



1 July 2021

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

By email: RulesCommittee@justice.govt.nz

SUBMISSION IN RESPONSE TO THE IMPROVING ACCESS TO CIVIL JUSTICE CONSULTATION PAPER DATED 14 MAY 2021

We welcome the opportunity to submit our views in response to the further consultation paper on Improving Access to Civil Justice dated 14 May 2021 (**'Consultation Paper'**).

About AIA New Zealand

1. AIA New Zealand Limited (**'AIA NZ'**) is a member of the AIA Group (**'AIA'**), which comprises the largest independent publicly listed pan-Asian life insurance group. It has a presence in 18 markets in Asia-Pacific and is listed on the Main Board of The Stock Exchange of Hong Kong. It is a market leader in the Asia-Pacific region (ex-Japan) based on life insurance premiums and holds leading positions across the majority of its markets.
2. Established in New Zealand in 1981, AIA acquired Sovereign Assurance Company Limited (**'Sovereign'**) in 2018 which, at the time, was New Zealand's largest life insurer having been in business in New Zealand for over 30 years. Sovereign formally amalgamated under the AIA brand in August 2019, and we have been protecting New Zealanders and helping them to lead Healthier, Longer, Better Lives ever since.

About this submission

3. We support the Rules Committee undertaking this further consultation. We agree that it is important to continue to review the structure of the civil justice system in order to ensure better access to justice for all New Zealanders.
4. Our response to the Consultation Paper is set out below. Our response focuses on the changes proposed to the Disputes Tribunal (**'Tribunal'**) only.



Submission

Jurisdiction

5. We are supportive of the Committee's current position that the Tribunal's jurisdiction should be increased to \$50,000 while largely preserving the current scheme.¹
6. As recognised in the Consultation Paper, we agree that the current model of the Tribunal provides flexible and responsive dispute resolution services which reliably achieve justice in an expeditious, efficient, and proportionate manner. We consider that an increase of the Tribunal's jurisdiction to \$50,000 would allow a wider range of disputes to benefit from these advantages, thereby increasing access to civil justice.
7. However, AIA NZ considers that if the Tribunal's jurisdiction is increased beyond \$50,000 as of right, this would require changes to the current model of the Tribunal in order to ensure more complex claims are determined in a procedurally fair manner.
8. Such changes may include (as recognised in the Consultation Paper) broader appeal rights, a change to the Tribunal's mandate to require it to give effect to the law in all cases (as opposed to having regard to the law) and greater use of expert evidence.
9. In our view, such changes risk impacting the advantages of the Tribunal outlined above. Changes to the current Tribunal model risks its processes becoming slower and costlier for consumers, which would not support the objective of improving access to justice.
10. These consequences would also not be consistent with the guiding principles for the design of a civil justice system identified by the Law Commission (and referred to in the Consultation Paper) that there should be proportionality between the investment of resources by parties and the nature of each dispute, that everyone should be able to use courts and tribunals to assert and defend their rights (with cost barriers minimised) and that the economic consequences for parties of having to litigate should be reduced.
11. Ultimately, the proposal at paragraph 50(c) of the Consultation Paper to increase the Tribunal's jurisdiction up to \$100,000 risks the Tribunal morphing into another District Court with a lower jurisdictional limit, which we consider would be undesirable. We therefore do not support this proposal.

¹ As set out at paragraphs 50 and 50(a) of the Consultation Paper.



12. AIA NZ does however support parties to individual proceedings being able to consent to the Tribunal's jurisdiction being increased beyond \$50,000 in their particular case (paragraph 50(b)), provided both parties agree. This would allow parties to benefit from the advantages of the Tribunal's streamlined and efficient process in situations which do not fall within the jurisdiction of the Tribunal as of right but where the parties agree that the Tribunal, with its current model, is an appropriate forum.
13. In our view, the jurisdiction could be increased to \$100,000 by mutual agreement. We consider that this would allow parties to utilise the benefits of the current Disputes Tribunal model by agreement in situations which would otherwise fall outside of the Tribunal's jurisdiction, while acknowledging the nature of the Tribunal's current model in contrast to court processes (e.g. the nature of the right of appeal from the Tribunal).

Other Changes

14. AIA NZ considers that the current model of the Tribunal may benefit from some of the other changes proposed in the Consultation Paper (in conjunction with raising the jurisdictional limit to \$50,000).
15. We support the proposal to increase the daily fees for referees. This recognises the need to attract referees who are able to deal with claims of higher value (up to \$50,000, or higher by agreement). Additionally, the Tribunal will likely need to recruit additional referees if its jurisdiction is increased to \$50,000, as more claims will be in scope for determination by the Tribunal. According to the Consultation Paper, the Tribunal is (by volume) the busiest of the three bodies under review, and it would be a negative outcome if an increase in jurisdiction impacted on the Tribunal's expediency and efficiency.
16. We are also supportive of the proposal to publish Tribunal decisions on NZLII or a government website, although (for the reasons set out below) we submit that these should be anonymised. We agree that this could improve the transparency of Tribunal decision-making and allow parties to prepare their submissions with a better understanding of how the Tribunal determines similar matters (as set out in the Consultation Paper), as well as increase consistency with the principle of open justice.
17. However, we do not support the proposal that the Tribunal would conduct public hearings. In our view, the fact that Tribunal hearings are conducted in private is appealing to individuals and increases accessibility on an individual basis. We are concerned that if individuals are required to speak in an openly public setting about a potentially emotive and personal issue, this may present a psychological barrier to pursuing a claim in the Tribunal. Public hearings may also exacerbate concerns and negative experiences such as those set out in the excerpt from the Porirua Kāpiti Community Law Centre's earlier submission, which is reproduced in the Consultation Paper at paragraph 22.



Conclusion

18. Thank you for the opportunity to submit on the Consultation Paper. Please let us know if you have any questions on our submission or would like to discuss any aspect of our submission further.

Yours sincerely

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AIA New Zealand