

# Departmental Disclosure Statement

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Remuneration Authority 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 certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

8 September 2021.

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## Part One: General Policy Statement

This Bill is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill that amends more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. That policy is to transfer responsibility for determining the remuneration of certain judicial and statutory officers to the Remuneration Authority to recognise the judicial nature of the positions.

The Bill amends the Remuneration Authority Act 1977 and 6 other Acts to transfer responsibility for determining the remuneration for the following judicial officers from the Cabinet Fees Framework to the Authority:

- Chairperson and Deputy Chairpersons of the Human Rights Review Tribunal:
- Community Magistrates of the District Court:
- Environment Commissioners and Deputy Environment Commissioners of the Environment Court
- members and deputy chairs of the Immigration and Protection Tribunal:
- Referees of the Disputes Tribunal:
- Tenancy Adjudicators of the Tenancy Tribunal.

The remuneration of these officers will remain the same until the Remuneration Authority makes its first determination. However, if the Remuneration Authority determines that any of these officers should be paid less than their current remuneration, the Remuneration Authority Act 1977 requires that their remuneration remain at its current level.

### ***Both Remuneration Authority and Cabinet Fees Framework determine remuneration***

The remuneration of statutory and judicial officers is determined under both the Cabinet Fees Framework and by the Remuneration Authority.

The Remuneration Authority is an independent statutory body that determines the remuneration for judicial and statutory officers who need to have, and to be seen to have, independence from Government. For example, the Remuneration Authority determines the remuneration for judges because judges need to be, and to be seen to be, impartial, independent from Government, and free from political interference in their decision-making. This contributes to public trust and confidence in the judicial system.

The Remuneration Authority Act 1977 prescribes the criteria the Remuneration Authority must consider in determining officers' remuneration. The criteria include the requirements of the position, relativity to the market, and fairness to those whose remuneration is being set and to the taxpayer. Determinations are made or reviewed on an annual basis. The Government has to implement the Remuneration Authority's determinations.

The Cabinet Fees Framework classifies judicial and statutory officers into four broad categories for fee-setting purposes and prescribes a range of fees for each category that reflects the nature of their work, including the expertise required, the extent of their decision-making powers and the impact of their decisions. The Minister or the fee-setting authority responsible for the officers makes the final decision on the fee to be paid to each type of officer within that fee range.

### ***An independent principles-based review recommended transfers***

An independent principles-based review was undertaken to determine whether the Cabinet Fees Framework or the Remuneration Authority is the most appropriate mechanism for setting the remuneration of statutory and judicial officers administered by the Ministry of Justice. The review concluded that the principal difference between the Remuneration Authority and the Cabinet Fees Framework is the degree of independence from Government of remuneration decisions. The Remuneration Authority is independent of Government whereas Government controls the Cabinet Fees Framework.

The review concluded that Community Magistrates, Disputes Tribunal Referees, and Environment Commissioners and Deputy Environment Commissioners are judicial decision-makers, and their remuneration should be determined independently of Government by the Remuneration Authority.

Community Magistrates sit in the District Court and hear matters that would otherwise come before a District Court Judge. Community Magistrates are required to have the personal qualities, experience, and skills needed to deal with lower-level criminal matters.

The Disputes Tribunal is a division of the District Court. It considers disputes based on contract, quasi contract or tort involving destruction, loss, damage or injury to property and the recovery of property of up to \$30,000. Referees are required to have appropriate qualifications such as legal, mediation or arbitration qualifications or training, as well as the personal attributes, knowledge, and experience needed for the role. Referees are required to try to mediate a settlement first. Where this is not possible, the Referee makes an order that is binding on the parties.

The Environment Court largely deals with appeals about the contents of regional and district plans and appeals arising out of applications for resource consents. Commissioners are appointed for their knowledge and experience in matters coming before the court, such as planning, resource management and heritage protection. Environment Commissioners and Deputy Environment Commissioners sit in the Environment Court, hearing matters and making decisions either as a panel, with an Environment Court Judge, or alone.

### ***Other tribunals also require greater independence from Government***

The remuneration of the Immigration and Protection Tribunal and the Tenancy Tribunal also needs to be determined independently of Government by the Remuneration Authority.

The Immigration and Protection Tribunal hears appeals against decisions of the Minister of Immigration or Immigration New Zealand on residence class visas, deportation (including appeals on humanitarian grounds), and claims to be recognised as a refugee or protected person. The Minister of Immigration or Immigration New Zealand is a party to these appeals.

The tribunal is required to be chaired by a District Court Judge and the members are required to be legally qualified. As the tribunal chair is a District Court Judge, their remuneration is already set by the Remuneration Authority. The Bill transfers responsibility for determining the remuneration of the other tribunal members to the Remuneration Authority.

The Tenancy Tribunal hears disputes between landlords (including Kāinga-Ora) and tenants of residential properties, and disputes relating to Unit Title developments such

as apartment buildings. Tenancy Tribunal Adjudicators are required to either be legally qualified or to have the knowledge or experience needed for the role.

The Residential Tenancies Amendment Act 2020 and the Residential Tenancies (Healthy Homes Standards) Regulations 2019 have significantly expanded the tribunal's role and responsibilities. For example, the monetary threshold of the Tenancy Tribunal for residential tenancy disputes has been doubled from \$50,000 to \$100,000. The tribunal can now impose pecuniary penalties of up to \$50,000 on non-compliant landlords and can issue works orders to compel landlords to comply with the Healthy Homes Standards. The chief executive of the Ministry of Business, Innovation and Employment can initiate proceedings against non-compliant landlords.

### *Human Rights Review Tribunal jurisdiction is comparable to that of a judge*

The Human Rights Review Tribunal hears claims relating to breaches of the Human Rights Act 1993, the Privacy Act 2020, and the Health and Disability Commissioner Act 1994.

Each case is heard by the Chairperson or a Deputy Chairperson and two panel members. The Chairperson and the Deputy Chairpersons are required to be legally qualified. Panel members have knowledge or experience of matters likely to come before the tribunal, including economic, employment, cultural or social issues. The Chairperson or a Deputy Chairperson chairs the panel that considers each case and also writes the tribunal decision.

The independent principles-based review concluded that the Human Rights Review Tribunal jurisdiction is comparable to that of a judge because the tribunal has the power to declare legislation to be inconsistent with the New Zealand Bill of Rights Act 1990. Only the legally qualified members of the tribunal have the knowledge and expertise to make such declarations. The Bill transfers responsibility for determining the remuneration of the legally qualified members, the Chairperson and the Deputy Chairpersons, to the Remuneration Authority.

### *Five new Permanent Legislative Authorities are being established*

A Permanent Legislative Authority (a **PLA**) is created when an Act authorises payments to be made from public money without a specific appropriation from Parliament. PLAs are needed because the remuneration for these officers is to be determined independently of Government.

The Bill establishes five new PLAs to fund the remuneration of the following officers:

- Chairperson and Deputy Chairpersons of the Human Rights Review Tribunal (Human Rights Act 1993):
- Environment Commissioners and Deputy Environment Commissioners of the Environment Court (Resource Management Act 1991):
- members and deputy chairs of the Immigration and Protection Tribunal (Immigration Act 2009):
- Referees of the Disputes Tribunal (Disputes Tribunal Act 1988):
- Tenancy Adjudicators of the Tenancy Tribunal (Residential Tenancies Act 1986).

A new PLA is not required to fund Community Magistrates because they are already funded through a PLA in the District Court Act 2016.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
The Bill implements some of the conclusions in the report titled Setting Remuneration for Judicial and Statutory Officers, prepared by MartinJenkins in September 2018. The report is available at <a href="https://www.justice.govt.nz/justice-sector-policy/publications/">https://www.justice.govt.nz/justice-sector-policy/publications/</a> "	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>

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

## 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 international obligations that conflict with the policy 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?**

YES

Crown Law has assessed the Bill for compliance with the New Zealand Bill of Rights Act 1990. Any advice provided to the Attorney-General by Crown Law, or a section 7 report of the Attorney-General, will be accessible at

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

### 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)?

NO

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

NO

### 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

<b>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?</b>	<b>NO</b>
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### Other testing of proposals

<b>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?</b>	<b>NO</b>
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However, the provisions in the Bill are modelled on existing statutory provisions that are workable and complete.

## 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
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### 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
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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### 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?	NO
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### Significant decision-making powers

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
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### 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
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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### 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
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