

# Regulatory and Cost Recovery Impact Statement: Increasing the Disputes Tribunal’s financial jurisdiction and introducing a new filing fee tier

## Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing Cabinet decisions
Advising agencies:	Ministry of Justice
Proposing Ministers:	Minister of Justice
Date finalised:	4 September 2024
Problem Definition	
<i>Part A – Disputes Tribunal financial jurisdiction</i>	
<p>Due to the cost of legal and court fees, it is generally considered uneconomic to bring a civil claim to the District Court that exceeds the Disputes Tribunals’ financial jurisdiction of \$30,000 but is below \$100,000.<sup>1</sup> This is known as the “justice gap”. The justice gap acts as an access to justice barrier for people who either cannot afford to take a claim to the District Court, or choose not to as the associated fees would exceed the value of the claim they are pursuing.</p>	
<i>Part B – Disputes Tribunal filing fee</i>	
<p>The Disputes Tribunal is resourced through a combination of user pays and Crown funding. This is to recognise the public and private benefits of the Disputes Tribunal. The fees are tiered with higher value claims paying a higher fee. Applying the current top fee tier of \$234 to all claims from \$5,000 to \$60,000 would not adequately reflect the likely higher private benefits of using the Disputes Tribunal for higher value claims under an increased financial jurisdiction.</p>	
Executive Summary	
<p>This Regulatory and Cost Recovery Impact Statement sets out analysis for two proposals:</p> <ul style="list-style-type: none"> <li>• Part A – covers increasing the financial jurisdiction of the Disputes Tribunal (section 10 of the Disputes Tribunal Act 1988),</li> <li>• Part B – covers introducing a new filing fee tier that corresponds to the increased financial jurisdiction options in Part A (rule 5 of the Disputes Tribunal Rules 1989), and</li> <li>• Part C – covers implementation of the proposals in Parts A and B.</li> </ul> <p>The regulatory impact analysis elements relate to the financial jurisdiction increases covered at Part A and the cost recovery analysis elements relate to the fee tier covered at Part B.</p>	
<i>Overview of Part A – increasing financial jurisdiction of the Disputes Tribunal</i>	
<p>The National Party’s 2023 Election Manifesto committed to increasing the financial jurisdiction of the Disputes Tribunal. The Minister of Justice has sought advice on</p>	

<sup>1</sup> See discussion at [17]-[20].

increasing the financial jurisdiction to either \$60,000 or \$70,000 for the purposes of increasing access to justice and promoting timely dispute resolution.

The Disputes Tribunal's inquisitorial model enables it to hear low value claims quickly and at low cost to parties. This is due to:

- the exclusion of lawyers,
- low filing fees, and
- the informal decision making mandate which enables referees to determine disputes according to the substantial merits and justice of the case, while having regard to the law, but without being bound to give effect to strict legal rights or obligations.

These special features are appropriate for cases of low value where a quick and final outcome is desirable.

Due to the justice gap, prospective claimants either need to abandon part of their claim to bring it in the Disputes Tribunal, or file a claim in the District Court potentially suffering a net loss, or leave the claim unresolved. All of these options raise access to justice concerns.

Officials have considered whether the Disputes Tribunal model is suited to being used to partially address the justice gap by raising the financial jurisdiction. The Disputes Tribunal's special features make it effective at resolving low-value claims and the benefits of the inquisitorial approach offset any natural justice concerns, but it is not known if these same features remain appropriate when the stakes are higher. Natural justice limitations can only be justified when on balance, the benefits to the parties outweigh the negative implications of limiting parties' natural justice rights.

Officials have considered whether any other changes to the model could enable public confidence to be upheld at higher financial jurisdictions, but concluded that elements of the Disputes Tribunal's model are too interlinked to adjust without undertaking a substantive review. Due to the timeframes of this project, public consultation was not undertaken however officials were able to use submissions made to the Rules Committee's Access to Civil Justice review<sup>2</sup> as a proxy for public consultation. Over 60% of submitters to the Rules Committee's process did not support increasing the financial jurisdiction above \$30,000 without changes to the current model.

Officials analysed options to increase the financial jurisdiction to either \$60,000 or \$70,000. While there is limited information to assess what the most appropriate financial jurisdiction is, the Ministry considers that Option Two (\$60,000 financial jurisdiction) is preferable to Option Three, and recommends that this should be combined with a requirement for referees to be legally qualified (Option Four) if the financial jurisdiction is increased. The accompanying Cabinet paper recommends increasing the Disputes Tribunal's financial jurisdiction to \$60,000 while maintaining the current model. It does not propose to amend the referee qualification requirements.

#### *Overview of Part B – introducing a new fee tier that corresponds to the financial jurisdiction increase*

As there are combined private and public benefits to the Disputes Tribunal, it is resourced through a combined user pays and Crown funding model. There is a significant public interest benefit in the Disputes Tribunal as it provides a forum for people to protect their rights, particularly for smaller claims which are not economic to take to the District Court. This contributes to upholding the rule of law and supports confidence in the state and its institutions. This is why the Crown funds the majority of the costs of the Disputes Tribunal.

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<sup>2</sup> <https://www.courtsofnz.govt.nz/assets/Rules-Committee-Improving-Access-to-Civil-Justice-Report.pdf>. The Rules Committee conducted a review of the rules of court for the purpose of improving access to civil justice beginning in 2019 and the *Improving Access to Civil Justice* report was released in 2022 after two rounds of consultation in 2020 and 2021.



However, the Disputes Tribunal also offers a private benefit to successful parties, as they are able to recover financial losses. As claim values increase, the private benefit to users increases due to the larger sums of money being recovered. Therefore, it is appropriate that a portion of the costs of operating the Disputes Tribunal is covered by users, and that a greater contribution is recovered through a higher fee for users with higher value claims. Presently, there are three fee tiers, with the filing fee increasing for higher value claims:

- \$59 for claims up to \$2,000,
- \$117 for claims between \$2,000 and \$4,999, and
- \$234 for claims \$5,000 and above.

If Cabinet agrees to increase the financial jurisdiction to \$60,000, the current top filing fee tier would apply to all claims from \$5,000 to \$60,000. If an increase is implemented, officials recommend introducing a new filing fee of \$468 for claims with a value between \$30,001 and \$60,000. This represents a doubling of the fee and is consistent with the way the existing fee tiers are doubled as the value of the claim increases.

#### *Overview of Part C – implementation*

The proposals in Part A and B are intended to be progressed as a package. We address the implementation of both the jurisdictional increase and the filing fee together in Part C.

### **Limitations and Constraints on Analysis**

We acknowledge that our analysis has been constrained by the following factors:

- **The limited scope of the project:** The Minister of Justice has requested advice on increasing the jurisdictional financial jurisdiction of the Disputes Tribunal to \$60,000 or \$70,000. This means that options such as expanding the substantive jurisdiction of the Disputes Tribunal are not considered and analysis is limited to consideration of the Disputes Tribunal financial jurisdiction. Analysis in this paper is limited to considering the appropriateness of an additional fee tier linked to the proposed increased financial jurisdiction to aid in cost recovery. The proposal does not reflect a first principles review of the entire fee structure, the appropriateness of a fee waiver, or of the fee structures and cost recovery principles underpinning the tribunals and the wider civil justice system.
- **No substantive change to the special features of the Disputes Tribunal model:** Analysis focused on the suitability of the model to consider higher value claims. Any substantive changes to the model would require a comprehensive review which was outside the scope of work.
- **Scale of the problem (level of unmet legal need) is unknown:** It is generally considered economically viable to take a claim to the District Court only if it is valued over (estimated) \$100,000. We are aware there is an unknown number of civil claims between \$30,000 and \$100,000 that are not currently captured in the legal system. We also know that some claimants abandon the value over \$30,000 in order to access the Disputes Tribunal.<sup>3</sup> However, there is no research available to suggest what the level of unmet legal need is or whether parties with claims up to \$60,000 will choose to use the Disputes Tribunal given the concurrent jurisdiction (claimants can choose to file in the Disputes Tribunal or the District Court). Modelling undertaken to estimate the number of new cases that could be captured by an increase to the financial jurisdiction is therefore based on historic trends following previous financial jurisdiction increases.
- **Timeframes for providing advice:** S9(2)(f)(iv) has constrained the timeframes for analysis and advice on the financial jurisdiction increase and the filing fee structure. This has meant:
  - We have been unable to undertake analysis on whether the value of a claim impacts the time it takes to resolve a claim. However, we sought advice on this matter from

<sup>3</sup> See discussion at [32].



the Principal Disputes Referee (PDR). As the PDR is responsible for the administration of the Disputes Tribunal, and in the absence of quantitative data, we consider her advice is a suitable proxy.

- Time was not available to undertake public consultation which has limited our ability to test whether there is public confidence in the Disputes Tribunal hearing higher value claims, or whether the Disputes Tribunal fee structure as a whole is achieving its policy intent. We have relied on:
  - submissions made to the Rules Committee in 2021 as part of its review to improve access to civil justice as a proxy for public consultation. This provided some insights, but the feedback is limited by the questions and proposals put forward by the Rules Committee for comment (for example, submitters were asked about their comfort with a financial jurisdiction increase to \$50,000 – although some submitters chose to comment on higher financial jurisdictions, this was not consistently addressed in feedback). Although the Committee did not consult on changing the filing fee some submitters made comments about the fees which we have taken into consideration, and
  - targeted consultation with the judiciary on the financial jurisdiction. The filing fee was not discussed.
- **Fiscal constraints:** As discussed in Part B, it is appropriate that the costs of the Disputes Tribunal are shared between the users and the Crown, with the Crown meeting the majority of the costs. For the purpose of our analysis, we have assumed that all resourcing required to implement the financial jurisdiction increase is able to be met. It is intended that resourcing requirements are met through filing fees and reprioritisation of departmental funding. If this resourcing does not prove sufficient, it may impact on the extent to which the benefits of the proposals as set out in this paper can be realised.
- **Inability to consider population impacts:** we are unable to accurately estimate the impacts on population groups as the information on claim types is not able to be filtered by demographic information.

**Responsible Manager(s) (completed by relevant manager)**

*Rajesh Chhana*

*Deputy Secretary Policy*

04 September 2024

**Quality Assurance (completed by QA panel)**

Reviewing Agency:	Ministry of Justice
Panel Assessment & Comment:	<p>The Ministry of Justice’s Regulatory Impact Assessment quality assurance panel has reviewed the Regulatory Impact Statement and Cost Recovery Impact Statement prepared by the Ministry of Justice, and consider that the information and analysis summarised in the Statement partially meets the quality assurance criteria.</p> <p>The Statement provides accurate, robust and balanced analysis, within the context of reasonably significant limitations and constraints, including a key assumption that Crown funding would</p>



be available to support greater use of the Disputes Tribunal. It clearly explains why the scale of the problem, the level of unmet legal need in New Zealand, is unknown. It makes good use of what information is available to provide compelling reasons for the recommendations, while flagging the potential for the proposed increased jurisdiction and accompanying fee to undermine the Disputes Tribunal model. The panel considers that the wide public use of the Tribunal means that public consultation on the changes would have been highly desirable.



# Part A – Increasing the Disputes Tribunal’s financial jurisdiction

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

The Disputes Tribunal was established to enable low value civil claims to be dealt with swiftly, inexpensively, and flexibly

1. Established under the Disputes Tribunal Act 1988 to replace the Small Claims Court, the Disputes Tribunal (the Tribunal) is a quasi-judicial division of the District Court that provides timely, low-cost, and accessible resolution of civil disputes in contract,<sup>4</sup> tort<sup>5</sup> and under some statutory provisions.<sup>6</sup> Approximately 80% of the Tribunal’s work is made up of contract and commercial disputes (20% being consumer-based claims). A high proportion of these claims involve one or more small to medium-sized businesses.<sup>7</sup> The tort jurisdiction of the Tribunal is limited to property damage, with over 80% of tort claims relating to car accidents.<sup>8</sup>
2. The Disputes Tribunal’s character imbues it with specific features that optimise its efficiency in resolving lower value civil claims and distinguish it from a court including:
  - no standard right to legal representation;
  - appeals to the District Court are limited to issues of unfairness or prejudice;
  - referees are required to make decisions in accordance with the “substantial merits and justice of the case”<sup>9</sup> while having regard for the law, as opposed to having to administer the law and “give effect to strict legal rights or obligations” (“the decision making mandate”);
  - disputes are adjudicated by referees who are not required to be legally qualified; and
  - no requirement for decisions to be published (standard practice is for any decisions that are published to be anonymised, but this is not a statutory requirement).

*The Disputes Tribunal’s inquisitorial approach offsets natural justice concerns for low value claims*

3. The principles of natural justice are concerned with ensuring fair processes are followed and require that affected parties are given the opportunity to be heard, and that decision makers are unbiased. The right to natural justice is protected in section 27(1) of the New Zealand Bill of Rights Act 1990. In most common law countries, including New Zealand, courts take an adversarial approach to decision making, where

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<sup>4</sup> A contract is an agreement between two or more persons (the parties) which is intended to be enforceable under the law. A party to a contract can make a claim (known as taking “an action in contract”) if they believe the other party has breached their obligations under the contract.

<sup>5</sup> A tort is any act (or lack of action), other than a breach of contract, that causes harm or injury to another person, including their property or their rights. Common “actions in tort” include actions in negligence (where someone has a responsibility to act with a certain level of care and failed to), trespass (doing an illegal act on someone else’s property – including unlawfully entering onto someone else’s land) and defamation (making statements that hurt someone’s reputation).

<sup>6</sup> Including the Consumer Guarantees Act 1993, Fencing Act 1978 and the Fair Trading Act 1986.

<sup>7</sup> Approximation based on advice from Principal Disputes Referee.

<sup>8</sup> Figures based on caseload from 1 July 2021 – 30 June 2022.

<sup>9</sup> Cf. section 18(6) of the Disputes Tribunal Act 1988 and section 12(b) of the Senior Courts Act 2016.



the onus is on parties to make sure the judge has the information they need to make a decision. This system can disadvantage parties who cannot afford skilled and experienced lawyers to put forward their case, therefore a lack of high quality legal representation is often a natural justice concern in adversarial forums.

4. The Disputes Tribunal lacks features present in most adversarial systems that give effect to natural justice.<sup>10</sup> However, to mitigate natural justice concerns while prioritising efficiency, the Tribunal takes an inquisitorial approach to decision making. This means the referee actively investigates the evidence to establish the facts of a case and determine the legal issues.
5. The Tribunal's special features and inquisitorial system, are what we refer to in this document as the "Disputes Tribunal model". This model is relatively consistent with the initial model established for the Small Claims Courts and is well suited to the low value claims considered by the Tribunal. This is reflected in the types of claims typically brought before the Tribunal, with approximately half of all applications claiming \$5,000 or less.<sup>11</sup>

#### *The Disputes Tribunal shares concurrent jurisdiction with the District Court*

6. The Tribunal has concurrent jurisdiction with the District Court.<sup>12</sup> This means claimants have a choice about whether to take a case to the Disputes Tribunal or the District Court to resolve their dispute. The District Court is a more formal forum with the ability to have legal representation, broader appeal rights, and strict upholding of the law.
7. It is not uncommon for claims that are eligible to be filed in the Disputes Tribunal to be filed in the District Court instead; in 2023, 26 eligible claims were filed in the District Court instead of the Disputes Tribunal. The different characteristics of the two forums, and the value of the claim may impact where a party will choose to file.

#### *Finality of decision making is emphasised in the Disputes Tribunal*

8. The Disputes Tribunal Act emphasises the finality of Tribunal decisions - this helps to achieve the objective of providing fast, informal, and flexible resolution of claims.<sup>13</sup> In the interests of finality, appeals from the Tribunal to the District Court are limited to grounds of procedural unfairness. However, parties are entitled to apply for a rehearing of their dispute on broader grounds, with rehearing applications making up about 6% of total applications filed in the Disputes Tribunal.<sup>14</sup> Judicial review is also available. As a result of these limitations and the emphasis on finality of decision making, the Tribunal has a low rate of appeals to the District Court, with approximately one appeal per 1,000 claims in the Disputes Tribunal, amounting to about 120 appeal applications per year. Approximately 14% of these appeals are successful.
9. The low rate of appeals, rehearings, and complaints indicate that the Tribunal is operating effectively, and parties have minimal natural justice concerns under the current settings. Although it is one of the busiest forums in the civil justice system, the special features that make up the model enable the Tribunal to have one of the fastest disposition rates of all courts and tribunals in New Zealand.<sup>15</sup>

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<sup>10</sup> Such as allowing legal representation, general rights of appeal, and binding decision makers with legal precedent.

<sup>11</sup> Around half of the applications filed in the Tribunal claim \$5,000 or less. (46% 1/01/2022 to 30/04/2024). 85% of claims are for amounts below \$20,000. (Ministry-of-Justice-Annual-Report-1-July-2022-to-30-June-2023.pdf).

<sup>12</sup> Originating applications can also be filed in the High Court which has no financial limit on jurisdiction.

<sup>13</sup> Section 23, Disputes Tribunal Act 1988.

<sup>14</sup> As rehearing applications are considered by referees, they are factored into the total number of claims considered by the Disputes Tribunal. In 2023, 810 rehearing applications were made which equated to 6.43% of total applications filed in the Disputes Tribunal that year.

<sup>15</sup> From 1 July 2022 – 30 June 2023, the Disputes Tribunal disposed of 61% of its claims within 3 months. Within that 12 month period, it disposed of a total of 11,019 claims.



Since 1976, the financial jurisdiction has increased from \$500 to \$30,000

- 10. The Tribunal’s financial jurisdiction has increased five times since it was established. Since 2019, the Tribunal has had jurisdiction to consider and make orders on claims up to a maximum value of \$30,000 (“the financial jurisdiction”). Figure 1 outlines these increases. There is no cap on the Tribunal’s settlement jurisdiction – the financial jurisdiction only limits the financial value of orders the Tribunal can make. The Disputes Tribunal Act also enables claimants to forego any value of their claim above the financial jurisdiction so orders can be made in the Disputes Tribunal (also known as “abandonment”).<sup>16</sup>
- 11. The financial jurisdiction increased most recently in 2019 through the Tribunals Powers and Procedures Legislation Act 2018, with the rationale being that the financial jurisdiction of \$30,000 was aligned broadly with similar limits in comparable civil dispute resolution forums in Australia and Canada.<sup>17</sup> With all increases to the financial jurisdiction, the cost associated with enforcing breaches of contract and the increasing costs of taking claims to the District Court were given as the key motivators.

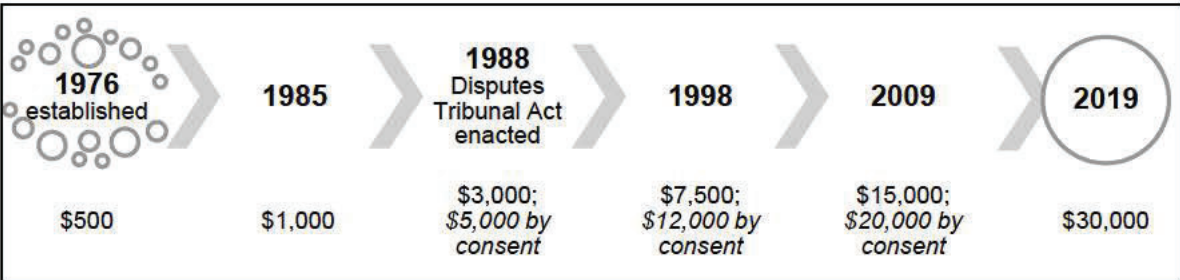


Figure 1: Financial jurisdiction increases of Small Claims Court/Disputes Tribunal from 1976 to present

Despite significant changes to the financial jurisdiction, the Disputes Tribunal’s model has remained relatively consistent since its establishment

- 12. The initial Small Claims Courts (which later became the Disputes Tribunal) arose out of the consumer rights and access to justice movement in the 1970s to provide a forum for consumers to enforce their rights without having to pay the legal fees associated with pursuing a claim in the District Court. At that time, the Tribunal prioritised the negotiation of settlements agreed by parties for an amicable resolution of disputes so there was no financial cap on the size of settlements that could be agreed by parties.
- 13. In the case that parties were unable to reach a settlement agreement, referees were empowered to make orders up to the maximum limit of \$500. Due to the focus on negotiation and mediation to help parties reach agreed settlements, referees were not required to be legally qualified. Rather, skills in dispute resolution were preferred, with the referee title indicating that the dispute has been “referred” to this person to be resolved in an informal way in the absence of a judge. This was intended to convey the informal and consensual process of the Tribunal.<sup>18</sup> However, this also meant that parties often felt pressured to settle, even where neither party was satisfied with the outcome.<sup>19</sup>

<sup>16</sup> Section 14, Disputes Tribunal Act 1988.  
<sup>17</sup> There are other Tribunals in New Zealand’s civil justice system with higher financial jurisdictions. Due to the difference in jurisdiction between the Disputes Tribunal and other civil Tribunals in New Zealand (the Disputes Tribunal has a wider substantive jurisdiction), as well as differences in the Tribunal models (e.g. broader rights of appeal in other jurisdictions) we do not use other Tribunals as a reference point in this paper.  
<sup>18</sup> Peter Spiller (Ed.) *Dispute Resolution in New Zealand* (1999) at 198.  
<sup>19</sup> Spiller at 197.

14. With the introduction of the Disputes Tribunal Act 1988, the focus of the Tribunal moved towards trying to help parties reach settlement where possible, while acknowledging this was not always going to be practicable. The Tribunal was empowered to make larger orders (\$3,000 by right or \$5,000 by consent).<sup>20</sup>
15. When the Disputes Tribunal's financial jurisdiction was increased to \$30,000 in 2019, some minor model changes were introduced. These changes clarified that only one rehearing would be permitted (unless a referee determines a further rehearing to be in the interests of justice) and required referees to have appropriate qualifications (with examples given of law, arbitration, or meditation). Further, the option to take larger claims to the Tribunal with consent of both parties was removed due to underuse.<sup>21</sup> We understand this was due to difficulties in getting the other party to agree to the higher amount.<sup>22</sup> These are the only changes that have been made to the model since establishment.
16. Although claim value is not always tied to complexity, we have heard from the Principal Disputes Referee (PDR) that higher value claims are often procedurally and/or legally complex and take time to resolve.

### The cost of taking a civil claim to the District Court has led to a “justice gap”

17. The “justice gap” is a term used to refer to civil legal issues where the claim value would fall between the \$30,000 financial jurisdiction of the Disputes Tribunal, and the point at which it becomes economic to bring a claim to the District Court.<sup>23</sup>
18. Despite the concurrent jurisdiction and the different character of the forums, the expense of taking a civil claim to the District Court can be prohibitive due to the costs of legal representation and disbursements. For example, from 1 July 2024, filing an initiating document<sup>24</sup> will cost \$260, with a \$1,170 fee for each half-day of hearing time.<sup>25</sup> In its submission to the Rules Committee, law firm Duncan Cotterill indicated its concerns with the ‘escalating costs of civil litigation in New Zealand’, asserting that “claims of less than \$100,000 are not economic to bring in the District Court”. This is on the conservative side of estimates, with other submitters suggesting the level at which a claim becomes economic could sit at \$200,000 or even up to \$500,000 which exceeds the financial jurisdiction of the District Court.<sup>26</sup>
19. Legal aid is available for most civil (including family) proceedings that could go to a court or tribunal,<sup>27</sup> but this does not include the Disputes Tribunal. Legal aid is

<sup>20</sup> Spiller at 197.

<sup>21</sup> For example, in 2018 – the year before the financial jurisdiction increased to \$30,000, of a total 10,547 claims, only 30 claims (0.3% of total claims) were filed within the higher financial jurisdiction with consent of both parties (between \$15,001 - \$20,000).

<sup>22</sup> [https://www.parliament.nz/resource/en-NZ/49SCJE\\_EVI\\_00DBHOH\\_BILL9086\\_1\\_A22415/a1168ed63527302c0437ad0223131036ec51846cat](https://www.parliament.nz/resource/en-NZ/49SCJE_EVI_00DBHOH_BILL9086_1_A22415/a1168ed63527302c0437ad0223131036ec51846cat) pg 3.

<sup>23</sup> See submission of New Zealand Law Society to the Rules Committee of 25 August 2020 ([https://www.courtsofnz.govt.nz/assets/4-About-the-judiciary/rules\\_committee/access-to-civil-justice-consultation/Submissions-to-Initial-Consultation-Redacted/New-Zealand-Law-Society-Submission.pdf](https://www.courtsofnz.govt.nz/assets/4-About-the-judiciary/rules_committee/access-to-civil-justice-consultation/Submissions-to-Initial-Consultation-Redacted/New-Zealand-Law-Society-Submission.pdf)), citing Winkelman CJ's Ethel Benjamin Address – *Access to Justice – Who needs lawyers?* of 7 November 2014 (then as Chief High Court Judge) (<https://www.courtsofnz.govt.nz/assets/7-Publications/1-Speeches-and-papers/hhfw.pdf>). Also referenced in the submission of Disputes Tribunal referees – *Disputes Tribunal: Bridging the Justice Gap* of November 2021 ([https://www.courtsofnz.govt.nz/assets/4-About-the-judiciary/rules\\_committee/access-to-civil-justice-consultation/Submissions-to-further-consultation/Disputes-Tribunal.pdf](https://www.courtsofnz.govt.nz/assets/4-About-the-judiciary/rules_committee/access-to-civil-justice-consultation/Submissions-to-further-consultation/Disputes-Tribunal.pdf)).

<sup>24</sup> An initiating document is generally the first document filed by the plaintiff that sets out the basis of the claim and/or any relief sought (see reg 3A, District Court Fees Regulations 2009).

<sup>25</sup> District Courts Fees Regulations 2009.

<sup>26</sup> <https://www.courtsofnz.govt.nz/assets/Rules-Committee-Improving-Access-to-Civil-Justice-Report.pdf> – Page 6, para 16.

<sup>27</sup> Including the: Employment Relations Authority, Human Rights Review Tribunal, Legal Aid Tribunal, Immigration & Protection Tribunal, Social Security Appeal Authority, Taxation Review Tribunal, Tenancy Tribunal, and Waitangi Tribunal.



considered a loan and may need to be paid back in full or in part, depending on individual circumstances such as income and assets, relationship status, and number of dependents. In courts and tribunals where legal aid is available, granting decisions are made independently of Government by the Legal Services Commissioner. Eligibility for civil legal aid is largely based on the Commissioner's consideration of an applicant's maximum income and their disposable capital (including any assets they have), offset by the number of dependents they have. An individual's case will also be looked at when determining their civil legal aid eligibility. A range of tests will apply, including an examination of the merits of an applicant's case, whether an applicant has reasonable grounds for taking the case, and whether an applicant owes a previous legal aid debt.

20. The legal aid system has been criticised in recent years by some stakeholders who consider its settings are inadequate to support civil claimants. For example, legal aid eligibility settings mean that a single applicant with no children must earn \$28,444 or less in the 2024-25 year to qualify for a grant of aid.<sup>28</sup> Government investment in 2022/23 increased eligibility for legal aid and reduced the amount of debt legally aided people must repay.

### **The Rules Committee views that Disputes Tribunal financial jurisdiction should increase**

21. To respond to the increasing levels of unmet civil legal need, the Rules Committee<sup>29</sup> conducted a review of the rules of court for the purpose of improving access to civil justice beginning in 2019 which included two rounds of consultation in 2020 and 2021. The Rules Committee subsequently released its 'Improving Access to Civil Justice' report in 2022. The Rules Committee was concerned about barriers that prevent people accessing civil justice. In its report, it made recommendations to address financial, psychological, cultural, and information barriers across the civil justice system. The Rules Committee's Disputes Tribunal recommendations were interlinked and presented as a package to be implemented together,<sup>30</sup> concurrently with its recommendations for the District and High Court's civil jurisdictions.
22. The changes recommended for the Disputes Tribunal included:
- increasing the Disputes Tribunal's financial jurisdiction to \$70,000 by right and \$100,000 by consent,
  - considering how the Tribunal can better utilise its existing substantive jurisdiction,
  - introducing graduated appeal rights by introducing a general right of appeal for claims over \$30,000,
  - requiring referees to be legally qualified,
  - continuing to publish decisions,

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<sup>28</sup> Regulation 5(1)(a)(iii), Legal Services Regulations 2011. Note: there are exceptions in some "special circumstances" – see s 10(2) Legal Service Act.

<sup>29</sup> The Rules Committee is a statutory body established by s 51B of the Judicature Act 1908 and continued by section 155 Senior Courts Act 2016. The Rules Committee is empowered to make procedural rules for the District Court, the High Court, the Court of Appeal, and the Supreme Court. The Chief Justice, Chief High Court Judge and Chief District Court Judge are ex-officio members, alongside the Attorney-General, Solicitor-General, and the Chief Executive of the Ministry of Justice. Appointed members include other members of the judiciary and two barristers and solicitors nominated by the New Zealand Law Society and approved by the Chief Justice.

<sup>30</sup> The Rules Committee also recommended no change to the rules regarding representation, no change to the private nature of hearings in most cases, continued publication online of at least 600 anonymised decisions a year, continued development of a library of all Disputes Tribunal decisions issued, that costs continue to lie where they fall (except in limited circumstances), that the filing fee should be recoverable by an applicant who is wholly or partly successful in their claim, that the filing fee should be subject to waiver, transitional provisions for non-legally qualified referees currently in office, the District Court giving consideration to finding more effective and straightforward ways for claimants to enforce a successful award, abolishing the \$200 enforcement fee imposed for collection of a Disputes Tribunal being abolished or at least subject to waiver, and renaming referees "adjudicators" but not changing the name of the Disputes Tribunal.

- seeking a decision from the Minister of Justice under section 57 of the Disputes Tribunal Act regarding reporting decisions of public interest,
- amending the Disputes Tribunal’s decision making mandate to reflect that the Tribunal must “determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal right or obligations or to legal forms or technicalities **where that would result in a substantial injustice**”(addition in bold),
- undertaking a review of the increase to the financial jurisdiction after 3 - 5 years, and
- implementing a communications strategy to reassure the public that referees will continue to resolve claims justly.

#### **If the status quo is maintained, access to justice concerns may continue**

23. If no action is taken, as per the status quo, we expect people whose claims fall below the value considered economic to pursue in the District Court may continue to experience reduced access to justice by either :
- abandoning some of their claim value to enable it to fit within the Tribunal’s jurisdiction,
  - resolving the dispute in the District Court but with a cost-negative outcome, or
  - not resolving the dispute at all.
24. The current economic environment may impact on the filing behaviour of claimants under the status quo. For example, we may see an increase in claims filed in the Disputes Tribunal. As the cost of living increases potential claimants may see it as more pressing to dispute claims rather than accepting the loss of funds. The Tribunal could potentially also see more complex matters if claimants chose to abandon part of their claim to bring it to the Disputes Tribunal rather than incur District Court expenses.

### **What is the policy problem or opportunity?**

#### **What is the nature of the issue?**

25. The lack of an affordable forum to raise mid-value civil claims impinges on the public’s ability to access justice.<sup>31</sup> This disproportionately impacts on people with claims that fall into the justice gap, including those who are unable to afford legal fees and are ineligible for civil legal aid. This either means legal issues remain unresolved even though parties would like to resolve them (classified as unmet legal need), or claimants abandon the portion of their claim that exceed the Disputes Tribunal’s \$30,000 financial jurisdiction to bring it within the Tribunal’s jurisdiction.
26. The Law Commission highlighted the importance of access to justice in the context of the court system in its 2004 report *Delivering Justice for All: A Vision for New Zealand Courts and Tribunals*.<sup>32</sup>

*The degree of confidence people have in the court system will influence their belief in the rule of law. If people cease to see courts as relevant, effective and accessible, they are less likely to believe that the rule of law means everyone is entitled to the benefit and protection of the law, including them and people like them. They are less likely to believe that courts will fairly and impartially resolve disputes between citizens and the state... Part of the fabric that holds civil society*

<sup>31</sup> Access to justice broadly refers to “the extent to which citizens are able to gain access to the legal services necessary to protect and vindicate their legal rights.” (Pg 28, Tom Cornford, ‘The Meaning of Access to Justice’ in *Access to Justice: Beyond the policies and politics of austerity* (Ellie Palmer et al. (Ed.) (2018)).

<sup>32</sup> <https://www.lawcom.govt.nz/assets/Publications/Reports/NZLC-R85.pdf> at 3.



*together is the common adherence to social institutions. Those institutions, including the courts, need to build and sustain this adherence.*

### What is the scope and scale of the problem?

27. There is no reliable data available on the financial value of unmet legal need in New Zealand. Unmet legal need is inherently difficult to capture as by definition it is unexpressed through usual forums. The lack of data on unmet civil legal need has been identified as an issue by stakeholders across the civil justice system.<sup>33</sup> The Ministry undertook a Legal Needs Survey<sup>34</sup> in 2023 which, when released in 2024, will provide information on the types of legal problems New Zealanders experience and the action (or inaction) taken to resolve these issues. It will also consider how legal problems impact on small businesses and population sub-groups. The survey asked about how much it cost people to obtain legal assistance, and whether they had used courts and tribunals to resolve their issues. The survey, however, does not capture information on the value of people's legal disputes nor information about the Disputes Tribunal specifically.

*There is unmet legal need that is difficult to quantify*

28. People either choose or are advised not to file in the District Court due to the costs of claims below a certain value being uneconomic. It is difficult to estimate how many claims are not filed due to lack of data, but we have some insights including:
29. **Few people pursue claims in the District Court.** People with potential claims who seek legal advice or assistance are routinely advised against taking a claim to the District Court for anything below \$100,000.<sup>35</sup> In 2023, less than 1% (24) of the District Court's civil applications covered the subject matter of claims that could be considered by the Disputes Tribunal (before accounting for the financial value).<sup>36</sup> This suggests that many claims aren't being pursued in the District Court. Those who do chose to file in the District Court may experience reduced access to justice because of the high costs of taking a case, relative to the value of the claim.
30. Previous increases to the Disputes Tribunal's financial jurisdiction have resulted in increases in the number of cases. Analysis of the Tribunal's workload following historical increases to the financial jurisdiction indicates that each time the financial jurisdiction increases, there is an increase in the overall number of claims filed (see Figure 2).

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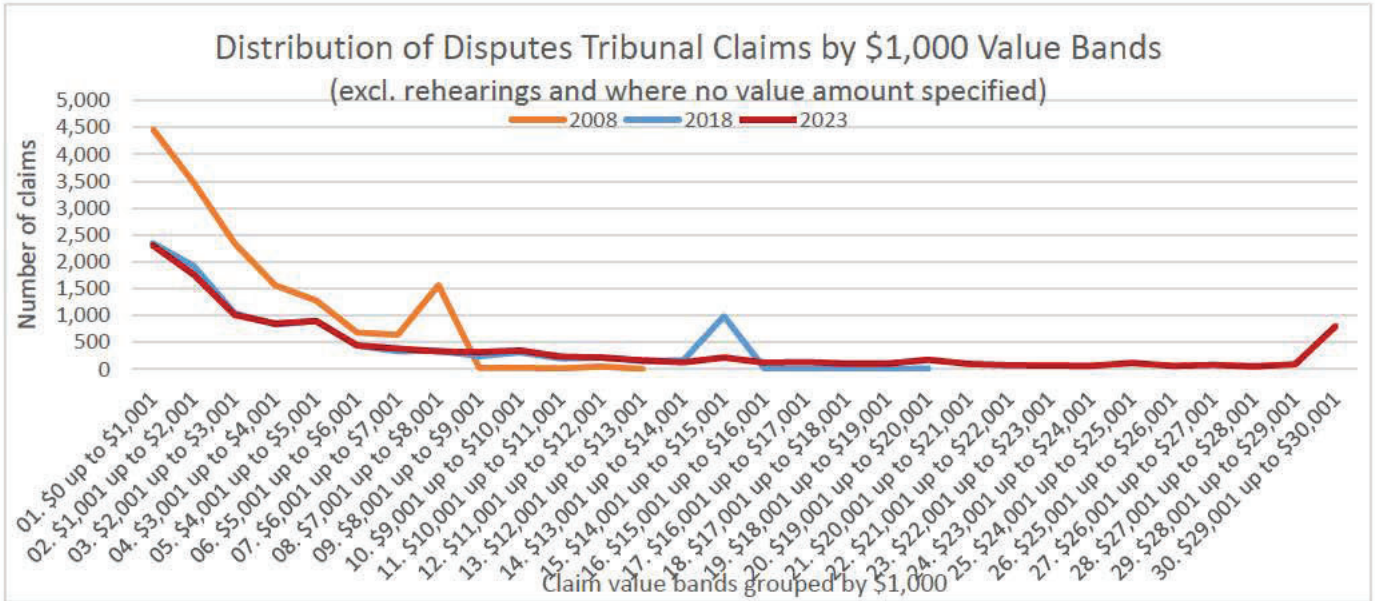
<sup>33</sup> The Chief Justice and the Secretary for Justice convened an access to justice workshop in March 2020. This workshop brought together a wide variety of stakeholders from within the civil justice system. Stakeholders reported that the system needs to be more user focussed and that better data is needed about those who use it (<https://www.justice.govt.nz/justice-sector-policy/key-initiatives/access-to-civil-justice/#:~:text=In%20March%202020%2C%20the%20Chief,in%20the%20civil%20justice%20system>).

<sup>34</sup> <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/access-to-civil-justice/frequently-asked-questions-legal-needs-survey/>

<sup>35</sup> See submission of the New Zealand Bar Association to the Rules Committee at 10: ([https://www.courtsofnz.govt.nz/assets/4-About-the-judiciary/rules\\_committee/access-to-civil-justice-consultation/Submissions-to-further-consultation/New-Zealand-Bar-Association\\_Redacted.pdf](https://www.courtsofnz.govt.nz/assets/4-About-the-judiciary/rules_committee/access-to-civil-justice-consultation/Submissions-to-further-consultation/New-Zealand-Bar-Association_Redacted.pdf)) – “Bar Association members agree that they would advise clients that bringing disputes worth less than \$100,000 before the District Court is rarely worthwhile.”

<sup>36</sup> The low number of claims filed in the District Court in 2023 that would be eligible to be heard in the Disputes Tribunal if the financial jurisdiction were increased indicates that many lower value civil claims are not being pursued at all. Analysis of the 19,671 civil applications disposed of in the District Court in 2023 shows that even if the Disputes Tribunal financial jurisdiction were increased to be equivalent to the District Court financial jurisdiction of \$350,000, only 24 applications (less than 1% of total civil applications) would be newly eligible to be heard in the Disputes Tribunal. Most civil claims filed in the District Court fall outside the Disputes Tribunal's substantive jurisdiction.

**Figure 2: Graph indicating distribution of claims by band in 2018 (pre 2019 increase) and 2023**



*There is reduced access to justice for people who fall in the justice gap, but abandon part of their claim, which is also difficult to quantify*

31. As noted at [10], the Disputes Tribunal Act permits claimants to abandon any value of their claim that exceeds the financial jurisdiction in order to access the Tribunal. For example, a person may be disputing a contract worth \$40,000, but abandon \$10,000 worth of the claim to bring it within the Disputes Tribunal’s \$30,000 financial jurisdiction. It is difficult to estimate how many people experience reduced access to justice due to lack of regular data collection about abandoned claim value, however we do know that some people abandon part of their claim in order to access the Disputes Tribunal.
32. The Principal Disputes Referee advises that a growing percentage of claims are filed for the maximum jurisdictional limit (in 2023 it was 6% (750) but this is likely to increase in 2024). Of those claims, a high proportion involve the abandonment of some part of the claim to fit under the jurisdictional limit. The Ministry of Justice does not hold statistics on the percentage and degree of abandonment, but the Principal Referee confirms that she deals with split claims on a weekly basis, being required to assess at the point of filing whether the claim can be accepted due to its size. At previous financial jurisdiction levels, we have seen a peak of claims filed at the top of the financial jurisdiction which captures the claims where the claimant is abandoning a portion of their claim to fit within the financial jurisdiction. Following each financial jurisdiction increase in the past, we have seen a new peak form at the top of the new financial jurisdiction, indicating that as the financial jurisdiction has grown, claimants have continued to experience reduced access to justice by abandoning part of the value of their claim to fit within the Tribunal’s financial jurisdiction.

**What approaches are taken to address this problem in comparable jurisdictions?**

33. Many comparable common law jurisdictions, such as Canada and Australia, also have specialised Tribunals or court divisions that have specific processes for considering low value civil disputes. Analysis of small claims jurisdictions in Canada and Australia shows that settings similar to those seen in the Disputes Tribunal, including limited appeal rights and no standard right to legal representation, are typically limited to considering claims up to the equivalent value of approximately \$30,000 in local currency. The 2019 increase to \$30,000 was intended to bring the Disputes Tribunal’s financial jurisdiction into alignment with comparable small claims divisions overseas.

**What work has already been undertaken to address the problem?**




34. The Ministry is currently undertaking work to improve the efficiency and access to justice benefits of the Disputes Tribunal. These projects include:



- 34.1 **Enabling referees to award the filing fee back to a successful applicant in the Disputes Tribunal:** Cabinet has agreed to amend to the Disputes Tribunal Act to enable referees to award the cost of the filing fee back to a wholly or partly successful applicant. This amendment is intended to progress as part of the Regulatory Systems (Justice) Amendment Bill, [S9\(2\)\(f\)\(iv\)](#)
- 34.2 **Digitising the Disputes Tribunal:** The Tribunals Case Management (TCM) software is currently used by claimants to file their claim. In 2023, approximately 87% of claims were filed online, while approximately 77.5% of cases are set down for a remote hearing in the coming year (most commonly via teleconference).<sup>37</sup> [S9\(2\)\(f\)\(iv\)](#)
35. Some recent initiatives to improve access to civil justice more broadly include:
- 34.1 **Legal Needs Survey:** Together with the Ministry of Business, Innovation and Employment, the Ministry has recently undertaken a survey of New Zealanders and small business owners to understand what people are doing about their legal problems. Results are expected in the second half of 2024 and may help identify potential avenues for expanding ways for people to get their legal problems resolved sooner and at a lower cost.
- 34.2 **Wayfinding for civil justice:** is a national strategy developed by an independent working group to encourage a co-ordinated approach to government and non-government efforts to improve access to civil justice.<sup>38</sup> The strategy includes goals relating to the accessibility of legal assistance, legal assistance providers' understanding of legal needs, access to dispute resolution, and monitoring of the civil justice system's impact.
- 34.3 **Increases to legal aid financial jurisdictions:** Budget 2022 investment increased the eligibility financial jurisdictions (for civil and family legal aid) to make 93,000 more New Zealanders eligible for legal aid (a 15% increase, to partially offset the impacts of inflation in wage growth on the eligibility financial jurisdictions, which over time had reduced the number of people eligible for legal aid). Repayment financial jurisdictions were also increased, which reduced the amount of legal aid debt 11,000 New Zealanders need to repay by increasing repayment financial jurisdictions and removing interest on legal aid debt.

#### What objectives are sought in relation to the policy problem?

36. The National Party's manifesto commits to "increase the jurisdiction of the Disputes Tribunal, allowing it to resolve disputes of higher value and thereby relieve pressure on the District Court." This work seeks to achieve the following objectives:

Icon	Number	Objective
	Objective 1	Improve access to quick, low-cost dispute resolution, including for small businesses
	Objective 2	Promote timeliness in the resolution of issues for parties.
	Objective 3	Ensure the distinct role of the Disputes Tribunal in the civil justice system is clear and easily understood by users

<sup>37</sup> As at 13/06/2024, for the period 14/06/2024 to 14/06/2025, we have 77.5% of Disputes Tribunal cases scheduled for a remote hearing with 22.5% scheduled for an in-person hearing.




<sup>38</sup> See strategy here: <https://www.justice.govt.nz/assets/Documents/Publications/Wayfinding-for-Civil-Justice-English.pdf>



# Section 2: Deciding upon an option to address the policy problem

## What criteria will be used to compare options to the status quo?

37. To determine whether the options meet the project objectives, they will be assessed against the following criteria:

Objectives	Criterion	Application
	<b>Upholds principles of natural justice</b>	The option ensures decision-makers are unbiased, and people affected by a decision have an opportunity to be heard.
	<b>Improves access to justice</b>	The option improves people’s access to a forum to resolve civil disputes and protect their rights, enabling an increased level of unmet legal need to be addressed.
	<b>Uphold public confidence in the civil justice system</b>	The option balances limitations on natural justice rights and improved access to justice in a way that is perceived to be in the public interest. The option is consistent with the distinct role the public expects the Tribunal to play in the civil justice system.

38. There is a trade-off between upholding the principles of natural justice and improving access to justice. The preferred approach will need to consider the appropriate balance between these criteria.

## What scope will options be considered within?

### The Minister sought advice on options to raise the financial jurisdiction

39. Reflecting the National Party’s manifesto commitment, the scope has been limited to considering options for raising the financial jurisdiction and limited consequential changes to the Disputes Tribunal model. A more comprehensive review of the Disputes Tribunal model is out of scope. The Minister sought advice on increasing the financial jurisdiction to \$60,000 or \$70,000.

*The Disputes Tribunal model is interlinked – changing any substantive aspects would have significant impacts that we do not have time to investigate*

- 40. It is important to consider the role and function of each element of the Disputes Tribunal model within the context of the system it operates in. Making any major changes, for example to uphold parties’ natural justice rights for higher value claims, could risk undermining the Tribunal’s access to justice benefits, such as timely resolution, finality of decisions, and affordability.
- 41. If there is a point at which significant model changes are required, this indicates that the model is no longer appropriate for claims beyond this and suggests that further work is required to determine how best to resolve claims above this limit. As the scope of the work didn’t include major changes to the Tribunal model, this analysis only considers minor model changes to mitigate any risks identified as the value of claims increases.
- 42. We note that the Regulatory Impact Statement supporting the 2019 financial jurisdiction increase, concluded that the interlinked nature of the Disputes Tribunal model means it would likely be unworkable to amend any substantive aspect of the model without it requiring run on changes to other aspects. As such, previous advice didn’t recommend any change to the model.



## What options are being considered?

### Option One – *Status Quo*

#### *Access to justice*

43. At present, the Disputes Tribunal provides an accessible and efficient forum for resolving civil claims up to a maximum value of \$30,000.<sup>39</sup> The Disputes Tribunal is a lower cost option than the District Court due to the low application fees and the absence of legal representation.
44. There is no limit on the value of settlement agreements that referees can help parties to negotiate. However, the justice gap means that there is no forum to enforce or protect rights where the value in dispute falls between the maximum claim value of Disputes Tribunal and the point at which it becomes economic to take a claim to the District Court.

#### *Natural justice*

45. While legal representation is usually a natural justice safeguard, in the Disputes Tribunal the inquisitorial model and relatively low financial jurisdiction mitigates risks of reduced natural justice.
46. The Disputes Tribunal is able to deliver quick resolution of disputes with finality due to the limited review rights available to parties. The relatively low financial jurisdiction helps mitigate natural justice concerns with the model as little is at stake should an error occur or claimants feel like justice was not done. This reduced natural justice is appropriately balanced against quick and speedy resolution of low value claims.

#### *Public confidence*

47. Having a dedicated forum to efficiently and effectively resolve low value claims that would otherwise be left unresolved aids in upholding trust in the civil justice system, and maintaining the rule of law, as it ensures that all citizens have an avenue to protect and uphold their rights. This leads to public confidence in the Tribunal, however, the justice gap has led to concerns about the ability to address civil justice matters that exceed the Disputes Tribunal's financial jurisdiction.
48. Referees are required to hold a "relevant qualification" with examples given in the Act of a qualification in law, mediation, or arbitration, and in practice a legal qualification is required.<sup>40</sup> We are not aware that this is seen as an issue under the current financial jurisdiction.

### **OR Option Two – \$60,000 financial jurisdiction**

49. Option Two includes:
  - Increasing the financial jurisdiction of the Disputes Tribunal to \$60,000; and
  - maintaining the remainder of the status quo.

*There are likely to be access to justice benefits from increasing the financial jurisdiction, but we cannot predict the extent of these benefits*

50. Doubling the financial jurisdiction is likely to improve access to justice by providing a more accessible forum for resolving civil claims up to \$60,000, for claims that fall within the Disputes Tribunals substantive jurisdiction. Modelling based on previous increases indicates this may result in an increase of 1,700 to 2,100 additional claims (+14% to +17%). However, the justice gap will remain for claims between \$60,000 to a minimum of \$100,000 which may continue to impact public confidence in the civil justice system and trust in the rule of law.

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<sup>39</sup> Unless parties negotiate a settlement agreement, in which case there is no financial cap.

<sup>40</sup> Section 7(2)(a), Disputes Tribunal Act 1988.

51. Some cases that are already in the Disputes Tribunal will also benefit from increased access to justice as they will not need to abandon part of their claim to fit into the jurisdiction of the Tribunal (or can abandon less of their claim). Accounting for both additional claims and claims that currently have some level of abandonment, modelling indicates that at least 2,000 claims could see improved access to justice.
52. This option increases the overlap between the Disputes Tribunal and the District Court's jurisdiction. It is unclear what, if any, behaviour changes may result from introducing higher value claims in the Disputes Tribunal. Although this option provides a lower cost resolution process for claims, it is not clear whether there will be public confidence in filing claims of higher value in the Disputes Tribunal. Some parties may continue to choose to not file at all, or to file in the District Court although we note this is a very small number.<sup>41</sup>
53. Although complexity is not always tied to claim value, higher value claims may be legally or procedurally complex and take time to reach a just outcome. As these claims have more at stake for parties, people may choose not to use this forum, and/or lead to increased use of the limited appeal rights and application for rehearing which may reduce the access to justice benefits in finality and timely justice outcomes for parties.
54. The realisation of any access to justice benefits will also be dependent on maintaining the existing timeliness of the Disputes Tribunal to ensure efficient and speedy resolution of issues. Introducing a modest filing fee will help maintain service levels. As discussed in Part B (see discussion at [108]), we view that a modest filing fee is unlikely to negatively impact on access to justice.

*The level of public confidence in the Disputes Tribunal's ability to consider high value claims is unknown*

55. We have relied on submissions to the Rules Committee's "Improving Access to Civil Justice" report from 2021 to inform our analysis of the impact on public confidence. In particular, the Rules Committee sought feedback on a proposal to increase the financial jurisdiction to \$50,000.
56. While some submitters prioritised the principles of the Disputes Tribunal as a low cost, quick and flexible dispute resolution forum for low value claims,<sup>42</sup> others were more concerned about the justice gap and the lack of existing measures to address claims that fall into it.<sup>43</sup> Two submitters (out of the 37 analysed) to the Rules Committee supported increasing the financial jurisdiction above \$50,000 with the current model (see Figure 3). Beyond \$30,000, most submitters were of the view that substantive model changes were required in order to uphold natural justice rights and public confidence at higher values.

*It is unclear whether increasing the financial jurisdiction will impact natural justice rights*

57. We note that the principles of the Tribunal's approach were developed for low value claims so may not be well suited to higher value claims. Characteristics of the model such as limited appeal and rehearing rights and preventing legal representation may no longer be appropriate at \$60,000. It is unclear whether doubling the financial jurisdiction will materially impact natural justice.

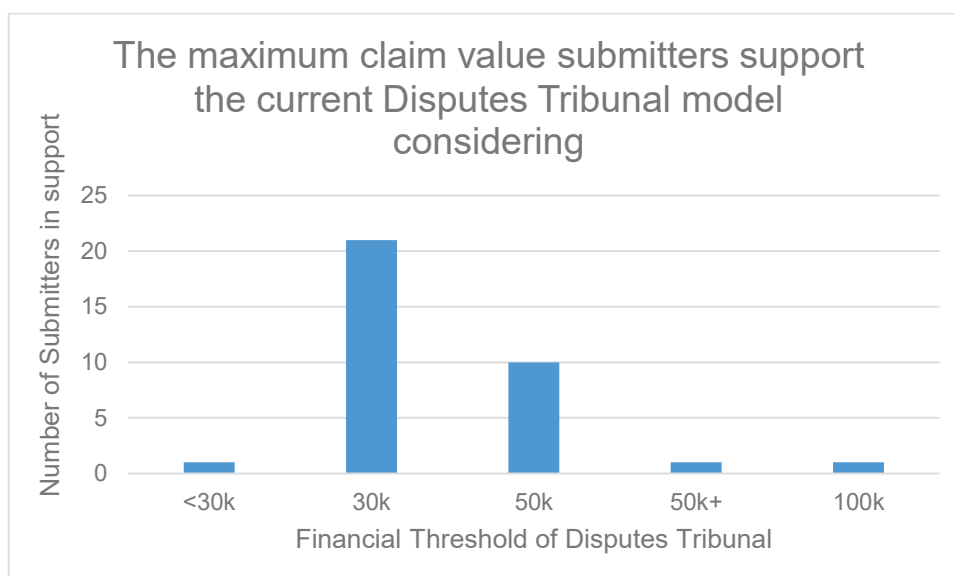
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<sup>41</sup> As discussed in the policy problem section, our analysis indicates that less than 1% of District Court civil cases could have been eligible to be filed in the Disputes Tribunal if the financial jurisdiction was higher

<sup>42</sup> For example, six submitters did not support any increase with model changes and one submitter was of the view changes were required at the existing financial jurisdiction of \$30,000.

<sup>43</sup> For example, six submitters supported an increase to \$100,000 with model changes.





**Figure 3: Graph indicating support for maximum financial jurisdiction increase without model changes**

**OR Option Three - \$70,000 financial jurisdiction**

58. Option Three includes:

- Increasing the financial jurisdiction of the Disputes Tribunal to \$70,000; and
- Maintaining the remainder of the status quo.

*There are likely to be access to justice benefits from increasing the financial jurisdiction, but we cannot predict the extent of these benefits*

59. Increasing the financial jurisdiction is likely to improve access to justice by reducing the justice gap for matters that fit within the Disputes Tribunal’s substantive jurisdiction. Modelling indicates that an increase to \$70,000 may see improved access to justice for at least 2,300 claims. This figure includes both claims that are currently made with some level of abandonment of claim value, as well as an estimated increase in additional claims of between 2,000 to 2,300 claims (+16% to +18%).

60. However, as discussed in Option Two, we cannot predict behaviour changes at higher financial jurisdictions, and potential claimants may chose not to file in the Disputes Tribunal. People may be more likely to file in the District Court the closer the claim gets to the point at which it is economic to take a claim to the District Court (i.e., the closer the financial jurisdiction is to \$100,000), but we are unable to draw a conclusion on this matter.

61. As for Option Two, the realisation of any access to justice benefits will also be dependent on appropriate management of the additional claims to uphold the existing timeliness of the Disputes Tribunal to ensure efficient and speedy resolution of issues.

*The level of public confidence in the Tribunal's ability to hear high value claims is unknown*

62. As for option two, there may be less public confidence in the Disputes Tribunal. As discussed in Option Two, the Rules Committees’s consultation suggests aa risk that there may be little public support for increasing the financial jurisdiction with the current Disputes Tribunal model.

*It is unclear whether increasing the financial jurisdiction will impact natural justice rights*

63. As for Option Two, it is unclear whether the natural justice limitations considered appropriate for the current inquisitorial Disputes Tribunal model continue to be appropriate for considering claims above \$30,000. This is because it was developed for low value claims and its suitability to consider high value claims in a way that is consistent with natural justice principles is untested.

64. Characteristics of the model such as limited appeal and rehearing rights and preventing legal representation at higher values may no longer be appropriate at \$70,000. It is unclear whether doubling the financial jurisdiction will materially impact natural justice. As the financial jurisdiction increases, submitters to the Rules Committee were of the view that more significant model changes would be required to uphold natural justice.

**Option Four – Require referees to be legally qualified (in combination with either Option Two or Option Three)**

65. This Option would require Disputes Tribunal Referees to hold a legal qualification to be eligible for appointment, if the Disputes Tribunal Financial Threshold is raised to \$60,000 or \$70,000.
66. While the vast majority of referees are legally qualified, the statute only requires them to have a relevant degree or training. Of the 63 current referees, only four are not legally qualified. These four have been referees for 10+ years and have significant and valuable institutional knowledge. In at least the last decade, no application for appointment has been considered unless the applicant holds a Bachelor of Laws at a minimum (with 33.3% of current referees holding a an Honours degree or Masters in Law). This reflects the need for legal expertise given the existing level of legal complexity present in Tribunal cases.
67. The Ministry previously advised against requiring a law degree when the qualification requirement was amendment alongside the 2019 financial jurisdiction increase. This was due to the difficulties faced in attracting suitable applicants. However, since shifting from the Cabinet Fees Framework to the Remuneration Authority in December 2022<sup>44</sup>, there has been an identifiable increase in the number of suitably qualified and legally skilled applicants. This is a discrete change that does not require any changes to other aspects of the Disputes Tribunal model, and could proceed together with either option two or three above.

*Public confidence in the tribunal may be improved*

68. Requiring referees to be legally qualified would likely enhance the public confidence that the Tribunal can make good decisions and uphold natural justice rights, when it is making decisions on higher value claims.<sup>45</sup> This change would give parties confidence that the referee is well-qualified in making a determination, according to the substantial justice and merits of the case, that has appropriate regard for the law.

*We cannot determine if it will impact access to justice*

69. This could improve access to justice if more people have confidence in taking higher value claims to the Tribunal, but we are unable to determine the impact of this on filing behaviour given that most referees are already legally qualified.

*Referees have the skills to uphold natural justice, and codifying the requirement makes it fairer for applicants*

70. A law degree may be a useful indicator that referees understand the principles of natural justice and will be able to ensure proceedings before them are conducted in a procedurally fair manner, which may be considered more critical for higher value claims. However, as most current referees are legally qualified, or have extensive experience, this option is unlikely to further enhance the Tribunal's ability to objectively uphold the principles of natural justice. We note that there may be different natural justice benefits from the perspective of applicants for referee appointments. It may be fairer to applicants for the legislation to be clear that a law degree is required for appointment, given this is expected in practice.

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<sup>44</sup> The Remuneration Authority sets the remuneration for judicial officers. This helps to reinforce their independence from political, commercial or financial pressures.

<sup>45</sup> Section 7(2)(a), Disputes Tribunal Act.



Key			
++	much better than the status quo	-	worse than the status quo
+	better than the status quo	--	much worse than the status quo
0	about the same as the status quo		

## How do the financial jurisdiction options compare to the status quo?

	Option One – Status Quo	OR Option Two – \$60,000	OR Option Three - \$70,000	AND Option Four – require referees to be legally qualified
<b>Upholds principles of natural justice</b>	0 <ul style="list-style-type: none"> <li>Inquisitorial system operates as suitable natural justice safeguard for lower value claims, with referee able to actively investigate evidence in the absence of a lawyer.</li> <li>Appeal and rehearing rights are limited to grounds of procedural unfairness in the interests of finality.</li> </ul>	- <ul style="list-style-type: none"> <li>Efficacy of the inquisitorial system in upholding natural justice is unclear.</li> <li>The principles of the Tribunal’s approach were developed for low value claims so may not be well suited to higher value claims. Restricting appeal and rehearing rights and preventing legal representation at higher values may no longer be appropriate.</li> </ul>	-- <ul style="list-style-type: none"> <li>At even higher financial jurisdictions, the risk to natural justice likely increases.</li> <li>Efficacy of the inquisitorial system in upholding natural justice is unclear.</li> <li>The principles of the Tribunal’s approach were developed for low value claims so may not be well suited to higher value claims. Restricting appeal and rehearing rights and preventing legal representation at higher values may no longer be appropriate.</li> </ul>	0 <ul style="list-style-type: none"> <li>As almost all referees are already legally qualified, this option would not materially enhance the Tribunal’s ability to uphold natural justice rights.</li> <li>May improve perceptions of the procedural fairness of the Tribunal.</li> <li>May enhance the procedural fairness of the referee recruitment process by setting out clear expectations in legislation.</li> </ul>
<b>Improves access to justice</b>	0 <ul style="list-style-type: none"> <li>The absence of legal representation and low filing fees make the Tribunal lower cost and more accessible than the District Court. Focus on finality and limited appeal rights provides quick resolution of disputes.</li> <li>A “justice gap” is present between \$30,000 financial jurisdiction of Disputes Tribunal and the point at which it is considered economic to take a claim to the District Court (estimated to be \$100,000).</li> </ul>	+ <ul style="list-style-type: none"> <li>Low cost promotes access to justice.</li> <li>Likely to decrease the justice gap to some extent, however, the Tribunal still has a limited substantive jurisdiction to consider claims within.</li> <li>The fact that these claims have more at stake for parties, may mean people chose not to use this forum and/or lead to increased use of the limited appeal rights and application for rehearing which may reduce the access to justice benefits in finality and timely justice outcomes for parties.</li> </ul>	+ <ul style="list-style-type: none"> <li>Low cost promotes access to justice.</li> <li>Likely to decrease the justice gap to some extent, however, the Tribunal still has a limited substantive jurisdiction to consider claims within.</li> <li>The fact that these claims have even more at stake for parties, may mean people may be more likely to chose not to use this forum and/or lead to increased use of the limited appeal rights and application for rehearing which may further reduce the access to justice benefits in finality and timely justice outcomes for parties.</li> </ul>	0 <ul style="list-style-type: none"> <li>Unlikely to be any notable access to justice benefits as codifies current practice.</li> <li>May contribute to increased access to justice if legal qualification requirement contributes to public confidence, but this is unclear.</li> </ul>
<b>Upholds public confidence in the civil justice system</b>	0 <ul style="list-style-type: none"> <li>Forum for low value claims to be resolved quickly, at low cost and with a focus on finality.</li> <li>Low rate of appeals and high usage of the Tribunal indicates public confidence in the balance between natural justice limitations that enable greater access to justice.</li> </ul>	0 <ul style="list-style-type: none"> <li>More people will have an avenue to enforce their rights and this may improve the public’s confidence in the civil justice system broadly.</li> <li>Submitters to the Rules Committee were concerned about the appropriateness of the Disputes Tribunal’s model at higher financial jurisdictions, which suggests that if the financial jurisdiction is increased beyond \$50,000, there be reduced public confidence in the Tribunal to hear higher-value claims.</li> </ul>	- <ul style="list-style-type: none"> <li>More people will have an avenue to enforce their rights and this may improve the public’s confidence in the civil justice system broadly.</li> <li>There may not be public confidence in the model at such a high financial jurisdiction. Submitters to the Rules Committee were concerned about the appropriateness of the Disputes Tribunal’s model at higher financial jurisdictions which suggests that if the financial jurisdiction is increased beyond \$50,000, there be reduced public confidence in the Tribunal to hear higher-value claims.</li> </ul>	+ <ul style="list-style-type: none"> <li>As the majority of referees are already legally qualified, the key benefit of this option is likely to be the positive impact on the public’s perception of the Tribunal, if they trust their disputes are being heard and determined by someone with appropriate skills.</li> </ul>
<b>Overall assessment</b>	0	0	--	+



## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

With the limited information available, the Ministry considers Option Two is preferable

71. While there is limited information to assess the appropriateness of increasing the Disputes Tribunal's financial jurisdiction, the Ministry considers that Option Two (\$60,000 financial jurisdiction) is preferable to Option Three, but recommends that referees should be required to be legally qualified (Option Four) if the financial jurisdiction is increased.
72. The special features of the Disputes Tribunal which enable it to resolve claims informally and quickly, without legal representation for parties and with limited appeal rights, were designed for resolving low value claims of low complexity. Although the financial jurisdiction has increased significantly since the Disputes Tribunal Act 1988 was introduced, it has not been reviewed, and only minor changes have been made to the model. The Ministry does not consider it has sufficient information to identify whether it is appropriate to raise the Dispute Tribunal's financial jurisdiction to the levels analysed in Options Two and Three. A more comprehensive review of the Disputes Tribunal model, including public engagement and consideration of how the Disputes Tribunal operates within the broader civil justice system, would support the identification of a preferred approach.
73. However, out of the two financial jurisdiction options considered in this Part, the Ministry considers that Option Two (\$60,000) is preferable to Option Three. We consider that people are more likely to still have confidence in the model and be willing to use the Tribunal at this level without legal representation and with limited appeal rights. If the financial jurisdiction is increased to \$60,000 or \$70,000, officials recommend introducing a requirement for referees to be legally qualified, in line with Option Four. This is due to the likely benefits this change would have on increasing public confidence in the Tribunal and its ability to consider higher value claims. This would also formalise current practice.

### **Cabinet paper recommendation: Option Two – increasing the financial jurisdiction to \$60,000**

74. The Cabinet paper recommends Option Two – increasing the financial jurisdiction to \$60,000. This will mean a greater number of people who currently fall into the justice gap will have a forum to take their claim to, which may increase access to justice. It does not recommend requiring referees to be legally qualified.

### **Targeted consultation indicated that the judiciary supported increasing the financial jurisdiction**

75. The Ministry undertook brief, targeted consultation on increasing the financial jurisdiction to \$60,000 or \$70,000 with the Judiciary's Legislation and Law Reform Committee (the LLRD) which shared preliminary observations in the time available.
76. The LLRC recommended that an increase to the Disputes Tribunal's financial jurisdiction be made alongside broader implementation of the package of recommendations made in the Rules Committee's *Improving Access to Civil Justice* report, as well as a broader review of the tribunals system. The LLRC noted that the changes presented in the Rules Committee report were interlinked and the full benefits will be realised by implementing it as a package. However, if a financial jurisdiction increase were progressed, the LLRC stated its support was contingent on aligning the immunity of referees with that of District Court Judges and requiring referees to be legally qualified.
77. Consideration of the immunity of referees was considered out of scope as it interlinked with other aspects of the model and could have significant impacts on the way the Tribunal operates. We consider that the legal qualification of referees is a discrete change as it codifies current practice. This is addressed in Option Four.



## What are the marginal costs and benefits of the option?

78. The costs and benefits of Option Two are set out in the table below:

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of the option compared to taking no action</b>			
Government - <b>total monetised costs</b>	<p>We project an increase of between <u>1,700 - 2,100 additional claims</u> to be filed annually in the Disputes Tribunal.</p> <p>As a consequence of an increased financial jurisdiction in the Disputes Tribunal, an increase in appeals made to the District Court could also be expected, this is estimated at between <u>17 to 20 additional appeals</u> (+13% to +16%) on the approximately 120 currently received each year. The increase in appeal applications to the District Court can be absorbed within baseline funding. The projected costs include the following:</p> <p><b>Departmental operating costs</b></p> <ul style="list-style-type: none"> <li>- One off - \$141,000 (costs associated with implementing the proposal, including TCM system changes and implementation FTE)</li> <li>- Ongoing - \$1,442,000 p.a. (incl. registry personnel and costs p.a.)</li> </ul> <p><b>Non departmental costs</b></p> <p>Up to 6 additional referees may be required to meet the predicted increase in cases, however, as referees are paid daily fees rather than a salary, some of the new sitting hours may utilise existing referees who take on additional work. One off costs account for mentoring new referees. Ongoing costs account for the increased amount of referee daily sitting fees.<sup>46</sup> These costs are in addition to current funding for the Tribunal:</p> <ul style="list-style-type: none"> <li>- One off - \$98,000</li> <li>- Ongoing - \$1,080,000 p.a.</li> </ul> <p>See <b>Appendix 1</b> for a more detailed cost breakdown of implementation resources.</p>	<p><b>Year One - \$ 2,761,000</b> (this includes cost pressure adjustment to account for increase in cases + estimated increase in caseload resulting from financial jurisdiction increase + one off implementation costs of \$157,000).</p> <p><b>Year Two and beyond - \$ 2,523,000 p.a.</b> (ongoing)</p>	<p>Estimate on claim increase is <b>low certainty</b> as it is based on observations from previous financial jurisdiction increases and current observations of the existing caseload of the Disputes Tribunal trending upwards. Lower confidence is due to difficulties capturing unmet legal need and claimant behaviour.</p> <p>Even though costing estimates are based on current costings, they are based on modelling of an increase in claim levels that is low certainty, and therefore, overall evidence certainty is <b>low</b>.</p>
Government – <b>total non-monetised costs</b>	As court timeliness is dependent on adequate resourcing, if monetary costs are not met, or if demand exceeds our predictions and the new demand is required to be met within existing resource, this will impact on the Tribunal's existing Timeliness by slowing down the Tribunal's disposal rate. Due to the significant impacts if the risk is realised, but the low evidence certainty, this is classified as a <b>medium</b> impact.	<b>Medium</b>	<b>Low</b>
<b>Additional benefits of the option compared to taking no action</b>			
Government	Increased access to civil justice increases strength of the rule of law, which enhances public confidence in state institutions (including the civil justice system).	Medium	Low
People with unmet legal need	Enabling people to protect their rights in an accessible way makes people feel safer and validated and enhances their trust in the state. It is likely that some people that previously did not have an affordable forum to make their claim will make their claim in the Disputes Tribunal. Although we have modelled the expected increase, as we have been unable to test whether there will be public confidence in the model at \$60,000 we therefore, are unable to draw conclusions on the exact extent to which these benefits will be realised. We note there are also additional barriers to accessing justice that can result in unmet legal need which go beyond the justice gap, including the cost of an application fee (although lower than the District Court) and understanding that there is in fact a legal issue.	Medium	Low
People taking claims to District Court	The concurrent jurisdiction already means a very small number of claims that would become eligible to be heard in the Disputes Tribunal are already being taken to the District Court. However, the cost of court fees and legal fees likely exceeds the value of the claim. These people would benefit from lower cost justice, enabling them to actually recover lost funds rather than pursue a matter in principle. This could enhance faith in the civil justice system and its ability to ensure justice is done. However, we cannot account for behavioural changes, and it is likely some people will still choose to take eligible claims to the District Court if, for example, they want legal representation. In 2023, 26 claims that were eligible to be heard in the Disputes Tribunal were still filed in the District Court.	Medium	Low
People abandoning part of their claim	Due to the justice gap, people already abandon part of their claim that exceeds the \$30,000 financial jurisdiction of the Disputes Tribunal. Less than 5% (around 500) claims abandon some level of claim value. Increasing the financial jurisdiction to \$60,000 would enable the majority of claims where some value is abandoned to have greater access to justice by claiming more of the full value.	High	Low
<b>Total monetised &amp; non-monetised benefits</b>		<b>Medium</b>	

<sup>46</sup> This includes sitting days, reserve days, travel time, training days, observation days and mentoring days. It is difficult to estimate the number of additional days referees might require, as sitting time varies with claim complexity which is not always tied to claim value. As a way of estimating the potential financial impact we used 2023 sitting day and claim data to work out an average of 0.57 days billed per claim in 2023. We worked this against the projected additional claims from Analytics and Insights and the daily sitting rate for referees. The Remuneration Authority has set a fee rate of \$910 per day for referees, to a maximum of \$204,900 per year per member. This fee is subject to annual review and may increase in September 2024.



# Part B – Introducing a new filing fee tier

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem?

The Disputes Tribunal is funded through a mix of Crown and user-pays funding.

- 79. Disputes Tribunal applicants are required to pay a filing fee when filing a claim. This is to partially offset the Tribunal’s operational costs given the private benefit to its users (particularly financial). The majority of the costs are met by the Crown as there is public interest in ensuring citizens feel there is a viable method to enforce their rights and uphold the rule of law.
- 80. The statutory authority to charge filing fees is set out in the Disputes Tribunal Act 1988. Section 24(1) states that the proceedings are commenced by the applicant lodging a claim together with the prescribed fee (if any). Section 60(1)(b) states that the Governor-General may make rules prescribing such things as are required by the Act to be prescribed, including fees.
- 81. Currently, the Disputes Tribunal charges one filing fee to the applicant when a new application is made. This is the only cost associated with taking a claim to the Disputes Tribunal. Parties are also entitled to one rehearing – there is no cost associated with a rehearing application. This is to minimise the barriers to entry and keep the Tribunal accessible for lower value claims, as is consistent with the purpose of the Tribunal outlined in Part A.

- 82. There are three filing fee levels which are set out in rule 5(1) of the Disputes Tribunal Rules 1989 (the Rules) (see Table 1). As the \$234 filing fee applies to claims of \$5,000 and above, this effectively applies to all claims between \$5,000 and \$30,000.

Claim value sought (Tiers)	Filing fee <sup>47</sup>
< \$2,000	\$59
\$2,000 - \$4,999	\$117
\$5,000 - \$30,000	\$234

Table 1: Current filing fee tiers

### What is the policy problem or opportunity?

- 83. For the purpose of this Part, “status quo” refers to the \$60,000 financial jurisdiction proposed as Option 2 in Part A and the existing filing fee structure active from 1 July 2024.
- 84. If Cabinet agrees to increase the financial jurisdiction to \$60,000 and the current fee structure continues, the current top fee tier would apply to all claims from \$5,000 to \$60,000. This does not reflect that there is likely to be a higher private benefit for a claim at the top of the tier (i.e., \$60,000) compared to a claim at the bottom of the same tier (i.e., \$5,000). Some of these higher value claims may also incur increased operating costs if they are of high legal or procedural complexity.

### Policy Rationale: Why a user charge? And what type is most appropriate?

- 85. In 2012, the Government directed the Ministry of Justice to undertake a first principles review of civil fees for the purpose of delivering a principled, consistent and equitable

<sup>47</sup> These fees were increased as of 1 July 2024 as part of a suite of court and tribunal fee increases to accompany the Government’s 2024 budget initiatives. As the Disputes Tribunal fees had not increased since 2013, despite the costs to deliver court and tribunal services increasing 41% since 2013, the 1 July 2024 fee increases adjusted for inflation (30%). Previously, the fees were set at \$45, \$90, and \$180



approach to setting fees.<sup>48</sup> As part of this review, the Ministry developed a framework for setting civil fees which, following broad consultation, was agreed by Cabinet (the 2012 Fees Review framework).

86. Following the review, the Ministry considered introducing cost recovery targets for courts and tribunals. While the Ministry ultimately recommended opting for a case by case approach to fee setting over mandating strict targets, the analysis on the proposed recovery target for the Disputes Tribunal suggests 20% would be an appropriately low-medium rate of cost recovery across the Tribunal which reflects the reasonably high public benefit of the Tribunal and lack of other realistic alternatives to resolve these types of disputes.<sup>49</sup> While the 20% recovery rate is not a firm target, it serves as a useful reference point.
87. As indicated in the Ministry's Cost Recovery Impact Statement to support the recent increase to fees in courts and tribunals,<sup>50</sup> the 2012 Fees Review framework provides a useful basis for considering future fee setting.
88. As these were developed with input from key stakeholders, including the judiciary, the Ministry considers that these remain relevant. As outlined in the framework, the established policy principles set for charging fees in courts and tribunals are:
- the cost of court and tribunals' services should be shared between taxpayers and users to broadly reflect public and private benefits of the service;
  - all relevant direct and indirect costs (both departmental and non-departmental) should be included in the base cost of a service;
  - fees should not be set at levels that preclude or significantly impede applicants commencing or continuing a meritorious claim. Fee waivers, concession rate fees, or exemptions may be appropriate to protect access to justice;
  - the user of a service should pay any fee, and judicial officers should have discretion to reallocate costs between parties;
  - fees should be structured simply, fairly, and efficiently; and
  - there should be consultation on major fee changes, and periodic fees reviews.
89. As there are both public and private benefits to using the Disputes Tribunal, it is reasonable to charge a fee for Tribunal users to partially recover these costs, with fees scaled to reflect the higher private interest in higher value claims. We propose to extend the existing fee structure by introducing a new filing fee tier that corresponds to the increased financial jurisdiction on the basis of the existing policy rationale.

## Section 2: Deciding on a new filing fee tier

### Cost Recovery Principles and Objectives

90. The 2012 Fees Review outlined that determining whether a particular fee constitutes a significant impediment to access to justice depends on the nature of a jurisdiction and its users. The following factors should influence whether a fee is prescribed, and the level at which it is set:

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<sup>48</sup> Regulatory Impact Statement on 2012 Civil Fees Review *Ministry of Justice*. pgs. 2-3. (<https://www.justice.govt.nz/assets/Regulatory-Impact-Statement-Civil-Fees-Review.pdf>). See also Treasury's Guidelines for Setting Charges in the Public Sector (April 2017) (<https://www.treasury.govt.nz/sites/default/files/2017-04/settingcharges-apr17.pdf>) and the Auditor-General's Setting and administering fees and levies for cost recovery: Good practice guide (August 2021) (<https://oag.parliament.nz/2021/fees-and-levies>).

<sup>49</sup> <https://www.treasury.govt.nz/sites/default/files/2013-05/ris-justice-cfr-may13.pdf>.

<sup>50</sup> Stage 2 Cost Regulatory Impact Statement on Increase to fees in Court and Tribunals (<https://www.justice.govt.nz/assets/Documents/Publications/Stage-2-Cost-Recovery-Impact-Statement-Fee-increases-for-courts-and-tribunals-April-2024.pdf>)

- *Likely users of the jurisdiction:* the individuals or entities who are likely to use particular services may be known or may be predictable. Knowledge about them and their financial resources should inform fee setting.
- *The accessibility of alternative means of resolution:* where a matter can only be determined by a court or tribunal and if alternative means of resolution are not available, the size of any fee may need to be limited.

91. In addition to the 2012 Fees Review framework, the Ministry also took into account guidance from the Treasury and Office of the Auditor-General around cost-recovery when setting our objectives for the recent review of court and tribunal fees in 2024.<sup>51</sup> We have evaluated our proposed new fee tier against the same objectives:

Icon	Objective	2012 Fees Review Framework criteria
	Effectiveness	Are resources allocated in a way that contributes to the outcomes being sought by the activity? Is the level of funding fit for purpose? Does it enable the cost recovered activity to be delivered to a level of quality that is appropriate for the circumstances?
	Simplicity	Is the cost recovery regime straightforward and understandable to relevant stakeholders?
	Equity	Have the impacts of the proposed or existing cost recovery regime been identified? Will stakeholders be treated equitably? Have impacts over time been identified?

#### Likely users of the Disputes Tribunal

92. Approximately half of all applications filed in the Disputes Tribunal claim \$5,000 or less.<sup>52</sup> We are aware that the majority of these lower value claims involve consumer contracts relating to goods and services. Contract claims make up 60% of the Tribunal's total caseload, which also includes the private sale of goods, building contracts, flatmate agreements, family loans and agreements and parking disputes. Neighbour disputes also make up 4% of total claims. About half of the Tribunal's caseload involves small to medium businesses, for example disputes relating to the provision of services by tradespeople. It is difficult to predict the types of claims that will be made if the financial jurisdiction is increased due to uncertainty around the nature and level of unmet legal need due to the justice gap.

#### The accessibility of alternative means of resolution

93. As discussed in Part A, a key issue which precludes many people from accessing civil justice is the high cost of taking a matter to the District Court. It is central to the Disputes Tribunal model that it remains accessible and cost effective to bring a low value claim to the Disputes Tribunal which can be efficiently resolved. This enables people to protect their rights where otherwise it would have been too expensive.

### The level of the proposed fee and its cost components (cost recovery model)

#### Proposed fee

94. We propose to introduce a new filing fee of \$468.00 for claims above \$30,000 and up to the new proposed financial jurisdiction of \$60,000.
95. The costs recovered from this new filing fee tier will mean Tribunal users with higher value claims meet a larger portion of the Tribunal's costs, both in terms of Tribunal's overall ongoing costs and the average cost per claim.

<sup>51</sup>Pp. 12-13.

<sup>52</sup>In 2023, 58% of claims sought a value of \$5,001 or less.



**Cost components**

96. The Tribunal’s costs are made up of both departmental costs which cover registry staff and associated operating costs, and non-departmental costs which consist of referee sitting fees (there is a Permanent Legislative Authority, or PLA, that applies for referee fees). As set out in Part A, there are one off and ongoing costs associated with implementing the \$60,000 jurisdiction increase which apply to both departmental and non-departmental costs. Although there is a PLA in place for the non-departmental costs, these are still met by the Crown and are factored into the total costs of the Tribunal in this section. One off costs of implementing Option 2 (the \$60,000 financial jurisdiction) are not factored in.

*Overall cost of operating the Tribunal*

- 97. With the current \$30,000 financial jurisdiction, the Disputes Tribunal cost approximately \$21,652,000 to run during the 2023/24 financial year.<sup>53</sup> Prior to the 1 July 2024 fee increases coming into effect, filing fee revenue amounted to \$1,319,000, meaning Tribunal users contributed 6% of the costs of running the Tribunal. The remaining 94% was met by the Crown.
- 98. The proposed fee is intended to meet some of the ongoing costs of implementing the financial jurisdiction increase to \$60,000 proposed in Part A (Option 2). As per the cost breakdown in Appendix 1, we estimate Option 2 will cost an additional \$2,523,000 annually. This means the Tribunal’s ongoing costs, accounting for the increased financial jurisdiction of \$60,000 are estimated to be approximately \$24,175,000.
- 99. Our analysis in Part A was undertaken on the basis of funding being made available to meet the increased cost to the Crown of the initiative. The proportion of costs met by the Crown and users under the existing filing fees compared to if the new filing fee tier were to be introduced is outlined in Table 2 below:

**Table 2: Proportion of estimated costs met by the Crown under the status quo compared to the proposed new filing fee tier**

	Total annual Disputes Tribunal costs	Total costs recovered though filing fees	Remaining cost to be met by Crown
Status Quo: \$60,000 jurisdiction + current fees (post 1 July 2024)	\$24,175,000	\$2,150,000 (9%)	\$22,025,000 (91%)
Fee Proposal: \$60,000 jurisdiction + new filing fee tier	\$24,175,000	\$2,584,000 (11%)	\$21,591,000 (89%)

100. The proposed filing fee is likely to recover a greater proportion of costs from users (11% compared to 9%). This means the remaining proportion of costs to be met by the Crown decreases with the proposed filing fee (from 91% to 89%). This is consistent with the cost recovery principle that Tribunal costs should be shared between the Crown and taxpayer to broadly reflect the public and private benefit.

*Average cost per claim*

- 101. As there are significant private benefits of bringing higher value claims, we believe it is justified to charge higher fees to file higher value claims. It then follows that where the private benefits are higher, the cost is still shared with the Crown, but greater emphasis is placed on a user pays option. This is the approach taken in the current fee structure where the cost to file a claim increases with the claim value.
- 102. Although complexity is not always tied to a claim value, anecdotal evidence suggests higher value claims are likely to be procedurally and/or legally complex, requiring

<sup>53</sup> <https://budget.govt.nz/budget/2024/by/dept/justice.htm> and <https://budget.govt.nz/budget/pdfs/estimates/v6/est24-v6-courts.pdf>.

additional hearing time and cost more<sup>54</sup> The staggered fee approach would mean that additional resourcing costs associated with higher value claims are met to a greater degree by the user, with less funding required from the Crown. The Crown would continue to subsidise a larger proportion of the operational costs associated with lower value claims. The cost offset by the proposed fee per claim band amounts to 3% of the average cost per claim for the lowest tier, and 27% for the higher tier.<sup>55</sup>

## Evaluation against the objectives

103. The Ministry evaluated the proposal against the following objectives:

103.1 **Effectiveness:** The new filing fee is expected to cover approximately 11% of costs required (see Table 2) with the remainder met by existing Crown funding. This appropriately balances the higher private benefit at higher values, while recognising a public benefit. While it is possible that a higher filing fee could be perceived as a barrier to accessing justice, in our view, this is unlikely to prevent claims over \$30,000 due to possibility of applicants recovering significantly more from their claim compared to the filing fee. As noted in Part A, a separate amendment is progressing to enable the claimant to claim the filing fee back if they are wholly or partially successful in a claim which may help mitigate any minor access to justice impacts. We consider the benefits of recovering a portion of the resourcing costs will mitigate the risks of the increased financial jurisdiction having a negative impact on the Tribunal's current service levels. To ensure the Tribunal is able to function effectively adequate resourcing is also required from the Crown. The way the Crown intends to manage this is set out in Part C: Implementation.

103.2 **Simplicity:** Introducing a new fee tier that only applies to claims between the current financial jurisdiction of \$30,000 and the new financial jurisdiction of \$60,000 is a straightforward change for registry staff to implement and for claimants to understand. The Ministry will provide clear information about the financial jurisdiction change and associated fee. The new fee is also consistent with the existing fee structure where each new tier effectively doubles the rate of the tier below it. \$468 is double the tier directly below it of \$232.

103.3 **Equity:** We consider it is equitable for the Crown to offset a greater proportion of the claim for lower value claims while the user funds more of a higher value claim. The private benefit to claimants with higher value claims (due to the potential to recover a substantial sum of money) increases compared to the (still applicable and consistent) public benefit of providing people with an accessible and effective forum through which they can protect their rights. This is consistent with the 2012 Fees Review framework which states, "variable ratios of recovery are appropriate and should be determined following consideration of the balance of public and private benefits".

104. In summary, we consider introducing a higher filing fee of \$468 for claims in excess of the current jurisdiction of \$30,000 and up to the proposed jurisdiction of \$60,000 is justified and appropriately balances the public and private benefits in terms of where the costs fall for users and the Crown. The proposed new fee is consistent with the intervals between existing fee tiers which are doubled<sup>56</sup> as they increase and will be simple for Tribunal users to understand.

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<sup>54</sup> Consultation with the judiciary, including the Principal Disputes Referee, indicated that higher value claims are more likely to be procedurally and/or legally complex than lower value claims. They are likely to require more resource to hear and manage. These figures are a total average of the cost to operate the Tribunal divided by the total number of claims and therefore do not account for the nuances of resourcing.

<sup>55</sup> Average cost per claim was calculated by dividing the total cost of the Tribunal by the number of claims in 2023/24. It does not account for differing resourcing needs between different types or values of claim.

<sup>56</sup> The exception is the difference between \$59 and \$117 which is just under double (double \$59 is \$118), however, it is clear through the previous fees that the intention is that they double the previous tier as they increase (i.e., \$45, \$90, \$180).



# Impact analysis

## What is the impact of the proposed fee? How many people, businesses etc. will be affected? What is the change in cost they will face?

- 105. As the proposed fee tier only impacts claims that exceed the current \$30,000 financial jurisdiction, it will not impact on the fees paid by applicants for claims up to \$30,000 who are already eligible to bring the full value of their claim to the Tribunal. If the financial jurisdiction is increased to \$60,000, we predict the higher fee will affect up to approximately 1850 applications.<sup>57</sup>
- 106. As noted in Part A, an estimated 500 claims annually under the current financial jurisdiction do involve some level of abandonment and pay the current top tier filing fee (\$234). Therefore, we expect a similar number may now bring the full value of their claim to the Tribunal. This proposal would impact on these applicants who would be required to pay the proposed higher fee.
- 107. Despite the potential increase in the filing fee for a small group of claimants who likely would have brought claims anyway, we believe there is still a net benefit as the successful party will be able to recover the entire value of a claim by paying the new filing fee, rather than being limited to recovering a portion of their claim and therefore, limiting their ability to resolve the civil issue in its entirety.
- 108. Section 14 of the Disputes Tribunal Act explicitly states that “a person may abandon so much of a claim as exceeds [the financial jurisdiction] in order to bring the claim within the jurisdiction of the Tribunal”, These applicants will be required to bring the entire value of the claim and will not have the option to abandon any value to strategically reduce their filing fee. This may have some implications for claims where the value is just slightly in excess of \$30,000 but we expect this impact to be small (in most cases, claimants abandon up to \$10,000).

## Impacts/risks on the regulator e.g., service performance risks

- 109. This cost recovery proposal will help to offset a portion of the costs associated with increasing the financial jurisdiction of the Disputes Tribunal. The implementation section in Part C addresses how the remaining resourcing requirements of this proposal will be managed. Due to the inability to accurately predict claimant behaviour and capture the amount of unmet legal need that a financial jurisdiction increase will address, our caseload and resourcing modelling are only broad estimates. A summary of the estimated net revenue from the new fee tier is set out in Table 3 below.

**Table 3: Projected annual cost recovery through filing fees at \$60,000 financial jurisdiction, comparing existing filing fee tiers to new filing fee tier proposal**

Year	Status quo: (\$60,000 jurisdiction + existing fees)	Proposal: (\$60,000 jurisdiction + new fee tier)
Costs recovered from \$59 filing fee	\$240,000	\$240,000
Costs recovered from \$117 filing fee	\$323,000	\$323,000
Costs recovered from \$234 filing fee	\$1,588,000	\$1,154,000
Costs recovered from NEW \$468 filing fee	N/A	\$868,000
Total estimated claims (excl. rehearings)	13,650	13,650
Increase in fees	<b>+\$434,000</b>	<b>+\$868,000</b>
<b>Total fees</b>	<b>\$2,150,000</b>	<b>\$2,584,000</b>

<sup>57</sup> Note: these figures are lower than the total number of additional claims predicted as they do not account for rehearings. This is because applicants are not required to pay a filing fee when making a rehearing application. This also does not include estimated higher fees paid for claims that currently abandon the value over the financial jurisdiction to fall within the new jurisdiction, that would subsequently be captured by the new fee tier (as explained in paragraphs 111-112). We have taken a cautious approach due to lack of certainty in the numbers involved.

## **To better mitigate the risks of the proposal in Part A in full, the Crown will need to fund the outstanding resourcing costs that cannot be met by the increase fee revenue**

110. Our modelling indicates that the costs recovered from the new filing fee will cover some of the departmental costs associated with the proposals, but other funding sources will be needed to meet the remaining ongoing and one-off implementation costs. As is consistent with the principles of cost recovery outlined in this Part, it is appropriate that the Crown ensure the remaining resourcing costs of the financial jurisdiction increase are met due to the public benefit of the Disputes Tribunal. The way the Crown intends to manage this is set out in Part C: Implementation.

## **Expected effects on demand for services**

111. If the financial jurisdiction is increased as set out in Part A, we expect to see an increase in additional claims made to the Disputes Tribunal. While it is possible that a higher filing fee could be perceived as a barrier to accessing justice, in our view, this is unlikely to prevent claims over \$30,000 from being made. Rather, the benefits of recovering a portion of the resourcing costs will mitigate the risks of the increased financial jurisdiction having a negative impact on the Tribunal's current service levels. We also note that proposed amendments to enable the claimant to claim the filing fee back if they are wholly or partially successful in a claim may help mitigate any minor access to justice impacts.

## **What is the evidence that the cost recovery arrangements are reasonable?**

112. Many of the access to justice benefits of the Disputes Tribunal stem from it being a cheaper and faster alternative to resolve disputes than the District Court, particularly for claims falling in the justice gap. Therefore, an average cost comparison of taking a claim to the Disputes Tribunal compared to District Court is the measure used in previous Regulatory Impact Analysis to determine if the cost recovery arrangements are reasonable.<sup>58</sup>
113. We have calculated the cost of legal fees based on the appropriate daily recovery rates for a Category 1 civil proceeding in the District Court.<sup>59</sup> These are the types of proceedings that are most likely to be appropriate to bring to the Disputes Tribunal. As a result, this calculation does not represent the average cost of taking a matter to the District Court – this accounts for a very simple matter with minimal legal costs associated for the purpose of indicating that even if the applicant is successful, the costs they are required to absorb still exceed the cost of taking a matter to the Disputes Tribunal.
114. As indicated in Table 4, a straightforward, Category 1 short trial proceeding would cost the applicant significantly more than the fee we are proposing to introduce (\$468) even if the litigant was self-represented. With the Crown continuing to cover approximately 89% of the operating cost of the Tribunal and the possibility that a successful applicant will have their filing fee costs covered, we believe the proposed recovery arrangements are justified and uphold the access to justice benefits of the Tribunal.

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<sup>58</sup> See page 4: <https://www.treasury.govt.nz/sites/default/files/2017-01/ris-justice-imc-aug17.pdf>

<sup>59</sup> The calculation assumes proceedings are short and straightforward and account for one judicial conference, a one day hearing conducted by junior counsel, minimal preparation time, no interlocutory applications, no costs to enforce the judgment and no costs for service by a third-party. Daily recovery rates set out the cost of legal fees that a successful party may claim at the conclusion of proceedings. The assumption is that the daily recovery rate covers two thirds of total reasonable legal costs incurred in a full day. Category 1 rates apply for straightforward proceedings that can be conducted by junior counsel.



**Table 4: Estimated cost of taking a claim to the District Court (one day hearing time)**

Item	Court fees (\$)	Legal costs (\$) <sup>60</sup>
Prepare statement of claim		1429
District Court filing fee	260	
Filing notice of proceeding		476
Filing and serving memorandum in anticipation of judicial conference		381
Appearance at judicial conference		572
Trial preparation		953
District Court scheduling fee	1170	
Appearance at hearing (one day)		1905
District Court hearing fee for one day (2 x half day hearing fee)	2340	
Sealing order or judgment		381
District Court fee for sealing application	65	
<b>TOTALS</b>		
Excl. GST	NA	6096
GST incl.	3835	7010
<b>Total costs (incl. GST)</b>	<b>10845</b>	
Eligible to recover if successful	8509	
Ineligible to recover	2337	

## Consultation

115. Although targeted consultation has been undertaken with the judiciary on the financial jurisdiction no consultation has been undertaken on the filing fee due to the constraints addressed in the cover sheet. The Rules Committee did not consult on the filing fee as part of its recent access to justice report.
116. In late 2023, the Ministry undertook consultation with Community Law Centres Aotearoa, the Citizens Advice Bureau and Disputes Tribunal referees relating to a proposal to enable the Tribunal to award the filing fee back to a wholly or partly successful applicant. At that time, these stakeholders indicated that filing fees can be seen as a barrier to accessing justice for low value claims (particularly below \$200), however, we note this consultation was concerned with the existing financial jurisdiction and filing fee tiers. While it is helpful to note that there are access to justice concerns related to the filing fees, we have distinguished these from the new higher value claims that will be newly eligible to be heard in the Disputes Tribunal.

## Conclusions and recommendations

117. The Disputes Tribunal currently costs approximately \$21,652,000 to operate. At present, approximately 6% of costs are met by users through filing fees and 94% is met by the Crown. This reflects the balance between public and private interest, where users are provided with a forum to protect their rights which upholds the rule of law, while enabling them to recover financial losses for private benefit.
118. If the financial jurisdiction of the Disputes Tribunal is increased under Part A, there will be additional ongoing costs of an estimated \$2,523,000 (excluding the one off implementation costs). We recommend that if the financial jurisdiction is increased to \$60,000 a new \$468 filing fee to cover all new applications filed above the existing

<sup>60</sup>This was calculated by taking the 2/3 recovery rate from Schedule 5 of the District Court Rules for a Category 1 proceeding (\$1,270) and calculating the rate for a full day (\$1770). This daily value was multiplied by the time allocations for different activities in line with a Category 1 proceeding as set out in Schedule 4 of the District Court Rules.

Disputes Tribunal financial jurisdiction of \$30,000 up to \$60,000 should be implemented.

119. The new fee tier will increase the overall proportion of costs recovered from users to 11%, with the remaining 89% to be met by the Crown. This reflects the higher private interest in higher value claims and is consistent with the 2012 Fees Review framework principles for cost recovery agreed by Cabinet in 2013. There will be a remaining shortfall of \$2,089,000. The implementation section in Part C addresses how the remaining resourcing requirements of this proposal will be managed.



## Part C: Delivering an option

### How will the new arrangements be implemented?

#### Amendments to primary legislation

##### *Disputes Tribunal financial jurisdiction*

120. The option that has been presented in the Cabinet paper (Option Two - \$60,000) requires amendments to the Disputes Tribunal Act 1988 to increase the financial jurisdiction provided for in section 10 of the Act. Consequential amendments will be needed to other statutes that make reference to the financial jurisdiction of the Disputes Tribunal which may include Consumer Guarantees Act 1993, Contract and Commercial Law Act 2017, Credit Contracts and Consumer Finance Act 2003, Fair Trading Act 1986, Fencing Act 1978, and Retirement Villages Act 2003.

##### *Filing fee tier*

121. To introduce a new fee tier, rule 5(1) of the Rules will need to be amended. This will involve inserting the new fee tier following rules 5(1)(a)-(c) which currently set out the three existing fee tiers. As secondary legislation, and as per section 60(1) of the Disputes Tribunal Act, the Rules can be made by Order in Council. However, as the fee changes will be implemented in parallel to the financial jurisdiction change in primary legislation, it is also possible to amend the Rules through the same amendment bill that will introduce the financial jurisdiction change. This method was used in 2018 when the Tribunals Powers and Procedures Legislation Act 2018 amended both the financial jurisdiction of the Disputes Tribunal and amended the level of the fine payable under rule 18(1) of the Rules making the fee change and financial jurisdiction change through an amendment bill will be more efficient and transparent than having two separate processes.

#### Transitional arrangements

122. [S9\(2\)\(f\)\(iv\)](#)

123. [S9\(2\)\(f\)\(iv\)](#)

124. As the new filing fee will only affect claims that become newly eligible to be filed in the Disputes Tribunal, the new fee tier will come into effect concurrently with the financial jurisdiction change. No changes are proposed to the fees for claims under the existing \$30,000 financial jurisdiction so transitional provisions regarding fees are not required.

#### Ministry of Justice's implementation activities

125. To enable claims to be filed that exceed the existing financial jurisdiction of \$30,000 with a new filing fee able to be paid, changes will be required and will take approximately three months to implement post enactment.

126. Software changes: Tribunal Case Management (TCM) is the online form through which applicants file claims in the first instance. TCM currently requires applicants to enter

their claim value and bars applications from proceeding if the amount claimed exceeds the \$30,000 financial jurisdiction. Applicants also file and pay through TCM. Therefore, TCM will need to be updated to change the claim amount limit rules on forms; reflect the new fee tier; and enable the new fee to be charged.

127. Non-software implementation activities: Other implementation activities to amend the financial jurisdiction and fee structure will be undertaken. The Ministry will identify and amend references to the existing financial jurisdiction and fee structure on all physical and digital media maintained by the Ministry of Justice, for example, on the Ministry's public website, paper forms, intranet guides for staff, and brochures and pamphlets. The Ministry will advise internal and external stakeholders of the change, asking them to update any material they hold.

### **Further resourcing, beyond what can be recovered through a filing fee is required to maintain the Tribunal's efficiency**

128. While the new filing fee tier outlined in Part B will meet some of the resourcing needs, the remaining resourcing costs will need to be met to ensure the initiative has the intended impacts. These resourcing shortfalls are:
- Year one: \$2,327,000
  - Ongoing: \$2,089,000
129. As outlined in the limitations section, there is an assumption underlying our analysis that the resourcing requirements of this proposal can be met through Crown funding. An adequately resourced judiciary is essential to the efficient administration of justice, upholding the rule of law and maintaining public confidence. Substantially increasing the financial jurisdiction of the Disputes Tribunal without adequate resourcing could lead to significant delays and backlogs and undermine the credibility of the judiciary.
130. As it is difficult to predict the expected increase in claims, we cannot estimate the resourcing and additional costs required with absolute certainty. We anticipate demand will slowly increase as people become aware and confident in taking higher claims to the Disputes Tribunal. As such, there are some costs that will need to be covered straight away, and others that can be funded more gradually as the number of claims filed increases. For example, we expect new referees will need to be brought onboard when the existing pool of referees reaches capacity. This means resource can likely be phased over the first 12 months following enactment, with the Ministry utilising existing resource to the extent possible in the first instance. However, if the demand far exceeds estimates and available resourcing then this could result in the Disputes Tribunal taking longer to resolve claims.
131. The Cabinet paper proposes to manage funding requirements by introducing a new filing fee tier for all claims filed under the new financial jurisdiction from \$30,001 to \$60,000, and the Ministry absorbing all remaining costs through reprioritising departmental funding.

### **How will the new arrangements be monitored, evaluated, and reviewed?**

132. In its regulatory stewardship capacity, the Ministry monitors the efficacy of the Disputes Tribunal Act. As part of our annual reporting, the Ministry captures data on the number of claims filed, the claim value, and the time to disposal which may aid in evaluating whether the arrangements are increasing access to justice by enabling more claims to be heard and resolved, as well as monitoring timeliness. The Tribunal strives for a target to dispose of claims within 3 months and to process applications within 6 days. These are reported on annually as part of the Ministry's annual report.
133. The estimated and actual costs of operating the Tribunal are published in the Vote Courts budget appropriation document. Although it has not been included in our implementation costings as it is out of scope of our project, consideration will be given to whether data can be gathered in the future on the level of abandonment involved in claims.



## Appendix 1: Cost breakdown of implementing Option 2 (\$60,000 increase)

Ongoing Departmental	
Court Registry Officer	\$570,000
Central Processing Officer	\$214,000
ACC & Superannuation	\$39,000
Publishing Advisor	\$89,000
ACC & Superannuation (Publishing)	\$4,000
Disputes Referee – Flights	\$132,000
Standard Ongoing Provision (Training)	\$9,000
Computer Support (Digital Foundation) - OSD	\$146,000
Overheads <sup>61</sup>	\$214,000
Depreciation & Capital Charge	\$26,000
<b>TOTAL ONGOING DEPARTMENTAL</b>	<b>\$1,442,000</b>
One Off - Departmental	
Senior Advisor	\$30,000
ACC & Superannuation	\$1,000
Recruitment - advertisement	\$10,000
Standard Induction	\$4,000
TCM system changes - financial jurisdiction	\$2,000
TCM system changes - new filing fee tier	\$4,000
Capital	\$90,000
<b>TOTAL ONE OFF DEPARTMENTAL</b>	<b>\$141,000</b>
Ongoing - Non Departmental [PLA]	
Disputes Tribunal Referee sitting fees	\$1,080,000
<b>TOTAL ONGOING NON DEPARTMENTAL</b>	<b>\$1,080,000</b>
One Off - Non Departmental [PLA]	
Disputes Tribunal Referee - Mentor Hours	\$98,000
<b>TOTAL ONE OFF NON DEPARTMENTAL</b>	<b>\$98,000</b>
TOTALS	
Total ongoing costs	\$2,523,000
Total one off costs	\$239,000
<b>TOTAL YEAR ONE COSTS (in addition to ongoing resourcing)</b>	<b>\$2,761,000</b>
Filing fee revenue and shortfalls	
Estimated revenue from new filing fee tier only	+\$868,000
Total estimated filing fee revenue (including proposed filing fee tier)	+\$2,584,000
<b>Resourcing shortfall (Year One)</b>	<b>-\$2,327,000</b>
<b>Resourcing shortfall (annual ongoing)</b>	<b>-\$2,089,000</b>

<sup>61</sup> Overheads generally covers all indirect corporate back-office costs that are not directly attributable but are necessary for the overall operation of the Ministry. These costs typically include finance costs, HR costs, IT support costs, utilities, rent, insurance, and other professional costs.