

5 August 2016

Andrew Bridgman
Secretary for Justice
Ministry of Justice
National Office
Ministry of Justice
SX10088
Wellington

By email: Andrew.Bridgman@justice.govt.nz

Dear Mr Bridgman

Ministry restructure proposal: Operations and Service Delivery Group

Introduction

Thank you for providing a copy of the Ministry's *Proposal for Consultation: The Operations and Service Delivery Group, 17 June 2016*, to the New Zealand Law Society. The proposal document was received on 28 July and circulated to the relevant Law Society committees, comprising lawyers who practice in courts and tribunals throughout the country, for urgent comment.

Overview

The legal profession is a major user of the services under review and takes a keen interest in the delivery of justice services. The proposed restructure of the Operations and Service Delivery Group will clearly have a significant flow-on effect on the administration of courts and tribunals throughout New Zealand and on the users of those courts and tribunals. We are aware that concern has already been expressed by practitioners and members of the judiciary, particularly in relation to the specialist courts.

Given this, consultation with the profession at an earlier stage in the development of the proposals could have been more helpful to the Ministry. The Law Society welcomes the opportunity to have input at this late stage and has made some comments below.

We understand the Ministry's desire for national consistency in service provision and to provide opportunities for the workforce to extend their skills. The proposed restructure aims to facilitate these goals by structuring functionally (grouping 'similar functions' together), rather than by speciality.

The key concern is that the restructure does not recognise the significant and valid differences across the different jurisdictions. The work of the specialist courts, in particular, is highly specialised and involves statutory and non-statutory processes that are specific to each court. The nature of the work varies across the specialist courts and their users' needs are different. Some of the courts also have a high proportion of litigants in person, who need particular attention and informed assistance from staff with experience and knowledge of their court's processes.

The Ministry will need to ensure that:

- the restructure supports the role, functions and operational efficiency of each court and tribunal;
- the valuable institutional knowledge and experience, and the specialist skills of staff, are retained;
- there is regional consistency across the functions (unless there are justifiable local differences) and that the resourcing and operational needs of each court within the region are met; and
- that the restructure incorporates the lessons learned from previous centralisation projects, notably Auckland Centralisation.

The proposed restructure

The proposed restructure of the Ministry's Operations and Service Delivery Group aims to "combine the service delivery groups into a single operational group". We understand that it is proposed the lower (District, Family and Youth Courts) and specialist courts and tribunals will be structured on a regional rather than a functional basis, across four regions. Other services such as service design, improvement and monitoring and national support services will be centralised.

The Law Society recognises that the proposed changes are operational and it is not appropriate for the Law Society to comment on how the Ministry organises and allocates its internal resources. The focus of this submission is on the potential impact of the changes on the legal profession and other users of court services, most particularly the public.

Feedback from lawyers

We consulted several of the Law Society's specialist committees (Civil Litigation & Tribunals, Criminal Law, Environmental Law, Employment Law, ACC, Courthouse and Youth Justice Committees) and the Family Law Section. The feedback is high level due to the significant time constraints and lack of detail in the proposal document. We have included direct quotes from the lawyers consulted.

a) The Employment Court

Comments from lawyers:

"Employment practitioners will primarily be concerned to ensure that the changes proposed do not in any way detrimentally impact on the functioning of the specialist Employment Court."

"Employment Court staff currently have a considerable degree of specialist knowledge, so that if a party or lawyer phones the Court they are given comprehensive information and not put on hold if the staff member is not up to speed."

"It is noted that the changes impact such aspects as the Library services. The judiciary and other judicial officers will be more concerned about that than employment practitioners unless such changes give rise to any delays in providing the outcomes of the judicial process."

"The changes are designed to ensure the provision of consistent services in which employees work more collaboratively and are more clearly accountable. To do this, they will be working across multiple jurisdictions and it is the latter aspect that gives rise to the possibility of the dilution of specialist expertise and the provision of specialist information."

"The specialist expertise and knowledge of court staff currently makes a significant contribution to the efficient and effective running of the Court, in particular in relation to dealing with an increasing number of self-represented parties. Dilution or removal of that expertise will not only

have an impact on the efficient delivery of justice in this area, it will also inhibit access to the justice system.”

b) The Environment Court

Comments from lawyers:

“Any structural changes made to improve service delivery issues occurring in other courts and tribunals should not be allowed to impact on the highly efficient and well-run systems in place in the Environment Court. It is the common experience of practitioners who engage with a number of different courts, that the expertise and timeliness of the Environment Court’s administrative functions is without peer in the court system. This is especially important given the frequency with which the staff are required to deal with lay litigants. The service delivery of the Environment Court is a model to be followed, not one to be diluted.”

Environmental lawyers also noted the significant differences between the work of the Environment Court and other courts. In particular, cases in the Environment Court often involve multiple parties, highly technical evidence (including from expert witnesses), high value matters, and significant public interest.

c) The District Courts’ specialist ACC jurisdiction

Comments from lawyers:

“It is fallacious to think that one skilled workforce can work across multiple jurisdictions. Those of us who work in specialised jurisdictions, such as ACC, know that the personnel who comprise the administrative infrastructure have institutional and experiential knowledge which allows them to function effectively. Overlaid on their competence as public servants is the knowledge which comes with dealing with the particular and often peculiar requirements of the ACC jurisdiction. At present, the ACC review processes are largely managed by FairWay Resolution Ltd, whose case coordinators likewise have particular knowledge about the workings of the review process. Underlying the surface level of procedural steps and milestones, is the reality of the need for adjournments, because medical reports have not been obtained in time and a host of other issues, which are known to the case coordinators, because of their daily involvement with them. ... an emphasis on uniformity would necessarily entail that the distinctiveness which makes up the specialised tribunals and courts would need to be abandoned, or otherwise eliminated, in order to achieve the management homogeneity which is apparently in view.”

d) Previous centralisation projects

In relation to the Family Court the Law Society would be concerned if the proposed restructure resulted in greater centralisation and led to similar problems to those experienced in the Auckland Family Court. Centralisation of the Auckland Family Court in 2010 resulted in significant systemic and ongoing issues. The Family Law Section has provided numerous examples to the Ministry in relation to the Auckland Family Court over several years, including delays in issuing service documents, actioning Court directions and actioning appointments of lawyer for child.

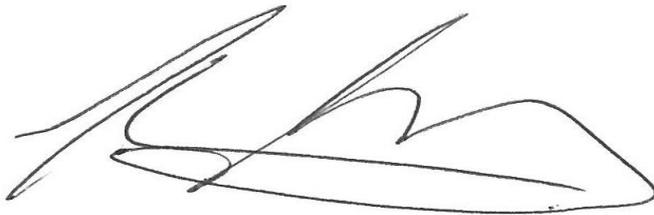
The centralisation of Collections has also been problematic:

“Collections has been centralised. There is no “access to justice” as such. The ability to pay fines for those who reside in Opotiki and all the way up to Cape Runaway is very difficult. They do not have internet access. These people’s method of communication is face to face not over a telephone. The Opotiki courthouse is open once a week and this has the “one” telephone that connects to a centralised unit. As people cannot access a way to pay their fines enforcement fees of at least \$100 are added to the outstanding amount. This accumulates over time.”

“If the Ministry propose to have a single Operations Group it will reduce the face to face contact all interested parties have with the Ministry and their ability to effectively service their customers will be reduced. This is on the basis that customer needs will not be properly identified and the frustration at the inability to deal with local people on a functional level will isolate people from engaging with the Ministry and the services.”

The Law Society would appreciate being involved in the further development of the proposals. Contact can be made in the first instance through Fazleen Ismail, General Manager Law Reform and Sections (fazleen.ismail@lawsociety.org.nz / 04 463 2908).

Yours sincerely

A handwritten signature in black ink, appearing to be 'K. Beck', written in a cursive style.

Kathryn Beck
President

cc:

Acting Chief Operating Officer, Kevin Jenkins Kevin.Jenkins@justice.govt.nz
Deputy CEO, Audrey Sonerson Audrey.Sonerson@justice.govt.nz