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Programme Director
Auckland Service Delivery Programme
Level 4, Auckland District Court
Private Bag 92020
Victoria Street West
Auckland 1142

Email: opmodelakldfeedback@justice.govt.nz

Proposed New Operating Model for District Courts in Auckland, Ministry of Justice Discussion Document

Introduction

The New Zealand Law Society (Society) appreciates the opportunity to comment on the Ministry of Justice discussion document, *Proposed New Operating Model for District Courts in Auckland* (the document).

The Society's submission has been prepared with assistance from its Courthouse Committee and Family Law Section.¹ We note that a very short time has been allowed for submissions, which we believe is inadequate. In the limited time available the Courthouse Committee and Family Law Section have consulted with stakeholders, and evaluated the impact on the civil and family jurisdictions of the proposed reorganisation of the Auckland district courts.

The Society accepts that the proposed reorganisation of the Auckland district courts primarily relates to the administrative operations of the Ministry, and that the Ministry will have additional internal information that is not set out in the document. However lawyers are able to provide worthwhile perspectives on how the proposed changes would affect them and their clients because of their day to day experiences of the operation of the different courthouses.

The Society has significant concerns about a number of aspects of the proposed centralisation model contained in the document and does not support the proposal in its current form.

The Society's key concerns with the proposed reorganisation are summarised below. More detailed concerns in relation to the impact on the family jurisdiction are then set out.

¹ The Society's Courthouse Committee is responsible for liaison with the Ministry of Justice regarding courthouse construction, alteration and renovation, and the Ministry's operational decisions where these impact on the adequacy of courthouse facilities. The Family Law Section has existed as a group with voluntary membership since 1997 and represents the interests of approximately 970 family lawyers.

Key concerns

- The proposed centralisation policy will inevitably cause extra expense and inconvenience for clients and their lawyers. This extra expense and inconvenience will fall disproportionately on those in the lower socio-economic areas in South Auckland, West Auckland and North Shore, affecting the most vulnerable and their children. Vulnerable families will be unlikely to have the financial means to travel and access court services in central Auckland. This extra expense and inconvenience will also apply to litigants in person, who are found in both family and civil litigation.
- The use of Melbourne as a template is misleading. The public transport system in Melbourne is far superior to that in Auckland and even there we understand the centralisation is less than successful in many ways. We have made enquiries with Melbourne practitioners. These show that the centralised Melbourne system is particularly disadvantageous for poor litigants who have trouble getting information and assistance at their local courthouses and find the extra travelling inconvenient and costly. These are the very people that need access to an effective justice system.
- Some of the geographical and population aspects of Greater Auckland are acknowledged in the document but we do not believe that sufficient emphasis has been placed on the geographic spread of Auckland and the difficulties of the public transport system which operates like the spokes of a wheel – and, in particular, the difficulties of public transport to Manukau City from other South Auckland suburbs. This underscores why having properly operational courts at Papakura and Pukekohe is so important from a South Auckland perspective. Car parking in Central Auckland and Manukau is also problematic. Although there are plenty of car parks in the vicinity of the Auckland District Court, they are very expensive to use. The difficulty at Manukau is the unavailability of car parking which is made even more critical because of the difficulties of public transport.
- The proposed transportation of files to fit in with this scheme will need to be carefully thought through. There is already anecdotal evidence of difficulties of files getting from one part of a courthouse to another. This will only be exacerbated when the files have been moved from courthouse to courthouse. Lost or delayed files disrupt the smooth flow of litigation and penalise all concerned – Judges, clients, court staff and lawyers. Speed and security will be of a critical importance.
- Centralising paper files also increases the risk that documents could be potentially lost by fire, earthquake (as in Christchurch) or volcanic activity (a potential risk anywhere in the Greater Auckland Region).
- It is unfortunate that two courthouses that are particularly effective and well run, Waitakere and North Shore, are having their services reduced and the operational burden increased on those courthouses in Central Auckland and Manukau which have in the past struggled from time to time.
- We have the greatest respect for the managers and experienced staff at the different courthouses. We are concerned that their institutional knowledge is not lost as this would be to the detriment of the effective operation of the family and civil court system. There is also a risk of the loss of local knowledge, for example over the appointment of counsellors, lawyers for the child, psychologists and the like.

- Although we fully appreciate the importance of introducing new systems and learning to operate them properly, it is important to learn the right lessons from the current operations. It is important that existing problems are not carried forward and made worse.
- We query whether the timing of this proposal is optimal. We would have thought it preferable to introduce a secure and effective electronic system relating to files first as this would then cut down the potential problems over logistics, security and speed. Expenditure on a system of this kind may well be the best way to save money overall.
- It is significant that there is considerable concern at this proposal among community groups in Waitakere, North Shore and South Auckland and dissatisfaction at the lack of consultation to date.
- We are disappointed that more consultation did not take place with the legal profession in relation to this proposal before the document was released. The protocols that the Society has with the Ministry were not utilised. The Society and ADLSi representatives on the Auckland Service Delivery Programme consultation committee were not informed about this proposal and not invited to contribute feedback before the report was finalised.
- Although we appreciate that this proposal is currently in relation to the Greater Auckland area only, we would be very concerned if it is applied elsewhere in New Zealand until the proposed model for the Greater Auckland area has been in operation for some time and has been carefully reviewed.

Detailed concerns in relation to the family jurisdiction

The Family Law Section's concerns about the impact of the proposed centralisation model mirror the concerns stated above. A detailed critique of the impact of the proposal on the family jurisdiction is set out in appendix A, attached.

Conclusion

Although the Society's concerns are wider than those specifically addressed in this submission, the Society has focussed on its key concerns and welcomes the opportunity to engage further with the Ministry on how these concerns might be appropriately addressed, before a final model is adopted. In particular, the Courthouse Committee wishes to explore the potential ramifications of the centralisation proposal on future courthouse property acquisitions and renovations.

The Society would appreciate the opportunity to discuss these concerns with the Ministry. Contact can be made in the first instance through the Courthouse Committee secretary, Julie Smith (ph 04 463 2967 / julie.smith@lawsociety.org.nz).

Yours sincerely



Jonathan Temm
President

Appendix A - attached

Appendix A - Concerns in relation to the family jurisdiction

A. RETENTION OF FAMILY COURT STAFF

Family Court registries that operate well, do so largely because of the long serving, experienced, knowledgeable and skilled staff within those registries. This is particularly evident in the exemplary functioning of the Waitakere² and North Shore Family Court registries which are in distinct contrast to the Auckland Family Court registry.

A registry that is staffed by long-serving, experienced and competent personnel is an essential component of a court that is able to serve its consumers (practitioners, Judges, clients and community agencies alike) expertly and efficiently. Specialist staff who are experienced in dealing with family law matters are a fundamental prerequisite in terms of the core functions of a typical Family Court registry. Such staff characteristics include, but are not limited to:

- dealing effectively with counter enquiries from members of the public, without having to defer to another person;
- linking family lawyers, clients and other members of the public with known and relevant agencies within the community that deal with family law matters;
- adeptly and promptly addressing queries from practitioners about a particular file; and
- assisting vulnerable families to access local community and/or legal services, particularly in urgent cases.

The Society is concerned about the impact on the effective operation of the Family Courts in the Auckland region by the centralisation of core functions currently undertaken within each individual registry. This concern focuses on the potential loss of existing experienced and valuable staff, many of whom have been with the Ministry for many years and who provide an established and invaluable link between the Court and community. Some Court staff in regional registries work part-time and live locally to the registry in which they work.³

A number of those staff members choose and/or need to work locally, and there is a real risk that staff from the local courts will choose not to take up employment offers based in central Auckland, and to a lesser degree Manukau.⁴

The proposed operating model underestimates the staff numbers required in both the hub and spoke courts, and the model accordingly fails to give regard to the significant impact this will have on the efficient management and handling of files.⁵ There seems to be an underlying presumption that current staff numbers are sufficient for the efficient administration of the Family Courts in the

² As the High Level Review Report for the Waitakere District Court makes clear in respect of its family registry (p. 11): "Waitakere is the best performing Family jurisdiction in the region and exceeds the national performance of both the intermediate and boundary standards".

³ See page 33 of the High Level Review Report for the Waitakere District Court where it is stated that "[T]he Family Team has no turnover of staff..."

⁴ The logistics of travelling from Waitakere or South Auckland into Auckland City are quite different from travelling from North Shore into Auckland. Also, the experience of staff retention from the experience of moving the North Shore Court from Takapuna to Albany is not comparable across the board if there is an expectation that staff from Waitakere or South Auckland will as easily move to Auckland to work.

⁵ It is pertinent to note in this respect the comment in the High Level Review Report for the Waitakere District Court at page 14, that having very experienced staff members with a generalised skill base (as opposed to being specialists) means that they can cover for each other during periods of leave.

Auckland region. The Society disagrees with this assumption and many family lawyers in all the registries in the Auckland region observe on a daily basis that the current workload is too great for the staff resource provided.

The model proposes to reduce the number of staff available to work on Family Court files. While under the proposed model the functions and tasks required of a Case Manager will be reduced by the specialist case processing role, and therefore fewer Case Managers will be required, the Society is not convinced that case processing will divert sufficient work from Case Managers to warrant fewer personnel in that role.

The role of a Family Court Co-ordinator is critical to the efficient operation of the Family Court. The proposed model appears to maintain seven Family Court Co-ordinators in the Auckland region and it is the Society's understanding that four Family Court Co-ordinators will be based in the Auckland hub with three in Manukau. This is particularly pleasing in light of the recent difficulties experienced by lawyers, Judges and members of the public in the Auckland Family Court since the two full-time, experienced Family Court Co-ordinators left late last year without replacement. The Society believes that seven experienced Family Court Co-ordinators for the Auckland region is the absolute minimum number required to efficiently run the Family Courts in the Auckland region and would be extremely concerned if there was a further reduction to this proposed number.

The Society is concerned that the centralisation of the Court Co-ordinators at the two hubs may run the risk of diluting the educative community role that the co-ordinators play.

B. PROPOSED COUNTER AND COURT SERVICE TEAMS

The proposed model states that counter and court services will continue to be available at all District Courts and there will be no reduction in the services offered to stakeholders. The Society is concerned that under the proposed model the services to stakeholders including lawyers, the public, and community organisations, will be greatly reduced.

Spoke-courts: North Shore and Waitakere

The proposal allows for a team leader at both the North Shore and Waitakere Family Courts and three counter staff who will be responsible for all civil and family law counter enquiries, accepting documents for filing, swearing and signing of documents and over the counter document processing. In addition they will be responsible for court taking including managing of the files that have been transferred from the hub-court, managing and setting up the court rooms, judicial support and managing the hearings.

In both civil and family matters, there are a large number of litigants who appear in person. It is expected that they will continue to make personal approaches to their local court for assistance in completing the necessary, and often to them, complex documentation. Currently in the spoke-courts there is a counter person for civil matters and another for family matters. Under the new proposal these two positions will be amalgamated into one position, leading to a reduction in service provision. This will result in a considerable change for court users and appears contrary to the stated intention that "people will be able to go to their local Court to access services in the same way they do now".

Litigants in person will often approach their closest court to discuss matters with the allocated Case Manager. They will be unable to do this once case management is centralised into the hub-court. Many people do not have access to the Internet to access information in this way and will therefore rely on the staff at the counter of their local court to provide them with information regarding the

management of their case. Problems will be exacerbated if the file is not available at the local court.

Counter staff are unlikely to have the specialised knowledge to respond to enquiries from members of the public about such matters as programme providers for domestic violence, programmes available for victims of domestic violence and the like.⁶ This is information that is usually held by the Family Court Coordinator and enquiries would need to be referred to the Coordinator who would be situated in the hub-court.

Urgent applications that are currently able to be dealt with efficiently in the spoke-courts by referral to the local Judge who has the full file available are likely to be delayed. Under the proposal, an existing file will only be held in the hub-court and the urgent application will need to be forwarded to that hub-court for consideration. If urgent orders are made, it is likely that there will be a delay if the original of the sealed order has to be collected from the hub-court rather than the local court.

The Society is concerned that delays might occur in having respondents in proceedings under the Domestic Violence Act 1995 served in a timely manner. Other urgent applications – such as proceedings involving allegations that a child may be about to be removed from New Zealand – may also experience delays in having the Court file brought back to the local spoke-court and the matter dealt with expeditiously.

Counter services: Papakura and Pukekohe

The document proposes that the Criminal Services Group at Papakura and Pukekohe District Courts will provide all counter and court taking services. This will result in a dramatic reduction in the expected services to all consumers of these two courts given that they will be dealing with court officers who have no background or experience in family or civil matters. If members of the public attend at the counter at either of these courts requiring information about their file or how to proceed with an application, it is highly unlikely that the counter staff from the Criminal Services Group would be able to adequately deal with the matter. This will lead to the person having to be referred to the hub-court in Manukau for more specific and focused advice (or delays whilst the counter staff obtains requisite advice).

C. IMPACT ON THE COMMUNITY

The proposed spoke-courts (Waitakere, North Shore, Papakura and Pukekohe) are currently well served by staff with good local knowledge and who are able to provide a timely and well informed response to face to face enquiries from stakeholders who attend the court in person. This service is likely to be significantly reduced under the proposed centralisation model.

There will no longer be Family Court Coordinators based at the spoke-courts that can provide immediate advice and support about appropriate local services.⁷ For example, if a victim of domestic violence should attend at the Papakura Court to request a referral to attend a domestic violence victim programme, they would be dealt with by a customer services officer from the criminal team who is unlikely to have the requisite knowledge. That person would then have to be referred to the hub -court to have the matter more appropriately dealt with. In lower socio-economic areas such as South Auckland, it is not realistic to expect members of the public to travel from their local district to receive this sort of assistance and information.

⁶ See footnote 4 above.

⁷ See the High Level Review Report for the Waitakere District Court at p 23 where the comment is made that the Family Court Coordinator has a strong community presence, and that the recently recruited Court Victim Advisor has initiated meetings with various community groups and with those involved in the Family Violence Court.

Currently in all of the Auckland regional Family Courts, local practitioners meet on a regular basis with the court staff and judges to address local issues and to address ways of improving services to the community that they serve. With the proposal to centralise case processing and management, it is unlikely that these sorts of initiatives will continue. The local Family Courts and the associated staff and professionals involved with the Family Court have thrived and served their local communities well because there is an ownership of providing the best overall service for the local community. This service would simply be lost with the centralisation of court services. Local counsel will be reluctant to travel into the hub-courts to meet with centralised teams to address centralised issues.

The Family Law Section's four Auckland-based Executive committee members together with the six Auckland regional representatives, which cover Manukau, Waitakere, North Shore and Central Auckland, met with family lawyers and community organisations including Women's Refuge, Citizen's Advice Bureaus and Age Concern, to discuss the Ministry's proposal and to seek feedback from those in the community that offer services to the public in the family law area. A meeting of community groups on the North Shore⁸ was indicative of the response received from all groups in the other regions throughout Auckland – the dissatisfaction in the community over the lack of consultation and the underestimation of the effect of centralisation on vulnerable families.

The question posed to the Family Law Section by all stakeholders was “who were the limited group of stakeholders” consulted over the last 18 months? None of the key community services under the umbrella of North Shore Community & Social Services Inc, for example including but not limited to Women's Refuge, Citizen's Advice Bureaus and Age Concern, have been consulted.

The stated intention that services for children and vulnerable families will continue to be available from all courts as they are now, is not viewed as possible with the removal of the Family Court Coordinator position from the North Shore Court, which will remove a long established link between the Court and the community agencies. This is an observation that applies equally to Waitakere, Papakura and Pukekohe, as each court enjoys the presence of a Family Court Coordinator (noting that the Papakura based coordinator also serves Pukekohe).

It is unlikely that vulnerable families will have the means to travel and access that service in Auckland – having regard to the significant distance involved and the size of the North Shore area and users serviced by the Court. For example, it is 104 km approximately from the most northern point of the jurisdiction of the North Shore Court to Auckland Court. Residents in Warkworth, Wellsford, Hatfields Beach, and Rodney District must already travel significant distances to access justice at their local Court. At least now they have easy and often free parking and their lawyers are North Shore based. The added expense of travelling to the city central for the parties and their lawyers, for some, will be prohibitive.⁹ In addition, while the time of travelling and associated parking costs will be passed on to privately paying clients, there is no mention in the document that travel and parking costs for legal aid providers and court-appointed counsel travelling to central Auckland will be met by the Ministry of Justice (who now administer the legal aid system).

⁸ In the week of Monday 16 May 2011.

⁹ Similar issues apply for those whose local court is Waitakere, Papakura or Pukekohe.

D. CENTRALISATION OF FILES

The proposal suggests that files will be centralised in the Auckland hub, and will not be held at the Manukau hub. A range of concerns are raised in relation to this proposal. These relate to the transporting of files generally between courts, including when this occurs for short cause fixtures.

(a) Delay in the delivery of files

The Society is concerned that files will not be delivered in time for a court date in a particular spoke-court or at the Manukau hub. Delay might be caused by a range of reasons including:

- traffic congestion on the roads, noting that for example, it can easily take 45 minutes to travel from Auckland Court to Manukau Court irrespective of the time of day.
- ill health on the part of a staff member at the Auckland hub.
- staff or systems error at the Auckland hub resulting in the late transfer of a file or part of a file to the spoke- or hub-court, necessitating an adjournment of the Court date to enable the file to be available. (Currently, such delay would not occur.)

(b) One file does not necessarily relate to one set of proceedings

The proposed model appears to proceed on the basis that any one file relates only to one set of proceedings under one Act. In reality it is not uncommon for a Family Court to be dealing with large and bulky files with multiple sets of proceedings, multiple parties and more than one Act. For example, many cases involve both a Child, Young Persons, and Their Families Act (CYPTF Act) proceeding and a Care of Children Act (COCA) proceeding, or a Domestic Violence Act proceeding and a COCA proceeding. An example could involve an 18 year old. Such cases do occur and often involve the Court seeking to access both files at the same call of the matter to ensure efficient disposition of the proceedings. The retention of files at the originating court would enable a staff member at that spoke-court or the Manukau hub to locate the additional file promptly. Under the proposed model, the only option would be an adjournment to obtain the additional file either until later in the day or a future date. Either option means increased cost and delay.

(c) Security of files held in one location

There is an issue of safety and security of files if they are to be held in one location. Information contained in Family Court files is by definition “sensitive”. The sheer number of files in each of the registries is such that ongoing and frequent transportation of files between the spoke-courts and Manukau hub and the Auckland hub would appear inevitable. The risk of loss of files and accidental release of information through loss or misplacement is of concern and raises privacy issues for parties. This risk is potentially heightened by the pressure of timeframes to ensure speedy delivery of files all over Auckland. The Christchurch earthquake illustrates the risk of storage of a large amount of documentation in one location, let alone one building. Other risks such as fire also arise in the same context.

The retention of files at the Manukau hub also would alleviate the issue to some extent within the context of the South Auckland Courts, but would still necessitate the transportation of files between Manukau, Papakura and Pukekohe leading to the identified risks of delay, loss, accidental release and lack of flexibility.

(d) Urgency

Urgent activity often arises on files, including “last minute” matters that can be placed in court lists, for example the mental health lists at the hospitals and information from Family Violence Information Reports from the Police. The proposed model involving centralised files lacks the flexibility for a prompt response that exists under the current model.

(e) Case management

The case management necessary to ensure that files progress properly through the Court process will be very difficult to achieve with files held in a hub court. Case management is key to the identification and control of serious cases and there are fiscal and safety implications for vulnerable adults and children, if that ability is reduced in any way by centralisation.

E. HUB SERVICES

If the intention with the “hub” and “spoke” proposal is to provide centralised “back office” services at the hub for the particular sub-region whilst the spokes are intended to continue to provide the current level of service to the public, the Society submits that each of the two hubs should be a mirror image of the other.

To have mirror-image hubs requires that “case processing” for family court jurisdiction matters must be at both hubs.

Examples of this mirrored approach would be as follows:

Waitakere	Family Court Application to be filed at local Court	Pukekohe
Waitakere	SPOKE: Counter Services	Pukekohe
Auckland (Hub North)	HUB: Case Processing Family Case Management Family Court Co-ordinators	Manukau (Hub South)
Waitakere	SPOKE: Court Services Judicial Conferences Short Cause Hearings	Pukekohe
Auckland (Hub North)	HUB: Long Cause Hearings	Manukau (Hub South)

Such an approach:

- provides an integrated service at each of the fully operational hubs with South Auckland clients knowing that their files will remain in South Auckland;

- gives an opportunity for comparison of performance between the two case processing teams in adjoining sub regional areas based on a similarity of demographics, the number of staff in each team and the number of applications filed in each hub area;
- ensures that the files and Judges are available for without notice applications at both hub-courts daily without the problems associated with unnecessary transfer of files; and
- will reduce the amount of transportation of files and the risks of files being misplaced.

F. FUTURE OF SHORT CAUSE FIXTURES

The Society strongly supports court events of less than one day, such as short-cause matters, including judicial, settlement and mediation conferences continuing to take place in the relevant spoke (or hub as the case may be).

The Society would be extremely concerned should there be any future suggestion that short-cause matters also be centralised. Possible anticipated rationales for this might include:

- that there is an insufficient number of staff with the requisite level of expertise in the spokes to deal effectively/efficiently with Family Court files at the short cause/judicial conference level; and
- difficulties around the flow of files between the relevant hub and spoke, impacting on the availability of files for particular events.

G. TIME FRAME FOR IMPLEMENTATION

The document proposes that the new operating model, in whatever form it ultimately takes, be implemented as early as November 2011. The Society has serious concerns about such a hasty implementation and considers that a much longer period is required to complete the necessary staff training and put in place the procedures required (and to test them) to ensure that the new model is successful in the long term.

If there is to be centralisation, any implementation should be deferred until other options have been considered and tested, for example, the move to full electronic filing has been implemented. The Society understands that this is a matter under possible consideration. It would appear to be a logical step to take as part of the process of ensuring that the Courts operate effectively and utilise up-to-date technology.

The Society is concerned that the implementation of a centralisation model being implemented in November 2011 does not allow sufficient time for the adequate training of Family Court staff or for the new system to be tested to ensure that problems are highlighted and rectified before the proposal is initiated.