

2 July 2021

Clerk to the Rules Committee
C/- Auckland High Court
CX10222
Auckland

Emailed to: rulescommittee@justice.govt.nz

Dear Committee Members,

ICNZ submission on the Improving Access to Civil Justice consultation

Thank you for the opportunity to submit on the Improving Access to Civil Justice consultation paper (**the consultation paper**).

The Insurance Council of New Zealand/Te Kāhui Inihua o Aotearoa (**ICNZ**) represents general insurers and reinsurers that insure about 95 percent of the Aotearoa New Zealand general insurance market, including about a trillion dollars' worth of Aotearoa New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, cyber insurance, commercial property, and directors and officers insurance).

Please contact Jane Brown (jane@icnz.org.nz or 04 495 8008) if you have any questions on our submission or require further information.

Submission

ICNZ agrees with the Rules Committee that access to justice is a fundamental right but that presently, various barriers mean that enforcing that right is out of reach for most New Zealanders. We are therefore supportive of efforts made to improve access to civil justice and generally agree with the Rules Committee's proposed changes to the Disputes Tribunal, District Court, and High Court. We believe that on balance, the proposals will streamline processes and provide greater options for redress to aggrieved parties. We would however note that it is unlikely that any of the proposals would make the civil courts any more accessible for vulnerable people in our community. Cost will still be an issue in relation to proceedings in the District and High Courts and the ability to use a representative before the Disputes Tribunal is limited for individuals. There are also psychological and emotional barriers which should not be underestimated, and which will likely only be overcome through greater support systems for applicants.

ICNZ's members frequently appear before the Disputes Tribunal, and we believe that motor vehicle claims make up a large percentage of the Tribunal's work. For this reason, ICNZ's main focus is on the Rules Committee's proposals relating to the Disputes Tribunal. We make some brief comments below.

Disputes Tribunal

Raising the Tribunal's jurisdiction: ICNZ is supportive of the proposal to raise the Tribunal's jurisdiction to \$50,000. This would allow more matters to be heard by the Tribunal which would otherwise have had to be taken to either the District or High Court at greater cost, or which would require any portion of a claim above \$30,000 to be abandoned. Raising the threshold to \$50,000 will mean many more claims fall within the Tribunal's jurisdiction, which would directly improve access to civil justice. We believe that \$50,000 would be the most sensible option, possibly with the ability to increase the threshold further with the consent of the parties. As noted in the next section below, with a threshold of \$50,000, our view is that referees should be required to give effect to the law rather than only having regard to the law.

While ICNZ's preference is for the jurisdiction to move to \$50,000 only, we would be open to raising the jurisdiction to \$100,000, but question whether such a high threshold would be worthwhile. Once a dispute involves such a high quantum, it is likely that the parties involved will have a greater need for legal representation and more formal judicial processes, which is obviously not possible before the Tribunal, and which may make them reluctant to pursue their claim via that avenue. Any move to \$100,000 would also need to be supported by implementation of proposed reforms to appeal rights, such as those set out in paragraph 46. The graduated right to appeal in 46(d) makes particular sense as it would allow for reflection of the complexity and quantum of the claim.

Giving effect to the law: We strongly agree with the Rules Committee's comment in paragraph 46(a) that should the threshold be raised to \$50,000 (or higher), the Tribunal should be required to give effect to the law rather than having regard to the law. Related to this point, we would appreciate clarification as to whether a referee only having regard to the law, rather than giving effect to, would constitute valid grounds for a rehearing (should the law be amended). If so, it could lead to a lot of rehearings, thereby increasing the Tribunal's workload.

While we have been informed that the current practice, albeit informally, is that referees will be legally qualified, we agree with the Rules Committee's suggestion that should they be required to give effect to the law, there ought to be a formal requirement for referees to be legally qualified and experienced.

Public hearings: While we agree that making Tribunal hearings public, as is proposed in paragraph 51(d) of the consultation paper, would mean justice can be seen to be done, we are concerned about the impact it could have on applicants' willingness to participate in the process. Insurers already find that there can be difficulties in getting people to attend hearings due to nerves and/or anxiety, and knowing that a hearing was going to be open to the public could exacerbate that.

Jurisdiction to grant costs: We would appreciate greater information on what costs the Tribunal would consider awarding under the proposal in paragraph 51(g).

Enforcing awards: ICNZ would support the Tribunal making enforcement and/or repayment of awarded costs more streamlined as we agree that having to make an application to the District Court is not commensurate with the type of case heard by the Tribunal.

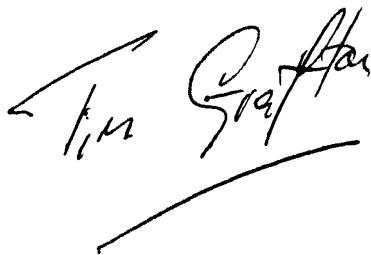
Increased options for accessibility: Finally, as the focus of this consultation is accessibility, we would encourage the Rules Committee to consider whether there are additional options which could increase accessibility for users of the Tribunal. For example, we believe that independent witnesses would be much more likely to participate in a hearing if there were flexibility as to whether they attended in person or not. While there has been a slow change over the past few years towards technology which allows remote attendance, flexibility in participating in the justice system has

become much more commonplace since the onset of Covid-19. The Disputes Tribunal could help to reduce both the health anxiety specifically arising from Covid-19, as well as general time pressures, if witnesses could instead choose to attend a hearing via phone or videoconference. This type of arrangement would be convenient for the likes of a truck driver who was a witness to a motor accident, and who could not attend in person due to work commitments, but would be willing to phone in. This option could also be extended to situations where the applicant is the owner of a vehicle involved in an accident, but who was not the driver at the time. We do not believe that there would be risks in providing these types of parties with more flexible arrangements to partake in the Tribunal's processes. If this option could be expanded, it may also help to mitigate some of the psychological or emotional barriers which prevent people from accessing civil justice. We would encourage the Rules Committee to investigate these options further.

Conclusion

Thank you again for the opportunity to submit on the consultation paper. If you have any questions, please contact our Legal Counsel on (04) 475 8008 or by emailing jane@icnz.org.nz.

Yours sincerely,



Tim Grafton
Chief Executive



Jane Brown
Legal Counsel