorandum account surplus steadier and less risky than under current fees. Accordingly, the fee change proposals presented in this discussion document are based on this target.
62. Another fees review will be required before July 2024 to identify what further changes to fees are required to avoid the memorandum account falling into deficit and bring fees closer to recovering the full cost of IPONZ services. It is difficult to predict what these fee changes will be, because of the potential variation in IPONZ revenue and expenses illustrated above. However, IPONZ expects that the required changes in overall revenue levels are likely to be less significant than those proposed in this discussion document.

Finding 3: The patent fee structure should be refined

63. IPONZ has carried out a detailed review of the patent fee structure based on experience implementing the Patents Act 2013 and transitioning from the Patents Act 1953. The key findings of this review are:
 - a. the overall design of the fee structure should be maintained or strengthened;
 - b. fees for examinations and restorations are relatively low compared to other fees;
 - c. there is significant variation in cost of patent examinations and amendments; and
 - d. fees for services under Patents Act 1953 may be a factor inhibiting innovation.
64. IPONZ considers that the patent fee structure should be refined to address these findings. The other patent fees (including fees for filing provisional and complete applications, hearings, and oppositions) are still appropriate and should be maintained.

Finding 3A: Overall design of patent fee structure is sound

65. IPONZ considers that the overall design of the fee structure is sound, and should be maintained or strengthened by any fee changes. The current patent fee structure is

designed to align with the purpose of the Patents Act 2013 and support the efficiency and effectiveness of the patent system.³

66. Renewal and application maintenance fees are set above the cost to serve, and renewal fees increase the longer a patent is held (see Annex 1, Table 1). The increase in renewal fees over time creates an incentive for patent holders to allow unused patents to lapse. In turn, this allows others to make use of inventions that are no longer protected by patent. This also reflects the increasing potential value of a patent over time – the longer the patent is in place, the more financial benefit the holder can generate from their monopoly on the patented invention. IPONZ considers that strengthening these incentives would improve the efficiency and effectiveness of the patents system.
67. High renewal and maintenance fees also allow fees for examinations and most other patent services to be set below the cost to serve per unit (cf. Annex 1 and Annex 2). This helps promote innovation by ensuring the accessibility of the system for individuals and firms that are not yet benefitting financially from their inventions, and for cost-sensitive applicants such as small businesses, start-ups and individual researchers. IPONZ considers that the accessibility of the patents system should be maintained when setting new fees, because this gives effect to the purpose of the Patents Act 2013.

Finding 3B: Fees for examinations and restorations are relatively low

68. IPONZ considers that the fees for examinations and restorations are relatively low compared to other patent fees. The more demanding examination process under the Patents Act 2013 is responsible for much of the current and planned increase in IPONZ's patents personnel.
69. Requests for restoration of lapsed patents and patent applications are a low volume service, but the estimated cost per request is over 20 times the current fee of \$100. This is because experienced senior or principal examiners have to judge whether the lapse was unintentional by assessing evidence and statutory declarations.

Finding 3C: The cost of patent examinations and amendments varies

70. IPONZ currently charges a flat examination fee for all patent applications, regardless of their size or complexity. This flat fee helps make the patent fee structure relatively simple compared to other jurisdictions. However, the flat fee doesn't reflect the wide variation IPONZ observes in the time required to examine patent applications. This variation in size and complexity is generally related to the number of claims included in a specification.
71. Similarly, all amendments to patent specifications are charged the same fee of \$150, regardless of whether they are requested before or after acceptance of the patent. Amendments before acceptance are considered as part of the examination process. Amendments after acceptance are time-consuming and costly because examiners have to become familiar with the entire application and specification, and then exercise discretion in judging whether the amendment should be allowed.

Finding 3D: Fees for services under Patents Act 1953 may be inhibiting innovation

72. The transitional provisions of the Patents Act 2013 allowed applicants with a pending patent application under the Patents Act 1953 to continue requesting services and paying fees under the Patents Act 1953 (1953 fees):

³ Section 3 states "The purposes of this Act are (a) to provide an efficient and effective patent system that (i) promotes innovation and economic growth while providing an appropriate balance between the interests of inventors and patent owners and the interests of society as a whole..."

- a. **Divisional applications** – Applicants with pending applications under the Patents Act 1953 can ‘divide’ their existing application into one or more separate applications, with priority rights and other dates being kept from the original filing date. These applications are referred to as ‘divisional applications’, and are charged the standard 1953 fee for filing of a complete specification (\$250). Divisional applications can be filed up to 20 years after the filing of the original application (referred to as the ‘parent application’).
- b. **Amendments** – Applicants with pending applications under the Patents Act 1953 patent applications can amend their specification before or after acceptance, and pay the 1953 fee for amendment (\$60).
- c. **Renewal fees** – When pending applications under the Patents Act 1953 are granted, the applicant can pay 1953 fees for renewal up to the date of granting. The overall cost of these renewal fees is significantly lower than the renewal fees under the Patents Act 2013.

73. IPONZ expects to continue receiving divisional applications under the Patents Act 1953 until at least July 2024.

Table 4: Expected volumes of divisional applications under the Patents Act 1953							
	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24
Applications	743	479	421	324	255	213	178

74. IPONZ considers that the ongoing filing of divisional applications under the Patents Act 1953 may be inhibiting innovation. By filing a divisional application under the Patents Act 1953, applicants can secure an IP right that is considerably broader in scope than a patent under the Patents Act 2013, often with earlier priority rights than their competitors. These applications leave innovators and the public in an uncertain position as to whether or not a patent will be granted for any of the subject matter contained in the relevant specifications. As a result, innovators may choose to steer clear of this subject matter rather than risk potential infringement or other legal proceedings.
75. Renewal fees under the Patents Act 1953 do not create any significant incentive for patent holders to allow unused patents to lapse or abandon applications that they don’t intend to exploit commercially. The significant difference between the renewal fees under the Patents Act 1953 and the Patents Act 2013 also creates an added incentive for applicants to continue dividing applications pending under the Patents Act 1953.
76. Finally, fees for applications and amendments under the Patents Act 1953 are low compared to the equivalent 2013 fees. While volumes of these services are relatively low, they require IPONZ to continue training examiners in the requirements of the Patents Act 1953. Some divisional applications under the Patents Act 1953 also include a very large number of claims, which increases the time required to examine them (see paragraph 70).

Finding 4: The trade mark fee structure could be improved

77. IPONZ has found that the trade mark fee structure is fit for purpose overall. However, the fees review has identified two opportunities to improve the fee structure:
- a. Simplifying pre-application advice services would make them more effective; and

- b. The efficiency of trade mark system could be improved by incentivising applicants to make less time-consuming types of applications.
78. Apart from these opportunities, IPONZ sees no need for changes to the trade mark fee structure. IPONZ considers that the fee levels for trade mark hearings and oppositions should be maintained, so that they stay consistent with the equivalent patent fees.

Finding 4A: Opportunity to simplify options for pre-application advice

79. Potential applicants can request advice from IPONZ on their proposed trade mark before making an application. The current options for pre-application advice are somewhat ineffective and inefficient. Potential trade mark applicants can request:
- a. A ‘search advice’ report, stating whether the potential trade mark is already registered or the subject of an application by someone else (\$40 fee); or
 - b. A ‘preliminary advice’ report, stating whether the potential trade mark is distinctive enough that it can act as a trade mark (\$40 fee); or
 - c. A combined report, including both ‘search advice’ and ‘preliminary advice’ (S & PA report, \$80 fee).
80. Trade mark applicants who request ‘search advice’ would often benefit from ‘preliminary advice’ as well, and vice versa. Applications based on a combined S & PA report have a higher acceptance rate, and are less likely to be the subject of objections. The costs for IPONZ of completing a combined S & PA report is also less than the cost of completing search and preliminary advice separately. However, the current fees treat search advice and preliminary advice as separate services, so combined reports are charged at the full combined cost of requesting both services.
81. Further, applicants who request an S & PA report may decide not to submit a trade mark application if the S & PA suggests that an application would be unsuccessful. This avoids IPONZ having to expend effort examining applications which will be rejected, resulting in efficiency gains for IPONZ and cost savings for applicants.
82. In this context, the combined S & PA report is a more efficient and effective service than the separate advice reports. Simplifying options for pre-application advice and adjusting the relevant fees could make the trade mark system more efficient and effective overall.

Finding 4B: Opportunity to improve efficiency of trade mark applications

83. Certain types of trade mark application are less time-consuming for IPONZ to process. There is an opportunity to improve the efficiency of the trade mark system by incentivising applicants to make these sorts of applications where appropriate.
84. Applications based on S & PA reports are far faster to complete than standard applications, because standard applications require a search of the trade mark register and assessment of whether the trade mark is unique (see Table 5 below). Applications following an S & PA report are also far less likely to be the subject of objections and ongoing correspondence. However, the current fee structure does not reflect this difference in cost – applicants who have previously paid for pre-application advice pay the same application fee as any other applicant.

Table 5: Time required to examine trade mark applications	
Service	Average personnel time per unit
Standard application for a trade mark	0.9 hours
Application based on full pre-application advice (including search advice and preliminary advice)	0.25 hours
Application using the picklist of pre-approved classification terms	0.6 hours
Application under Madrid Protocol	0.6 hours

85. Similarly, applications that use IPONZ’s ‘picklist’ of pre-approved classification terms are faster and less costly to complete than standard applications. If more and more applicants use the classification picklist then IPONZ could operate more efficiently. Despite these potential efficiency benefits, there is currently no incentive for applicants to use the picklist.
86. International applications under the Madrid protocol are also faster to complete than standard applications. However, IPONZ does not see this as an opportunity to incentivise efficiency: international applicants are unlikely to change their behaviour in response to a minor change to the fees they are charged in New Zealand.

Question 1: Is there any other information that IPONZ should take into account as part of the fees review? If so, does this information confirm IPONZ’s findings or suggest different findings? Why?

Part B: Objectives and assessment criteria

87. The next sections of this document (Part C-D) present a suite of proposed fee changes to address the findings in Part A. For the purpose of assessing these proposals, IPONZ has identified a set of objectives and assessment criteria that the fee changes should meet.

Objectives for fee changes

88. IPONZ has set objectives that the proposed changes to trade mark and patent fees should fulfil. These objectives link the findings of the fees review to the specific fee change proposals. Table 6 below sets out the objectives and how they relate to the findings of the fees review.

Objectives	Relevant fee review findings
Objective 1: Restore parity between revenue from patent services and trade mark services	Finding 1A, 1B and 1C: Patent and trade mark fees are not reflecting the costs of providing these services. If current fees are maintained, trade mark services would cross-subsidise patent services.
	Finding 1D: Parity between trade mark and patent services can be restored by setting fees at levels that make each IP regime's revenue roughly proportional to its share of IPONZ expenses.
Objective 2: Ensure a steady reduction in the memorandum account surplus	Findings 2A: Under current fees the memorandum account surplus is projected to reduce quickly to \$7.5m by July 2024.
	Finding 2B: The risk of falling into deficit can be mitigated by increasing IPONZ revenue overall and rebalancing trade mark and patent revenue.
	Finding 2C: Targeting a surplus of \$10m in July 2024 would ensure a steady reduction in the memorandum account balance.
Objective 3: Maintain or enhance the current design of the patent fee structure	Finding 3A: Overall design of the patent fee structure is sound, and should be maintained or strengthened by fee changes. Renewal fees are set above cost to incentivise allowing unused patents to lapse. Examination and other up-front fees are set below cost to ensure accessibility of patent system.
	Finding 3D: The significant difference between renewal fees under the Patents Act 2013 and the Patents Act 1953 may be a factor inhibiting innovation.
Objective 4: Better reflect the cost of individual patent services	Finding 3B: Fees for examinations and restorations are relatively low.
	Finding 3C: There is a significant variation in the cost of patent examinations and amendments.
	Finding 3D: Fees under the Patents Act 1953 are set well below cost.
Objective 5: Improve the efficiency and effectiveness of the trade mark system	Finding 4A: Options for pre-application trade mark advice could be simplified.
	Finding 4B: Efficiency of the trade mark system could be improved by incentivising applicants to make less time-consuming applications where appropriate.

Criteria for assessing options

89. IPONZ has considered a range of options for meeting the objectives above. IPONZ used the criteria below to assess which options would be most appropriate:

- **Effectiveness** – fees should contribute to the effectiveness of IPONZ and the IP regimes it administers. This means, for example, that the incentives created by patent fees should be consistent with the purpose of the Patents Act 2013.
- **Efficiency** – fees should be set at a level that is economically efficient. Fees should promote efficient production and consumption of IP services – for example, if high fees are charged for low-cost services and low fees are charged for high cost services, we would expect higher costs overall for both IPONZ and fee payers. IPONZ also needs to operate efficiently and offer its services at reasonable prices.
- **Equity** – fees should be as fair as possible. This includes both equity across IP regimes (e.g. between patent fee payers and trade mark fee payers), and equity within IP regimes (e.g. between current holders of IP rights and future IP applicants).
- **Simplicity and consistency** – fee structures should be kept as simple and consistent as possible. This helps ensure that it is relatively easy for fee payers to understand which fees they should pay. Consistency of fees over time also helps businesses plan effectively.

Question 2: Are there any other objectives, principles or criteria that IPONZ should take into account when deciding which proposals and options to progress?

Part C: Overview of proposals

90. IPONZ has developed a suite of changes that would meet the objectives above and address the findings of the fees review. This section includes an overview of the proposed fees and a summary of their expected impacts. Your feedback is sought on these impacts.
91. The next section of the discussion document (Part D) provides analysis of each individual proposal for changes to the patent and trade mark fee structures. These proposals are:
- a. Proposal 1: increased patent renewal and maintenance fees;
 - b. Proposal 2: increased and new fees for high-cost patent services;
 - c. Proposal 3: new trade mark application fee options; and
 - d. Proposal 4: simplified options for pre-application trade mark advice.

Overview of proposed fee changes

92. Together, IPONZ's four proposals for change to fee structures would result in a suite of changes to trade mark and patent fees. The specific fee changes proposed are set out in Tables 7 and 8 below, with the relevant proposals listed for ease of reference. The fee changes in these tables reflect IPONZ's preferred options, outlined later in Part D.
93. New fees that IPONZ is proposing are listed in italics. IPONZ is not proposing changes to any current trade mark and patent fees that aren't listed below. For a full list of current fees, refer to Annex 1.

Table 7: Proposed changes to patent fees (exclusive of GST)			
Service (Patents Act 2013)	Current fee	Proposed fee	Relevant proposal
Request for examination (including PCT examinations and re-examinations)	\$500	\$750	Proposal 2 (page 33)
<i>Examination of patent specification with 30 claims or more (per 10 claims)</i>	<i>No fee</i>	<i>\$200</i>	Proposal 2 (page 34)
Request for leave to amend complete specification after acceptance	\$150	\$500	Proposal 2 (page 33)
Application maintenance fee if paid within 3 months of anniversary	\$100	\$200	Proposal 1 (page 30)
Application maintenance fee if paid within 6 months of anniversary	\$150	\$300	Proposal 1 (page 30)
Annual renewal fee – 4 th to 9 th year	\$100	\$200	Proposal 1 (page 30)
Annual renewal fee – 10 th to 14 th year	\$200	\$450	Proposal 1 (page 30)
Annual renewal fee – 15 th to 19 th year	\$350	\$1000	Proposal 1 (page 30)
Penalty payable for request to extend the period for payment of a renewal fee	\$50	\$100	Proposal 1 (page 30)
Request for restoration of patent or patent application	\$100	\$600	Proposal 2 (page 34)

Table 7: Proposed changes to patent fees (exclusive of GST)			
Service (Patents Act 1953)	Current fee	Proposed fee	Relevant proposal
On filing complete specification	\$250	\$500	Proposal 2 (page 33)
<i>Application to amend complete specification before acceptance⁴</i>	\$60	\$150	Proposal 2 (page 33)
<i>Application to amend complete specification after acceptance⁴</i>		\$500	Proposal 2 (page 33)
Application to renew – 4 th year	\$170	\$600	Proposal 1 (page 31)
Application to renew – 7 th year	\$340	\$600	Proposal 1 (page 31)
Application to renew – 10 th year	\$540	\$1350	Proposal 1 (page 31)
Application to renew – 13 th year	\$1000	\$5900	Proposal 1 (page 31)

Table 8: Proposed changes to trade mark fees (exclusive of GST)			
Service	Current fee	Proposed fee	Relevant proposal
Request for search advice (per class)	\$40	\$50 for search and preliminary advice	Proposal 4 (page 41)
Request for preliminary advice (per class)	\$40		
Application to register a trade mark – standard (per class)	\$150	\$100	Proposal 3 (page 37)
<i>Application to register a trade mark – based on pre-application advice (per class)</i>		\$50	Proposal 3 (page 38)
<i>Application to register a trade mark – using picklist of pre-approved classification terms (per class)</i>		\$70	Proposal 3 (page 37)
Renewal of registration of a trade mark (per class, every 10 years)	\$350	\$200	Proposal 3 (page 37)

94. IPONZ proposes that any fee changes will come into force in early 2019, subject to Cabinet approval. Plans for implementation, monitoring and evaluation are described on pages 44 to 45.

Expected impacts of fee changes

95. As a whole, IPONZ expects the proposed fee changes to:

- a. Rebalance trade mark and patent revenue and ensure a steady reduction in the memorandum account;
- b. Increase costs for patent applicants and patent holders without adverse effects on innovative activity;

⁴ The current Patent Regulations 1954 include a single fee for amendment, before or after acceptance.

- c. Reduce costs for trade mark applicants and trade mark holders; and
 - d. Increase the complexity of the patent fee structure and the trade mark structure overall while making fees more effective, efficient and equitable.
96. These overall impacts are outlined below. More specific analysis of each proposal's impacts is provided in subsequent sections.

Achieve Objectives 1 and 2

97. These fee changes are expected to achieve Objective 1 by restoring parity between revenue from trade mark services and patent services, by making trade mark revenue and patent revenue roughly proportional to their share of IPONZ expenses (see list of fee change objectives on page 24). The trade marks regime is projected to incur 36.5% of total IPONZ expenses between July 2019 and July 2024, and the patents regime is projected to incur 60.1%. Under the proposed fee changes, trade mark fees are forecast to make up 36.4% of total IPONZ revenue and patent fees are forecast to make up 60.6%.
98. The fee changes are also expected to achieve Objective 2 by ensuring a steady reduction in the memorandum account surplus under a range of scenarios. The fee changes are forecast to reduce the memorandum account balance to \$9.8m by July 2024. There is little risk of the memorandum account falling into deficit under the proposed fees, even if IPONZ revenue is much lower than expected and expenses are higher than expected (projected account balance = \$1m in July 2024). The proposed fees also ensure that the memorandum account would reduce steadily if revenue is much higher than expected and expenses are lower than expected (projected account balance = \$18.2m in July 2024).

Increase patent costs without affecting innovation

99. IPONZ expects these fee changes to increase costs for patent applicants and patent holders, but does not expect any substantive adverse effects on innovation as a result.
100. The whole of life fees for a complete specification under the Patents Act 2013 would increase from \$4100 to \$9450 (excluding any excess claims fees). Annex 4 provides a breakdown of these costs and comparison with fees in similar jurisdictions. This cost increase will affect around 10,000 patent fee payers a year. Whole of life fees for a single divisional application under the Patents Act 1953 would increase from \$2300 to \$8950, affecting 300-500 fee payers a year.
101. IPONZ considers that these overall cost increases are unlikely to affect levels of innovative activity in New Zealand or internationally. IPONZ takes this view because:
- a. Costs are distributed across the life of a patent, with lower up-front costs when applicants are undertaking innovative activity and unlikely to be profiting from their inventions. Patent applications have an average lifespan of 6 years.
 - b. IPONZ fees are only a small portion of the expenses involved in developing and commercialising an invention, and in obtaining patent protection. For example, 98% of patent applications are made by patent attorneys and other agents. In general, the professional fees charged by patent attorneys are significantly higher than IPONZ patent fees. IPONZ patent fees are also outweighed by the potential profits of most inventions.
 - c. Both New Zealand and international patent applicants are likely to be paying fees in other jurisdictions. In general, fees in other jurisdictions are similar to the proposed fees above (see Annex 4). 85-90% of patent applications received by IPONZ are from overseas applicants.

- d. The proposals for amendments to fees under the Patents Act 1953 may support innovation by reducing the incentive for continued divisional applications under the 1953 Act, which may be inhibiting innovation (see paragraph 117 below).
102. While IPONZ doesn't expect the proposed fee changes to affect levels of innovative activity, IPONZ does expect the changes to have a minor impact on volumes of patent renewals, divisional applications under the Patents Act 1953, and examination requests for large and complex patents. These impacts are outlined in Proposal 1 (page 30) and Proposal 2 (page 33).

Reduced costs for trade mark applicants and holders

103. IPONZ expects that the proposed fee changes would reduce costs for business that apply for or hold trade marks. Under the proposed fees, the total cost of applying for and holding a single trade mark for 20 years would decrease from \$850 to \$500 (excluding any discounted application fees or additional services). This reduction in cost is small in magnitude but may be of benefit to small businesses, community groups and other trade mark applicants that are cost sensitive.
104. Cost savings will benefit around 15,000 trade mark fee payers a year, including new applicants and existing trade mark holders. IPONZ proposes reducing both renewal fees and application fees to ensure equity between past and future fee payers. If only application fees were reduced, this would disadvantage past fee payers who have contributed to the current memorandum account surplus.
105. The reduction in costs may lead to a moderate increase in volumes of domestic trade mark applications – for example, cost sensitive applicants may apply across more classes than they would have under previous fees. IPONZ considers that this effect is likely to be small in magnitude. For many applicants, the cost of the current fees is likely to be insignificant compared to the benefits of protecting their intellectual property through trade marks.
106. IPONZ also expects changes in the type of trade mark services requested by applicants as a result of Proposal 3. These impacts are outlined at page 40.

Increase complexity while improving effectiveness, equity and efficiency

107. The introduction of several new fees under Proposals 2 and 3 is expected to increase the complexity of the patent and trade mark fee structures. Proposal 4 would simplify the trade mark fee structure and mitigate the complexity introduced by Proposal 3. However, the new fees could still confuse some applicants, especially early in the implementation.
108. Overall, IPONZ considers that the increase in complexity is warranted because the new fees will improve the effectiveness, equity and efficiency of IPONZ services. Ultimately, these benefits flow to fee payers and the public in the form of better quality services, lower overall costs and a more fair distribution of the costs and benefits of IP protection.
109. It is also worth noting that each of the proposed new fees is already in place in one or more similar jurisdictions such as Australia, the UK or Canada. Overall, IPONZ considers that both proposed fee structures remain relatively simple and user-friendly compared to similar jurisdictions.

Question 3: Do you agree with the analysis above? Are there any other impacts of the proposed fee changes that IPONZ should consider? If so, please provide any information you have about who is impacted and how.

Part D: Analysis of Individual Proposals

110. This section provides detailed analysis of each individual proposal for changes to the trade mark and patent fee schedules. For an overview of the total package of fee changes and its relation to these proposals, refer to Tables 7 and 8 (pages 26 to 27). The discussion of each proposal includes:

- a. How the proposal would achieve the fees change objectives outlined on page 24;
- b. The options that IPONZ considered, including options that aren't proposed;
- c. Analysis showing why the proposed option(s) have been selected and the expected impact of the proposal.

111. Your feedback is sought on the proposed option(s) and their effects, and any other options that you think would fulfil the relevant fee change objectives.

Proposal 1: Increased patent renewal and maintenance fees

112. A significant increase in patent revenue is required in order to restore parity between trade mark and patent services (see Finding 1D, page 15). One of the key questions for the fees review was how much of this increase should be made up by increases to fees for renewal of patents, maintenance of patent applications, and fees for late payment of renewal and maintenance fees (referred to as 'renewal fees' in this section).

113. IPONZ proposes that renewal fees are increased significantly relative to other patent fees to maintain and enhance the current design of the patent fee structure (Objective 3).

Option 1A: Significant increase to patent renewal fees (proposed)

114. Under Option 1A, increases to patent renewal fees would make up the majority of the overall increase in patent revenue. Maintenance and early renewal fees under the Patents Act 2013 would increase moderately, and later renewal fees would increase significantly (see Table 9 below).

Service	Current fee	Proposed fee
Maintenance fee if paid within 3 months of anniversary	\$100	\$200
Maintenance fee if paid within 6 months of anniversary	\$150	\$300
Renewal – 4 th to 9 th year	\$100	\$200
Renewal – 10 th to 14 th year	\$200	\$450
Renewal – 15 th to 19 th year	\$350	\$1000
Penalty for late payment of a renewal fee	\$50	\$100

115. The changes to renewal fees under the Patents Act 2013 are intended to increase incentives for patent owners to allow unused patents to lapse, and for applicants to abandon or void patent applications that they don't intend to exploit commercially.

116. The periodic renewal fees charged under the Patents Act 1953 would be increased to match the cumulative cost of the annual fees under the Patents Act 2013. Table 10 below

shows the current and proposed fees under the Patents Act 1953, and how these relate to the proposed renewal fees under the Patents Act 2013.

Table 10: Current and proposed renewal fees under the Patents Act 1953 (Option 1A)			
Service	Current fee	Proposed fee	Relation to 2013 renewal fees
Application to renew – 4 th year	\$170	\$600	3x 4 th to 9 th year (\$200 p/a)
Application to renew – 7 th year	\$340	\$600	3x 4 th to 9 th year (\$200 p/a)
Application to renew – 10 th year	\$540	\$1350	3x 10 th to 14 th year (\$450 p/a)
Application to renew – 13 th year	\$1000	\$5900	2x 10 th to 14 th year (\$450 p/a) 5x 15 th to 19 th year (\$1000 p/a)

117. While the increases to the 10th year renewal fee and 13th year renewal fee appear significant, the fees are effectively equal to those charged under the Patents Act 2013. This would mean that those who hold patents and pending applications under the 1953 Act have appropriate incentives to allow unused patents to lapse and to abandon applications that they don't intend to exploit. These changes would also remove the financial incentive for applicants to continue making divisional applications under the Patents Act 1953 (see Finding 3D, page 20).

Option 1B: Percentage increase to all patent fees (not proposed)

118. Under Option 1B, all patent fees would increase by 85%, excluding hearing and opposition fees. This option is intended to show the effect of increasing patent revenue to be proportional to expenses, while making no changes to the current patent fee structure.

Table 11: Patent fees under Option 1B			
Service (Patents Act 2013)	Current fee	Estimated cost (per unit)	Fee (Option 1B)
Provisional specification	\$100	\$97	\$185
Complete specification / PCT national phase	\$250	\$171 / \$134	\$462.50
Transmittal fee for filing of PCT applications	\$180	\$465	\$333
Amendment before acceptance	\$150	\$249	\$277.50
Amendment after acceptance	\$150	\$1145	\$277.50
Examination/re-examination	\$500	\$3112 / \$2229	\$925
Maintenance of application	\$100	\$2523	\$185
Renewal – 4 th to 9 th year	\$100	\$97	\$185
Renewal – 10 th to 14 th year	\$200	\$97	\$370
Renewal – 15 th to 19 th year	\$350	\$97	\$647.50
Late fee	\$50	\$97	\$92.50
Request for restoration	\$100	\$2118	\$185

Table 11: Patent fees under Option 1B			
Service (Patents Act 1953)	Current fee	Estimated cost (per unit)	Fee (Option 1B)
On filing complete specification	\$250	\$2015	\$462.50
Amendment (before or after acceptance)	\$60	\$249 (before) \$1145 (after)	\$111
Application to renew – 4 th year	\$170	\$97	\$314.50
Application to renew – 7 th year	\$340	\$97	\$629
Application to renew – 10 th year	\$540	\$97	\$999
Application to renew – 13 th year	\$1000	\$97	\$1850

119. Under Option 1B, some fees would be set significantly above the estimated cost per unit. For example, the fee for filing a complete specification under the Patents Act 2013 is \$462.50, whereas the estimated cost per unit is just \$171. Other services (such as restorations and amendments after acceptance) would continue be charged at a small fraction of the estimated cost per unit. See Annex 2 for a full breakdown of the estimated costs of patent services.

Analysis

120. IPONZ prefers Option 1A because it would be more effective, equitable and efficient than Option 1B. Table 12 below summarises analysis of these options.

Table 12: Summary of analysis – change to patent renewal fees		
Criteria	Option 1A: significant increase to patent renewal fees	Option 1B: increase all patent fees by 85%
Effectiveness	+	-
Efficiency	+	Neutral
Equity	+	Neutral
Simplicity & Consistency	+	Neutral

Option 1A is more effective and efficient than Option 1B

121. Option 1A is more effective and efficient than Option 1B because it strengthens the existing incentives for applicants who are unlikely to commercially exploit their invention to abandon their application, and for holders of unused patents to allow them to lapse. IPONZ is forecasting steady growth in patent renewals over the next 5 years, and expects these increased incentives to dampen the forecast growth slightly (see Annex 3, page 53).

122. Option 1A would also allow IPONZ to keep up-front costs for patent applicants relatively low. Under Option 1B, renewal fees would comprise 49% of total patent revenue from FY 2019/20 to FY 2023/24, which is the same as under the status quo. Under Option 1A, renewal fees are forecast to comprise 59% of total patent revenue. This may help maintain the accessibility of the patent system for applicants with limited means (such as small businesses, start-ups and independent researchers).

Option 1A is more equitable than Option 1B

123. The increase in renewal fees would affect around 8000 fee payers a year. Option 1A would be more equitable than Option 1B because it would improve the balance between Patents Act 2013 fee payers and Patents Act 1953 fee payers. Also, existing patent holders have been benefiting from under-recovery of costs since FY 2015/16, so increased renewal fees may be appropriate from an equity perspective.

Option 1A is more consistent with similar jurisdictions

124. Current IPONZ renewal fees are significantly lower than those charged in similar jurisdictions such as Australia, Singapore and Canada. Table 13 below shows that the renewal fees proposed in Option 1A with fees in these jurisdictions.

Renewal Period	New Zealand	Australia	Singapore	Canada
Renewal – 4 th to 9 th year	\$200	\$320	\$240	\$220
Renewal – 10 th to 14 th year	\$450	\$580	\$540	\$270
Renewal – 15 th to 19 th year	\$1000	\$1320	\$800	\$490

125. The proposed renewal fees are higher than those charged in Canada, but compare well with the other two jurisdictions. IPONZ considers that the proposed fees in Option 1A are more appropriate than those charged in Canada because they create a stronger incentive for allowing unused patents to lapse.

Question 4: Do you support IPONZ's preferred option (1A)? If not, what other option(s) should be adopted? Why?

Question 5: What effect do you think increased renewal fees would have on how businesses and individuals use the patent system?

Proposal 2: Increased and new fees for high-cost patent services

126. The increased renewal fees in Proposal 1 above would make up a significant proportion of the required increase in patent revenue. IPONZ proposes to raise the rest of the required revenue by increasing fees for high-cost patent services (Option 2A), and introducing a new 'excess claims' fee for complex patent applications (Option 2B). This proposal would more fairly reflect the cost of individual patent services (Objective 4) and maintain or enhance the current design of the patent fee structure (Objective 3).

Option 2A: Increase fees for existing high cost services (proposed)

127. Under this option, IPONZ would increase fees for examinations, amendments after acceptance and restorations. These fee increases are intended to reflect the relatively high cost of these services.

⁵ All figures above have been converted into NZD and rounded to the nearest multiple of 10. Singapore fees have been adjusted to reflect the difference between renewal periods in NZ and Singapore

Table 14: Proposed changes to fees for high cost patent services (Option 2A)			
Services under Patents Act 2013	Current fee	Estimated cost (per unit)	Proposed fee
Examination	\$500	\$3112	\$750
Examination under PCT		\$2523	
Re-examination		\$2229	
Amendment after acceptance	\$150	\$1145	\$500
Request for restoration	\$100	\$2118	\$600
Services under Patents Act 1953	Current fee	Estimated cost (per unit)	Proposed fee
Filing of complete specification	\$250	\$2015	\$500
Amendment before acceptance ⁶	\$60	\$249	\$150
Amendment after acceptance ⁶		\$1145	\$500

128. All increased fees remain below the estimated cost per unit. This maintains the current design of the patents system (Objective 3) by keeping the up-front costs of the patent system low and accessible for cost-sensitive applicants.
129. The proposed fee for amendments after acceptance is set closer to the cost to serve than the other proposed fees. This is because amendments after acceptance require the involvement of senior and principal patent examiners (see paragraph 71 above), and may be avoided in some cases by applicants amending specifications before acceptance. In this context, the proposed fee would provide an appropriate incentive for applicants to make amendments earlier in the examination process whenever possible.
130. The proposed fee for restoration of lapsed patents and patent applications is a significant increase on the current fee. This is because restoration requests are costly on a per unit basis (see paragraph 69), and may be avoided by applicants paying renewal fees in a timely manner. The proposed fee is set well below the cost to serve because restorations are generally requested because of unintentional administrative errors, rather than a deliberate decision by the applicant. Lapsed applications or patents can only be restored if the lapsing was unintentional.
131. The fee for filing of complete specifications under the Patents Act 1953 is set lower than the combined cost of the equivalent fees under the Patents Act 2013 (complete application fee and examination fee). This is because the examination process under the Patents Act 1953 is generally less stringent and time-consuming than the process required by the Patents Act 2013. The proposed amendment fees under the Patents Act 1953 are intended to match the equivalent fees under the Patents Act 2013.

Option 2B: New 'excess claims' fee (proposed)

132. Under this option, a new 'excess claims' fee for examination of complex patent applications would be introduced. The excess claims fee would apply to accepted patents that included 30 or more claims at any point during the examination process. For example, a single additional fee of \$200 would be payable if a patent application included 25 claims at first examination and was amended to include 32 claims before acceptance.

⁶ This is a change to the current fee structure in the Patents Regulations 1954. The current Patent Regulations 1954 include a single fee for amendment, before or after acceptance.

133. This fee is intended to reflect the higher cost of examining complex patent specifications. Table 17 below provides more detail on the costs involved and how the excess claims fee would affect overall examination fees for patents (page 36).

134. Applicants would need to pay the \$200 fee for every 10 claims (above the threshold of 29) before the patent is granted. The Patents Act 2013 provides for a 3 month public notification of the patent between acceptance and granting, and the applicant would be required to pay the fee during this period.

Option 2C: Increase patent application and examination fees by 45% (not proposed)

135. Under this option, all patent application and examination fees would increase by 45%. This option is intended to show the effect of maintaining the relative levels of application and examination fees while raising renewal fees as per Proposal 1. Overall patent revenue levels under this option would be similar to revenue levels under Options 2A and 2B.

Table 15: Patent application and examination fees under Option 2C			
Service	Current fee	Estimated cost (per unit)	Fee (Option 2C)
Provisional specification	\$100	\$97	\$145
Complete specification	\$250	\$171 / \$134	\$362.50
Transmittal fee for filing of PCT applications	\$180	\$465	\$261
Amendment (before or after acceptance)	\$150	\$249 (before) \$1145 (after)	\$261
Examination/re-examination	\$500	\$3112 / \$2229	\$725
Request for restoration	\$100	\$2118	\$145
On filing complete specification (Patents Act 1953)	\$250	\$2015	\$362.50
Application to amend complete specification before or after acceptance (Patents Act 1953)	\$60	\$249 (before) \$1145 (after)	\$87

Analysis

136. IPONZ considers that Options 2A and 2B are appropriate and feasible options for raising the additional required revenue. Table 16 below summarises analysis of these options.

Table 16: Summary of analysis – change to fees for high-cost patent services			
Criteria	Option 2A: Increase fees for high-cost services	Option 2B: New ‘excess claims’ fee	Option 2C: Increase all fees by 45%
Effectiveness	+	+	Neutral
Efficiency	+	+	Neutral
Equity	+	+	-
Simplicity & Consistency	Neutral	-	+

Options 2A and 2B are more equitable, effective and efficient than Option 2C

137. Options 2A and 2B would be more equitable, effective and efficient than Option 2C because they better reflect the costs of individual patent services.
138. Together, Options 2A and 2B are expected to make the patent fee structure fairer while raising the additional revenue required for IPONZ to continue delivering high quality patent services. Table 17 below shows the combined impact of these options on examination fees, including excess claims fees.

Table 17: Total patent examination fees based on number of claims			
# of claims	Estimated % of accepted patents	Estimated cost (per unit)	Total examination fees under Option 2B (including excess claims fees)
1-29	75.5%	\$3112	\$750 (Standard examination fee)
30-39	11.5%	\$3356	\$950 (Exam. + \$200 excess claims fee)
40-49	4.6%	\$3600	\$1150 (Exam. + \$400 excess claims fees)
50-59	3%	\$3844	\$1350 (Exam. + \$600 excess claims fees)
60-69	1.6%	\$4088	\$1550 (Exam. + \$800 excess claims fees)
60-79	1.1%	\$4332	\$1750 (Exam. + \$1000 excess claims fees)
80+	2.5%	\$4500+	\$1950+ (Exam. + \$1200 or more excess claims fees)

Note: The estimates above are based on analysis of patents accepted between 1 July 2016 and 30 June 2017.

139. Option 2C would result in some fees being set well above the estimated cost per unit, and others being set far below the cost per unit. Some of these variations in cost recovery seem difficult to justify. For example, it seems inappropriate to subsidise restorations and amendments after acceptance more heavily than examinations.
140. Under Option 2A, existing patent fees would be more proportional to the estimated cost per unit than under Option 2C or the status quo. This would make the patents fee structure fairer, and may have some efficiency benefits as well – for example, some amendments may be requested before acceptance rather than after acceptance. There are still variations in how much each service is subsidised, but these variations are based on the need to maintain an effective, fair and efficient patent system.
141. Under Option 2B, IPONZ would recover more examination costs from applicants who make complex patent applications. This would make the patent fee structure fairer by reducing the subsidisation of complex patent applications by the wider body of patent fee payers. This fee could also improve the effectiveness of cost recovery (by making patent revenue more responsive to the type of applications received) and efficiency (by incentivising applicants to file patents with fewer claims).⁷

⁷ One of the expected impacts of the excess claims fee is a minor reduction in the average number of claims per patent application, as a result of applicants minimising their costs under the new fees. When variable acceptance and amendment fees were introduced by IP Australia in 2002, the average number of claims per application dropped noticeably. It seems likely that the effect of the excess claims fee will be minor by comparison, because the cumulative cost of Australia’s variable fees is far higher than the cost of the proposed excess claims fee (see Annex 4).

Option 2B increases complexity to the minimum necessary

142. Option 2A would be relatively simple to implement because it does not introduce any new charging points. However, Option 2B would increase the complexity of the patent fees structure by introducing a new charging point and making fees variable based on the number of claims considered during examination.
143. IPONZ considers the simplicity and user-friendliness of the current patent fee structure as a strength and asset. Accordingly, Option 2B has been designed to minimise the complexity involved in charging variable fees:
- a. The threshold of 29 claims has been chosen so that most applicants won't need to pay the excess claims fee and deal with the complexity involved.
 - b. The interval of 10 claims was chosen so that only a single fee is required. For example, if the fee was payable on every 5 claims above the threshold, two fees would be required – a fee of around \$200 for applications with 30 or more claims, and a fee of around \$100 for every 5 claims above 34.
 - c. The excess claims fee would need to be paid between the acceptance of a patent and granting. This provides applicants with a clear timeframe and incentive to pay the fee. Charging at the point of acceptance also avoids potential gaming of the system – if variable fees are charged at first examination then applicants could request examination of a small number of claims and then increase the number of claims by amendment.
144. Overall, IPONZ considers that Option 2B introduces the minimum complexity required to better reflect the variable cost of examinations, and that the patent fee structure would remain more simple and user-friendly than similar jurisdictions such as Australia, Singapore and the United Kingdom.

Question 6: Do you support IPONZ's preferred options (2A and 2B)? If not, what other option(s) should be adopted? Why?

Question 7: What effect do you think increased fees for high cost services (Option 2A) would have on how businesses and individuals use the patent system?

Question 8: What effect do you think the proposed excess claims fee (Option 2B) would have on how businesses and individuals use the patent system?

Proposal 3: New trade mark application fee options

145. IPONZ has identified an opportunity to incentivise efficient trade mark applicant behaviour by introducing two new application fee options. These fee options would be alternatives to the current application fee, referred to in this section as the 'standard' application fee. This proposal is intended to help fulfil Objective 5 (improve the efficiency and effectiveness of the trade mark system).

Option 3A: discount for applications that use the classification picklist (proposed)

146. Under this option, applications that use the list of pre-approved classification terms (the classification picklist) would be charged a discounted fee. This is intended to improve efficiency by creating an incentive for applicants to use the classification picklist.

147. Use of the classification picklist makes applications faster to examine because less effort is required to confirm the classification of the goods and services covered by the proposed trade mark. Classification is also a common ground for objection and ongoing correspondence between IPONZ and applicants, and this is seldom required when applicants use the classification picklist.
148. The proposed fee for applications using the classification picklist is \$30 cheaper than the proposed standard application fee. IPONZ anticipates that annual volumes of picklist applications would grow as a result of the discounted fee. Table 18 compares picklist applications to standard applications in terms of fees, average time to complete and estimated cost per unit.

Table 18: Applications using classification picklist – fees, time to complete and estimated cost				
Service	Current fee (per class)	Average time to complete	Estimated cost (per unit)	Proposed new fee
Standard application for a trade mark	\$150	0.9 hours	\$175	\$100
<i>Trade Mark registration fee - using classification picklist</i>		0.6 hours	\$134	\$70

Option 3B: discount for applications based on pre-application advice (proposed)

149. Under this option, applications that are based on both search advice and preliminary advice (S & PA) would be charged a significantly discounted fee. As noted in Finding 4B (paragraph 84), the standard application process includes a search of the trade mark register and an assessment of whether the proposed mark is distinctive enough that it can act as a trade mark. Applications that are based on both search advice and preliminary advice are much faster to examine than standard applications because this work has already been completed.
150. In order to be eligible for the discounted fee, an application would need to be based on the information submitted in the request for pre-application advice, with no amendments. The application would also need to be submitted within 3 months of IPONZ's pre-application advice.
151. Together, the proposed fees for pre-application advice (\$50) and applications based on pre-application advice (\$50) are equal to the standard application fee (\$100). This is intended to create an incentive for applicants who would benefit from an S & PA report to request one, while avoiding any incentive for applicants to request an S & PA report when they do not need one. Table 19 compares applications following an S & PA to standard applications in terms of fees, average time to complete and cost per unit.

Service	Current fee (per class)	Time to complete (per unit)	Estimated cost (per unit)	Proposed new fee
Request for search advice and preliminary advice	\$80	0.5 hours	\$120	\$50
Standard trade mark application	\$150	0.9 hours	\$175	\$100
<i>Trade mark application fee - following pre-application advice</i>		0.25 hours	\$86	\$50

152. Compared to standard applications, applications following pre-application advice are also more likely to be accepted and less likely to be the subject of objections and ongoing correspondence between the applicant and IPONZ. Table 20 below compares applications following full pre-application advice report to data on all trade mark applications.

Application type	Acceptance rate	Most common grounds for objection
Following full pre-application advice	92%	1. Classification and specification (26%) 2. Conflict with existing trade mark (24%) 3. Failure to provide required information (18%)
All trade mark applications	61%	1. Conflict with existing trade mark (32%) 2. Classification and specification (23%) 3. Mark is descriptive or non-distinctive (17%)

153. Applications based on a search advice or preliminary advice alone would not be eligible for the discounted fee. While such applications are usually processed faster than standard applications, they are more time-consuming than applications based on both types of pre-application advice. Moreover, IPONZ is proposing to simplify pre-application advice by offering search advice and preliminary advice as a single bundled service (see Proposal 4, page 41).

Option 3C: discount for applications under Madrid protocol (not proposed)

154. Under this option, a discounted fee would be applied to international applications made under the Madrid protocol.⁸ Applications under the Madrid protocol are similar to picklist applications in that they require less effort to classify. A new fee for Madrid protocol applications could be set at \$70 to reflect the reduced effort and cost for IPONZ.

Analysis

155. IPONZ considers that Options 3A and 3B should be progressed. Table 21 below summarises analysis of these options.

⁸ The Madrid Protocol is international treaty that allows a trademark owner to seek registration in any of the countries that have joined the Protocol by filing a single application.

Table 21: Summary of analysis – new trade mark application fee options			
Criteria	Option 3A: discounted picklist application fee	Option 3B: discounted S & PA application fee	Option 3C: discounted Madrid protocol fee
Effectiveness	+	+	Neutral
Efficiency	+	+	Neutral
Equity	+	+	+
Simplicity & Consistency	-	-	-

All options are more equitable and less simple than status quo

156. All of the options outlined above are more equitable than the status quo, because they provide greater cost savings to applicants who create less cost for IPONZ. However, each option would also make the trade mark fee schedule more complex. In this context, equity benefits alone are probably not sufficient to justify introducing new discounted fee options. For example, applicants would need to identify which fee they should pay, and any errors would need to be followed up by IPONZ. IPONZ has also budgeted for changes to IT systems to support implementation of the new fees.

Options 3A and 3B provide significant efficiencies

157. Options 3A and 3B are expected to result in significant efficiencies for IPONZ and trade mark applicants, as a result of uptake of the new discounted fees. IPONZ's forecasting shows that the following efficiencies could be realised over the forecast period:

- a. Option 3A could save around 9000 IPONZ personnel hours, and \$2.5m in fees.
- b. Option 3B could save around 1200 personnel hours and \$0.35m in fees.

158. IPONZ also expects these changes to improve the efficiency of the trade mark system more broadly. For example, increased use of the classification picklist and of pre-application advice could improve overall acceptance rates and average examination timeframes, because acceptance rates are higher for these application types.

159. IPONZ considers that these potential efficiencies justify making the trade mark fee schedule more complex. It is also worth noting that IP Australia offers similar fee options, and that the New Zealand fee schedule would still be relatively simple by comparison because of additional trade mark fees charged by IP Australia.

160. IPONZ does not propose progressing Option 3C because it is not expected to provide any efficiency gains. International applicants apply under the Madrid Protocol because of the administrative efficiency of doing so, and a \$30 discount on the application fee seems unlikely to affect volumes of Madrid protocol applications.

Question 9: Do you support IPONZ's preferred options (3A and 3B)? If not, what other option should be adopted? Why?

Question 10: What effect do you think the proposed fee for applications using the classification picklist (Option 3A) would have on the trade mark system?

Question 11: What effect do you think the proposed fee for applications based on pre-application advice (Option 3B) would have on the trade mark system?

Proposal 4: Simplified options for pre-application trade mark advice

161. IPONZ has found that the current options for pre-application trade mark advice are somewhat ineffective and inefficient (see Finding 4A, page 22). IPONZ proposes simplifying these options by offering search advice and preliminary advice as a single bundled service. This proposal is intended to help fulfil Objective 5 (improve the efficiency and effectiveness of the trade mark system).

Option 4A: Bundle search and preliminary advice as a single service (proposed)

162. Under this option, trade mark applicants would receive search advice and preliminary advice as a single bundled service. The intended effect of this proposal is to simplify the trade mark fee schedule, and avoid unsuccessful trade mark applications that are based only a search report or a preliminary advice report (see Table 24 below).

163. Additionally, IPONZ would reduce the combined fee for search and preliminary advice from \$80 to \$50. As a result, the additional cost to applicants from bundling these services would be minimal.

164. This option would also support Option 3B by lowering the cost of full pre-application advice to \$50. The fee for applications based on full pre-application advice is \$50 under Option 3B, so the combined cost of would be equal to the standard application fee (\$100). This would create an incentive for applicants who would benefit from search and preliminary advice to request it before making an application.

Option 4B: Discounted fee for combined S & PA reports (not proposed)

165. Alternatively, IPONZ could continue offering search advice and preliminary advice separately, but introduce a new discounted fee for combined S & PA reports.

Service	Current fee	Estimated cost (per unit)	Fee (Option 4B)
Request for search advice (per class)	\$40	\$86	No change (\$40)
Request for preliminary advice (per class)	\$40	\$86	No change (\$40)
Request for combined search and preliminary advice (per class)	\$80	\$120	\$50

166. This option is intended to reflect the lower cost of completing combined S & PA reports, and create some incentive for applicants to request combined S & PA reports instead of separate search advice reports and preliminary advice reports. This option would also support the policy intent of Option 3B by lowering the cost of a combined S & PA report to \$50.

Analysis

167. IPONZ prefers Option 4A, because it would simplify the fee schedule and make pre-application advice more efficient and effective. Table 23 below summarises analysis of these options:

Criteria	Option 4A: Bundle search and preliminary advice	Option 4B: Discounted fee for combined S & PA reports
Effectiveness	+	Neutral
Efficiency	++	+
Equity	Neutral	Neutral
Simplicity & Consistency	+	-

Option 4A has significant efficiency benefits

168. Option 4A would make the trade mark system more efficient by reducing numbers of unsuccessful applications and objections to applications. Table 24 below shows that:

- a. Applications based only on a search report or a preliminary advice report are less likely to be accepted than applications based on an S & PA report;
- b. Such applications are more likely to be the subject of objections and ongoing correspondence between IPONZ and the applicant; and
- c. The most common grounds for objection for these applications suggest that many of these applicants would have benefitted from a combined S & PA report.

Application type	Acceptance rate	Average objections per application	Most common ground for objection
Following search advice	83%	0.33	Mark is descriptive or non-distinctive (35%)
Following preliminary advice	86%	0.35	Mark conflicts with existing trade mark (43%)
Following combined S & PA	92%	0.29	Classification and specification (26%)

169. Option 4B would allow trade mark applicants who only require search, or only preliminary advice, to request these services. This is efficient because they do not need to pay the additional cost of a combined report, and IPONZ doesn't spend the additional time completing the combined report.

170. However, the potential efficiency benefits of Option 4B are expected to be minor compared to the benefits of Option 4A. A relatively small number of avoided unsuccessful applications or avoided objections would be likely to outweigh the potential efficiency benefits of retaining search and preliminary advice as separate services.⁹

⁹ For example, if we assume that 50% of search advice applicants and preliminary advice applicants would not benefit from a combined report, Option B would save around \$700 for applicants and around 90 hours of IPONZ personnel time per annum. These savings would be outweighed by a small number of avoided objections and unsuccessful applications per annum.

Option 4A is more effective and user-friendly than Option 4B

171. Option 4A is more effective and user-friendly than Option 4B, particularly for inexperienced applicants. Search reports and preliminary advice reports only provide applicants with some of the information they need in order to confidently file their trade mark application. Inexperienced applicants may be unaware of these limitations.
172. Search and preliminary advice services are primarily directed at inexperienced and non-expert applicants who are not represented by a patent attorney or lawyer. Patent attorneys and lawyers who deal with trade mark applications are capable of searching the trade mark register themselves and providing advice on whether a proposed trade mark could be registered. Only 23% of requests for pre-application advice are made by patent attorneys or lawyers on behalf of their clients. By comparison, attorneys make 55% of all trade mark applications.

Option 4A is simpler than Option 4B

173. Option A would simplify options for pre-application advice. This effect is particularly important given Proposal 3 above (new trade mark application fee options, page 37).
174. Adding new application fee options makes the fee schedule more complex, and creates a risk that applicants will be confused about which fee to pay. This risk is especially high under Option 4B, whereas Option 4A mitigates the risk. Under Option 4B, applicants would only be eligible for the discounted S & PA application fee if they request a combined S & PA report (see paragraph 150 above). Confusion about this point could arise if applicants are still able to request separate search reports and preliminary advice reports.

Question 12: Do you support IPONZ's preferred option (4A)? If not, what other option should be adopted? Why?

Question 13: What effect do you think the bundling of pre-application advice as a single service (Option 4A) would have on the trade mark system?

Part E: Implementation, monitoring and evaluation

175. This section sets out IPONZ's plans for implementing, monitoring and evaluating the amended fee schedules proposed in this document.

Implementation

176. IPONZ proposes that the new amended fees would come into force in early 2019. The commencement date would be at least 28 days after the notification of the amendment regulations in the New Zealand Gazette. Tables 25 and 26 below show how the transition would work for each of the new and amended fees.

Table 25: Implementation of patent fee changes	
Proposed fee change(s)	New/amended fee would apply to:
Increased fees under Patents Act 2013 for the following requests: <ul style="list-style-type: none"> • examinations (including PCT examinations and re-examinations) • leave to amend complete specification after acceptance • annual renewal of a patent • maintenance of a patent application • restoration of patent or patent application • extending the period for payment of a renewal fee 	Requests made on or after commencement date
New excess claims fee under the Patents Act 2013 for patent applications with 30 or more claims	Patent applications with examination requested after commencement date
Increased fees and new fees under Patents Act 1953 for: <ul style="list-style-type: none"> • Filing of a complete specification (including divisional applications) • Applications to amend a specification before acceptance (new fee) • Applications to amend a specification after acceptance (new fee) • Applications to renew a patent 	Requests / applications made on or after commencement date

Table 26: Implementation of trade mark fee changes	
Proposed fee change(s)	New/amended fee would apply to:
Reduced fees for: <ul style="list-style-type: none"> • Trade mark applications • Renewal of a trade mark registration New discounted fee for applications using the classification picklist	Requests / applications made on or after commencement date
New discounted fee for applications based on pre-application advice	Applications based on pre-application advice issued after commencement date
Bundling of search advice and preliminary advice as a single service and fee change to \$50	Requests for pre-application advice made on or after commencement date

Monitoring and evaluation

177. IPONZ would monitor and evaluate the impacts of the any fee changes by carrying out a fees review in 4-5 years' time, in accordance with Treasury guidance. This review is likely to include consideration of:

- a. the trend in the memorandum account balance;
- b. parity between trade mark and patent revenue levels; and
- c. impacts on application volumes and types as a result of new and amended fees.

178. IPONZ also intends to carry out benchmarking to measure efficiencies gained from the proposed fee changes. For example, monitoring of trends in trade mark acceptance rates, examination timeframes and objections would help IPONZ assess whether the expected efficiency benefits of the proposed changes to trade mark fees were realised.

Question 14: Do you support IPONZ plans for implementing, monitoring and evaluating the amended fee schedules? If not, what alternative approach should IPONZ consider?

Annex 1: Summary of current patent, trade mark and design fees

Below are tables setting out the current fees under the Trade Marks Act 2003, the Patents Act 2013, the Patents Act 1953 and the Designs Act 1953. All fees are GST exclusive. Fees that would remain the same under the proposals in this document are highlighted in **green**.

Table 1: Current fees under Trade Marks Act 2003

Activity title	Description of activity	Fee
Request for search advice (per class)	Examiners search the trade marks register to see if the trade mark is already in use.	\$40
Request for preliminary advice (per class)	Examiners provide preliminary advice on the registrability of the trade mark.	\$40
Application for a trade mark (per class)	Application for examination and registration for a trade mark in one class of goods or services.	\$150
Renewal of registration of trade mark (per class)	Fee for renewing the registration of a trade mark for a period of 10 years.	\$350
Notice of opposition to registration of a trade mark	Fee for submitting a motion to oppose the registration of a trade mark.	\$350
Hearing by Commissioner for each party	Fee imposed when a hearing takes place.	\$850
Application for revocation of registration of trade mark	Fee for submitting a motion to revoke a registered trade mark.	\$350
Application for declaration of invalidity of registration	Fee for submitting a motion to declare a registered trade mark invalid.	\$350

Table 2: Current fees under Patents Act 2013

Activity title	Description of activity	Fee
Application accompanied by a provisional specification	A provisional application for a patent that is less detailed than a standard application. This is often used to buy more time for research and development.	\$100
Application accompanied by a complete specification	A standard application for a patent. This fee covers the filing of the patent specification but not examination of the specification.	\$250
Application made under the Paris Convention	An application based on the first application for an invention filed in a Paris Convention country.	\$250
Application for entry into the national phase of a Patent Cooperation Treaty (PCT)	An international application which is being filed in a large number of jurisdictions simultaneously under the Patent Cooperation Treaty. In New Zealand this activity is treated as a patent application	\$250

Activity title	Description of activity	Fee
application	accompanied by a complete specification.	
Transmittal fee for filing of PCT applications	An application by a New Zealand applicant for their patent specification to be filed in a large number of jurisdictions simultaneously under the PCT.	\$180
Request for examination or re-examination	A request for examining a patent or re-examining a patent once changes have been made.	\$500
Amendment by applicant of complete specification before acceptance	Amending the specification of a patent to overcome an objection raised in examination, or to overcome an opposition to registration.	\$150
Request for leave to amend complete specification after acceptance	Amending the specification of a patent after the patent has been accepted for granting.	\$150
Application maintenance fee if paid within 3 months	A fee paid to extend the time for an existing application or on lapsed applications approved for restoration.	\$100
Application maintenance fee if paid within 6 months	As above, but including an additional charge for late payment under regulation 9(1)(b) of the Patent Regulations 2014.	\$150
Renewal fee (4th – 9th year)	Annual fee to keep a granted patent on the patents register.	\$100
Renewal fee (10th – 14th year)	“ “	\$200
Renewal fee (15th – 19th year)	“ “	\$350
Late payment penalty	Penalty for renewal fees paid after the due date.	\$50
Request for restoration of a patent or patent application	Request to restore a lapsed patent application or patent due to non-payment of maintenance or renewal fees.	\$100
Notice of opposition	Fee for submitting a motion to oppose the grant of a patent.	\$350
Request for a hearing	Fee for requesting a hearing on opposition to or revocation of a patent.	\$850
Application to revoke a patent	Fee for submitting a motion to revoke a registered patent.	\$350

Table 3: Current fees under Patents Act 1953 – compared to equivalent fee(s) under Patents Act 2013

Activity title	Description of activity	Fee (Patents Act 1953)	Equivalent fee(s) (Patents Act 2013)
Filing complete specification	The standard application fee for a patent, including examination of the patent. Divisional applications are charged this fee.	\$250	\$750 (\$250 complete application fee + \$500 examination fee)
Application to amend complete specification (before or after acceptance)	Amending the specification of a patent before or after the patent has been accepted for granting.	\$60	\$150
Renewal fee: 4 th year	Fee to keep a granted patent on the patents register.	\$170	\$300 (3x annual renewal fee of \$100)
Renewal fee: 7 th year	“ “	\$340	\$300 (3x annual renewal fee of \$100)
Renewal fee: 10 th year	“ “	\$540	\$600 (3x annual renewal fee of \$200)
Renewal fee: 13 th year	“ “	\$1000	\$2150 (2x annual renewal fee of \$200 + 5x annual renewal fee of \$350)

Table 4: Current fees under Designs Act 1953

Activity title	Description of activity	NZ fee (exclusive of GST)
Application for registration	Application and examination fee for registering a design.	\$100
First renewal fee	Fee for renewing the registration of a design.	\$100 (for 5 years)
Second renewal fee	“ “	\$200 (for 5 years)
Notice of opposition by opponent	Fee for submitting a motion to oppose a registration of a design.	\$300
Hearing fee for each party	Fee imposed when a hearing takes place.	\$750
Notices of opposition to correction to error	Fee for submitting a motion to oppose a correction of an error in a design.	\$300

Annex 2: Costs recovered by proposed fees

The tables in this annex set out estimates of the costs recovered by all proposed patent, trade mark, and design fees. Fees that would remain the same under the proposals in this document are included and highlighted in **green**.

The estimated per unit costs in the table below are based on FY 2021/22. Per unit costs grow across the forecast period, so costs in FY 2021/22 are the best available estimate of the average costs between implementation (mid 2018/19) and the end of the forecast period (2023/24).

Table 1: Costs recovered by proposed patent fees						
Service	Proposed fee	Est. personnel costs ¹⁰	Est. operating costs ¹¹	Est. capital and asset costs ¹²	Est. corporate costs ¹³	TOTAL est. cost
Application accompanied by a provisional specification	\$100	-	\$63	\$20	\$14	\$97
Application accompanied by a complete specification (incl. convention applications)	\$250	\$42	\$63	\$20	\$44	\$171
Application for entry into the national phase of a PCT application	\$250	\$21	\$64	\$20	\$29	\$134
Transmittal fee for filing of PCT applications	\$180	\$209	\$72	\$20	\$164	\$465
Request for examination	\$750	\$1715	\$136	\$20	\$1240	\$3112
Request for examination of application under PCT	\$750	\$1380	\$121	\$20	\$1001	\$2523
Request for re-examination	\$750	\$1213	\$114	\$20	\$882	\$2229
Amendment before acceptance	\$150	\$88	\$66	\$20	\$74	\$249
Request for leave to amend after acceptance	\$500	\$731	\$81	\$20	\$313	\$1145

¹⁰ Personnel costs represent the estimated cost of staff time spent on each unit.

¹¹ Operating costs represent the estimated cost of internal IPONZ operating expenses such as IT support, travel and [example].

¹² Capital and asset costs represent the cost of capital invested in IPONZ assets, including depreciation of assets and the 'capital charge'.

¹³ Corporate costs represent overhead costs charged by MBIE (IPONZ's parent organisation), including office space and support from central services such as HR and legal.

Table 1: Costs recovered by proposed patent fees

Service	Proposed fee	Est. personnel costs¹⁰	Est. operating costs¹¹	Est. capital and asset costs¹²	Est. corporate costs¹³	TOTAL est. cost
Additional fee for examination of patent with 30 claims or more (per 10 claims)	\$200	\$84	\$66	\$20	\$74	\$244
Application maintenance – within 3 months	\$200	-	\$63	\$20	\$14	\$97
Application maintenance – within 6 months	\$300					
Annual renewal fee – 4 th – 9 th year	\$200	-	\$63	\$20	\$14	\$97
Annual renewal fee – 10 th – 14 th year	\$450	-	\$63	\$20	\$14	\$97
Annual renewal fee – 15 th – 19 th year	\$1000	-	\$63	\$20	\$14	\$97
Late payment penalty	\$100	-	\$63	\$20	\$14	\$97
Request for restoration of a patent or patent application	\$600	\$1545	\$89	\$20	\$463	\$2118
Notice of opposition	\$350	\$1687	\$63	\$20	\$14	\$1785
Request for a hearing	\$850	\$1687	\$63	\$20	\$14	\$1785
Application to revoke a patent	\$350	\$1687	\$63	\$20	\$14	\$1785
Filing complete specification (Patents Act 1953)	\$500	\$1091	\$109	\$20	\$882	\$2015
Periodic renewal fee – 4 th and 7 th years (Patents Act 1953)	\$600	-	\$63	\$20	\$14	\$97
Periodic renewal fee – 10 th year (Patents Act 1953)	\$1350					
Periodic renewal fee – 13 th year (Patents Act 1953)	\$5900					

Table 2: Costs recovered by proposed trade mark fees

Service	Proposed fee (per class)	Est. personnel costs ¹⁰	Est. operating costs ¹¹	Est. capital and asset costs ¹²	Est. corporate costs ¹³	TOTAL est. cost
Request for search and preliminary advice	\$50	\$40	\$26	\$16	\$38	\$120
Trade mark application – standard	\$100	\$72	\$27	\$16	\$59	\$175
Trade mark application – based on pre-application advice	\$50	\$20	\$25	\$16	\$25	\$86
Trade mark application – using classification picklist	\$70	\$48	\$26	\$16	\$43	\$134
Renewal of registration of trade mark	\$200	-	\$24	\$16	\$11	\$52
Notice of opposition to registration of a trade mark	\$350	\$1250	\$24	\$16	\$11	\$1302
Hearing by Commissioner for each party	\$850	\$1250	\$24	\$16	\$11	\$1302
Application for revocation of registration of trade mark	\$350	\$1250	\$24	\$16	\$11	\$1302
Application for declaration of invalidity of registration	\$350	\$1250	\$24	\$16	\$11	\$1302

Table 3: Costs recovered by design fees (no changes proposed)

Service	Proposed fee	Est. personnel costs ¹⁰	Est. operating costs ¹¹	Est. capital and asset costs ¹²	Est. corporate costs ¹³	TOTAL est. cost
Application for registration	\$100	\$68	\$71	\$53	\$86	\$278
First renewal fee (for 5 years)	\$100	\$6	\$68	\$53	\$41	\$169
Second renewal fee (for 5 years)	\$200	\$15	\$69	\$53	\$47	\$184
Notices of opposition	\$300	\$1250	\$68	\$53	\$41	\$1412
Hearing fee for each party	\$750	\$1250	\$68	\$53	\$41	\$1412

Annex 3: Approach to fees modelling

This Annex provides a brief summary of the approach that IPONZ took when modelling revenue and expenses, and how this modelling helped IPONZ develop the proposed fee changes. This work was carried out with assistance from Deloitte.

Forecast period

IPONZ decided to start its modelling from FY 2014/15, so that it could assess historical trends in revenue and expenses. IPONZ decided to forecast revenue and expenses to the end of FY 2023/24, five and half years after the proposed implementation date for fee changes. This end date was selected to ensure that IPONZ could assess the long-term effect of fee changes on the memorandum account balance.

Base assumptions

To review fees, IPONZ had to forecast future service volumes the expenses required to deliver and improve these services. This forecasting helped IPONZ assess whether current fees are still appropriate, and how much overall revenue levels should change.

IPONZ volume forecasting included the following assumptions:

- Trade mark applications are expected to continue growing at around 3% per annum;
- Trade mark renewals are expected to drop temporarily, reflecting both the downturn in applications following the GFC in 2008 and the change to renewal periods in 2003;
- Examination requests under the Patents Act 2013 are expected to grow quickly up to 2019/20 (as a result of a significant number of patent applications becoming due for examination at that time) and then plateau;
- Overall, volumes of patent applications and renewals are expected to remain static;
- Applications and renewals under the Patents Act 2013 are expected to continue growing steadily as more applicants shift to the new patents regime;
- Applications and renewals under the Patents Act 1953 are expected to decline slowly, mainly due to ongoing divisional applications (see Finding 3D, page 20).

IPONZ expense forecasting included the following assumptions:

- IPONZ will deal with continued growth in trade mark applications by improving the efficiency of IT systems, rather than hiring more trade mark examiners;
- IT improvements and other improvements to trade mark services will require increased capital and operating expenditure (see Finding 1B, page 13);
- IPONZ will need to hire more patent examiners to deal with the rapid growth in examination requests under the Patents Act 2013 (see Finding 1A, page 11);
- Overhead costs will rise significantly due to the increase in patents personnel and increasing corporate cost recovery by MBIE, IPONZ's parent organisation.

Sensitivity testing

The assumptions outlined above formed a 'base case' – a forecast of future revenue and expenses based on the most reasonable and likely scenario IPONZ could expect. However,

these assumptions are subject to varying degrees of uncertainty. Therefore, alternative assumptions were incorporated into the model to test how they would affect revenue and expenses. This kind of testing is referred to as 'sensitivity testing'.

Sensitivity testing was an essential part of generating the findings of the fees review. Alternative assumptions used in sensitivity testing included:

- Significant variation in trade mark application volumes;
- Moderate variation in volumes of patent renewals, applications and examinations;
- Cost overruns on IT projects;
- Delay of IT projects, which would reduce expenditure.

These assumptions were combined to make two main scenarios for sensitivity testing:

- An 'upside scenario' showing how high the memorandum account balance could remain if expenses are lower than expected and revenue is higher than expected;
- A 'downside scenario' showing how low the memorandum account balance could fall if expenses are higher than expected and revenue is lower than expected.

Analysis of these two scenarios indicated that the trend in the memorandum account balance over the forecast period is subject to significant uncertainty. Accordingly, IPONZ focused on identifying fee options that would be likely to work well under a range of circumstances.

Effect of proposed fee changes

IPONZ identified a range of fee change options to rebalance revenue from trade mark and patent services. These options were developed iteratively, looking at their effect on the trend in the memorandum account balance, whether they achieved parity between trade mark and patent revenue, and how they performed during sensitivity testing.

Once a preferred fee change option was identified, IPONZ made some assumptions about how it might affect demand for trade mark and patent services. These assumptions included:

- A slight reduction in patent renewals under the Patents Act 2013 and in divisional applications under the Patents Act 1953 (see Proposals 1 and 2);
- Significant growth in trade mark application types that would be discounted under the proposed fee changes (see Proposal 3); and,
- Significant growth in demand for pre-application trade mark advice as a result of the discount for applications based on pre-application advice and increased effectiveness of these services (see Proposal 4).

Changing fee levels and introducing new fees creates uncertainty about future revenue. Accordingly, the assumptions above were varied during sensitivity testing, to ensure that the potential risks and disadvantages of the preferred fee change option were well understood. Based on this sensitivity testing, IPONZ considers that the fee changes proposed in this document would make IPONZ revenue less uncertain than the status quo.

Annex 4: Comparison of total patent costs

The tables in this annex set out the total fees of applying for and holding a patent under IPONZ's proposed fees with fees in Singapore, Australia and the United Kingdom. The tables compare costs for applications containing 15 claims, 35 claims, and 55 claims. All figures for other jurisdictions have been converted into NZD and rounded to the nearest multiple of 10.

The analysis assumes that:

- the application is a standard complete specification with no amendment or maintenance fees;
- the total number of claims at filing being the same as at grant or acceptance and after acceptance; and
- the patent is held for the full 20 year term.

Table 1: Comparison of patent fee costs based on patent application with 15 claims

Jurisdiction	Application fees	Renewal fees	Total fees
New Zealand	\$1000	\$8450	\$9450
Australia	\$1170	\$12420	\$13590
Singapore	\$2410	\$8590	\$11000
United Kingdom	\$710	\$8920	\$9630

Table 2: Comparison of patent fee costs based on patent application with 35 claims

Jurisdiction	Application fees	Renewal fees	Total fees
New Zealand	\$1200	\$8450	\$9650
Australia	\$2910	\$12420	\$15330
Singapore	\$3030	\$8590	\$11620
United Kingdom	\$1190	\$8920	\$10110

Table 3: Comparison of patent fee costs based on patent application with 55 claims

Jurisdiction	Application fees	Renewal fees	Total fees
New Zealand	\$1600	\$8450	\$10050
Australia	\$5220	\$12420	\$17640
Singapore	\$3860	\$8590	\$12450
United Kingdom	\$1870	\$8920	\$10790