

Departmental Disclosure Statement

Disputes Tribunal Amendment Bill

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.

7 November 2024

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Part One: General Policy Statement

The Disputes Tribunal Amendment Bill amends the Disputes Tribunal Act 1988 to increase the financial jurisdiction of the Disputes Tribunal from \$30,000 to \$60,000. The aim is to improve access to quick, low-cost disputes resolution so that people can resolve disputes of higher value. The Bill intends to improve access to justice for people who either cannot afford to take a claim to the District Court, or choose not to as the associated fees would exceed the value of the claim they are pursuing.

The Disputes Tribunal is resourced through a combination of user pays and Crown funding. This is to recognise the public and private benefits of the Disputes Tribunal. The fees are tiered with higher value claims paying a higher fee. The Bill amends the Disputes Tribunal Rules 1989 to introduce a new filing fee tier of \$468 for claims of \$30,001 or more to aid with cost recovery and reflect the likely higher private benefits of using the Disputes Tribunal for higher value claims.

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
<p><i>Improving Access to Civil Justice, Rules Committee, November 2022</i> www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/access-to-civil-justice-consultation/</p> <p><i>Delivering justice for all: a vision for New Zealand Courts and Tribunals, Law Commission, March 2004</i> https://www.lawcom.govt.nz/our-work/unified-tribunal-framework/</p> <p><i>Tribunal Reform, Law Commission, October 2008</i> https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP20.pdf</p> <p><i>Regulatory Impact Statement, Civil Fees Review, Ministry of Justice 2012 accessible at</i> https://www.justice.govt.nz/assets/Regulatory-Impact-Statement-Civil-Fees-Review.pdf or https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments.</p> <p><i>Regulatory Impact Statement, Increasing the maximum claim level in Disputes Tribunals, Ministry of Justice 2013, accessible at</i> https://www.treasury.govt.nz/sites/default/files/2017-01/ris-justice-imc-aug17.pdf or https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments.</p>	

Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Regulatory and Cost Recovery Impact Statement: Increasing the Disputes Tribunal's financial jurisdiction and introducing a new filing fee tier, Ministry of Justice, 04 September 2024, accessed on the Ministry of Justice website at</i> https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/ and can also be found at https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments.</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

The Regulatory and Cost Recovery Impact Statement did not meet the threshold for a Treasury RIA team assessment.

The Ministry of Justice's Regulatory Impact Assessment quality assurance panel has reviewed the Regulatory Impact Statement and Cost Recovery Impact Statement prepared by the Ministry of Justice, and considered that the information and analysis summarised in the Statement partially meets the quality assurance criteria. The panel noted that:

The Statement provides accurate, robust and balanced analysis, within the context of reasonably significant limitations and constraints, including a key assumption that Crown funding would be available to support greater use of the Disputes Tribunal. It clearly explains why the scale of the problem, the level of unmet legal need in New Zealand, is unknown. It makes good use of what information is available to provide compelling reasons for the recommendations, while flagging the potential for the proposed increased jurisdiction and accompanying fee to undermine the Disputes Tribunal model. The panel considers that the wide public use of the Tribunal means that public consultation on the changes would have been highly desirable.

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

Yes, this can be viewed in the Regulatory and Cost Recovery Impact Statement: Increasing the Disputes Tribunal's financial jurisdiction and introducing a new filing fee tier, Ministry of Justice, 04 September 2024, accessed on the Ministry of Justice website link specified in 2.3, page 22.

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

The Bill does not create new obligations or standards or impact on existing obligations or standards. However, it may support regulatory efforts by providing an affordable forum to resolve civil disputes which may support upholding the rule of law.

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 Bill improves access to justice and is therefore consistent with New Zealand's international obligations.

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?

The Ministry of Justice did not identify any inconsistency with the principles of the Treaty of Waitangi during the development of the Bill and its policy. Changes promoted through this Bill are intended to make civil dispute resolution more accessible. We are unable to accurately estimate the impacts on Māori as information on claim types is not able to be filtered by demographic information.

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)?

YES

The Bill increases the financial jurisdiction of the Disputes Tribunal to \$60,000.

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

NO

The policy was developed by the Ministry of Justice.

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
<p><i>Time was not available to undertake public consultation. We have relied on:</i></p> <ul style="list-style-type: none"><i>targeted consultation with the judiciary on the financial jurisdiction. The filing fee was not discussed. This consultation is described in the RCRIS at pages 75-77 available at the link provided in 2.3. We also consulted with the judiciary on the draft Bill and they had no comment.</i><i>submissions made to the Rules Committee in 2021 as part of its review to improve access to civil justice as a proxy for public consultation. This information is described throughout the RCRIS.</i> <p><i>The Ministry of Justice have consulted on the proposals with the Ministries of/for Regulation, Social Development, Women, Ethnic Communities, Pacific Peoples, Housing and Urban Development, Business, Innovation and Employment and Department of Inland Revenue and the Treasury. The Ministry also provided an opportunity to comment to Crown Law, Te Puni Kōkiri, Whaikaha/Ministry for Disabled People and the Office for Seniors. The Department of Prime Minister and Cabinet were informed.</i></p>	

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
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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
<i>The filing fee is not in the nature of a tax as it is not greater than cost recovery and is clearly related to the service provided.</i>	

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?	YES
<i>Clause 4 amends section 10 of the Disputes Tribunal Act 1988 to increase the financial jurisdiction of the Disputes Tribunal from its current jurisdiction of \$30,000 to enable it to determine claims up to a value of \$60,000, and this change is reflected in other consequential amendments in the Bill. The Disputes Tribunal makes decisions on matters that fall within the substantial jurisdiction of the Disputes Tribunal including civil disputes in contract, tort and under some statutory provisions (the Consumer Guarantees Act 1993, Fencing Act 1973 and the Fair Trading Act 1986).</i>	
<i>There are a range of existing safeguards that apply to the Disputes Tribunal's decision-making powers which will also apply to decisions that fall within the increased financial jurisdiction. The Disputes Tribunal Act 1988 sets out the procedural requirements (Part 3). Parties are given notice of the claim and a right to appear and be heard at hearings. Decisions are made by an impartial referee. Referees are appointed through an appointments process and must hold a relevant qualification, have the personal attributes, knowledge and experience to be capable of performing the functions, and be recommended</i>	

for appointment. Referees take an inquisitorial approach to actively investigate the evidence and hear both sides, establish the facts of a case, and determine the legal issues. Referees help parties reach a settlement and if that is not possible, the referee can make legally binding orders. Referees make determinations in accordance with the “substantial merits and justice of the case” while having regard for the law rather than having to administer the law or give effect to precedent.

The Disputes Tribunal Act emphasises the finality of Tribunal decisions. To achieve this, the Disputes Tribunal has special characteristics that help it to provide fast, informal and flexible resolution of small claims, including: no standard right to legal representation and limited appeal rights to promote the finality of decisions. However, if a party to a claim is unhappy with the outcome, they are able to apply for a rehearing. Only 1 rehearing may be ordered unless the Tribunal assesses it to be in the interests of justice to order additional rehearsings. Appeals from the Disputes Tribunal to the District Court are limited to grounds of procedural unfairness. Judicial review by the High Court is also available. The Dispute Tribunal’s inquisitorial approach seeks to offset natural justice concerns for low value claims. The low rate of appeals, rehearsings, and complaints indicate that the Tribunal is operating effectively, and parties have minimal natural justice concerns under the current settings. This enables timely resolution of matters and improves access to justice for claims that otherwise would not be economically viable to take to court.

When considering an increase to the financial jurisdiction, time was not available to undertake public consultation which has limited our ability to test whether there is public confidence in the Disputes Tribunal hearing higher value claims. As the principles of the Tribunal’s approach were developed for low value claims, the Ministry considers a comprehensive review of the Disputes Tribunal model would be needed to fully assess the suitability of the model to higher value claims and whether increasing the financial jurisdiction will impact natural justice rights. However, of the two options considered (\$60,000 or \$70,000), the Ministry considered that \$60,000 was preferable as prior consultation undertaken by the Rules Committee to inform its Access to Civil Justice report indicated people are more likely to have confidence in the Tribunal at lower financial thresholds without legal representation and with limited appeal rights. The Disputes Tribunal model is explained in the RCRIS (pages 6&7) and options considered were assessed against criteria including whether they uphold principles of natural justice, improve access to justice, and uphold public confidence in the Tribunal (pages 15-21). The full analysis and recommendations can be viewed in the Regulatory and Cost Recovery Impact Statement: Increasing the Disputes Tribunal’s financial jurisdiction and introducing a new filing fee tier, Ministry of Justice, 04 September 2024, accessed on the Ministry of Justice website link specified in 2.3.

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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