

2 July 2021

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

By email: rulescommittee@justice.govt.nz

SUBMISSION on “Improving Access to Civil Justice” consultation document

1. Introduction

Thank you for the opportunity to make a submission on the further consultation on “Improving Access to Civil Justice”. This submission is from Consumer NZ, an independent, non-profit organisation dedicated to advocating on behalf of New Zealand consumers. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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2. Comments

Consumer NZ supports proposals to improve access to civil justice. We consider there are significant barriers limiting consumers’ ability to access legal avenues for the resolution of civil disputes. These barriers would be reduced if the following changes were introduced:

2.1 Increase the Disputes Tribunal claims limit to \$100,000

Increasing the Disputes Tribunal limit to \$100,000 would significantly improve consumers’ access to dispute resolution. At present, if a consumer has a dispute involving a sum greater than \$30,000 they must either limit their claim to this amount in order to use the tribunal, or pursue lengthy and costly action through the courts.

We consider a limit of \$100,000 is preferable to a limit of \$50,000. A cap of \$100,000 would be sufficient to cover many common consumer disputes. For example, disputes involving household maintenance, such as a kitchen or bathroom refit, can cost well in excess of \$50,000.

The cost of legal action means it is uneconomic for consumers to take cases involving amounts less than \$100,000 to the District Court. This means they often have no cost-effective forum in which to seek a remedy for a breach of contract or the failure of a company to meet its obligations under consumer law.

A limit of \$100,000 would also bring the Disputes Tribunal cap into line with the current limit at the Motor Vehicle Disputes Tribunal (MVDt).

2.2 Create a specialist disputes tribunal for building disputes

Consumer NZ receives regular complaints about building disputes, which typically exceed \$30,000. We believe consideration should be given to establishing a specialist building tribunal, similar to Queensland's Building Services Authority. Given building disputes are often complex and technical, there are strong grounds for a specialist body.

In the absence of a stand-alone tribunal for building disputes, we recommend the Disputes Tribunal Act and Building Act be amended to make it clear the tribunal has jurisdiction over Building Act disputes.

2.3 Introduce a more extensive right of appeal to the District Court

If the jurisdiction of the Disputes Tribunal is increased, we agree there should be a more extensive right of appeal to the District Court.

2.4 Allow a wider range of disputes to be brought before the Disputes Tribunal

We consider the Disputes Tribunal should be available for a wider range of disputes.

For example, consumers cannot take a dispute to the tribunal about an unfair contract term. Under the Fair Trading Act, only the Commerce Commission can seek a declaration from the court that a term is unfair. This means consumers are unable to directly challenge unfair contracts.

2.5 Allow the Disputes Tribunal to waive filing fees

For disputes involving relatively small sums of money (for example, a \$100 parking ticket or a \$50 gift voucher), the \$45 Disputes Tribunal filing fee acts as a barrier to pursuing action. Consumers may consider it uneconomic to take their dispute to the tribunal as the filing fee is non-refundable.

We consider the tribunal should have the ability to waive filing fees (particularly in cases of financial hardship), similar to rules in other countries. For example:

- In Australia, some tribunals can waive filing fees or offer reduced filing fees to pensioners, students and those receiving assistance from community legal centres.
- In the UK, anyone on a benefit or low income may have the small claim court fees waived or reduced.

Where a consumer is successful in their claim, we also consider the tribunal should have the ability to require the losing party to reimburse them for the filing fee. In the UK, if a consumer wins a case in the small claims court, they will be reimbursed for the filing fee by the other party.

2.6 Provide for better enforcement

We strongly agree there needs to be a more effective way for claimants to enforce a tribunal decision in their favour. Enforcing Disputes Tribunal decisions currently involves an application to the District Court. We agree there should be a more straightforward way for consumers to enforce a tribunal decision.

2.7 Other changes

We support the Disputes Tribunal being renamed. Our preference is "Community Court" over "small claims court" given that claims of up to \$100,000 (or even \$50,000) are not "small" to most consumers.

2.8 *Extend the MVDT's jurisdiction*

We believe there is a gap in the MVDT's jurisdiction. In our view, the MVDT should hear any disputes about vehicles that require a warrant of fitness. This would allow it to hear disputes about mopeds, motorcycles under 60cc, caravans, trailers and horse floats.

Thank you for the opportunity to make a submission. If you require any further information, please do not hesitate to contact me.

Yours sincerely

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Consumer Advocate