

31 January 2025

LTIB Project Team
Ministry of Justice

By email: LTIB@justice.govt.nz

Feedback on proposed topic for Long-Term Insights Briefing

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the Ministry of Justice’s discussion document on its Long-Term Insights Briefing (**Discussion Document**).

1.2 This submission has been prepared with input from the Law Society’s law reform committees.¹

2 Q1. Do you feel that exploring the future of courts and justice services in Aotearoa New Zealand is an important and relevant topic?

2.1 It is important to consider both short-term and long-term trends, risks and opportunities when exploring the future of courts and justice services. The Law Society therefore agrees the future of courts and justice services (collectively referred to in this submission as **the justice system**) is an important topic.

3 Q2. What opportunities do you see in exploring the future of courts and justice services?

3.1 This exercise should offer opportunities to:

- (a) Promote the rule of law (for example, by improving public confidence in the justice system, and encouraging adherence to the law).
- (b) Enhance access to justice within the justice system (including in relation to access to the courts and tribunals, access to legal representation, and the use of technology).
- (c) Ensure legal proceedings are conducted fairly and efficiently, and provide resolution within a reasonable time and at a reasonable cost.
- (d) Address resourcing constraints within the justice system, and consider ways to reduce delays and backlogs.

¹ See the Law Society’s website for more information its committees:
<https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

- (e) Identify ways in which the justice system is able to 'flex' and continue administering justice when unexpected events such as pandemics and severe weather events impact its operations.
 - (f) Where needed, review the structure of the courts and tribunals (such as the Disputes Tribunal, as discussed at [5.13] below) in order to ensure they remain fit for purpose.
- 4 Q3. What factors should be considered when exploring the future of courts and justice services?
- 4.1 Some key factors which must be considered when deciding whether to make changes to New Zealand's courts and justice services are:
- (a) Relevant constitutional principles, including the rule of law, the separation of powers and comity, the role of the judiciary, consistency with the New Zealand Bill of Rights Act 1990, and obligations under the Treaty of Waitangi.
 - (b) Access to justice. This is a broad concept which will require, for example, ensuring access to legal representation and advice, including through the legal aid scheme and the Duty Lawyer Scheme, and the timely, efficient, and low-cost completion of proceedings or resolution of disputes.
- 4.2 Ensuring fair and just outcomes for all parties involved in the justice system. Ministers and officials should carefully consider these factors when exploring the future of the justice system, including by seeking input from those who are likely to be affected by any proposed changes. Care should be taken to ensure any proposals for change within the justice system do not contradict or undermine these important principles.
- 5 Q4. We have proposed some factors that we believe are worth exploring. What are your thoughts on these?
- 5.1 The Law Society agrees the additional factors listed in the Discussion Document should also be considered when exploring the future of the justice system, and notes the following in relation to each factor:
- Communities are changing*
- 5.2 While communities are indeed changing (and always have been), those changes do not always occur in predictable patterns.
- 5.3 What is most relevant here is that cultural and social attitudes about the law, the courts and justice (broadly speaking) are also evolving along with society. This has important implications for considering whether:
- (a) the justice system is capable of flexing and evolving to respond to the needs of a changing society over time; and
 - (b) information about the functioning of the justice system needs to be presented in a way that generates a greater collective consensus on its purpose.
- 5.4 Changes in communities and social attitudes can also be linked to growing inequality and threats to social unity – these are identified as the fifth factor in the Discussion Document, and are considered at [5.14]-[5.16] of this submission).

Advancements in technology

- 5.5 Technology has the potential to enhance access to justice, for example, by enabling remote participation in court proceedings, which can increase the efficiency of hearings, and reduce costs for parties.² On the other hand, technology can hinder access to justice for parties, for example, because of difficulties with obtaining or using the necessary technology, or lack of access to a reliable internet connection.
- 5.6 The use of artificial intelligence (**AI**) (which is presently unregulated in New Zealand) can also be both beneficial (for example, it can promote the rule of law through the consistent application of rules),³ and problematic (as AI systems are often prone to errors and bias, and fail to take into account cultural factors which may be relevant in the New Zealand context).
- 5.7 It is therefore vital that advancements in technology, as well as access to technology, inform reforms within the justice system (and we note this is particularly important given the Ministry of Justice is currently undertaking a first principles review of the Courts (Remote Participation) Act 2010). This would help ensure the use of technology does not:
- (a) Undermine the rule of law (for example, where a proposal involves the use of automated decision-making (**ADM**) systems which can reduce transparency and accountability, and clarity about how the law applies to a particular individual's circumstances).
 - (b) Hinder access to justice, or disadvantage anyone, or exclude them from effectively participating in the justice system.
 - (c) Cause participants in the justice system to feel alienated or removed from the process because of reduced human interaction (particularly where AI and ADM systems are used).

Continued over-representation of Māori in justice statistics

- 5.8 The Law Society agrees this is a factor which requires ongoing consideration, and should inform the development and any reforms of the justice system. This is particularly important as data shows, for example, that:
- (a) Māori are currently overrepresented at every stage of the criminal justice system and make up 52% of the prison population, despite only representing

² See the Law Society's submission to the Ministry of Justice on the *Review of the Courts (Remote Participation) Act 2010* (12 December 2024), for further discussion about the impacts of remote participation on access to justice. A copy of that submission is available here: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/law-reform-submissions/discussion-papers/>.

³ Lord Sales "Judicial Review Methodology in the Automated State" (*Presentation for the Conference on Automation in Public Governance – Theory, Practice and Problems*, Prato, Italy, September 2024) at page 3.

approximately 15% of the total population.⁴ Māori over-representation has continued at this level for over three decades.⁵

- (b) Māori men are now over six times more likely to be in prison than non-Māori men, while Māori women are almost 11 times more likely to be in prison than non-Māori women.⁶
- (c) Māori are also overrepresented as victims of offending (making up 37% of victims who experienced crime over a 12-month period).⁷
- (d) Rangatahi Māori are 'significantly and persistently overrepresented in the criminal justice system', both as victims of crime and offenders.⁸
- (e) The majority (around 68%) of young people in the Youth Justice custody of the Chief Executive of Oranga Tamariki are rangatahi Māori.⁹

5.9 It is also appropriate to consider the overrepresentation of Māori in the justice system as a factor when exploring the future of the justice system, given:

- (a) The Waitangi Tribunal has indicated that te Tiriti o Waitangi places an obligation on the Crown to respond to the overrepresentation of Māori in the criminal justice system.¹⁰
- (b) The Government has already acknowledged it will be 'critical' for the criminal justice system to address Māori overrepresentation in its *2022 Long-term Insights Briefing: Imprisonment*.¹¹

5.10 Doing so will enable consideration of overarching solutions which address disparities across multiple sectors including the justice, social, economic and health sectors, and assist with understanding why past reforms within the justice system have not successfully reduced Māori over-representation. It will also allow for reflection on the ways that seemingly neutral policy, legal and practice changes have resulted in disparate outcomes, and what can be done to offset these outcomes in future¹² (our Criminal Law Committee has observed, for example, that suitable interventions such as the Rangatahi Courts could help prevent behaviours which escalate and lead to overrepresentation of Māori in the criminal justice system).

⁴ Ministry of Justice *Regulatory Impact Statement: Amendments to the Sentencing Act 2002* (30 May 2024) at page 39.

⁵ Ara Poutama Aotearoa | Department of Corrections and others *Long-term Insights on Imprisonment, 1960 to 2050* (December 2022) at page 92.

⁶ Above n 5 at page 8.

⁷ Above n 4 at page 15.

⁸ Barnaby Melville *Te Rau o te Tika: The Justice System Kaupapa Inquiry (Wai 3060): Exploratory Scoping Report on Criminal Justice Issues* (July 2023) at page 77 (referring to: Ian Lambie *Using Evidence to Build a Better Justice System: The Challenge of Rising Prison Costs* (Wellington: Office of the Prime Minister's Chief Science Advisor, 2018)).

⁹ Oranga Tamariki–Ministry for Children *Young serious offender declaration and military-style academies* (1 May 2024) at page 13.

¹⁰ See WAI 2700 'The Mana Wāhine Kaupapa Inquiry' and WAI 3060 'Te Rau o Tika Justice System Kaupapa Inquiry'.

¹¹ Above n 5 at page 92.

¹² Above n 5 at page 92.

Alternative ways to resolve disputes

- 5.11 The Discussion Document notes people are looking for ‘faster and cheaper ways to solve issues instead of going to court’, and ‘this includes options like the Rangatahi Courts, which focus on youth and better meet the needs of communities, or the Disputes Tribunal, which helps settle disputes between people without the costs of lawyers’.¹³
- 5.12 This description of the Rangatahi Courts is not entirely accurate: the Rangatahi Courts are not intended to – and do not – function as a ‘faster and cheaper’ solution. They are designed to help young Māori to engage in the youth justice process, and to better involve Māori families and communities in the youth justice process.¹⁴ It is also worth noting that while the Disputes Tribunal excludes the involvement of lawyers, it does not prevent parties from obtaining legal advice prior to a Tribunal hearing.
- 5.13 We also note that, while the Disputes Tribunal was originally intended to deal with small claims in equity and good conscience, it will soon have the jurisdiction to consider disputes worth up to \$60,000.¹⁵ This raises questions about whether it would now be appropriate for there to be (among other things) appeal rights from Disputes Tribunal orders, the right to legal representation in the Disputes Tribunal, and the ability to have disputes resolved according to the law. These matters were recently canvassed in the Rules Committee’s *Improving Access to Civil Justice* report,¹⁶ and the Law Society has since called for a wider first-principles review of the Disputes Tribunal’s jurisdiction to consider whether the Tribunal’s current structure and jurisdiction remains fit for purpose.¹⁷ If alternative dispute resolution is to be a factor which informs reforms and developments in the justice system, these issues would also need to be considered.

Growing inequality and social unity

- 5.14 The Discussion Document notes that ‘problems like poverty are growing, and people are losing trust in government and other institutions’.¹⁸ It also references findings from the *2023 General Social Survey* that trust in institutions like the health system, education system, parliament, media, police, and courts has declined since 2021.¹⁹
- 5.15 In our view, it is imperative to preserve and strengthen public confidence in all three branches of Government in order to promote public confidence in the rule of law, and readiness to comply with the law. Eroding trust in the Government, Parliament and the Judiciary can weaken the rule of law, for example, by creating perceptions that some individuals or institutions are not always accountable to the law, or that compliance with the law is simply a matter of choice, rather than an obligation which attracts penalties and enforcement actions for non-compliance.

¹³ At page 7.

¹⁴ See: <https://www.youthcourt.govt.nz/about-youth-court/rangatahi-courts-and-pasifika-courts/>.

¹⁵ See the Government’s *Disputes Tribunal Amendment Bill 2024*, which, once enacted, will increase the Disputes Tribunal’s jurisdiction from \$30,000 to \$60,000.

¹⁶ Rules Committee *Improving Access to Civil Justice* (November 2022).

¹⁷ See the Law Society’s submission on the *Disputes Tribunal Amendment Bill 2024* (13 January 2025).

¹⁸ At page 7. The Discussion Document references findings that trust held by New Zealanders in institutions like the health system, education system, parliament, media, police, and courts has declined since 2021.

¹⁹ At page 7.

- 5.16 The Law Society therefore supports this being a key factor, so new initiatives and reforms promote transparency and accountability within the justice system, and increase trust and public confidence in the justice system, and other institutions.

Climate change

- 5.17 Climate change can be a relevant factor where it impacts the justice system (for example, where a severe weather event caused by climate change causes physical damage to a courthouse, and affects its operations). In such circumstances, reliable and accessible remote participation technology could assist with hearing matters remotely, and avoiding significant backlogs and delays (although significant additional investment would be needed to ensure this technology is made available to all those who need it).

6 Next steps

- 6.1 We hope this feedback is useful. Please feel free to get in touch with me via the Law Society's Senior Law Reform & Advocacy Advisor, Nilu Ariyaratne (Nilu.Ariyaratne@lawsociety.org.nz), if you have any questions, or wish to discuss this feedback further.

Nāku noa, nā



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