

Regulatory Impact Statement

Increasing the maximum claim level in Disputes Tribunals

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Justice. It provides an analysis of options to reduce barriers to getting justice for people with low-value civil disputes, and to generally improve the operation of the Disputes Tribunals. It responds to a request by the Minister of Justice to do further work on the possibility of increasing the maximum claims level in the Disputes Tribunals from \$15,000 (or \$20,000 if the parties agree) to \$25,000 (or \$30,000 if the parties agree), as having more low value disputes go to the Disputes Tribunals could free up both District Court and legal aid resources for more serious cases.

Data in a number of areas that would assist in evaluating the magnitude of the problem or effectiveness of policy options is lacking.

In the time available, the Ministry has not been able to analyse other ways of reducing barriers to the Disputes Tribunals such as allowing other types of civil claims to be brought to the Tribunal, or considered all of the possible maximum claims levels that could be set. Assessing at which point people would require better protections (such as better appeal rights) is difficult, and more time and resource would be needed to survey potential applicants to determine when they would make this judgment.

Analysis of whether or not civil legal aid eligibility should be changed is not feasible because the Government has already made final decisions in this area.

The Ministry has not analysed whether parties should be able to be represented by a lawyer in the Disputes Tribunal, because this would make the Tribunal less accessible for parties who cannot afford legal fees.

Limited data is available about how many extra claims might be brought to Disputes Tribunals or how many fewer cases in District Courts. The Ministry has made the following assumptions:

- If the maximum claims level in the Tribunals is raised, most people will take their case to a Disputes Tribunal instead of a District Court (in order to take advantage of the lower cost and faster resolution of cases in the Disputes Tribunals), and some people that currently resolve their case out of the courts and tribunals system (or do nothing) will use the Tribunal.
- If the Disputes Tribunal maximum claims level is increased to \$30,000 (option 1C), the number of new Disputes Tribunal cases will increase by 3.8 percent. This is based on the percentage increase in case numbers experienced the last time the maximum claims level was increased. (In 2009, the level increased by 100 percent from \$7,500 to \$15,000. Option 1C represents a 100 percent increase on the current maximum claim level of \$15,000.)
- If Disputes Tribunal hearings are made public, there will be a minimal impact on attendance unless there is particular media interest in a case. This is based on

Tenancy Tribunal experience where the public rarely attend open hearings. The Ministry cannot predict the level of public interest in Disputes Tribunal hearings.

No data is available about:

- the value of claims for cases where legal aid has been granted for a District Court case;
- the numbers of people who currently do not use the District Court but give up a remedy or use alternative dispute resolution;
- the number of cases where people reduce the amount claimed in order to use a Disputes Tribunal, and
- the gender of parties in the Disputes Tribunals and District Courts.

Before policy decisions can be implemented, amendments to the Disputes Tribunals Act 1988 are needed. More detailed work would be needed before Parliamentary Counsel could be instructed to draft amendments.

The policy options are not likely to:

- impose additional costs on businesses
- impair private property rights, market competition, or the incentives on businesses to innovate and invest, or
- override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines).

Warren Fraser
Policy Manager, Courts and Tribunals Policy
Courts and Justice Services

27 November 2013

Status quo

- 1. Individuals and small businesses with small-value civil disputes can settle the dispute themselves, do nothing, go to the District Court, or go to a Disputes Tribunal. Disputes Tribunals provide a simple, fast and low-cost way to resolve these disputes.

- 2. Applicants can lodge a claim with a Disputes Tribunal if they have a civil claim for \$15,000 or less, or up to \$20,000 with the consent of all parties (although less than 1 percent of applicants utilise the consent range of \$15,001 to \$20,000). These maximum claims levels are set in the Disputes Tribunals Act 1988 ('the Act'). There are currently about 16,000 Disputes Tribunal cases each year. However, new cases have declined from about 20,000 over the last few years, as shown in figure 1.

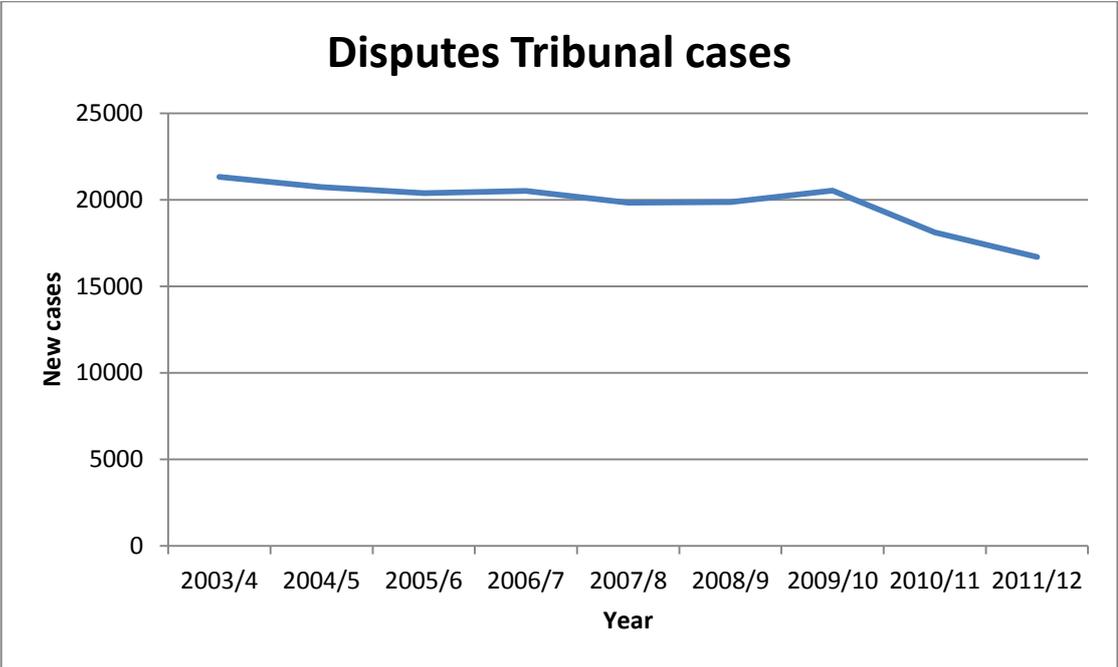


Figure 1

- 3. In order to provide a simple, fast and low-cost procedure, claimants forgo certain protections they are usually entitled to. This means:
 - Disputes Tribunal referees must first assess whether they can assist parties to reach an agreed settlement.
 - If no resolution is found, the referee decides the claim based on the substantial merits and justice of the case having regard to the law (but not to strict legal rights or obligations, or legal forms or technicalities).
 - Lawyers are not allowed to represent the parties at Tribunal hearings.
 - Disputes Tribunal hearings are heard in private.
 - Decisions are not required to be published (although reasons for decisions must be given to the parties).

- An appeal from a Disputes Tribunal decision to a District Court is only allowed if it can be proved that a referee conducted the Disputes Tribunal hearing in a way that was unfair and prejudicially affected the result of the case.

These limits are set in the Act.

4. Going to the District Court is expensive compared with the Disputes Tribunal – see the table below.

| | Disputes Tribunal | District Court |
|-----------------------|--|---|
| Filing fee | Claims under \$2000: \$45 Claims \$2000 to \$5000: \$90 Claims above \$5000: \$180 | 200 + other filing fees for other documents |
| Hearing fee | Nil | \$900 per half-day |
| Cost of lawyer | Nil, unless hire lawyer for advice before the hearing. | \$100-\$150 per hour ¹ |

5. Parties who are unsuccessful in the Tribunal may be able to have their case reheard in the Tribunal. The Act provides for the referee to decide whether there will be a rehearing on such grounds as he or she thinks fit. Rehearings prevent miscarriages of justice where material evidence that was not known at the time of the hearing comes to light later.

Problem definition

6. The main problem is how to remove barriers to Disputes Tribunals for individuals and small businesses with claims above \$15,000 that are still relatively low-value. If the monetary threshold is raised, this gives rise to a secondary problem – how to improve safeguards but also retain the essence of the Tribunal as a simple, fast and inexpensive dispute resolution service. A third, unrelated, problem relates to the misuse of the rehearing provision.

(1) Increasing access for low-value civil claims

7. Individuals and small businesses with low-value civil claims over \$15,000 face barriers to getting their disputes resolved. The District Courts are expensive. The options available to parties with a low-value civil claim above \$15,000 are to:
 - incur the time and expense of a District Court action (by hiring a lawyer, or representing themselves and paying court fees in advance including the \$900 hearing fee)
 - go to a Disputes Tribunal but abandoning the amount over \$15,000 (unless they can persuade the other parties to consent to an amount up to \$20,000)
 - use private alternative dispute resolution (eg, negotiation, mediation, conciliation, arbitration), or
 - give up on a remedy altogether.

¹ Based on hourly rates for legal aid services in civil law proceedings.

8. The Ministry estimates that there are up to 200 cases per year in the District Courts where there is a civil dispute of between \$15,000 and \$30,000.² These figures include around 100 people per year who are granted legal aid.³
9. The numbers of individuals and small businesses using private dispute resolution or forgoing a remedy altogether for low-value civil claims is unclear. However, the Legal Services Agency's *Report on 2006 National Survey of Unmet Legal Needs and Access to Services* found that 72 percent of people with consumer problems did not seek legal assistance, for reasons including cost, stress, ease of access to justice and not knowing where to get help.

(2) Balancing nature of the Tribunal with appropriate safeguards

10. If the Disputes Tribunal maximum claims level is increased, a new problem presents itself. In pursuing inexpensive, simple and fast dispute resolution at a Disputes Tribunal, parties give up many of the safeguards usually found within the justice system. Therefore, if the maximum claims level is increased people are more likely to want the following safeguards:
 - decisions to be made on a strict legal basis;
 - legally qualified referees;
 - legal representation;
 - ability to appeal to the District Courts on matters of fact and/or law;
 - public hearings;
 - reasons for decisions to be published and accessible by members of the public.

Should the maximum claims level be raised, the right balance must be found between maintaining inexpensive, quick and simple processes and improving safeguards.

(3) Rehearings

11. There is also a problem with some parties who are unhappy with the outcome of a Tribunal decision applying for more than one rehearing. This stalls resolution of the dispute, and may unfairly drag the other party through multiple Tribunal hearings.

² Based on notices of claim commenced in District Courts where the amount in dispute is between \$15,000 and \$30,000, for the 2010/11 and 2011/12 financial years (excluding notices of claim which could not be brought in the Disputes Tribunal because of the claim type), and an estimate of cases currently not accessing Disputes Tribunal or District Courts. This latter estimate is based on the number of current disposals, increased by the same proportion of new business in Disputes Tribunals between 2008/09 and 2009/10 (when the maximum claims level was increased from \$7,500 to \$15,000). Data extracted from the Ministry of Justice's case management system on 3 July 2012 (ref 1669).

³ There were 108 grants of legal aid approved for District Courts civil cases (for any claimed amount up to \$200,000) in the year between 30 October 2012 and 30 October 2013.

1 Removing barriers to Disputes Tribunals for low-value civil claims

Objectives

12. In analysing the initial problem, the objectives are to:
- provide inexpensive dispute resolution for low-value civil disputes above \$15,000
 - resolve low-value civil disputes in a timely manner
 - maintain public confidence in Disputes Tribunal processes, and
 - keep taxpayer costs to a minimum.

Regulatory impact analysis

13. To solve this problem, we need to enable more individuals and small businesses to access the Disputes Tribunals. This can be done by:
- increasing the maximum claim level/s, or
 - allowing more types of civil disputes to be considered.
14. We have had insufficient time to fully analyse whether other types of civil disputes could (or should) be able to be considered by the Tribunals (eg, disputes about a neighbour's trees, relationship property disputes, or claims in tort for economic loss).
15. We have also had insufficient time to analyse all of the possible maximum claims levels above \$15,000 that could be set. Assessing the tipping point at which people would want better safeguards (such as appeal rights and legal representation) in the Disputes Tribunal is difficult. We have therefore chosen some possible maximum claims levels, which seem reasonable (based on the District Courts maximum claims level being \$200,000,⁴ current and past numbers of claims in the Disputes Tribunal and District Courts, and suggested levels from key stakeholders). The table below outlines these options.

⁴ Cabinet has agreed to increase this amount to \$350,000 through another Bill.

| Objective | Option 1A (status quo) | Option 1B | Option 1C | Option 1D |
|---|---|--|--|---|
| | Key | \$25,000 (or \$30,000 if all parties consent) | \$30,000 | \$50,000 |
| | Meets objective | | | |
| | Mainly meets | | | |
| | Does not meet | | | |
| Unclear if meets | | | | |
| Inexpensive dispute resolution for low-value civil disputes above \$15,000 | Do nothing (inexpensive) Self-representation in District Court (inexpensive) Hire lawyer for District Court (expensive) | Same as option 1C, but slightly smaller increase in Disputes Tribunal cases. | Estimate 500 -800 (3-5%) more Disputes Tribunal cases & up to 200 fewer District Courts cases yearly. ⁵ | Same as option 1C, but more Disputes Tribunal cases and less District Courts cases. |
| | Potentially lose money by abandoning disputed amount over maximum claims level. | Same as option 1A. | Same as option 1A. | Same as option 1A. |
| | <i>Diminishes the higher the claim level is set, because parties abandon less with a higher maximum claim level.</i> | | | |
| | District Courts fees (\$200 + other filing fees, & hearing fees of \$900/half-day). | Disputes Tribunal filing fee for higher value claims= \$180. No hearing fee. | Disputes Tribunal filing fee for higher value claims= \$180. No hearing fee. | Disputes Tribunal filing fee for higher value claims= \$180. No hearing fee. |
| Consent provision used in less than 1% cases, as respondents do not consent or applicants do not try to get their | Same as option A. | | | |

⁵ It is difficult to predict case number increases. We have assumed that Disputes Tribunal cases will increase by 3.8%, based on the increase in case numbers when the maximum claims level was increased from \$7,500 to \$15,000 in 2009 (the maximum claims level increased by 100%, and if the maximum claims level is increased to \$30,000, this is also a 100% increase). However, we do not have information about the numbers of people who are currently not using the District Court but are forgoing a remedy or using alternate dispute resolution.

| Objective | Option 1A (status quo) | Option 1B | Option 1C | Option 1D |
|--|--|---|--------------------|--|
| | | \$25,000 (or \$30,000 if all parties consent) | \$30,000 | \$50,000 |
| | Key | | | |
| | Meets objective | | | |
| | Mainly meets | | | |
| Does not meet | | | | |
| Unclear if meets | | | | |
| | consent. | | | |
| Timely dispute resolution | Median District Court disposal time: 154 days. Median Disputes Tribunal disposal time: 55 days. ⁶ | Same as option 1A. | Same as option 1A. | Disputes Tribunal disposal time may increase as caseload rises more significantly than other options (& assuming Disputes Tribunals resourcing not increased). |
| Public confidence in Disputes Tribunal processes | <i>Unclear at which point the public will want better safeguards. See analysis below regarding balancing nature of Tribunal with appropriate safeguards (eg, legal representation, increased transparency of decision-making, better appeal rights). The higher the maximum claims level, the more safeguards people will want. However, people will still be able to take cases for any amount to the District Court if these safeguards are important to them.</i> | | | |
| Minimise taxpayer costs | Disputes Tribunal provides inexpensive dispute resolution services. Defended cases in the District Courts are more | More Disputes Tribunal cases than District Courts cases. No additional referees or courtrooms required. Any | Same as option 1B. | The Ministry may need to increase the number of referees to cope with increased Disputes Tribunal case numbers. ⁸ |

⁶ Median Disputes Tribunal disposal time over 2010/11 and 2011/12 years. We do not expect an increase in disposal times as a result of the small projected increase in case numbers because the Ministry can manage 15,000 – 20,000 cases within existing baselines).

⁸ Any decline in District Court case numbers would be unlikely to be significant enough to reduce District Court costs.

| Objective | Option 1A (status quo) | Option 1B | Option 1C | Option 1D | | | | | |
|--|---------------------------|--|--------------|---------------|------------------|---|---|----------|----------|
| <table border="1"> <tr> <td>Key</td> </tr> <tr> <td>Meets objective</td> </tr> <tr> <td>Mainly meets</td> </tr> <tr> <td>Does not meet</td> </tr> <tr> <td>Unclear if meets</td> </tr> </table> | Key | Meets objective | Mainly meets | Does not meet | Unclear if meets | \$15,000 (or \$20,000 if all parties consent) | \$25,000 (or \$30,000 if all parties consent) | \$30,000 | \$50,000 |
| Key | | | | | | | | | |
| Meets objective | | | | | | | | | |
| Mainly meets | | | | | | | | | |
| Does not meet | | | | | | | | | |
| Unclear if meets | | | | | | | | | |
| | expensive. | additional costs (eg, increased sitting time) absorbed within existing baselines. ⁷ | | | | | | | |

2 Balancing nature of the Tribunal with appropriate safeguards

16. If the Disputes Tribunal maximum claims level is increased, people are more likely to want:

- decisions to be made on a strict legal basis
- legally qualified referees
- legal representation
- ability to appeal to the District Courts on matters of fact and/or law
- public hearings, and
- published decisions.

These safeguards must be balanced with maintaining inexpensive, timely and informal dispute resolution services.

On what basis should decisions be made?

Objectives

17. The objectives are to:

- maintain public confidence in Disputes Tribunal processes
- ensure low-value civil disputes can be resolved in a timely manner
- keep Disputes Tribunals simple and inexpensive for applicants and respondents
- ensure Disputes Tribunals continue to present an unthreatening environment,
- keep taxpayer costs to a minimum.

⁷ Due to small expected increase in case numbers & fluctuations in case numbers over the last decade.

Regulatory Impact Analysis

| Objective <table border="1" data-bbox="220 324 399 555"> <tr><td>Key</td></tr> <tr><td>Meets</td></tr> <tr><td>Mainly meets</td></tr> <tr><td>Does not meet</td></tr> </table> | Key | Meets | Mainly meets | Does not meet | Option 2A (status quo) - preferred Disputes Tribunal referees make decisions based on the substantial merits and justice of the case having regard to the law (but not to strict legal rights or obligations, or legal forms or technicalities). | Option 2B Disputes Tribunal referees make decisions based on the law, with regard to the substantial merits and justice of the case |
|---|--|---|--------------|---------------|---|--|
| Key | | | | | | |
| Meets | | | | | | |
| Mainly meets | | | | | | |
| Does not meet | | | | | | |
| Public confidence | Good | Without legal representation, potential for increased power imbalances between parties who have more in-house legal expertise. | | | | |
| Timely dispute resolution | Yes | Worse – estimate increased disposal times as parties take longer to make legal arguments & referees take longer to decide. | | | | |
| Simple and inexpensive dispute resolution | Yes | Worse – more legal advice before hearing would be required. | | | | |
| Unintimidating | Disputes Tribunals less intimidating for individuals and small businesses than District Court as decisions are made on the merits of the case rather than strictly on the law. | More intimidating for individuals and small businesses to present their case, as more legalistic arguments would need to be made. | | | | |
| Minimised taxpayer costs | Yes | Worse – more referee training would be required. | | | | |

Disputes Referee Qualifications

Objectives

18. The objectives are to:

- maintain public confidence in Disputes Tribunal processes
- ensure low-value civil disputes can be resolved in a timely manner
- keep taxpayer costs to a minimum, and
- retain current referees who have high skill and experience levels.

Regulatory Impact Analysis

| Objective | Option 2C (status quo) | Option 2D | Option 2E - preferred | Option 2F | |
|---------------------------|---|--|--|-----------------------------------|-------|
| | Referees must be capable, by reason of their personal attributes, knowledge, & experience, of performing the functions of a referee. Referees not required to be legally qualified | Maintain status quo but require (in legislation) <i>all</i> referees to hold appropriate qualifications⁹ | Maintain status quo but require (in legislation) <i>new</i> referees to hold appropriate qualifications | Improve referee training | |
| | | | | | Key |
| | | | | | Meets |
| Mainly meets | | | | | |
| Does not meet | | | | | |
| Public confidence | <p>In 2004, about ¼ referees legally qualified. Now, over 80% referees legally qualified.</p> <p>Perception in 2004 that a lack of legally qualified referees is a system weakness.</p> <p>No new referees recently appointed without legal qualifications.</p> | <p>More effectively protects interests of the parties.</p> <p>Reduces likelihood of decisions being contrary to established law.</p> | Same as option 2D. | Would increase somewhat. | |
| Timely dispute resolution | Good | Better if there are complex legal issues | Better if there are complex legal issues | Better | |
| Minimised taxpayer costs | Disputes Tribunal referees less expensive than District Court judges. | Increased referee recruitment costs. | Same as option 2C. | Increased referee training costs. | |
| Retain good quality | Yes. Risk: difficult to recruit legally qualified referees in | Risk that some highly capable referees would be | Same as option 2C. | Yes | |

⁹ Appropriate qualifications for disputes referees could be that they hold a degree in law, or are an accredited mediator or arbitrator. More policy analysis is required to determine the required standard.

| Objective <table border="1" data-bbox="193 271 344 501"> <tr><td>Key</td></tr> <tr><td>Meets</td></tr> <tr><td>Mainly meets</td></tr> <tr><td>Does not meet</td></tr> </table> | Key | Meets | Mainly meets | Does not meet | Option 2C (status quo) Referees must be capable, by reason of their personal attributes, knowledge, & experience, of performing the functions of a referee. Referees not required to be legally qualified | Option 2D Maintain status quo but require (in legislation) <i>all</i> referees to hold appropriate qualifications⁹ | Option 2E - preferred Maintain status quo but require (in legislation) <i>new</i> referees to hold appropriate qualifications | Option 2F Improve referee training |
|---|---|-------|--------------|---------------|--|--|--|---|
| Key | | | | | | | | |
| Meets | | | | | | | | |
| Mainly meets | | | | | | | | |
| Does not meet | | | | | | | | |
| referees | rural areas, but referees can be brought in to hear cases in remote courts if no referee available. | lost. | | | | | | |

Legal representation

Objectives

19. The objectives are to:

- maintain public confidence in Disputes Tribunal processes
- ensure low-value civil disputes can be resolved in a timely manner
- keep Disputes Tribunals simple and inexpensive for applicants and respondents
- ensure Disputes Tribunals continue to present an unthreatening environment, and
- keep taxpayer costs to a minimum.

Regulatory Impact Analysis

| Objective <table border="1" data-bbox="242 340 421 568"> <tr><td>Key</td></tr> <tr><td>Meets</td></tr> <tr><td>Mainly meets</td></tr> <tr><td>Does not meet</td></tr> </table> | Key | Meets | Mainly meets | Does not meet | Option 2G(status quo) - preferred No legal representation | Option 2H Legal representation |
|---|--|---|--------------|---------------|--|---|
| Key | | | | | | |
| Meets | | | | | | |
| Mainly meets | | | | | | |
| Does not meet | | | | | | |
| Public confidence | If higher claims level, public expects greater transparency. | If higher claims level, public expects greater transparency. | | | | |
| Timely dispute resolution | Yes | <i>More analysis required.</i> | | | | |
| Simple and inexpensive dispute resolution | Yes | No – Lawyers are very expensive. | | | | |
| Unintimidating | Yes | No - more legalistic arguments would be made by lawyers. People who cannot afford a lawyer will find it more intimidating and there will be bigger power imbalances. | | | | |
| Minimised taxpayer costs | Yes | <i>More analysis required.</i> | | | | |

Appeal rights from Disputes Tribunals to District Courts

Objectives

20. The objectives are to:
- maintain public confidence in Disputes Tribunal processes
 - ensure low-value civil disputes can be resolved in a timely manner
 - keep Disputes Tribunals simple and inexpensive for applicants and respondents, and
 - keep taxpayer costs to a minimum.

Regulatory Impact Analysis

21. Under the status quo, the Act provides that appeal to a District Court is only allowed if the referee conducts the hearing in a way that is unfair and prejudicially affects the result of the case. This means appeals are limited to ‘procedural fairness’ grounds.

| Objective | Option 2I (status quo) - preferred | Option 2J | |
|---|--|--|--|
| | Key | Appeals to District Courts only allowed if referee conducts hearing in a way that is unfair and prejudicially affects the result of the case (limited to procedural fairness) | Appeal rights expanded (eg, enable appeals to be made on the facts) |
| | Meets | | |
| | Mainly meets | | |
| Does not meet | | | |
| Public confidence | Unsuccessful party may feel aggrieved, and unable to do anything about it. | If higher claims level, public expects greater transparency. Unsuccessful party will have better confidence in the justice system. | |
| Timely dispute resolution | Protect successful party from relitigation, and allows them to move on. | Successful party has to wait longer until appeal is heard before they can move on. | |
| Simple and inexpensive dispute resolution | Current process is inexpensive. | More expensive – parties in case, which has been appealed, must pay for lawyer in District Court. | |
| Minimised taxpayer costs | The same. | More expensive – greater number of District Court cases (on appeal from Disputes Tribunal). | |

Public or private Disputes Tribunal hearings

Objectives

22. The objectives are to:

- maintain public confidence in Disputes Tribunal processes
- ensure low-value civil disputes can be resolved in a timely manner
- ensure Disputes Tribunals continue to present an unthreatening environment, and
- keep taxpayer costs to a minimum.

Regulatory Impact Analysis

| Objective <table border="1" data-bbox="199 324 383 616"> <tr><td>Key</td></tr> <tr><td>Meets</td></tr> <tr><td>Mainly meets</td></tr> <tr><td>Does not meet</td></tr> </table> | Key | Meets | Mainly meets | Does not meet | Option 2K (status quo) Private | Option 2L Public, except when the referee is mediating an agreement between the parties, or there are other circumstances that warrant privacy | Option 2M Public |
|--|---|---|---|---------------|---|---|---------------------------------------|
| Key | | | | | | | |
| Meets | | | | | | | |
| Mainly meets | | | | | | | |
| Does not meet | | | | | | | |
| Public confidence | Contrary to principle of open justice. | Starting point of principle of open justice ('justice should be seen to be done') is proceedings should be open to the public unless good reason – encourages fair & independent dispute resolution, & maintains public confidence. | Same as option 2L. | | | | |
| Timely dispute resolution | Sitting time of Disputes Tribunals referees per case is about one to one-and-a-half hours per case. | Same as option 2K. | Same as option 2L. | | | | |
| Unintimidating | Yes. | Will increase formality and may make process more intimidating (people don't like discussing personal/private matters in public). Mitigated by mediated agreements being held in private, referee discretion to close proceedings if there are other circumstances that warrant privacy, and low likelihood of public/media interest in attending hearings (cf. Tenancy Tribunal hearings). ¹⁰ | Increased formality, more intimidating. | | | | |
| Minimised taxpayer costs | Hearings held in small hearing rooms, with minimal administrative support and no security officer | Approximate that less than 50 hearings a year will require a larger hearing room. ¹¹ No new buildings or other infrastructure required. If the personal security of referees or parties is at issue, then a security | Same as option 2L. | | | | |

¹⁰ The public/media rarely attend Tenancy Tribunal hearings which are open to the public.

¹¹ Based on Tenancy Tribunal experience.

| Objective <table border="1" data-bbox="204 271 381 566"> <tr><td data-bbox="204 271 381 327">Key</td></tr> <tr><td data-bbox="204 327 381 383">Meets</td></tr> <tr><td data-bbox="204 383 381 472">Mainly meets</td></tr> <tr><td data-bbox="204 472 381 566">Does not meet</td></tr> </table> | Key | Meets | Mainly meets | Does not meet | Option 2K (status quo) Private | Option 2L Public, except when the referee is mediating an agreement between the parties, or there are other circumstances that warrant privacy | Option 2M Public |
|--|----------|---|--------------|---------------|---|---|-----------------------------------|
| Key | | | | | | | |
| Meets | | | | | | | |
| Mainly meets | | | | | | | |
| Does not meet | | | | | | | |
| | present. | officer at that Court may be made available (not expected to usually be an issue, based on Tenancy Tribunal experience). Any financial implications will be managed as part of the Four Year Budget Plan process. | | | | | |

Publication of reasons for Disputes Tribunal decisions

Objectives

23. The objectives are to:
- maintain public confidence in Disputes Tribunal processes
 - ensure low-value civil disputes can be resolved in a timely manner
 - keep taxpayer costs to a minimum, and
 - ensure privacy considerations are taken into account.

Regulatory Impact Analysis

24. Under the status quo, decisions are not required to be published; however, reasons for decisions must be given. In practice, these are explained orally at the end of the hearing and summarised in a paragraph or two setting out any orders made. When referring to publication of written decisions in the analysis below, we mean publication of the existing paragraph or two explaining the reasons and any orders (which is currently provided to parties after the case).

| Objective | Option 2N (status quo) | Option 2O | Option 2P | | | | | |
|---------------------------|---|--|---|--------------|---------------|--|---|---|
| | <table border="1"> <tr> <td>Key</td> </tr> <tr> <td>Meets</td> </tr> <tr> <td>Mainly meets</td> </tr> <tr> <td>Does not meet</td> </tr> </table> | Key | Meets | Mainly meets | Does not meet | <p>Referees provide decisions to parties at the end of the hearing, and provide the reasons in writing to the parties afterward. Registrar may publish particulars of Tribunal proceedings when Minister directs. Some decisions published online by NZ Legal Information Institute.</p> | <p>Publish online some decisions which referees deem in the public interest</p> | <p>Publish online all decisions, with referee discretion to make details anonymous if doing so is warranted for privacy reasons</p> |
| | Key | | | | | | | |
| | Meets | | | | | | | |
| Mainly meets | | | | | | | | |
| Does not meet | | | | | | | | |
| Public confidence | Inconsistent with principle of open justice. | Inconsistent with principle of open justice. | Principle of open justice: decisions should be public unless good reason. Encourages fair & independent dispute resolution, & maintains public confidence. | | | | | |
| Timely dispute resolution | Sitting time of Disputes Tribunals referees per case is about one to one-and-a-half hours per case. | Determining which decisions are 'in the public interest' would use referee resources, which could otherwise be used on dispute resolution. | <p>Referees explain decisions to parties at the end of the hearing, and provide decisions in writing to the parties afterward. Therefore, minimal extra time will go into making decisions available online.</p> <p>Small risk that referees will reserve judgment until a later date. Mitigated by maintaining ability for referees to initially provide parties with the reasons for the decision orally, and requiring reasons for decisions to be published later (which are already written up).</p> | | | | | |
| Minimised taxpayer costs | Costs currently minimal. | Referees would decide if a decision is in the public interest, which | Would involve uploading 1250+ decisions a month onto the Ministry website (and/or | | | | | |

| | | | |
|---------------------------|-------------------------------------|---|---|
| | | <p>would have some small cost implications, as referees would take time to decide which cases should be published.</p> <p>The cost of uploading additional decisions on the Ministry website is manageable.</p> | <p>providing them to NZLII). Substantial administrative costs would be incurred in anonymising the decisions.</p> |
| Ensure privacy considered | Published decisions are anonymised. | If the hearing is public, then consistent to also publish the parties' details (unless referee considers anonymity desirable). | Same as option 20. |

3 Rehearings

Objectives

25. The objectives are to:

- maintain public confidence in Disputes Tribunal processes
- ensure low-value civil disputes can be resolved in a timely manner
- keep Disputes Tribunals simple and inexpensive for applicants and respondents, and
- keep taxpayer costs to a minimum.

| Objective Key Meets Mainly meets Does not meet | Option 3A (status quo) Parties can apply for more than one rehearing – a rehearing may be granted on such terms as the referee sees fit. | Option 3B – preferred Clarify the Act so the usual rule is that parties may have one rehearing, unless the interests of justice warrant further rehearings. |
|--|---|---|
| Public confidence | Rehearings protect miscarriages of justice where material evidence that was not known at the time of the hearing comes to light later. However, some parties can take advantage and request a rehearing, without cost, even if they are likely to lose. | The public should be assured that vexatious litigants in the Disputes Tribunal cannot drag parties through the Tribunal over and over again without justification. There will still be provision for a rehearing if this is necessary to avoid miscarriages of justice. |
| Timely dispute resolution | More rehearings without good reason wastes time. | One rehearing, if necessary, is appropriate. |
| Simple and inexpensive dispute resolution | Having more rehearings without good reason is expensive. | Introducing a fee increases the cost of dispute resolution if a party is unsuccessful and wants a rehearing (the fee can be set at an appropriate level). |
| Minimised taxpayer costs | 5% of Disputes Tribunal cases are rehearings. ¹² | |

Consultation

26. The Principal Disputes Referee, the Chief District Court Judge, New Zealand Law Society, community law centres, Citizens Advice Bureau New Zealand and community law centres were consulted, and their preliminary views are incorporated into this paper.
27. The Ministry of Business, Innovation, and Employment, Ministry of Women's Affairs were consulted. The Treasury, Parliamentary Counsel Office, Te Puni Kōkiri and the Department of the Prime Minister and Cabinet were informed.

Conclusions and recommendations

28. The status quo has been compared with other options for increasing access to justice for low-value civil claims. These options are:
 - increase the maximum claims level to \$25,000 (or \$30,000 if parties consent)
 - increase the maximum claims level to \$30,000 and remove the 'by consent' provision

¹² Based on Disputes Tribunal new business 2011/12 and 2012/13.

- increase the maximum claims level to \$50,000.

As it is difficult to assess at which point people will want better safeguards before they would take their case to a Disputes Tribunal (as opposed to taking their case to a District Court, another dispute resolution mechanism or doing nothing), we do not recommend any particular option. However, if the maximum claims level is increased, we recommend removing the 'by consent' option, because it is used in less than 1% cases.

29. If the maximum claims level is increased, the nature of the Tribunals as inexpensive, quick and simple informal dispute resolution services must be balanced with improving some safeguards. Therefore, if the maximum claims level is increased, we recommend:

- maintaining the status quo by decisions being made on the substantial merits and justice of the case having regard to the law;
- requiring *new* referees to hold appropriate qualifications (such as a law degree, or qualification as an accredited mediator or arbitrator);
- maintaining the status quo by barring legal representation in Disputes Tribunal proceedings;
- maintaining the status quo by only allowing appeals to a District Court if the referee conducts the case in a way that is unfair and prejudicially affects the result of the case.

These changes balance improved public access to the Disputes Tribunals with maintaining confidence in the Tribunals as inexpensive, quick and informal dispute resolution services.

30. To fix the problem of some parties who are unhappy with the outcome applying for multiple rehearings, we recommend clarifying that if a rehearing is appropriate, there should only be one, unless a referee determines that the interests of justice warrant more than one.

Implementation

31. Most of the proposals in this paper require amending the Disputes Tribunals Act 1988. Consequential amendments will be needed to the Consumer Guarantees Act 1993, Credit Contracts and Consumer Finance Act 2003, Fair Trading Act 1986, Fencing Act 1978, Minors' Contracts Act 1969, and the Retirement Villages Act 2003. Consequential amendments to the Disputes Tribunals Rules 1989 may also be required.

32. Implementation dates will depend on the Government's legislative programme and allocation of legislative priorities.

33. Once Cabinet makes policy decisions, the Minister of Justice is likely to issue a press release announcing the proposals. If a Bill is enacted, the Ministry of Justice will update the Ministry of Justice and Disputes Tribunal websites, and published informational material for the public, to reflect any changes. The Ministry will also write to the New Zealand Law Society, Citizens Advice Bureau

New Zealand and community law centres to inform them of any proposed changes.

Monitoring, evaluation and review

34. The Ministry of Justice will continue to monitor and evaluate the Disputes Tribunals Act and Rules. The Ministry will also consider ways to improve data collection, including better rehearing statistics in the Disputes Tribunals and District Courts, so that it can better monitor and evaluate the impact of any changes in future. If any changes are implemented, the Ministry will consider trends in disposal times, the requested number of sitting days required for Disputes Tribunals hearings (to measure any increased resourcing implications), and length of hearings.