

2 July 2021

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

Submissions to the Rules Committee | Te Komiti mō ngā Tikanga Kooti on its *Further Consultation Paper on Improving Access to Civil Justice*

Introduction

1. Te Kaunihera o Tāmaki Makaurau, Auckland Council (the **Council**) welcomes the opportunity to comment on Te Komiti mō ngā Tikanga Kooti, the Rules Committee (the **Committee**)'s *Further Consultation Paper on Improving Access to Civil Justice* (the **Paper**).
2. The Council is happy to provide further information regarding its submissions if required.

The Council's comments on the Committee's proposals

Disputes Tribunal

3. The Council wishes to make a further proposal regarding the Disputes Tribunal (**Tribunal**)'s procedures.
4. The Council received 43 Tribunal claims last year. The Tribunal did not have jurisdiction under the Disputes Tribunal Act 1988 to hear 30 out of those 43 claims. However, these claims generally proceeded to a hearing – despite the jurisdictional issues – and unnecessarily wasted a significant amount of the Tribunal and the parties' time and resources. The Council notes that if it receives a claim that does not have jurisdiction, it still attempts to resolve the issues with the claimant.
5. It is the Council's view that jurisdictional issues should be dealt with at an early stage without a hearing being necessary. The Council proposes that:

- (a) the Tribunal should not accept claims that it clearly does not have jurisdiction to hear;
 - (b) if the Tribunal does accept a claim, a speedy process is introduced to allow defendants to apply to strike out a claim on jurisdictional grounds (**strike out application**); and
 - (c) the Tribunal should determine strike out applications on the papers.
6. This would save a considerable amount of the Tribunal and the parties' time. It would improve the Tribunal's efficiency and allow it to deal with more claims, claimants would not waste their time and money in the Tribunal and could have their claim heard in the correct jurisdiction, and defendants would not be forced to defend claims unnecessarily.

District Court

- 7. The Council files more than 100 claims relating to debt collection in the District Court each year.
- 8. The Council notes the Committee's comments regarding pre-action protocols and improving the efficiency and fairness of the debt collection process. The Council supports the introduction of pre-action protocols for debt collection matters but notes that it already follows a similar process to the pre-action protocols proposed. Council's process is set out below.
- 9. Prior to Council's Ngā Ratonga Ture department (Legal Services) (**NRT**) receiving a debt collection file, the relevant business unit within the Council has already conducted an extensive Dunning Process. If the debt relates to a resource consent or a development contribution, the business unit will ensure that the legislative objection process is completed before a demand for payment is made. The business unit will not refer the file to NRT until this process has been undertaken.
- 10. NRT then reviews the file to make sure that the Dunning Process (and if applicable, the statutory objection process) has been followed. It then sends the debtor a letter giving them an opportunity to discuss the debt and payment options prior to commencing legal

action. If the debtor engages with the Council, then it will endeavour to work with them to resolve the matter without filing legal proceedings. The Council offers various payment options – including payment plans.

11. If the Council cannot contact the debtor (which is a common problem) or they do not engage, then it will file proceedings and generally apply for judgment by default – very few proceedings are contested. It will then undertake processes to enforce its judgment.
12. It is the Council's view that the efficiency of the debt collection process would be significantly improved if a "statutory demand" type procedure was introduced for individuals (**personal demand**). This would negate the need to file proceedings and massively reduce the processing workload of the District Court.
13. The Council believes that creditors should only be able to use the personal demand procedure if they have complied with the pre-action protocols. It also acknowledges that it would be important to ensure that personal demands are not used inappropriately and therefore should only be issued in the same circumstances as statutory demands are, and debtors should have the ability to have them set aside.
14. If the personal demand is not satisfied, a creditor should be able to move straight to the bankruptcy process.

Ngā mihi | Kind regards

