

New Zealand Association of
Citizens Advice Bureaux Inc
Ngā Pokapū Whakahoki Pātai mai i te Iwi Whānui

5th March 2008

Jo Dinsdale
Law Commission
PO Box 2590
WELLINGTON

SUBMISSION ON THE TRIBUNALS SYSTEM IN NEW ZEALAND

Background

- 1 The New Zealand Association of Citizens Advice Bureaux (the Association) – Ngā Pokapū Whakahoki Pātai mai i te Iwi Whānui welcomes the opportunity to comment on the issues paper 'Tribunals in New Zealand'.
- 2 We would value any further opportunities for input on the issues raised in the discussion document and can be contacted through:

Kerry Dalton
Chief Executive
New Zealand Association of Citizens Advice Bureaux
PO Box 9777
Wellington 6141
Phone (04) 382 8759
- 3 The purpose of our organisation is to promote knowledge and understanding in our society. To achieve this purpose our organisation aims to:

Support the principle of partnership reflected in the Treaty of Waitangi – E tautoko ana Ngā Pokapū Whakahoki Pātai mai i te Iwi Whānui, i te mātāpono nohotahi (hononga), e whakaatahia ana i roto i te Tiriti o Waitangi.

Ensure that individuals do not suffer through ignorance of their rights and responsibilities or of the services available; or through an inability to express their needs effectively — Me noho matāra kia kua te tangata e mate i tōna kore mōhio ki ngā āhuatanga e āhei atu ana ia, ki ngā mahi rānei e tika ana kia mahia e ia, ki ngā ratonga rānei e āhei atu ana ia; i te kore rānei ōna e āhei ki te whakaputu i ōna hiahia kia mārama mai ai te tangata.

Exert a responsible influence on the development of social policies and services, both locally and nationally — Kia tino whawāhi atu ki te auahatanga o ngā kaupapa-ā-iwi me ngā ratonga-ā-rohe, puta noa hoki i te motu.
- 4 From our 91 locations around New Zealand the Citizens Advice Bureaux (CAB) provides a free, impartial and confidential service of information, assistance, and

PO Box 9777, Level 7, 75 Ghuznee Street,
Wellington
Phone (04) 382 8759 Fax (04) 382 8647
Email policy@cab.org.nz Website www.cab.org.nz

referral to individuals, and we use our experience with clients to seek socially just policies and services in Aotearoa New Zealand.

- 5 We work to empower individuals to resolve their own problems and to strengthen communities by identifying and raising local and national issues. The person to person information, advice, advocacy and support service provided by over 2,600 CAB volunteers is unique in New Zealand, as is our ability to provide a national snapshot of community issues and concerns.
- 6 In making our comments we draw on the knowledge and experience from bureaux in delivering the Citizens Advice service to clients. Last year the Citizens Advice Bureaux dealt with over six hundred thousand enquiries from the public. In the past ten years our organisation has dealt with approximately six million enquiries.

Introduction

- 7 We value the tribunals system and the people who provide tribunal services, as do our clients - our bureaux regularly link members of the public up with the various tribunals. We are very much aware of how significant tribunals are in terms of being able to take cases which might otherwise not be heard, to potentially resolve issues without escalation to the courts, and in terms of the sheer volume of cases the system deals with. Tribunals clearly have an important role to play in facilitating access to justice.
- 8 The Law Commission is to be commended on its issues paper 'Tribunals in New Zealand'. The paper has been well researched, the issues comprehensively analysed and clearly presented with information conveyed in a balanced and reasoned way. The Association believes it provides an excellent platform from which to progress the reform and improvement of New Zealand's tribunal system.
- 9 In this submission we share the Citizens Advice Bureaux' experience of the tribunals system, we provide comment on some of the issues and suggestions outlined in the issues paper, and we make a number of recommendations in relation to some of these issues.

Accessibility

Tribunal fees

- 10 For many people, the tribunals system may be the only legal avenue they have for redress of their disputes. Therefore the accessibility of the tribunals system is critical to the state of justice in New Zealand and it is important that any barriers to justice be removed.
- 11 The Association believes that tribunals' fees are a barrier to many people, especially for those on low incomes. For people struggling to meet the costs of everyday living, the cost of a tribunal hearing can upset the fine balance of their household budget and it can therefore be a major disincentive to taking a case to a tribunal.
- 12 Disputes Tribunal fees provide an example of the deterrent effect even very low fees can have:
- 13 While it deals with a very broad range of issues, the Disputes Tribunal is especially valuable to our organisation and our clients in terms of its role in protecting consumer rights. Consumer issues are a significant area of concern for our clients and our bureaux receive approximately 60,000 consumer-related client enquiries every year. Many of these enquiries arise from situations where a client has been sold a faulty good

or service and the trader has refused to address the problem. For our lower income clients, they have already lost money on the purchase – money which they can ill afford to lose – and they face the potential of losing even more money if the outcome of the tribunal hearing is not in their favour. Clients in this situation are easily deterred from pursuing justice because of cost considerations.

- 14 The last time the application fee was increased for Disputes Tribunal claims up to \$1,000 (from \$10 to \$30) there was a marked reduction in the number of cases taken to the Tribunal.¹ This took place at the same time as publicity and awareness-raising about the role of the Disputes Tribunal was being improved and increased. It is likely that without a fee increase, the number of cases taken to the Tribunal would have risen in this period; therefore the real impact was possibly more significant than the figures showed.

Recommendation

- 15 In the interests of ensuring access to the tribunals system for all people, the Association recommends the removal of tribunal application fees.

Information about tribunals

- 16 The Citizens Advice Bureau is one of the key ways through which the public access the tribunals system. We hold information about the various tribunals in our bureaux, our bureau workers learn about some of the key tribunals in basic and ongoing CAB training, and we link clients up with tribunals across the spectrum, providing many referrals particularly to the Disputes Tribunal, the Motor Vehicle Disputes Tribunal, and the Tenancy Tribunal for instance. We receive over 3,000 enquiries every year relating to the Disputes Tribunal alone.

- 17 One of the roles of our bureau workers is to help our clients identify options for resolving the issues or problems they bring to us, and to work through the options with clients so they can decide what their next steps will be. This is an important part of the service as a client may know what their issue is and they may even know the outcome they ultimately desire, but they may not know what they can do to get to that outcome. Therefore, we often get cases where, after working it through with the client, it becomes clear that resort to a tribunal is an appropriate option – yet before coming to the bureau the client had not thought of their case at all in the context of the tribunal system.

Recommendation

- 18 Even with the potential for better information and publicity in the future about the tribunals system, we can see that our organisation will continue to be an important way in which the public access the system. Therefore, an effort to improve access should include looking at better support of key gateways into the system, such as the Citizens Advice Bureau. The Association would be happy to discuss this further.

Information about the appeals process

- 19 People need to be aware of their right to appeal a decision, where that right exists, and this is a critical piece of information for any person who is going through a tribunal hearing. We support the case for a standard approach to the issue of informing recipients of a tribunal decision about their right of appeal, or at least the setting of minimum standards on this matter.²

¹ Department for Courts, *Briefing Paper for the Incoming Government*, 27th November 1999.

² Part II Analysis, Chapter 3 Accessibility, Information about tribunals, para 3.13.

Recommendation

- 20 We suggest that, where practicable, there is a requirement for recipients to be informed verbally of their right to appeal (in addition to the other means of informing recipients) to ensure people understand they have this right and how to access it. This could, for instance, become a standard part of the verbal information relayed to recipients by the adjudicator after giving their decision.

Simple entry

New migrants

- 21 The Association supports the suggestions made in the issues paper for improving the entry points into tribunals' systems.³ However, we suggest there should also be consideration of the needs of newcomers to New Zealand when looking at improving entry points into the system. Although we don't have statistics for the number of newcomer clients we refer to tribunals, we do know that migrants make up a significant proportion of our client base overall – 37% of the approximately 600,000 client contacts we have every year. We assist migrant clients on a wide range of issues, as we do with the wider public, including in relation to problems and disputes which end up in the tribunals system.

Recommendation

- 22 We believe it will be beneficial for newcomers if the process for review and reform of the tribunals system from this point forward gives special consideration to the needs of newcomers. Wider availability of information resources (including hard copy and online resources) in a range of different languages may be one way of making the system more accessible to newcomers.

Highlighting important information

- 23 In terms of making the entry points more accessible generally, in our experience it is sometimes the most simple of issues which are the most critical, and the most simple of solutions which are the most effective. To illustrate; recently one of our bureaux has fielded enquiries from some very upset members of the public who have missed out on a rebate they are entitled to because they did not make the deadline for applying.
- 24 Upon looking into the situation further, the bureau discovered there was a lack of clear, well-placed information about the deadline and that in the absence of good information some people had made an incorrect (but not unreasonable) assumption about the date for the deadline. The CAB made a recommendation to the organisation concerned that the deadline should be highlighted on the rebate application form and in the appropriate place on the organisation's website. These simple steps would prevent more people in the future from missing out on a rebate they are entitled to.
- 25 While this situation involved a different system and different processes to those of the tribunal system, it illustrates the importance of making sure the public have information which is critical to their situation and which may have a significant effect on how (and in this case, whether) their case proceeds.

Recommendation

³ Part II Analysis, Chapter 3 Accessibility, Simple entry, paras 3.16 – 3.17.

- 26 The Association therefore recommends, as part of a strategy to improve access to entry points into the tribunal system that forms, websites, pamphlets and other information resources must highlight any critical information including deadlines or timeframes which applicants and respondents need to be aware of. This will be of benefit to all parties and not only to the public going through the system but also to tribunal personnel as it will support and enhance the efficiency of tribunal processes.

Assisting applicants to understand the tribunal's processes

Recommendation

- 27 The standards recommended by the United Kingdom's Council on Tribunals for informing users about the process, as outlined in the issues paper, are very good.⁴ We would suggest that the standards as they pertain to the New Zealand tribunals system should include requiring the provision of as much advance notice as possible for users so they can make any necessary arrangements and to generally aid their preparation for hearings.

Publication of decisions

- 28 We agree that making tribunal decisions publicly available has advantages and that generally speaking such information should be in the public domain. We certainly recognise the need to balance openness, though, with interests such as privacy; respect for privacy will be a key element in maintaining public trust and confidence in the tribunals system. It is likely that many of the difficulties mentioned in the issues paper will, as it is suggested, be resolved by making decisions available without revealing the names of the parties.⁵
- 29 However, we would suggest that in some cases this may not be enough to preserve privacy. Occasionally there will be cases where the very substance of the case is enough to identify one or both parties. In such cases either (a) certain details will need to be withheld or (b) the case will need to be withheld from release into the public domain altogether.

Recommendation

- 30 Perhaps the general approach could be to make information about cases available as a general rule (without naming names) but to allow for decisions to be made on a case-by-case basis with the option of withholding certain information or withholding the case in its entirety from the public domain as deemed to be appropriate.

Membership and expertise

Representation of groups affected by the decision, or of particular interests

Recommendation

- 31 The Association agrees that inclusion of lay members on tribunals helps to enhance public confidence in these bodies.⁶ For the sake of fairness and in the interests of their contribution and participation being effective and meaningful, we would also suggest that there needs to be an acknowledgement that lay members may not always have the resources and supports sitting behind them that other tribunal members have and they may therefore need additional assistance to be able to contribute fully and without undue burden being placed upon them. This would be especially relevant to tribunals

⁴ Part II Analysis, Chapter 3 Accessibility, Information and assistance for users, para 3.18.

⁵ Part II Analysis, Chapter 3 Accessibility, Ease of Understanding, Publication of decisions, para 3.24.

⁶ Part II Analysis, Chapter 4 Membership and expertise, Composition of the tribunal, paras 4.27 – 4.28.

where the adjudicators provide their services on an unpaid, voluntary basis. For such members, support could take the form of additional training, a mentoring system, and financial assistance for the costs involved in attending hearings (where such support is not already provided).

Independence

- 32 We absolutely agree that “tribunals must enjoy independence from the executive, and must also be perceived as independent.”⁷ This is a point the Association has consistently made where we have had the opportunity to make comment on designs for new disputes bodies or reviews of existing disputes bodies. Two key areas we have emphasised through these processes have been in relation to membership of the disputes bodies and the institutional relationships between the disputes bodies and the organisations which have an interest in their decisions.

Recommendation

- 33 It is important that there are no conflicts of interest in the membership and governance of tribunals. This means that organisations which have an interest in the decisions should not be represented in the membership or on the governing bodies. This is critical to actual and perceived independence and therefore the ability of tribunals to fulfil their role in an impartial manner and to receive the trust and confidence of the public.

Procedure

Recommendation

- 34 The issues paper asks the question “whether it is enough for the legislation regulating a tribunal simply to provide that “the principles of natural justice” are to be observed, or whether it is better to set out the requirements in more detail.”⁸ The Association recommends that the requirements should be set out in more detail. This would be particularly helpful, we believe, for less experienced tribunal members and particularly for members with no formal legal training. It would serve to enhance the quality and fairness of hearings and decisions.

Disclosure

- 35 In our experience proper information disclosure does not always happen when it should. For instance, we are aware of Disputes Tribunal cases where information which was prejudicial to the respondent was given in private by the complainant to the adjudicator and never disclosed to the respondent to the complaint. In one such case the adjudicator subsequently ruled against the respondent, apparently on the basis of the information that had been withheld. At the end of the process, the respondent (who maintained their innocence with regards to the complaint that had been brought against them) left feeling they had not received a fair hearing. They were left with a less-than-favourable impression of the tribunal system as a result of their experience.

Recommendation

- 36 We agree that legislation governing all tribunals should contain consistent provisions so that parties are fully informed of the evidence against them and have the opportunity to

⁷ Part II Analysis, Chapter 5 Independence, para 5.1.

⁸ Part II Analysis, Chapter 6 Procedure, Natural Justice – A Fair Hearing, para 6.23.

respond.⁹ The Association suggests this is an issue which could also be usefully addressed through training for tribunal personnel.

Speed and efficiency

- 37 Some of our bureaux have observed that there can be a very long time between a party lodging an application and the hearing actually taking place. There may be a number of reasons for the delays; however they do need to be addressed because they have the potential to put people off taking a valid claim forward to a tribunal. People with smaller claims would be especially sensitive to delays where there may be a perception that the length of time they have to wait to get a hearing is out of all proportion to the cost and complexity of their claim. In such cases the temptation may be to simply drop their complaint even though this represents a lost opportunity for justice. We support the suggestions outlined in the issues paper for addressing delays in the tribunals' processes.¹⁰

Other issues

Enforcement of decisions

- 38 An issue our bureaux have raised but which is not explored in any depth in the issues paper is around enforcement of adjudicators' decisions. From time to time adjudicators' decisions are ignored by the party who has had a ruling made against them e.g. they have been ordered to pay an amount to the other party but fail to do so. This problem has been mentioned specifically in relation to the Disputes Tribunal and the Motor Vehicle Disputes Tribunal which would represent the greater majority of tribunal referrals by our bureaux.
- 39 We understand this may be a complex issue to tackle, and at this stage we do not have any specific recommendations to make with regards to how this issue could be addressed. However, we have raised it here because it is an issue which we believe has significant implications for the public's perception of the effectiveness of the tribunals system in being able to fully and properly dispense justice. In the words of one of our bureau workers:

If someone who has a decision [made] against them decides not to pay up for whatever reason, even if our clients go through all the correct procedure afterwards to try and get them to pay up, if they don't, then the next option is the District Court and this is usually when the client gives up. In other words it is felt that the [adjudicator's] decisions don't have any teeth. What is the point of someone having a decision against them at a tribunal if they don't respect it and if it can't be enforced at that point, they don't need to respect it.....Having to go to a lawyer or debt collection agency to enforce it seems unfair.....It leaves our clients very disillusioned and out of pocket even further.

⁹ Part II Analysis, Chapter 6 Procedure, Para 6.28 Disclosure.

¹⁰ Part II Analysis, Chapter 9 Speed and efficiency.

Summary of recommendations

- 40 In the interests of ensuring access to the tribunals system for all people, the Association recommends the removal of tribunal application fees.
- 41 Even with the potential for better information and publicity in the future about the tribunals system, we can see that our organisation will continue to be an important way in which the public access the system. Therefore, an effort to improve access should include looking at better support of key gateways into the system, such as the Citizens Advice Bureau. The Association would be happy to discuss this further.
- 42 We suggest that, where practicable, there is a requirement for recipients to be informed verbally of their right to appeal (in addition to the other means of informing recipients) to ensure people understand they have this right and how to access it. This could, for instance, become a standard part of the verbal information relayed to recipients by the adjudicator after giving their decision.
- 43 We believe it will be beneficial for newcomers if the process for review and reform of the tribunals system from this point forward gives special consideration to the needs of newcomers. Wider availability of information resources (including hard copy and online resources) in a range of different languages may be one way of making the system more accessible to newcomers.
- 44 The Association recommends, as part of a strategy to improve access to entry points into the tribunal system that forms, websites, pamphlets and other information resources must highlight any critical information including deadlines or timeframes which applicants and respondents need to be aware of. This will be of benefit to all parties and not only to the public going through the system but also to tribunal personnel as it will support and enhance the efficiency of tribunal processes.
- 45 The standards recommended by the United Kingdom's Council on Tribunals for informing users about the process, as outlined in the issues paper, are very good.¹¹ We would suggest that the standards as they pertain to the New Zealand tribunals system should include requiring the provision of as much advance notice as possible for users so they can make any necessary arrangements and to generally aid their preparation for hearings.
- 46 As a general rule information about cases should be made publicly available (without naming names) but in the interests of preserving privacy there should be an allowance for decisions to be made on a case-by-case basis with the option of withholding certain information or withholding the case in its entirety from the public domain as deemed to be appropriate.
- 47 The Association agrees that inclusion of lay members on tribunals helps to enhance public confidence in these bodies.¹² For the sake of fairness and in the interests of their contribution and participation being effective and meaningful, we would also suggest that there needs to be an acknowledgement that lay members may not always have the resources and supports sitting behind them that other tribunal members have and they may therefore need additional assistance to be able to contribute fully and without undue burden being placed upon them. This would be especially relevant to tribunals where the adjudicators provide their services on an unpaid, voluntary basis. For such members, support could take the form of additional training, a mentoring system, and financial assistance for the costs involved in attending hearings (where such support is not already provided).

¹¹ Part II Analysis, Chapter 3 Accessibility, Information and assistance for users, para 3.18.

¹² Part II Analysis, Chapter 4 Membership and expertise, Composition of the tribunal, paras 4.27 – 4.28.

- 48 It is important that there are no conflicts of interest in the membership and governance of tribunals. This means that organisations which have an interest in the decisions should not be represented in the membership or on the governing bodies. This is critical to actual and perceived independence and therefore the ability of tribunals to fulfil their role in an impartial manner and to receive the trust and confidence of the public.
- 49 The issues paper asks the question “whether it is enough for the legislation regulating a tribunal simply to provide that ‘the principles of natural justice’ are to be observed, or whether it is better to set out the requirements in more detail.”¹³ The Association recommends that the requirements should be set out in more detail. This would be particularly helpful, we believe, for less experienced tribunal members and particularly for members with no formal legal training. It would serve to enhance the quality and fairness of hearings and decisions.
- 50 We agree that legislation governing all tribunals should contain consistent provisions so that parties are fully informed of the evidence against them and have the opportunity to respond.¹⁴ The Association suggests this is an issue which could also be usefully addressed through training for tribunal personnel.

Conclusion

If you have any questions relating to this submission, please do not hesitate to contact me at the Association office as per the contact details on the front page of this submission.

Yours sincerely,



Kerry Dalton
Chief Executive

¹³ Part II Analysis, Chapter 6 Procedure, Natural Justice – A Fair Hearing, para 6.23.

¹⁴ Part II Analysis, Chapter 6 Procedure, Para 6.28 Disclosure.