

# Regulatory Impact Statement

## Ensuring District Court Cases are Resolved Quickly

### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Justice.

It provides an analysis of options to improve access to civil justice in the District Courts, by correcting some unintended consequences of recent changes to the District Courts Rules, in particular the restriction of summary judgment procedure.

There are some constraints in the analysis:

- While there is some data to identify the problem being addressed (delays for some cases where summary judgment is restricted), the analysis also relies heavily on anecdotal evidence and recommendations for the preferred option provided by the Rules Committee. However the Rules Committee is an expert committee established by statute for the purpose of determining appropriate rules of court procedure, therefore relying on their recommendations is reasonable.
- It is not possible to fully assess the scale of the problem, because the Ministry of Justice's data collection system does not hold information that can accurately identify if cases have shifted from the District Courts to the High Court (where summary judgment is less restricted). We also cannot identify if some parties have decided not to pursue cases because of the restrictions in summary judgment procedure.
- It is not possible to accurately predict how many parties will apply for summary judgment under the preferred option. This means that the impact on judicial resources is unclear. However, we can use pre-2009 statistics to help estimate the impact of the preferred option.

The preferred policy option is likely to impose some minor additional compliance costs on businesses (eg, law firms will have to update templates and retrain staff). None of the policy options are likely to:

- impair private property rights, market competition, or the incentives on businesses to innovate and invest, or
- override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines).

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## Status quo and problem definition

1. In 2009, the District Courts Rules were reformed in order to simplify and streamline processes, and in part to provide a system where parties are encouraged to resolve disputes out of court. Before 2009, the District Courts used to have a procedure called “summary judgment”. This was used for some straightforward proceedings to be resolved quickly, through short, preliminary hearings, if there were no disputed facts and the opponent raised a defence that was not reasonably arguable.

### *2009 reforms restricted summary judgment*

2. As part of the 2009 reform of the District Courts Rules, the availability of summary judgment procedure was restricted, so that it is now only available at the end of the court process. At the time, it was believed that the new processes introduced by the 2009 reforms would be sufficient to render summary judgment unnecessary.

### *The problem of delay*

3. The current system appears to be working well for most cases. As a result of the reforms, more cases now settle out of court.
4. However, for some cases (mainly debt recovery litigation, and litigation regarding a business or credit contract), delays have lengthened from about 57 working days to obtain summary judgment (for the 2008/09 financial year) to about 237 working days to short trial or 283 working days to obtain summary judgment (for the 2010/11 financial year).<sup>1</sup> These statistics show that it now takes over four times as long to obtain judgment by short trial, and almost five times as long to obtain summary judgment.
5. The delays incur costs on people which include financial costs, emotional toll arising from uncertainty and financial pressure, and restrictions on the parties’ ability to plan for the future.

### *People affected by the problem*

6. Parties affected by the problem in the District Courts are individuals, businesses and sometimes central or local government, where there is a civil dispute usually involving debt recovery or a breach of contract<sup>2</sup>, and one of the parties contemplates or commences litigation in a District Court. An example of a summary judgment claim is a claim for money owed because a cheque has bounced. The District Courts usually consider claims worth between \$15,000 and \$200,000.

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<sup>1</sup> The median time between filing the first application and summary judgment outcome for the 2008/09 financial year was 57 working days. The median time between filing the first application to final outcome for a short trial for the 2010/11 financial year was 237 working days. Data extracted from the Ministry of Justice’s Case Management System on 21 December 2011, except for short trial data extracted on 5 January 2012.

<sup>2</sup> Summary judgment claims in the 2008/09 financial year mainly concerned debt recovery (61%), business contracts (13%), and financial/credit contracts (11%). These figures are based on nature of claim data extracted from the Ministry of Justice’s Case Management System on 21 December 2011.

7. Since 1 November 2009, approximately 1260 cases per year (or 6.1 percent of total civil cases where a notice of claim has been filed in the District Courts) are currently likely to be subject to longer delays.<sup>3</sup> The delays have affected the confidence that lawyers and their clients have in the District Courts system.

## Objectives

8. The objective of the District Courts Rules, set out in rule 1.3, is to secure the just, speedy, and inexpensive determination of any proceeding or interlocutory application. This includes, so far as practicable:
  - ensuring that all parties are treated equally
  - saving expense
  - dealing with the case in ways that are proportionate to the importance of the case, the complexity of the issues, the amount of money involved, and the financial position of each party
  - ensuring that the case is dealt with speedily and fairly, and
  - allotting to a case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.
9. Public confidence in the court system must also be maintained.

## Regulatory impact analysis

### Option 1: revert to old system before 1 November 2009

10. We could replace the District Courts Rules 2009 with the rules as they were before they were reformed on 1 November 2009. This would address the problem because summary judgment would be available at the beginning of the court process. However, the District Courts Rules 2009 have resulted in more general civil cases being resolved out of court. Reverting to the old system would likely introduce more problems by reversing this trend.

### Option 2: retain the status quo

11. Summary judgment is currently only available at the end of the court process. Most court documents are required to be served within 30 working days. A party can apply for a type of judgment commonly called “default judgment” when the other party does not respond or discontinues the claim. However, the status quo will not address the problem.

### Option 3: amend the District Courts Rules to reduce delays (preferred option)

12. The preferred option amends the District Courts Rules 2009 to reduce delays by:
  - reducing the time required to serve some court documents
  - expanding the circumstances where a party can apply for a type of judgment (sometimes known as “default judgment”), and
  - enabling parties to obtain summary judgment earlier.

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<sup>3</sup> These figures are based on the number of summary judgment applications for the 2008/09 year and the number of total new applications for the 2010/11 year. Data extracted from the Ministry of Justice’s Case Management System on 21 November 2011.

13. Other variations of the rules are possible to achieve the objectives. However, only three variations have been analysed, because:

- they are recommendations of the Rules Committee, which is an expert statutory body;
- we are constrained by time; and
- the identified variations are likely to address the problem and meet the objectives.

## Analysis of options

### Service time periods

	<b>Option 1: Old system before 1 November 2009</b>	<b>Option 2: Status quo</b>	<b>Option 3: Preferred option</b>
<i>Description</i>	As soon as practicable	30 working days (six weeks)	20 working days (four weeks)
<i>Impact</i>	<ul style="list-style-type: none"> <li>• Some delays</li> </ul>	<ul style="list-style-type: none"> <li>• Some delays</li> </ul>	<ul style="list-style-type: none"> <li>• Few delays</li> <li>• Balance between time to prepare &amp; serve documents, and quick case progression</li> </ul>
<i>Risks</i>	Uncertain	Debtors may serve documents as late as possible, to prolong proceedings and defer debt payment	If too short, more applications for time extensions

### Circumstances where a party can apply for judgment (“default judgment”)

	<b>Option 1: Old system before 1 November 2009</b>	<b>Option 2: Status quo</b>	<b>Option 3: Preferred option</b>
<i>Description</i>	Available when: <ul style="list-style-type: none"> <li>• Defendant does not respond</li> <li>• Claim discontinued</li> </ul>	Same as option 1	Available when: <ul style="list-style-type: none"> <li>• Defendant does not respond</li> <li>• Claim discontinued</li> <li>• <b>Defendant admits facts and agrees with the claim</b></li> <li>• <b>Defendant does not raise arguable defence</b></li> </ul>
<i>Impact</i>	If defendant admits facts & agrees with claim / does not raise arguable defence, full court process	Same as option 1	Easier to obtain judgment quickly
<i>Risks</i>	Defendants may respond to prolong proceedings, to defer debt payment	Same as option 1	

## Summary judgment

	<b>Option 1: Old system before 1 November 2009</b>	<b>Option 2: Status quo</b>	<b>Option 3: Preferred option</b>
<i>Description</i>	<b>Available</b> at the <b>beginning</b> of the court process	<b>Not available</b> until the <b>end</b> of the process	<b>Available</b> at the <b>beginning</b> of the court process
<i>Impact</i>	<ul style="list-style-type: none"> <li>About <b>57</b> working days to judgment</li> </ul>	<ul style="list-style-type: none"> <li>About <b>283</b> working days to judgment (or 237 working days by short trial)</li> <li>More civil cases resolved out of court</li> </ul>	<ul style="list-style-type: none"> <li>About <b>77</b> working days to judgment</li> <li>Greater certainty for individuals / businesses entering into contracts</li> </ul>
<i>Risks</i>	<ul style="list-style-type: none"> <li>More general civil disputes come to court</li> </ul>	Affected individuals / businesses may: <ul style="list-style-type: none"> <li>have extra financial costs</li> <li>be emotionally strained</li> <li>be restricted in ability to plan for the future</li> </ul>	<ul style="list-style-type: none"> <li>Lots of summary judgment applications. Mitigated by requiring parties to wait until response period expired</li> <li>Uncertain impact on judicial resources</li> <li>Some minor staff-retraining &amp; template-updating costs for debt collection agencies, finance companies &amp; law firms</li> </ul>

### Do the options meet the objectives?

14. The table below illustrates that only option 3 meets the objectives.

<b>Objectives:</b>	<b>Option 1: Old system before 1 November 2009</b>	<b>Option 2: Status quo</b>	<b>Option 3: Preferred option</b>
<i>Parties treated equally</i>	✓	✓	✓
<i>Expense saved</i>	?	✗	✓
<i>Proportionality</i>	?	?	✓
<i>Cases dealt with speedily &amp; fairly</i>	✓	✗	✓
<i>Appropriate use of resources</i>	✗	✗	✓
<i>Public confidence in civil justice system</i>	?	✗	✓

**Consultation**

- 15. The Rules Committee established under section 51B of the Judicature Act 1908 developed the draft rules, and consulted on them by posting them on their website for a period of over four weeks. The draft rules and a consultation paper were sent by the Rules Committee to the following organisations: New Zealand Law Society, Auckland District Law Society, New Zealand Bar Association, Ministry of Economic Development, Business Roundtable, Commerce Commission, Citizens Advice Bureau New Zealand, Insurance Council of New Zealand, New Zealand Bankers’ Association, and New Zealand Credit and Finance Institute.
- 16. Rules Committee consultation was restricted to comments about the preferred option. This is because the Rules Committee intends to undertake a more general review of all of the District Courts Rules.
- 17. Submitters all commented that making summary judgment available earlier, as proposed, is desirable. A key request by submitters was that the Rules Committee should undertake a more general review of the Rules.
- 18. The Ministry of Justice also consulted with Treasury, Crown Law Office, Parliamentary Counsel Office, Ministry of Economic Development, Inland Revenue Department, and Department of Building and Housing.

**Conclusions and recommendations**

- 19. Option 1 is to revert to the old system before 1 November 2009. Option 2 is to retain the status quo. Option 3 (preferred) is to amend the District Courts Rules to reduce delays. This includes three sub-options, which are all recommended: reducing the time to serve documents; expanding circumstances to apply for judgment; and enabling parties to obtain summary judgment earlier.
- 20. The changes are summarised in the table below:

	<b>Old system before 1 November 2009</b>	<b>Status quo</b>	<b>Preferred option</b>
<b>Service time periods</b>	As soon as practicable	30 working days (six weeks)	20 working days (four weeks)
<b>Application for Judgment (“default judgment”)</b>	Available when: <ul style="list-style-type: none"> <li>• Defendant does not respond</li> <li>• Claim discontinued</li> </ul>	Available when: <ul style="list-style-type: none"> <li>• Defendant does not respond</li> <li>• Claim discontinued</li> </ul>	Available when: <ul style="list-style-type: none"> <li>• Defendant does not respond</li> <li>• Claim discontinued</li> <li>• <b>Defendant admits facts and agrees with the claim</b></li> <li>• <b>Defendant does not raise arguable defence</b></li> </ul>
<b>Summary judgment</b>	<b>Available</b> at the <b>beginning</b> of the court process	<b>Not available</b> until the <b>end</b> of the process	<b>Available</b> at the <b>beginning</b> of the court process

<b>Time to get summary judgment</b>	About <b>57</b> working days	About <b>283</b> working days (or 237 working days to obtain judgment by short trial)	About <b>77</b> working days
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21. As outlined above, there are some risks associated with the preferred option. However, the preferred option is likely to improve the situation and adequately address the problem by:
- shortening the time it takes between filing a notice of claim and resolution of the dispute
  - weakening the ability of a defendant to prolong proceedings when they essentially admit they are at fault, and
  - enabling summary judgment to be obtained earlier so that parties are able to resolve their dispute much faster.

### Implementation

22. The Ministry of Justice administers the District Courts Rules. There will be a notification in the *New Zealand Gazette* about amendment rules, and the Law Society is likely to publicise the changes. The preferred option will have some implementation costs arising from the need to change to forms and other printed material, and training of court staff. These costs are minor.

### Monitoring, evaluation and review

23. The Rules Committee and the Ministry of Justice will continue to monitor and evaluate the District Courts Rules.
24. The Ministry uses a reporting tool to measure the impact of the rules, and provide monthly reports to the judiciary. The Ministry and the judiciary monitor how the rules are working in order to ensure the objectives of the rules are being met.
25. The Rules Committee have begun a more general review of the District Courts Rules 2009.