

# Regulatory Impact Statement

## Tribunal Enhancements:

### Agency Disclosure Statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Justice. It provides an analysis of options to improve the efficiency of 29 Ministry of Justice administered tribunals<sup>1</sup>.
2. The following are constraints in the regulatory impact analysis:
  - Assumptions have been made in relation to the costs of the new Accident Compensation Appeal Tribunal. The Ministry has considerable experience in undertaking this analysis, but figures are still indicative based on assumptions on:
    - The future caseload and impact of Accident Compensation Corporation policies
    - How many cases will remain in the backlog when the new tribunal is established and will require temporary additional resource
    - The number of judicial members and staff that are needed
    - The uptake and impact of the new powers in improving case throughput
    - The impact of operational improvements occurring in parallel
    - The project costs.
  - We do not have reliable data to assist in considering a number of the small proposals for new tribunal powers, such as how many cases would have been better dealt with on the papers, or should have been struck out, if these powers were available. Anecdotal evidence and analysis of comparable tribunals has been used in these instances.
  - For the small proposals, it is difficult to quantify the additional costs or savings because we cannot definitely ascertain how the policy will influence tribunal users and judicial officers. But overall, the proposals facilitate business change and allow tribunals to work differently without costing any more.
  - Key stakeholders have been consulted on specific proposals. Public consultation on the full proposals would have been a preferred approach but we were time constrained due to the intended introduction date. In mitigation, the majority of the proposals are small efficiency changes and the tribunals examined have small stakeholder communities and the targeted approach to consultation is likely to have captured the majority of views.
  - None of the policy options discussed is likely to impose additional costs on businesses or impair private property rights, market competition, or the incentives on businesses to innovate and invest. Nor should any of these proposals override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines).

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26 March 2014

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<sup>1</sup> For the purpose of this paper, the term 'tribunal' is used to describe the 29 quasi-judicial adjudicative tribunals, authorities and DC registries administered by the Ministry of Justice. This does not include the Waitangi Tribunal. The Ministry administration of tribunals includes operational, administrative and legal and research support.

## Introduction

1. In 2013, the Minister for Courts requested the Ministry of Justice to provide advice on ways to improve the user experience and efficiency of tribunals administered by the Ministry.
2. Tribunals, authorities and committees supported by the Ministry are expert forums for hearing and resolving disputes on facts and/or law. The types of issues they cover are extensive. Attached in Appendix 1 is a table containing background details on the role and workload of each tribunal.
3. Good progress has been made since a review of tribunals by the Law Commission in 2004 in improving the operation of the tribunal system predominately through a series of operational initiatives. However, there are still opportunities to make further improvements by modernising the law. This will help facilitate further quality and timeliness improvements, as well as improved access and cost savings.
4. The proposals cover a range of measures to address key issues raised by tribunal members and Ministry of Justice analysis. This especially includes the tribunals that have the highest average age of cases on hand, such as the Legal Complaints Review Officer (LCRO) and two accident compensation appeal jurisdictions.
5. The proposals continue to support tribunals being the first option for quick, informal and fair decision-making at low cost without the need for court intervention. Providing trusted low cost resolution options contributes to the overall modernisation and efficiencies of the court system, which is a particular focus of government. Modernisation is also about maintaining public confidence in the tribunal system.
6. This paper assesses the following proposals:
  - Structural changes:
    - Improving the cost and speed of accident compensation appeals by merging of the two accident compensation appeal jurisdictions.
  - Generic practice and procedure powers:
    - improving the efficiency of tribunals by more wide spread inclusion of the power to strike out an application or appeal
    - speeding up decisions on minor matters through the inclusion of the power to consider matters on the papers, if appropriate
    - ensuring sensitive information is suitably protected – through the inclusion of suppression order powers and offence/penalties.
  - Tribunal specific improvements – to:
    - provide for open and transparent motor vehicle disputes hearings in the Motor Vehicle Disputes Tribunal (MVDT)
    - improve the efficiency of the Real Estate Agents Disciplinary Tribunal (READT)
    - provide fairer opportunities for companies and people with minor convictions to sell second hand goods – through new powers for the Licensing Authority of Secondhand Dealers and Pawnbrokers (LASDP)

7. The status quo, problem and analysis are set out for each of these topics. The Cabinet paper considers a number of other proposals which are not included in this RIS because they have either been the subject of another RIS as part of the Judicature Modernisation Bill or do not require a RIS.

## Objectives

8. The Government is focussed on developing a modern, accessible and people centred tribunal service. To contribute to this overarching goal, objectives have been identified to assess proposals against, as follows:
  - Convenience for users and access to justice
  - Low cost for users and government and improved efficiency/fit for purpose
  - Speedy decision-making
  - High quality decision-making process.
9. Tribunals share many common characteristics, despite the varied functions they undertake. Part of this review is trying to standardise tribunal powers, where appropriate to do so. For instance, variations may be appropriate where the tribunal is already operating efficiently, has a small workload or the power does not suit the nature of its business.
10. One of the other themes in this review is ensuring tribunals operate consistent with the presumption of open justice – which aids transparency and public confidence in the tribunal system.

## Improving the administration cost and speed of accident compensation appeals

### Status quo and problem

11. Two jurisdictions currently consider the same type of accident compensation appeals but under quite different, sometimes inconsistent, legislative processes. The Accident Compensation Appeals District Court Registry (DC Registry) hears claims made under the Accident Compensation Act 2001. Cases are heard by a District Court Judge. The Accident Compensation Appeal Authority (the Authority) hears appeals under the repealed Accident Compensation Acts 1972 and 1982. Cases are heard by a one member authority.
12. The number of appeals received annually by both jurisdictions exceeds the number being resolved and the age of cases is quite high and rising. For example, cases before the DC Registry, which receives the majority of the accident compensation appeal cases, have an average age of 695 days<sup>2</sup>. The Social Security Appeal Authority (SSAA), which is comparable decision-making body, has an average age of cases of 188 days. The reasons for the high number in the accident compensation jurisdiction includes:
  - the lapse of time before submissions are received from applicants

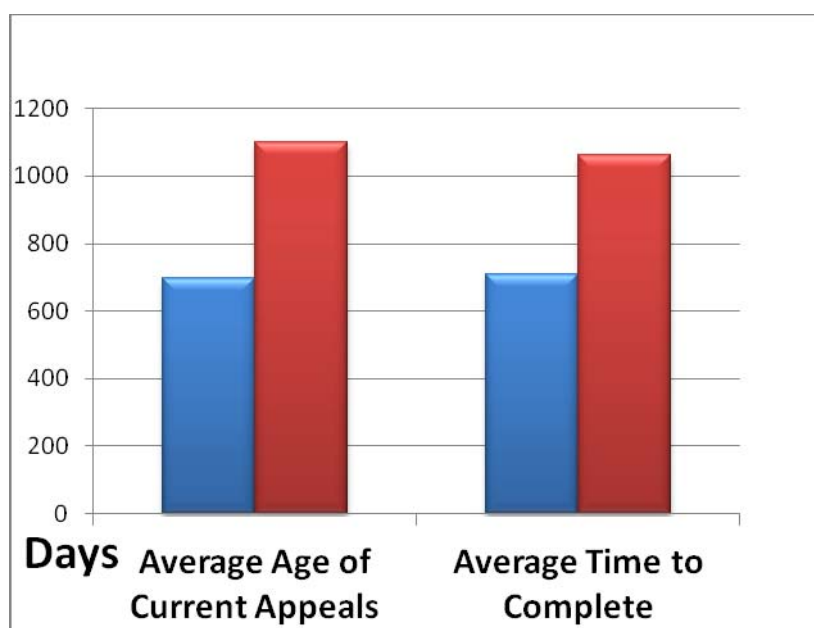
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<sup>2</sup> All figures quoted in this paper are calendar days and as at 1 December 2013, unless stated otherwise

- the number of District Court judges allocated to the jurisdiction can vary according to District Court priorities rather than based on volumes in the tribunal.

The average age of appeals will continue to increase if no change is made. It is estimated that at current rates the average age would rise to 1100 days by 2018.

13. The cost of the appeal process to government is very high and rising. For instance the cost per case comparison between the DC Registry and SSAA for the year to 30 June 2012 was \$1,910 per case of DC Registry as compared to \$1,472 for the SSAA.
14. The average time to complete an appeal for the combined jurisdictions is also predicted to increase from the 2012/13 level of 709 days to 1064 days in 2017/2018.



**Graph: Age of Cases as at 30 June 2018 against 30 June 2013**

15. The legislation is prohibiting some improvements being made because it has not kept pace with best practice. For instance, there is no provision for minor matters to be considered on the papers, where appropriate.

#### **Regulatory Impact Analysis**

16. Four options were considered.

A: Status Quo

B: Operational improvements, such as improved computer systems with better data capture/analysis and more judicial and staff resources

C: Legislative change to transfer all cases to the District Court Registry. Transferring all cases to the one member Authority was not considered as this model is not working efficiently.

D: (Preferred) Legislative change to merge the two current jurisdictions into a new tribunal, with features based on comparable models, the Law Commission's review and operational

improvements, as above. Additional funding would be applied in the short term to remove the backlog of cases.

We did not consider the option of additional transition funding to remove the backlog for any other option – as it was only cost effective for the new model which would be cheaper in the long term when decision-makers are lawyers rather than judges.

The new tribunal would include features of a modern, best practice tribunal. It would:

- be led by a full time Chair with clear leadership responsibilities, including the orderly and efficient operation of the business and consistent and quality decision-making processes
- comprise 8-10 part time members, spread based on historical case load and geographical regions, paid for work undertaken
- have cases heard by one member, who is a barrister or solicitor of the High Court with seven plus years' experience. That person may also have specific technical knowledge of accident compensation matters.
- hear matters on the papers, where appropriate, subject to interests of justice considerations
- produce an annual report
- maintain the same level of appeal rights and legal aid opportunities.

The tribunal will also have new powers over and above the existing two jurisdictions, such as:

- the inclusion of statutory timeframes, which apply both for the appellant and ACC, for lodging applications and submissions – to help improve case throughput
- the power to regulate procedures and issue practice notes
- the power to make and enforce suppression orders
- a \$30 filing fee (which has policy approval for the existing accident appeal jurisdictions and will be confirmed in legislation for the new tribunal)
- the clear ability to strike-out cases, where appropriate.

Under this option, additional resource would be applied in the transition to address the backlog of cases and enable the new tribunal to achieve target timeframes of 250 days for case completion.

		Merger of 2 Accident Compensation Appeal Jurisdictions			
		A Status quo	B Status quo, with some non-legislative change	C All cases to District Court	D New tribunal
Objectives	Convenience/ user experience	Increasingly inconvenient as timeframes increase.	Increasingly inconvenient as timeframes increase if no additional resource secured on an ongoing basis.	There are often unrepresented appellants and the informal Tribunal model may better suit. Timeframes will not improve.	Clearer process – as one tribunal. Speedier process. Modern. Consistent. Appeal rights remain the same.
	Cost/ Efficiency/Fit for purpose	Costs to government will continue to be high per case.  Costs to parties remain the same under all options.  Volumes are slightly on the decline through ACC putting more emphasis on solving issues before they reach review and the Tribunal and its staff ensuring cases meet necessary criteria. However, this on its own will not make enough change to costs and time.	Costs to government will continue to be high per case and rise if more Judges are able to be provided. 3.5 full time judges are needed to meet current demands. This number has only ever been available for short periods.  Further funding would be required for technology change.  Costs to parties remain the same under all options.	Costs will continue to be high.  The nature of cases is more appropriate for tribunals: large number of matters disputed on the facts, rather than law.  Further call on District Court judge resources.  Costs to parties remain the same under all options.	Estimated annual savings of \$0.400 million <sup>3</sup> to ACC per year once backlog of cases is cleared.  Frees up at least 2 full time judges for District Court work.  Costs to parties remain the same under all options.  Cases do not warrant Judge as decision-maker – so more fit for purpose.  The implementation costs are more than offset by the savings.
	Timeliness	Increasing delays to resolution. Risk judges will be assigned to higher priority court matters.	Increasing delays to resolution.  Unlikely would secure additional judge time.	Continue to run the risk of limited judicial resource and long timeframes. More work for District Court – does not align with government's strategic objectives.	Improved timeframes through new tribunal model. Target of 250 days average time to decision – down from 700. Even if this is not fully met, it will still be far quicker than existing model.
	Quality decision-making processes	No change	Small improvements through technology change possible.	Judges as decision-makers may create the perception of better decisions, robustness and confidence.	Allows one specialist body – with dedicated members and clear leadership. Chair will provide for consistency in decision-making. Tribunal model now well established.

<sup>3</sup> This is based on a comparison of the costs to ACC in 2012/13 of \$1.537 million and the projected steady state costs of the new tribunal in 2018/19 of \$1.097 million

	Merger of 2 Accident Compensation Appeal Jurisdictions			
	A Status quo	B Status quo, with some non-legislative change	C All cases to District Court	D New tribunal
Conclusion	Does not meet objectives	Does not meet objectives	Does not fully meet objectives	Meets objectives

## Strike out powers

### Status Quo and Problem

17. In common with Courts, tribunals can occasionally experience problems with parties who either wilfully fail to comply with tribunal processes causing additional costs and delays or who are vexatious.
18. The usual power to address this (a strike out power) is not available in all tribunal legislation. This power is not considered necessary for all tribunals as some matters must be heard or for some matters there are no hearings. However there are other tribunals where the power is absent because the legislation is outdated and has not kept pace with best practice or it is only partially provided for.

### Regulatory Impact Analysis

19. A proposed strike out power has been developed based on the powers in the District Court and other tribunal legislation in a manner<sup>4</sup> that is designed to not inhibit access to justice, as follows:

This generic proposal will be adapted to suit the nature of each Tribunal's business- i.e. whether appeal, application or review is being considered - Empower the tribunal to at any time dismiss an appeal/application or review or part thereof if it is satisfied that the appeal/application or review:

- a. discloses no reasonable cause of action;
- b. is likely to cause prejudice or delay;
- c. is frivolous or vexatious;
- d. is otherwise an abuse of process of the tribunal.

Where a party is neither present or represented at the hearing of an appeal/application or review, empower the tribunal to:

- a. determine the appeal/application or review in the party's absence; or
- b. adjourn the appeal/application or review; or
- c. strike out the appeal/application or review.

<sup>4</sup> This is similar to the provisions for the Customs Appeal Authority, Human Rights Review Tribunal and Immigration Protection Tribunal in terms of the power to dismiss an appeal if it is satisfied the appeal is frivolous or vexatious.

20. Strike out provisions are always used sparingly and occur typically when matters are not being pursued. The risk of further litigation by way of appeal is therefore minimal. Appeal rights will remain the same.
21. A case by case assessment was undertaken of each tribunal to determine if the power was appropriate. This analysis included whether the tribunal already had sufficient powers and the nature of its business. For instance, the power is not suited where tribunals already have their cases referred to them for consideration by another body or they are solely issuing licences and certificates. Some tribunals were found to have limited powers which require extension to the generic set. The following tribunals are proposed for change:
- Lawyers and Complaints Review Officer (LCRO)
  - Real Estate Agents Disciplinary Tribunal (READT) – for appeals and review but not for hearing and determining cases referred by Real Estate Agents Authority
  - Customs Appeal Authority (extend current provisions)
  - Social Security Appeal Authority
  - Taxation Review Authority – clarify existing provisions
  - Copyright Tribunal
  - Disputes Tribunals
  - Human Rights Review Tribunal (extend current provisions)
  - Motor Vehicles Disputes Tribunal
  - Tenancy Tribunal (extend current provisions)
  - Weathertight Homes Tribunal. (clarify existing provisions)
22. The only options considered were the status quo or legislative change to empower the tribunals listed above to strike out cases (the preferred option). If the status quo remains, tribunals will continue to experience unnecessary additional cost and time delays. This will not meet the review criteria. The option of providing this new power to the named tribunals will meet the review criteria as it will improve customer service through fair and consistent practice across tribunals and timely decisions. It will also reduce some administration costs.

## Speeding up tribunal decisions for minor matters through use of ‘Hearings on Papers’

### Status Quo and Problem

23. Tribunals are given the express power to hear cases in person or on papers, or a mix of both. There are times when no party or witness wants or needs to be present because of the nature of the matter and it could be dealt with by a member based on written evidence. This is particularly relevant in the:
- Occupational and industry regulation tribunals when issuing licences and certificates and
  - Administrative review tribunals when reviewing another body’s decision



24. However, some tribunal legislation does not provide for such matters to be 'heard on the papers' which can create additional costs and delays if this is a requirement when the matter is minor or parties do not wish to be present. In most instances because of natural justice principles it is appropriate for parties to agree to the matter being dealt with on the papers.

### **Regulatory Impact Analysis**

25. Where significant rights are at stake there should in general be the opportunity for an oral hearing. Oral hearings are likely to be required where a person's credibility is at issue or where the nature of the fact finding task requires it. "In person" hearings may also provide a sense of increased fairness and openness, as parties are able to present their case and response to the other party.
26. Based on advice from Tribunal Chairs and Ministry tribunal staff, the following tribunals do not have the appropriate discretion to hear on the papers and are recommended for change.

### **Occupational and Industry Regulation Tribunals**

- The Private Security Personnel Licensing Authority (PSPLA) has the ability to hear applications on the paper but it has no ability to hear complaints about businesses and individuals working in the private security and private investigation industry on the papers. As long as both parties agree, and the PSPLA considers it has sufficient information, there is no reason to require a hearing.
- The LCRO is an independent reviewer of decisions made by the Standards Committees on complaints against lawyers and conveyancers. The LCRO is funded through levies from the New Zealand Law Society and the New Zealand Society of Conveyancers. It is a fairly new regime, but is experiencing significant backlogs of work, many of which are administrative matters. Under the Act, the LCRO's reviews are required to be as informal, straightforward and expedient as possible, while giving proper consideration to natural justice, the process of the review itself and the law. The current process is not allowing it to be efficient. The LCRO has the power to consider matters on the papers by consent of the parties, but consent by the parties is rarely given<sup>5</sup>. It is therefore proposed that the tribunal be able to hear matters on the papers when the LCRO considers it appropriate, without the consent of the parties. It will however be accompanied by the opportunity for parties to respond to the LCRO's intention to hear a matter on the papers.
- All other tribunals in this category have the ability to hear matters on the papers (or must hear on the papers) apart from the Lawyers and Conveyancers and Real Estate Agents Disciplinary Tribunals where hearings must be held in public, unless the matter needs to be held in private.

### **Administrative Review Tribunals**

- The Social Security Appeal Authority hears matters on the papers currently, in line with the intention of the Act. The wording of the legislation is however unclear and is proposed for clarification.
- All other tribunals in this category have the ability to hear matters on the papers (or must hear on the papers) apart from the Taxation Review Authority where hearings

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<sup>5</sup> Approximately 50% of all claims waiting for an in-person hearing have been offered the option of "On-the-papers" and have declined.

must occur and are closed because of the nature of this tribunal's business.

27. The only options considered were the status quo and legislative change to empower the specific tribunals above the power to consider matters on the papers. The status quo will not meet the review objectives because additional costs and delays will continue.
28. The option of hearings on the papers will meet the objectives of speedy, low cost decisions. The inclusion of this power will not affect the quality of the decision-making process because tribunals will still request an oral hearing if further information is needed or it is appropriate for parties to be present. It will be more convenient for users not to attend a hearing if they agree it is not necessary. The exception is LCRO where it is not by agreement. The preferred option is to make legislative change, as above.

## Ensuring sensitive information can be suitably protected-through the inclusion of suppression order powers and offence/penalties

### Status Quo and Opportunity

29. Tribunals have varying legislative abilities to suppress information and ensure it is not published. Occasionally some tribunals encounter problems when they do not have sufficient powers to ensure sensitive private or commercial information is not published. There is a risk that this will become an increasing issue with the move towards more tribunals having hearings open to the public, decisions being publicly available and the increasing use of social media. Suppression can be needed for information that is disclosed at a hearing and/or documents before the tribunal.
30. Enforcement powers usually accompany the power to issue a suppression order. Again the legislation is inconsistent in this regard. While it would be rare for this power to be used, it is important that such orders can be enforced if the breach is significant. The threat of enforcement is also a deterrent.
31. It is recommended that all tribunals have suppression powers. Based on a case by case assessment of tribunal legislation, the following tribunals were found to either not have any or have insufficient suppression powers.
  - Immigration Advisers Complaints and Disciplinary Tribunal
  - Legal Complaints Review Officer (adding offence and penalty only)
  - Licensing Authority of Secondhand Dealers and Pawnbrokers
  - Private Security Personnel Licensing Authority
  - Real Estate Agents Disciplinary Tribunal (adding offence and penalty only)
  - Customs Appeal Authority (adding offence and penalty only)
  - Immigration Protection Tribunal (broadening the power and including offence and penalty)

- Legal Aid Tribunal
- Review Authority
- Social Security Appeal Authority (increasing penalty from \$100 to \$3000)
- Victims Special Claims (adding offence and penalty only)
- Motor Vehicle Disputes Tribunal
- Tenancy Tribunal (adding offence and penalty only)
- Weathertight Homes Tribunal (adding offence and penalty only).

### Regulatory Impact Analysis

32. The options considered were the status quo or providing these tribunals with the power to make a suppression order and for their legislation to provide for a conviction to a fine of up to \$3,000 for breach of any order, consistent with comparable provisions in other tribunal legislation. Any fines that are imposed will be subject to the collection and enforcement provisions of the Summary Proceedings Act 1957.
33. Legislative change is the preferred option. Tribunals need the ability to ensure that parties have trust and confidence that sensitive information can be disclosed where it is needed to help arrive at a fair resolution, while at the same time knowing it will be kept secure. The onus will be on the tribunals to balance this against the presumption of open justice and the public interest in the matters at hand and the legislation would particularly note these as criteria the Tribunal should consider.
34. The level of penalty also varies in legislation for no apparent reason. Up to \$3000 has been chosen because it is consistent with comparable provisions in other tribunal legislation. While a higher penalty could be considered appropriate when compared to the money publishers can make, the reforms are aiming for consistency wherever possible and a high penalty would not be appropriate in some tribunals.
35. The inclusion of suppression powers and offence/penalty meets the criteria of increased convenience for users at no additional cost. Decision-making processes are also enhanced through the availability of these powers if needed. Any additional enforcement costs and legal aid are considered to be very minor given the past history of enforcements in this area. The status quo will leave the risk of sensitive information being disclosed because the tribunal did not have the power to protect it – or decision-making is compromised because this information is not brought to their attention because of its sensitivity.

## Providing for open and transparent motor vehicle disputes hearings

### Status Quo and Opportunity

36. The Motor Vehicle Disputes Tribunal is the only remaining inter-partes disputes tribunal that requires hearings to be held in private. Cabinet has recently agreed that the Disputes

Tribunal hearings should be open to the public in certain circumstances. [CAB Min (13) 43/13] This category of tribunal is of particular interest to the public as it involves matters in disputes between citizens or citizens and businesses. It also does not align with the presumption of open justice to keep these hearings in private. While the pool of people that might be interested in these proceedings is small, having open hearings would present an opportunity for the public to learn about the types of matters handled. The Motor Vehicle Disputes Tribunal decisions are already publicly available.

### **Regulatory Impact Analysis**

37. The options considered were to retain the status quo or legislative change to provide for the Motor Vehicle Disputes Tribunal hearings to be open to the public, unless the tribunal considers otherwise. As a general principle, public access to hearings aids transparency and enhances public confidence in the tribunal system. Closed tribunal and court hearings are an exception for instances such as when vulnerable people need to be protected.
38. There is unlikely to be any additional cost from allowing the hearings to be in public because the existing facilities provide sufficient space for the occasional visitor and additional security is unlikely to be required. Open hearings, the preferred option, will not affect the tribunal's ability to provide timely, quality decisions and will improve access to justice.

## **Improving the efficiency of the Real Estate Agents Disciplinary Tribunal**

### **Status Quo and Problem**

39. There are two issues relating to cost awards and the method by which matters can come before this tribunal.
40. From time to time complainants lodge appeals which are vexatious, non-meritorious or frivolous<sup>6</sup> or refuse to comply with tribunal directions/orders, using up considerable tribunal time and resources. Currently READT can award costs against a licensee, but not a complainant.
41. Appeal rights across tribunals vary considerably. However READT is out of step by having the power for parties to appeal against the decision of the Real Estate Agents Authority to have the matter referred to the tribunal. This means the claim is effectively heard twice, at additional cost and time. The tribunal must first hear the appeal before it hears the substantive proceedings i.e. the charge/s laid<sup>7</sup>. Vexatious litigants will then often appeal the referral to further delay proceedings. On average 10 appeals are received per year, which is around 10% of cases.

### **Regulatory Impact Analysis**

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<sup>6</sup> Anecdotally, we estimate approximately 10% of all complainants make vexatious or frivolous complaints, but this can take between 20-80% of staff and judicial time.

<sup>7</sup> These referrals come from the Complaints Assessment Committee, which are independent judicial panels that make decisions on complaints referred to them by the Real Estate Agents Authority.

42. Only two options were considered – the status quo in each case – or legislative amendment, as follows.
43. While additional strike out powers will go some way to addressing vexatious litigants, further powers are warranted in some situations.
44. The awarding of costs in civil courts is discretionary, although generally there is a presumption that costs follow the event and the successful party is entitled to costs against the unsuccessful party. This presumption does not equally apply across all tribunals. The decision whether to enable the awarding of costs should focus on the nature of the dispute.
45. The Law Commission were of the view in 2004 that there was a case for occupational disciplinary tribunals, such as this one, to have this additional power. It should only be used in exceptional circumstances therefore the preferred option is to empower READT to award costs against non licensee complainants under certain conditions<sup>8</sup>, which will be put into legislation. Empowering the tribunal to award costs, the preferred option, meets the review criteria as it provides a fairer, faster and more cost effective process, and increased customer satisfaction with more robust legislative process. Additional appeals against costs awards are unlikely. Costs awards are very rare and are not usually at the level where the pursuit of an appeal is viable.
46. The only option considered in relation to READT having the power for parties to appeal against the decision to have the matter referred to the tribunal was the status quo or removing the additional appeal step. The preferred option for change better meets the review criteria as it provides a fairer, faster and more cost effective process.

## Providing fair opportunities for companies and people with minor convictions to sell second hand goods

### Status Quo and Problem

47. The Secondhand Dealers and Pawnbrokers Act 2004 disqualifies people and companies from holding a licence/certificate to sell second hand goods when they have had minor Fair Trading Act or Crimes Act conviction within the last five years. This means that even if the stolen item is worth a few cents and the sentence is one of conviction and discharge the applicant would still be completely disqualified from obtaining a certificate or licence. Companies can address this, but they have to establish a separate company. This has impacted on major phone companies on a number of occasions. It is not necessary to completely disqualify people/companies with minor convictions to protect consumers.

### Regulatory Impact Analysis

48. Three options were considered:  
A: Status quo  
B: Involves amending the legislation to empower the Licensing Authority of Secondhand Dealers and Pawnbrokers (LASDP) with the discretion, subject to certain conditions, to

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<sup>8</sup> Officials from the Ministry of Justice and Police will develop supporting legislative criteria defining the particular circumstances in which a licence or certificate could be considered.

approve a licence or certificate where a company or person has been convicted of an offence under the Fair Trading and Crimes Acts.

C: Involves amending the legislation and removing the Fair Trading Offences only and gives the Authority full discretion over Crimes Act convictions.

		Providing for companies with minor convictions to sell second hand goods.		
		A Status quo	B Empower the Authority with the discretion to approve a licence or certificate	C Remove Fair Trading Act offences only and give the Authority full discretion to issue
Objectives	Convenience	Continues to be very inconvenient for major listed companies.  People with minor convictions are excluded.	Increased customer/business satisfaction. Increased fairness.	Authority will have more discretion around issuing of licences and certificates.  Increased fairness.
	Cost	Continues to cost companies extra through the establishment of new companies.	Saves money for companies in not setting up new company.	Saves money for companies in not setting up new company.
	Timeliness	Continues to impact on companies through time spent setting up new companies.	Saves time for companies in not setting up new company.  Small amount of additional work for the LASDP from new applications.	Saves time for companies in not setting up new company.  Small amount of additional work for company from new applications
	Quality decision-making processes	Impacts on the integrity of the justice system.  In line with purpose of Act, but disqualification can be disproportionate to gravity of breaches.  Inconsistent approach between tribunals.	Remove legislative anomaly.  Provides consistency as this discretion already occurs in the Private Security Personnel Licensing Authority.	Removes a legislative anomaly.  Inconsistent with other occupational licensing tribunals.  Government stakeholders are unlikely to support this and it is not consistent with the Act's intent.
Conclusion		Does not meet review objectives	This approach is supported by the Licensing Authority and was raised in the Authority's 2013 Annual Report. Meets review objectives	Partially meets review objectives.

## Consultation

49. Stakeholder and judicial views have been taken into consideration in this analysis, including some proposals that came from tribunal Chairs.
50. Officials had ongoing discussions with the Chief District Court Judge and tribunal Chairs during development of these proposals. The New Zealand Law Society and other affected Crown entities were consulted on some topics.
51. Crown Law, NZ Police, the Department of Corrections, the Ministries of Business, Innovation, and Employment, Education, Health, Pacific Island Affairs, Social Development and Transport, Inland Revenue, State Services Commission, New Zealand Customs, Health and Disability Commissioner, the Office of the Privacy Commissioner, the Accident Compensation Corporation, The Treasury and Te Puni Kokiri have been consulted on the topics relevant to their areas of interest. The Department of the Prime Minister and Cabinet has been informed.
52. In some cases the legislation governing a tribunal administered by the Ministry of Justice is the responsibility of another government department. In these instances, the Ministry sought and received the department's agreement to the proposal.

## Conclusion

53. The assessed options are summarised in the table below, with preferred options indicated.

Topic	Options	Conclusion
1. Improving the administration cost and speed of accident compensation appeals	A. Status Quo – continue with high costs and timeframes for these appeals	
	B. Small operational improvements	
	C. Legislative - Establish new tribunal to take over this work	Preferred
	D. Legislative - All cases go to the District Court	
2. Strike out powers	A. Status Quo – no power to address the issue	
	B. Legislative change to empower 11 named tribunals to strike out applications/reviews/appeals	Preferred
3. Speeding up tribunal decisions for minor matters through use of 'Hearings on Papers'	A. Status Quo – continue with hearings even for minor matters	
	B. Legislative change for 3 tribunals to allow and clarify their ability to hear matters on the papers	Preferred
4. Suppression powers and offence/penalty	A. Status Quo	
	B. Legislative change for 15 tribunals to provide sufficient suppression powers	Preferred



Topic	Options	Conclusion
5. Providing for open and transparent motor vehicle disputes hearings	A. Status Quo – closed hearings	
	B. Open motor vehicle disputes hearings, unless tribunal considers otherwise	Preferred
6. Improving the efficiency of the Real Estate Agents Disciplinary Tribunal	A. Status Quo	
	B. Legislative amendments to allow the tribunal to award costs against a complainant and remove the right for parties to appeal against the decision to have the matter referred to the tribunal	Preferred
7. Providing for companies and people with minor convictions to sell second hand goods.	A. Status Quo – companies have the cost and inconvenience of setting up a separate company. Unfair as people with minor convictions are disqualified	
	B. Empower the Authority with the discretion, subject to certain conditions, to approve a licence or certificate	Preferred
	C. Remove Fair Trading Act offences only and give the LASDP full discretion	

## Implementation

54. Apart from the establishment of the new accident compensation appeals tribunal, these proposals facilitate business change and allow tribunals to work differently without costing anymore overall and will not be overly significant to implement.
55. There are likely to be further opportunities for savings in the future as case loads are reduced and timeframes improves. The extent of these savings depends on the types of cases and uptake of the new powers by judicial officers.
56. The establishment of the Accident Compensation Appeal Tribunal to take over all existing and new appeals will take some work. The Ministry estimates that six months will be required for the establishment phase. Project costs have been calculated at \$0.518 million. This comprises \$0.3 million for information technology changes with the remainder being project costs associated with part-time project and advisory staff. \$0.528 million per year will be required for three years to fund additional temporary staff and judicial resources to address the backlog of cases. ACC fully funds the Ministry of Justice for the administration of the two current appeal jurisdictions and as such has agreed to fund the cost to address the backlog of cases and the transition and project costs when the new tribunal is established.
57. It is estimated that ACC will receive \$0.400 million savings per year after the backlog of cases is addressed, which is anticipated to be three years after the new tribunal is established. The combined total yearly costs of the new tribunal and transition (over the three year period) are still projected to be less than the total ACC is projected to pay in 2013/14.
58. The proposals require legislative amendment to a variety of Acts and implementation will depend on the Government's legislative programme and allocation of legislative priorities.

59. Tribunal members and staff will need training and explanatory material to assist them with the implementation of the legislative changes. Minor information technology changes will be required for the small new proposals. Information on the Ministry of Justice's website will be reviewed and updated. Minor changes will be required to the way Motor Vehicle Disputes Tribunal hearings are arranged and communicated.
60. Once Cabinet makes policy decisions, the Minister for Courts will issue a press release to publicise the proposals. The Ministry of Justice will write to stakeholder agencies and judicial officers to inform them of the proposed changes.

## Monitoring, evaluation and review

61. The Ministry's strategy is to reduce the time it takes to deliver its services overall by 50% by 2017 through a combination of operational and legislative change. Under the Ministry's *Flight Plan* (how it will achieve the 50% goal) its aim is to reduce processing times by 20% overall from all tribunals and specialist courts by the end of December 2014 through a variety of operational changes. The legislative package will contribute in a tangible way to improvements post December 2014, particularly for accident compensation appeals. A variety of analytical and communications tools such as the *Nine O'clock news* (which provides a weekly break down of the cases on hand and the reduction in processing time) will be used to monitor progress.
62. The Ministry of Justice will work with other sector agencies, particularly the Ministry of Business Innovation and Employment and ACC to ensure the legislative changes have the desired effect. The Ministry will also monitor the use of suppression penalties and whether a higher penalty level should be considered in future reviews.
63. Surveys of tribunal users are periodically undertaken and appropriate questions will be fed in at that time.

## Appendix 1 Background Information

<b>Tribunal/Authority DC Registry/Other – administered by Ministry of Justice</b>	<b>Purpose</b>	<b>Empowering Legislation</b>	<b>Average Age of Cases in Calendar Days as at 1 Dec 2013</b>	<b>No. Case Disposals 2012/13</b>	<b>No. New Cases 2012/13</b>
Abortion Supervisory Committee	Keeps abortion law under review; licenses institutions where abortions performed; appoints consultants with whom women must consult when considering an abortion	Contraception Sterilisation and Abortion Act 1977	N/A – it is a review committee	N/A	N/A
Accident Compensation Appeal Authority	Hears appeals against ACC review decisions under the repealed Accident Compensation Act 1982		1177	15	19
Accident Compensation Appeals DC Registry	Hears appeals against review decisions under the Accident Compensation Act 2001	Accident Compensation Act 2001	695	608	785
Birdlings Flat Land Titles Commissioner	Made orders relating to the division of land into separate titles at Birdlings Flat, Banks Peninsula	Birdlings Flat Land Titles Act 1993	No active cases	0 since 2000	0 since 2000
Copyright Tribunal	Hears disputes about copyright licensing schemes and file-sharing infringements	Copyright Act 1994	190	17	30
Criminal Justice Assistance Reimbursement Scheme	Considers applications for compensation from people who have been victimised and suffered material loss as a result of giving evidence in a criminal case or caring for a witness	Established by Cabinet	144	1	2
Customs Appeal	Hears appeals against decisions of the Customs	Customs and	337	10	9

<b>Tribunal/Authority DC Registry/Other – administered by Ministry of Justice</b>	<b>Purpose</b>	<b>Empowering Legislation</b>	<b>Average Age of Cases in Calendar Days as at 1 Dec 2013</b>	<b>No. Case Disposals 2012/13</b>	<b>No. New Cases 2012/13</b>
Authority	Service	Excise Act 1996			
Disputes Tribunal	Hears civil disputes with a value up to \$15,000 (\$20,000 by agreement)	Disputes Tribunals Act 1988	70	16,374	16,044
Human Rights Review Tribunal	Hears cases relating to human rights law, privacy and the Code of Patients' Rights	Human Rights Act 1993	377	41	32
Immigration Advisers Complaints Disciplinary Tribunal	Hears complaints against licensed immigration advisers and appeals against decisions of the Immigration Advisers Authority	Immigration Advisers Licensing Act 2007	407	50	66
Immigration and Protection Tribunal	Hears appeals against decisions relating to residence class visas, deportation, and refugee and protection status	Immigration Act 2009	264	1130	1263
International Education Appeal Authority	Hears complaints from international students about care and support received from their education provider		119	51	76
Lawyers and Conveyancers Disciplinary Tribunal	Hears disciplinary cases against lawyers and conveyancers and applications regarding suspension, striking off, revocation of orders, and restoration of practitioners to the roll or register	Lawyers and Conveyancers Act 2006	357	34	38
Legal Aid Tribunal	Reviews decisions about the granting of legal aid	Legal Services Act 2011	32	140	107
Legal Complaints	Reviews decisions of	Lawyers and	331	208	391

<b>Tribunal/Authority DC Registry/Other – administered by Ministry of Justice</b>	<b>Purpose</b>	<b>Empowering Legislation</b>	<b>Average Age of Cases in Calendar Days as at 1 Dec 2013</b>	<b>No. Case Disposals 2012/13</b>	<b>No. New Cases 2012/13</b>
Review Officer	standards committees of the Law Society and Society of Conveyancers	Conveyancers Act 2006			
(Licensing Authority of) Second-hand Dealers and Pawnbrokers	Issues licences and certificates for secondhand dealers and pawnbrokers	Dealers and Pawnbrokers Act 2004	13	943	1031
Liquor Licensing Authority (Alcohol Regulatory and Licensing Authority)	Determines applications for the issue, suspension and cancellation of liquor licences	Sale and Supply of Alcohol Act 2012	113	1366	1377
Motor Vehicle Disputes Tribunal	Hears disputes between consumers and motor vehicle traders	Motor Vehicles Sales Act 2003	43	217	216
Private Security Personnel Licensing Authority	Issues licenses and certificates to companies and people working in the security industry	Private Security Personnel and Private Investigators Act 2010	100	5555	5317
Real Estate Agents Disciplinary Tribunal	Hears disciplinary cases against licensed Real Estate Agents, and appeals against decisions of Complaints Assessment Committees and the Real Estate Agents Authority Registrar	Real Estate Agents Act 2008	207	103	96
Review Authority (Legal Aid Providers)	Reviews decisions about approvals to provide legal aid	Legal Services Act 2011	No active cases	18	20
Social Security Appeal Authority	Hears appeals against decisions about benefit entitlements	Social Security Act 1964	188	138	155

<b>Tribunal/Authority DC Registry/Other – administered by Ministry of Justice</b>	<b>Purpose</b>	<b>Empowering Legislation</b>	<b>Average Age of Cases in Calendar Days as at 1 Dec 2013</b>	<b>No. Case Disposals 2012/13</b>	<b>No. New Cases 2012/13</b>
Student Allowance Appeal Authority	Hears appeals against decisions about student allowance entitlements	Education Act 1989  Student Allowance Regulations 1998	182	12	8
Taxation Review Authority	Hears objections to tax assessments and other decisions on the Inland Revenue Commissioner	Taxation Review Authorities Act 1994	828	33	27
Trans-Tasman Occupations Tribunal	Reviews decisions regarding the entitlement of a person registered for an occupation in Australia to be registered in New Zealand for the equivalent occupation	Trans-Tasman Occupations Tribunal	No active cases	0 since 2010	0 since 2008
Tenancy Tribunal	Hears disputes between landlords and tenants of residential properties, and between persons with disputes relating to unit title developments	Residential Tenancies Act 1986	20	22,108	21,203
Victims Special Claims Tribunal	Hears claims made by victims of crime for compensation	Prisoners and Victims Claims Act 2005	No Active cases	2	2
Weathertight Homes Tribunal	Hears claims relating to leaky homes	Weathertight Homes Resolution Services Act 2006	361	126	99