

15 June 2023

Section (9)(2)(a)

Section (9)(2)(a)

Our ref: OIA 104489

Tēnā koe

Section (9)(2)(a)

## Your request for official information

Thank you for your email of 9 May 2023, requesting, under the Official Information Act 1982 (the Act), information regarding the publication of Disputes Tribunal (the Tribunal) decisions. Specifically, you have requested:

*Any cabinet papers, reports to ministers, internal memorandum, feasibility discussions or any other such document which considers the wider publication of determinations of the Disputes Tribunal and the current legislation requiring hearings to be held in private, in the last five years.*

*Any guidance or procedural document provided to Disputes Tribunal referees surrounding what constitutes a 'public interest' decision which is then published on the MoJ's feed of Disputes Tribunal decisions. What guidance is provided to referees to assist in identifying decisions of public interest, or is this solely discretionary?*

*The information sought in this request is to be used as part of a report by the NZ Herald/Open Justice into the Disputes Tribunal's approach to open justice.*

In response to the first part of your request, please find appended to this letter documents that fall within the scope of your request and my decision on their release. The documents that are being released to you were produced when the legislative and policy proposals for the Tribunal were being considered by the Rules Committee in 2022, as part of their wider work on Improving Civil Access to Justice.

For clarity, appended documents three and four are both summaries of the proposed legislative and policy changes for the Tribunal. Specifically, document three summarises comments made by the Ministry of Justice (the Ministry) on recommendations suggested by the Rules Committee. Document four summarises the received submissions on the suggested proposals, as a result of public consultation and from consultation with organisations (such as community law centres). Further, document five, appended, is an internal Ministry document which summarises the meeting with the Rules Committee from June 2022, where the legislative and policy changes for the Tribunal were discussed.

Some information has been withheld under section 9(2)(a) of the Act, to protect privacy of natural persons, section 9(2)(f)(iv) of the Act, to maintain the constitutional conventions that protect confidentiality of advice tendered by Ministers and officials, and section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions.

In accordance with section 9(1) of the Act, I have considered the public interest in making available the information being withheld and determined that it does not outweigh the need to withhold the information at this time.

Turning to the second part of your request, while the Ministry provides administrative support to the Tribunal, it is a judicial body that must operate independently from the Government, Ministers, and their officials. The Principal Disputes Tribunal Referee manages publication of Tribunal decisions and consults with her fellow referees to determine whether decisions are suitable for publication. While the Ministry carries out the anonymisation and publication process, it is not involved in any decision-making processes. Therefore, I am refusing this part of your request under section 18(g) of the Act as the information requested is not held by the Ministry and I have no grounds for believing it is held by another agency or Minister.

If you require any further information, please contact Media & Social Media Manager Joe Locke at [media@justice.govt.nz](mailto:media@justice.govt.nz).

Please note that this response, with your personal details removed, may be published on the Ministry website at: [justice.govt.nz/about/official-information-act-requests/oia-responses/](https://justice.govt.nz/about/official-information-act-requests/oia-responses/).

If you are not satisfied with this response, you have the right to make a complaint to the Office of the Ombudsman under section 28(3) of the Act. The Office of the Ombudsman may be contacted by email to [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or by phone on 0800 802 602.

Nāku noa, nā

A handwritten signature in black ink, consisting of a stylized initial 'S' followed by a long, sweeping horizontal line that ends in a small upward hook.

Sam Kunowski  
**General Manager, Courts, and Justice Services Policy**

## Documents for release

Number	Document Type	Document Title	Decision on release
1	Report	The Rules Committee – Improving Access to Civil Justice. Disputes Tribunal recommendations.	Refused under section 18(d) of the Act. This information is publicly available at: <a href="https://courtsfnz.govt.nz/about-the-judiciary/rules-committee/access-to-civil-justice-consultation/">courtsfnz.govt.nz/about-the-judiciary/rules-committee/access-to-civil-justice-consultation/</a>
2	Draft of Meeting Minutes	Suggested draft of minutes for The Rules Committee Meeting of 28 March 2022	Withheld in full under section 9(2)(g)(i) of the Act. The final version of these minutes is publicly available at: <a href="https://courtsfnz.govt.nz/assets/Minutes-28-March-2022-meeting.pdf">courtsfnz.govt.nz/assets/Minutes-28-March-2022-meeting.pdf</a>
3	Paper	Paper One: Disputes Tribunal – Summary of Recommendations and Ministry of Justice comments	Some information withheld under section 9(2)(a) and section 9(2)(f)(iv) of the Act.
4	Paper	Paper two: Disputes Tribunal proposals, submissions, and Ministry comments	Some information withheld under section 9(2)(f)(iv) of the Act.
5	Meeting briefing	Summary of Rules Committee meeting, Monday 28 March 2022	Some information withheld under section 9(2)(g)(i) of the Act and deemed out of scope of your request.

## Paper One: Disputes Tribunal – Summary of Recommendations and Ministry of Justice comments

### Summary of Recommendations for Legislative and Policy changes

#### Recommendation 1: Changes to Disputes Tribunal jurisdiction

- (1) Increase the Disputes Tribunal's jurisdictional cap to:
  - (a) \$70,000 as of right; and
  - (b) \$100,000 by consent.
- (2) Consider amending s 10(1)(c) and s 19 of the Disputes Tribunal Act 1988 to broaden and clarify the ways in which the Tribunal can provide its service under existing areas of jurisdiction.

#### Recommendation 2: Appeal rights from Disputes Tribunal decisions

By majority, the Committee recommends that there be:

- (a) No change to existing appeal rights from Disputes Tribunal orders up to \$30,000;
- (b) A general right of appeal to the District Court from orders between \$30,000 and \$100,000.

#### Recommendation 3: Representation in the Disputes Tribunal

The Committee recommends that there be no change to the current rules regarding representation in the Disputes Tribunal.

#### Recommendation 4: Public hearings and publication

The Committee recommends that there be:

- (a) no change to the private nature of Disputes Tribunal hearings in most cases;
- (b) continued publication online of at least 600 anonymised decisions a year;
- (c) continued development of a library of all Disputes Tribunal decisions issued, categorised into topics, available for research purposes, academics, referees and judiciary; and
- (d) a direction sought from the Minister under s 57 of the Disputes Tribunal Act regarding reporting cases of public interest.

#### Recommendation 5: recovery of filing fees, costs and disbursements

The Committee recommends that:

- (a) costs in Disputes Tribunal claims continue to lie where they fall (except in limited circumstances);
- (b) the filing fee should be recoverable by an applicant who is wholly or partly successful in their claim; and
- (c) the filing fee should be subject to waiver.

#### Recommendation 6: Qualifications of referees

The Committee recommends that all Disputes Tribunal referees be legally qualified, with transitional provisions for non-legally qualified referees currently in office.

### Recommendation 7: Resolving disputes according to the law

The Committee recommends that there be a slight change to s 18(6) of the Disputes Tribunal Act 1988, which currently requires that the Tribunal must “determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal right or obligations or to legal forms or technicalities”. We recommend the words “where that would result in a substantial injustice” be added to the end of this provision.

### Recommendation 8: Enforcement and recovery processes

The Committee recommends that:

- (a) consideration be given by the District Court to finding more effective and straightforward ways for claimants to enforce a successful award; and
- (b) the \$200 enforcement fee imposed for collection of a Disputes Tribunal award be abolished, or at least subject to waiver.

### Recommendation 9: Appropriate name for referees and the Disputes Tribunal

The Committee:

- (a) recommends that Disputes Tribunal referees be renamed “adjudicators”; but
- (b) does not recommend any change to the Disputes Tribunal’s name.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



## Summary of submissions

---

### **Recommendation 1: Changes in Tribunal's Jurisdiction**

- The New Zealand Law Society (NZLS) supports this recommendation.
- Community Law Centres o Aotearoa (Community Law) supported this recommendation, and conveyed the following views:
  - Significant increase in resourcing is necessary to reflect the corresponding increase in caseload.
  - Agreed that the jurisdictional increase be reviewed in 3-5 years' time.
  - Agreed to an expansion to the types of claims under the Disputes Tribunal's jurisdiction. They suggest an inclusion of trimming and removal of trees, and debt disputes in amounts not worthwhile dealing within the District Court.
  - An improved process for moving disputes from the Disputes Tribunal to the District Court, including increasing awareness to parties. Parties should be able to appeal a refusal to transfer a case to the District Court.
- **s9(2)(a)** is supportive of the recommendation only if parties were given the right to appoint counsel for claims over \$40,000.

### **Recommendation 2: Appeal Rights from Tribunal Decisions**

- Community Law supports this recommendation.
- The NZLS supports this recommendation, and conveyed the following views:
  - Suggests there be a limit to the grounds of appeal for higher-value claims – i.e., error of law or principle, irrelevant considerations, or where the decision was plainly wrong. They feel this would discourage attempts to relitigate the entire matter while also leaving room for judgment by the District Court.
  - That leave required before an appeal can be filed is not necessary given the additional cost and delays associated with such processes.
- **s9(2)(a)** also supports this recommendation. He also notes the availability of representation in the Tribunal for higher-value claims would reduce the probability of an appeal being lodged in these instances.

### **Recommendation 3: Representation in the Tribunal**

- The NZLS supports this recommendation
- Both Community Law and **s9(2)(a)** expressed concern about maintaining the bar on representation:
  - The increase in jurisdictional cap may lead to an increase in complexity of issues – enabling legal representation promotes access to justice and emphasises that power disparities will be addressed. This would assist parties who have disabilities, have limited proficiency in English, and cases where there is a vulnerable party on one side and an experienced corporate party on the other side.
  - Suggest consideration be given to incorporating a similar provision to that of section 93(3) of the Residential Tenancies Act 1986, which allows

representation if the complexity of issues and disparities between parties which affect their ability to present their cases deem it appropriate to do so.

- Noted it may be useful to appoint investigators to assist in cases, especially if there are vulnerable parties who do not understand the information required of them to present their claim.
- Believes integrity of the justice system will be promoted through professional advocacy – issues of cases would be better focused, improving confidence in the process and potentially reduces appeals to the District Court.
- Representation is observed in the Employment Relations Authority

#### ***Recommendation 4: Public Hearings and Publication***

- The NZLS supports this recommendation
- Community Law is supportive and noted the following:
  - The library of Disputes Tribunals decisions should be as public and user-friendly as possible, including enhanced categorisation. It was observed that there are accessibility issues with the current database.
  - Suggested access to the library include lawyers
  - Queried whether the library would be published on a database such as Westlaw.
  - Queried whether there will be a Tribunal librarian to assist those who wish to access the internal library.

#### ***Recommendation 5: Recovery of Filing Fees, Costs and Disbursements***

- The NZLS supports this recommendation
- Community Law is supportive, but expressed concern that waiver of the filing fee may lead to frivolous claims
- s9(2)(a) suggested consideration be given to:
  - Setting the award of costs to a higher than usual standard if legal representation is allowed in the Tribunal, such as when a party needlessly prolongs a proceeding.
  - Amending section 43 of the Disputes Tribunal Act 1988 (award of costs), to avoid confusion that there may be no entitlement of legal costs for a potential claimant.

#### ***Recommendation 6: Qualification of Referees***

- The NZLS and Community Law support this recommendation.

#### ***Recommendation 7 Resolving Disputes According to the Law***

- The NZLS supports this recommendation
- s9(2)(a) supports this recommendation, noting the following:
  - His understanding is that the reason for restricted appeal rights in Tribunal decisions through judicial review is because the Tribunal is not bound to uphold strict legal rights – disputes are decided based on substantial merits

and justice of a case. He suggests consideration be given to the effect of adding this recommendation on cases subject to judicial review.

- The Insurance Council of New Zealand felt this recommendation did not go far enough, especially given the recommended increase in the Tribunal's jurisdiction:
  - They expressed concern that the recommendation poses a risk of uncertainty which impacts insurance contracts and pricing.
  - Suggested an amendment requiring Tribunal referees to give effect to the law so there is no longer a risk of uncertainty.

***Recommendation 8: Enforcement and Recovery Process***

- The NZLS support this recommendation.
- Community Law support this recommendation, noting this issue is currently a significant barrier to accessing justice.
- **s9(2)(a)** supported this recommendation and conveyed the following:
  - Suggests filing fees be abolished for enforcement but rather be recoverable from the judgement debtor directly by the Court – applications for enforcement hearings including financial assessment hearings are currently subject to long delays.
  - Suggests the Disputes Tribunal (and District Court) could implement an enforcement plan within its decision to streamline enforcement processes.

***Recommendation 9: Appropriate Name for Referees and Tribunal***

- Community Law and the NZLS support this recommendation.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



s9(2)(f)(iv)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

The following pages 6-14 are withheld under s9(2)(f)(iv)

## Paper two: Disputes Tribunal proposals, submissions and Ministry comments

### The Rules Committee proposals

- increasing the jurisdiction of the Disputes Tribunal to \$50,000, or possibly higher, subject to the views obtained on further consultation;
- changing the right of appeal from decisions of the Disputes Tribunal, if its jurisdiction is extended beyond \$50,000;
- re-naming the Disputes Tribunal the “Community Court” or “Small Claims Court”;
- changing the title of “referee” to “adjudicator”;
- granting a greater use of power to appoint investigators as Tribunal-appointed experts;
- allowing public hearings in appropriate cases;
- increasing daily fees for referees;
- allowing the Tribunal to make decisions to waive filing fees;
- granting the Tribunal a limited costs jurisdiction and an ability to grant disbursements; and
- providing a more effective or straightforward way for successful claimants to enforce a successful award.

### Summary of submissions

#### *Jurisdiction*

1. Most submitters supported the jurisdiction of the Disputes Tribunal increasing to \$50,000. Some supported an increase to \$100,000, however most of those who did acknowledged the increased burden this would place on the Tribunal.
2. Only a few submitters supported the involvement of lawyers if the jurisdiction is increased. There was some support for lawyers having a role for claims over \$50,000 although most considered that it should be a submission only role.

#### *Right of appeal*

3. Submitters did not agree about the extent to which the Disputes Tribunal should become a de facto third tier District Court, some noting this would be counterproductive. Many commented that an advantage of the Tribunal was its relative simplicity.

#### *Name of the Tribunal*

4. Views were evenly divided between the three options; no change (favoured especially amongst community groups), renaming to the Small Claims Court, and renaming to the Community Court.

*Changing the title of "referee" to "adjudicator"*

5. There was support for referees to be renamed 'adjudicators' and to be legally trained and to make decisions in accordance with the law, with existing referees 'grandfathered' into the scheme.

*Allowing public hearings in appropriate cases*

6. The majority of submitters saw a benefit in maintaining private hearings for cases with privacy concerns or unwilling witnesses, however there was an acceptance that the Disputes Tribunal should conduct some hearings in public. Safety issues were raised by two submitters, regarding high tensions in civil claims and the risks to victims of family violence. One submitter suggested a need for security, the other suggested the need for referees to undertake training on such matters.

*Allowing the Tribunal to make decisions to waive filing fees*

7. Most submitters supported the Tribunal's ability to waive fees and make disbursements orders where appropriate.

*Granting the Tribunal a limited costs jurisdiction*

8. Some submitters supported a limited costs jurisdiction but there was no consensus on implementing an overall costs jurisdiction.

*Other matters*

9. All submitters who engaged with the suggestion that enforcement provisions in the Disputes Tribunal should be made easier agreed.
10. Some submitters raised concerns about the Disputes Tribunal losing its efficiency with any changes. Dr Bridgette Toy-Cronin raised concerns about the lack of data about the Disputes Tribunal and the impact of expanding its jurisdiction. Dr Toy-Cronin suggests further data collection in conjunction with the changes.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

s9(2)(f)(iv)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

The following pages 4 - 13 are withheld under s9(2)(f)(iv)

## Rules Committee

**To** Rajesh Chhana, Deputy Secretary Policy

**From** Maddie Knight, Secretary to the Rules Committee

**CC** Jeff Orr, Chief Legal Counsel, Office of Legal Counsel  
Edrick Child, Deputy Chief Legal Counsel, Office of Legal Counsel  
Tina Wakefield, Acting Chief Operating Officer  
Anna Graham, Director, Office of the Chief Operating Officer  
Jacquelyn Shannon, Group Manager, Courts & Tribunals, Regional Service Delivery  
Andrea King, Group Manager, Senior Courts  
Julia Marino, Manager, Operations Support for Senior Courts  
Victoria McLaughlin, Group Manager, Operations & Service Delivery Group  
Rebecca Todd, Acting Manager, Operations Support  
Wayne Newall, Manager, Appointments and Specialist Functions  
Michelle McVie, Senior Advisor, Implementation  
Glen Brinkler, Principal Advisor, Implementation  
Mark Thomas, Manager, Service Improvement  
Sam Kunowski, General Manager, Courts and Justice Services Policy  
Matthew Mitchell, Policy Manager, Courts and Tribunals Policy

**Date** 16 June 2022

**Subject** Summary of Rules Committee meeting, Monday 28 March 2022

**For**  Approval  Review Comment  Action  Noting

### Purpose

1. This briefing summarises the Rules Committee (Committee) meeting of Monday 28 March 2022.

### Item 1: Preliminary matters

2. The Attorney-General gave his apologies for the meeting.
3. The Chair welcomed the Principal Disputes Referee, Ms Janet Robertshawe, to the meeting as she was presenting the recommendations relating to the Disputes Tribunal.
4. The Chair also introduced and welcomed Ms Anna McTaggart, the new Clerk, to the Committee.
5. The November 2021 meeting minutes were approved by the Committee, following some minor corrections.

## Item 2: Improving Access to Civil Justice – Discussion of Submissions from Second Consultation Round (repeat item)

---

6. This agenda item was split into three sessions, with different Committee members leading the discussions for each. The three sessions were:
  - a. Discussion of submissions and proposals relating to the Disputes Tribunal  
**Out of scope**
7. The Chair expressed his desire for the Committee to make final decisions at this meeting, to eliminate the need for a second meeting dedicated to this topic.

### Discussion of submissions and proposals relating to the Disputes Tribunal

#### Background

8. In preparation for the meeting, Ms Robertshawe and Mr McHerron had prepared a document making 10 recommendations for changes in the Disputes Tribunal. Ms Robertshawe began the discussion on the Disputes Tribunal by speaking about her experience and noted that the Disputes Tribunal manages 11,000 cases a year, with 75% of those cases disposed of in 90 days pre-COVID. Ms Robertshawe noted her strong belief that the options presented will be effective.
9. Ms Robertshawe and Mr McHerron made 10 recommendations relating to the following areas regarding the Disputes Tribunal:
  - a. Increasing the jurisdiction of the Disputes Tribunal to \$50,000 or \$100,000
  - b. Changing appeal rights from the Disputes Tribunal for claims over \$30,000, if the jurisdiction increases
  - c. Not changing representation rights
  - d. Keeping Dispute Tribunal hearings private, increasing the publication of anonymised decisions, retaining a library of all decisions issued, and a direction sought from the Minister regarding the reporting of cases of public interest
  - e. Exploring the potential for the Disputes Tribunal to be used as a settlement forum for the District Court
  - f. Changing the recovery of filing fees, costs, and disbursements
  - g. Requiring all referees to be legally qualified
  - h. Resolving disputes according to the law



- i. Finding more effective and straightforward ways for claimants to enforce a successful reward and abolishing (or making subject to waiver) the enforcement fee imposed for collection of a Disputes Tribunal award
- j. Changing the title of “referees” to “adjudicators” and renaming the Disputes Tribunal to better reflect its connection to the community and the spirit of its process

Outcome

10. The Committee agreed to all 10 of the recommendations, with the concerns of some Committee members regarding some proposals to be noted in the Committee’s report.

Out of scope

The following pages 4 - 5 are withheld as they are deemed to be out of scope of your request

s9(2)(g)(i)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

The following pages 7 - 9 are withheld under s9(2)(g)(i)

Out of scope

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982