



Date: 1/6/21

To: Rules Committee

From: Manawatū Tenants' Union (MTU)

Subject: **MTU Submission on “Improving Access to Civil Justice” Document**

Tēnā koe

Introduction

1. The Manawatū Tenants' Union provides free tenant advice and advocacy in the Manawatū Tenants' Union and frequently engages with the civil justice system via the Tenancy Tribunal and, less often, the Disputes Tribunal.
2. We briefly submit to support improving access to civil justice and provide a tenant advocacy perspective on the consultation document.

About MTU

3. MTU is a registered charity and social services provider which works primarily, but not exclusively, in the Manawatū region to support tenants for free regarding tenancy issues. We do not support landlords. We primarily work with tenants that are on low incomes, who often face complex challenges and barriers to accessing justice.
4. In the last year we reported over 2,000 tenant contacts, supported or advised tenants regarding the Tenancy Tribunal, Disputes Tribunal, or Tenancy Services mediation, in over 60 cases. We frequently support tenants through advocating or facilitating conversations with landlords, directly support tenants at Tribunal hearings, and occasionally represent tenants at the Tribunal where appropriate and necessary.
5. We work closely with other organisations such as Community Law, Housing Advice Centre, Citizen's Advice Bureau, at a local and national level, and also work in the areas of education, and social/policy advocacy.

Scope of submission

6. As MTU works at the lower levels of civil justice, and our staff are not legal professionals, our submission focusses on the lower levels of civil justice.

Housing is a basic human right.



Manawatū Tenants' Union

Need for improving access to civil justice

7. MTU agrees that there is a need for improving access to civil justice.

General principles for civil justice

8. MTU believes that civil justice should be;
 - a. As accessible and barrier free as possible for those who need it, primarily being those disadvantaged and disempowered in society (such as tenants);
 - b. Barrier-free civil justice means free from financial, social, and educational barriers;
 - c. Civil justice should generally seek to resolve disputes at the lowest level possible;
 - d. Civil justice should encourage and provide for restorative and non-litigational processes such as mediation. However, processes such as mediation should be appropriate to the dispute, and parties to the dispute, including access for kanohi ki ti kanohi processes where desired by parties;
 - e. Civil justice should be safe, effective, and free from retaliation;
 - f. Civil justice should consider the power imbalances that can be involved in disputes, such as those between tenants and landlord's, head tenants and flatmates.

Comments on Tenancy Tribunal system

9. While we acknowledge that the Tenancy Tribunal appears to be outside the scope of this review, we briefly discuss the Tenancy Tribunal in terms of what works well, what does not work well, and how this applies to wider civil justice reform.
10. The fact that the Tribunal filing fee is only \$20.44 greatly increases its accessibility, although we note that this is still a barrier for some tenants.
11. The discouragement of lawyers from the Tribunal system also reduces barriers, although we note that given the power imbalance between tenants' and landlord's, support and at times representation for tenants is essential.
12. The restrictions of the Tenancy Services mediation system, such as being done primarily by phone and in short times compared to employment mediation, heavily limits the use of mediation and increases reliance on the Tribunal.
13. We strongly support the limited approval of costs to parties in Tenancy Tribunal cases, and believes that this improves access to justice for tenants.

Comments on the Disputes Tribunal

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14. While we rarely work in the Disputes Tribunal, we have assisted tenants in preparing applications and occasionally supported tenants directly at Disputes Tribunal hearings.
15. We liked that the Disputes Tribunal had a clear place in the hearing for the referee to indicate their thinking on the dispute, and to encourage and allow the parties to reach an agreement part way through the hearing.

Access to decisions

16. The Tenancy Tribunal has a relatively accessible and searchable database, the Disputes Tribunal database is much more difficult to use effectively; easier access to decisions, with appropriate name suppression, would improve layperson access to civil justice.
17. While we strongly support name suppression of tenants in decisions, we emphasise that access to civil justice must also mean free and effective access to civil justice decisions.

MTU Supports Changing Title of Disputes Tribunal Referees

18. We support changing the title of Disputes Tribunal “referees” to “adjudicators” for the sake of consistency with other Tribunals.

On changing name of Disputes Tribunal

19. MTU does not have a firm position for or against renaming the Disputes Tribunal, but we note that *how* the Tribunal works is far more important than what it is named.
20. MTU believes that, should the name be changed to Community Court, that a community approach and values should be central to its operation. This goes deeper than a name change.

Mediation

21. MTU supports the establishment of more mediation type services to support restorative and practical approaches to justice, and suggests the Committee investigate the model of a Dispute Resolution Centre / Service in Victoria Australia at <https://www.disputes.vic.gov.au/about-us/mediation>

Advocacy

22. We note that due to power imbalances, such as that between a landlord and tenant, it is essential there is adequate funding of advice/advocacy services and legal aid as a part of improving access to civil justice. This not only supports access to justice at Courts and Tribunals, but can increase the probability of lower level dispute resolution.

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Conclusion

23. MTU supports the principles of this change, and is available to speak to this submission if required.

Ngā mihi

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Manawatū Tenants' Union

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