

Departmental Disclosure Statement

Tribunals Powers and Procedures Legislation Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certify that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

July 2017

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Part One: General Policy Statement

The Tribunals Powers and Procedures Legislation Bill (the **Tribunals Bill**) and the Courts Matters Bill form an integrated package of amendments that will contribute towards the goal of a modern, efficient, and effective courts and tribunals system. The Business Committee has agreed to the introduction of these Bills as cognate Bills under Standing Order 269.

The Tribunals Bill and the Courts Matters Bill amend tribunals and courts legislation respectively to—

- reduce the time it takes to hear and resolve matters and improve users' experience of the courts and tribunals system:
- enable greater use of modern technology to further improve efficiency, effectiveness, and timeliness:
- simplify and standardise statutory powers and procedures to improve productivity and efficiency:
- provide better consumer protection and redress, and greater access to justice.

The Business Committee has agreed to the introduction of the Tribunals Bill as an omnibus Bill under Standing Order 260(a) and/or (b).

The major initiatives in the Tribunals Bill are described below.

Tribunals' powers and procedures will be simpler and standardised

The Tribunals Bill will provide similar tribunals administered by the Ministry of Justice with a standard set of powers and procedures to improve productivity and administrative efficiency. For example, the Legal Complaints Review Officer will be able to reduce the significant backlog of cases with the new powers to hear appropriate matters on the papers and to strike out meritless complaints. This will enable the parties to put the matter behind them and to move on with their lives sooner. These amendments will also make tribunal processes easier for the public to understand.

The standardisation of powers and procedures will also reduce the time it takes to hear and resolve matters, and will improve users' experience of tribunals. For example, members will be able to complete any part-heard cases after their successors have been appointed. This will ensure proceedings are not unnecessarily prolonged or delayed by appointment rounds, and members will have less uncertainty when appointments are under consideration.

In addition, users will benefit from new standard provisions governing—

- the striking out of meritless applications:
- the summoning of witnesses, including the creation of a new offence of failing to appear or co-operate at a hearing:
- the awarding of costs when a person has obstructed or unreasonably delayed proceedings:
- contempt, so that tribunals can maintain order and conduct proceedings efficiently:
- the use of audiovisual facilities in appropriate cases.

Tribunals will provide better consumer protection and redress

The Tribunals Bill will also enable some tribunals to provide better consumer protection and redress, and greater access to justice by providing a simpler, quicker, and cheaper alternative to a court case. For example,—

- the Disputes Tribunal monetary threshold will be increased from \$15,000 (or \$20,000, if all parties agree) to \$30,000:
- the Real Estate Agents Disciplinary Tribunal will be able to award monetary compensation of up to \$100,000 for financial losses arising from a real estate agent's unsatisfactory conduct:
- the Private Security Personnel Licensing Authority will be able to discipline licensees and certificate holders for unsatisfactory conduct as well as for misconduct. Currently, the authority cannot sanction unsatisfactory conduct such as bullying.

One defunct and 2 rarely used tribunals will be disestablished

The Tribunals Bill will repeal the Birdlings Flat Land Titles Act 1993. The Commissioner completed the task of making orders relating to the division of land into separate titles at Birdlings Flat on Banks Peninsula in 2000.

The Tribunals Bill will also disestablish the Boards of Appeal established under the Health Act 1956 and the Maritime Appeal Authority established under the Maritime Transport Act 1994. These tribunals have not received any new cases for several years. Any future cases will be heard in the District Court instead.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Some amendments were developed in response to issues identified in the Annual Reports of Tribunals.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory Impact Statements (RIS) were prepared by the Ministry of Justice:</p> <ul style="list-style-type: none">• in November 2013 analysing the proposal to increase the monetary threshold for Disputes Tribunal claims and to make procedural changes;• in March 2014 analysing procedural changes proposed for tribunals administered by the Ministry of Justice. <p>A copy of these RIS can be found at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements/ and http://www.treasury.govt.nz/publications/informationreleases/ris</p> <p>After consultation with the Treasury it was determined that the other amendments were not subject to the regulatory impact analysis requirements because they will have no or only minor impact on individuals, businesses or not-for-profit entities.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Potential costs and benefits were quantified in the Regulatory Impact Statements.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Ministry has not identified any obligations that conflict with the policies contained in the Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Changes promoted through this Bill are not considered to have specific implications for Māori as individuals, communities or tribal groupings.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO (TBC)

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

- (a) The bill contains the following amendments to offence provisions:
- The creation of a new offence for breaching a suppression order (eg, by publishing suppressed information) for the fourteen tribunals that do not have this offence. The maximum penalty is a fine of up to \$3,000 upon conviction.
 - The maximum penalty for breaching a suppression order of two further tribunals has been increased to \$3,000.
 - The creation of a new offence of contempt, which is defined as hindering the operation of the tribunal, for the eight tribunals that do not have this offence. The maximum penalty is a fine of \$1,000 upon conviction.
 - The creation of a new offence of failing to comply with a summons or to co-operate with a proceeding without reasonable excuse for the three tribunals that do not have this offence. The maximum penalty is a fine of up to \$1,000 upon conviction.
 - An amendment of the definition of 'offence of dishonesty' in the Private Security Personnel and Private Investigators Act 2010 to include offences under section 127 (benefit fraud) under the Social Security Act 1964.
- (b) The bill contains the following amendments to the jurisdictions of tribunals:
- The Private Security Personnel Licensing Authority is being authorised to discipline licensees and certificate holders for 'unsatisfactory conduct' as well as 'misconduct'. This aligns with the approach in other comparable tribunals.
 - The Real Estate Agents Disciplinary Tribunal is being authorised to award compensation of up to \$100,000 for 'unsatisfactory conduct' as well as 'misconduct'. This addresses an anomaly.
 - The Boards of Appeal established under the Health Act 1956 and the Maritime Appeal Authority are being disestablished. These have not heard a case for several years. Any future cases will be considered by the District Court.
 - The Birdlings Flat Land Titles Commissioner is also being disestablished because this work has been completed.

3.4.1. Was the Ministry of Justice consulted about these provisions?	N/A

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
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Members of the legal profession were consulted in 2012 on some of the policies relating to the Disputes Tribunal.

In May 2015, the Ministry of Justice consulted the following on the other policies in the bill:

- Heads of Bench (including the Principal Youth Court Judge and the Principal Family Court Judge)
- the Chairs of affected Tribunals
- Real Estate Institute of New Zealand
- Secondhand Dealers Association
- New Zealand Security Association
- Scrap Metal Recycling Association of New Zealand
- Automotive Parts Industry Association New Zealand

Many of the proposals in the bill were suggested by the Tribunal Chair.

The responses received were generally supportive. The comments received were taken into account when the policy proposals were finalised.

The Ministry consulted with government agencies and departments on the draft Bill. We received a number of comments, which were taken into account in finalising the Bill.

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
The Bill will provide members of two tribunals with civil and criminal immunity for actions undertaken in good faith during the performance of their statutory functions. This immunity is already available for members of the other tribunals. It will remove a potential impediment to these members deciding matters fairly and impartially.	

Significant decision-making powers affecting individuals

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The bill amends the regulation making powers in three acts to enable fees to be charged that reflect the private benefit users receive from three tribunals.</p> <p>In addition, most prescribed forms are being replaced with forms approved by the Chief Executive of the Ministry of Justice following consultation with the relevant tribunal. This will simplify the process for revising these forms.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO