

Disputes Tribunal Amendment Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

13 January 2025

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Disputes Tribunal Amendment Bill (**Bill**), which will amend the Disputes Tribunal Act 1988 (**Act**) in order to increase the financial jurisdiction of the Disputes Tribunal from \$30,000 to \$60,000.¹
- 1.2 This submission has been prepared with input from the Law Society's Civil Litigation & Tribunals Committee, as well as the wider profession.²
- 1.3 In summary, the Law Society supports the proposal to increase the financial jurisdiction of the Disputes Tribunal.
- 1.4 The Law Society does not wish to be heard in relation to this submission.

2 General observations

- 2.1 For the reasons below, the Law Society supports the proposed amendment to the financial jurisdiction of the Disputes Tribunal. However, while this will make a contribution to improving access to civil justice, it is not a substitute for a broader consideration of the changes necessary to confront the access to justice problem in New Zealand, including those proposed by the Rules Committee.
- 2.2 In the Law Society's view, there should be further consideration of the Disputes Tribunal's jurisdiction, including a comprehensive first-principles assessment of the scheme generally (addressing matters such as appeal rights, other safeguards of the quality of decisions, and the treatment of costs) within the context of the wider civil justice system, including the role of other tribunals and the District Court.

3 Financial jurisdiction of the Disputes Tribunal

- 3.1 The Law Society supports the proposal to increase the financial jurisdiction of the Disputes Tribunal from \$30,000 to \$60,000. This would make a contribution to improving access to justice, and is generally consistent with the Rules Committee's *Improving Access to Civil Justice* report,³ which recommended increasing the jurisdiction of the Disputes Tribunal to \$70,000.
- 3.2 There appears to be general support in the profession for increasing the Disputes Tribunal's jurisdiction and, while there are a range of views about precisely where the balance should be struck, the Law Society considers that the proposed level of \$60,000 is appropriate.
- 3.3 Although falling outside the scope of the existing draft, the Law Society suggests one option to consider for future reform is a provision for jurisdictional bands to be increased automatically from time-to-time in accordance with an articulated policy, to ensure that it does not fall behind inflation. However, as noted above, any amendments

¹ Explanatory Note of the Bill.

² See the Law Society's website for more information about this Committee:
<https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/civil-litigation-and-tribunals-committee/>.

³ Rules Committee *Improving Access to Civil Justice* (November 2022) at page 17.

to the Disputes Tribunal's jurisdiction should be considered in conjunction with the District Court's jurisdiction to avoid the latter being 'squeezed' and as part of a comprehensive holistic assessment of the Disputes Tribunal system.

4 Other potential safeguards

4.1 The Law Society has considered whether amendments to the rights of appeal or other safeguards would be appropriate. The more the Disputes Tribunal's jurisdiction is extended, the greater social weight it carries.

4.2 In relation to these matters, we note the following points the Law Society raised in previous submissions to the Rules Committee:

(a) A majority of the Rules Committee had proposed that there be no change to existing appeal rights against orders up to \$30,000 and a general right of appeal to the District Court from orders between \$30,000 and \$100,000. The Law Society generally supported this proposal, perhaps with narrowed grounds of appeal.⁴

This Bill does not change existing appeal rights. That is a policy decision. We note that the need to introduce appeal rights is less acute if jurisdiction is being increased to \$60,000 rather than \$100,000, although some members of the profession would still prefer that the safeguard of having appeal rights be introduced for higher value claims given that these will still represent a significant amount of money to many New Zealanders.

(b) The Law Society's submissions to the Rules Committee discussed whether the provision in section 18(6) of the Act for Disputes Tribunals to decide disputes according to the substantial merits and justice of the case should be modified for higher-value disputes, and whether there should be a power to award costs for such cases.⁵

4.3 We acknowledge these matters are outside of the scope of the current Bill, and the need for these protections may be less acute if the jurisdictional limit is being increased to only \$60,000, but they should be considered as part of a wider review of the Disputes Tribunal in due course.

5 Filing fee

5.1 The Bill proposes to amend 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.

5.2 The Law Society does not express a view on the proposal to introduce a new filing fee tier for higher-value claims. However, a filing fee of \$468 could represent a substantial

⁴ Law Society submission to the Rules Committee *Feedback on Improving Access to Civil Justice Report* (27 February 2023) at [2.4] (available here: <https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/RC-Improving-access-to-civil-justice-27-2.pdf>).

⁵ Above n 4 at [2.3]. However, we note the Rules Committee did not make such recommendations (see above n 3, at pages 25 to 27).

hurdle for many users of the Disputes Tribunal. Even those who have potentially substantial claims may struggle to fund the higher filing fee.

- 5.3 We note the District Court Fees Regulations 2009 give Registrars the power to waive fees in full or in part where they would suffer financial hardship if they paid the fee (including, for example, where they are in receipt of a benefit), and similar provisions existing the senior courts.⁶ The Law Society suggests that if a new filing fee tier is introduced, then the Disputes Tribunal Rules 1989 should be amended to introduce a power based on the District Court provisions to waive the filing fee, as previously recommended by the Law Society and the Rules Committee.⁷ We acknowledge that the prospect of a fee waiver was outside the scope of officials' work leading to the Bill, but would be a relatively straightforward amendment to the Bill.



David Campbell
Vice-President

⁶ District Court Fees Regulations 2009, r 5.

⁷ Law Society submission to the Rules Committee *Rules Committee further consultation paper: Improving Access to Civil Justice* (2 July 2021) at [3.9(d)] (available here: <https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/1-Rules-Committee-Improving-Access-to-Civil-Justice-further-consultation.pdf>); above n 3 at pages 25 to 26.