

The Rules Committee's Further Consultation Paper "Improving Access to Civil Justice"

RUSSELL MCVEAGH'S OVERVIEW OF THE PROPOSALS



New broader proposals to streamline High Court proceedings

The Rules Committee has released a further consultation paper identifying potential reforms to improve access to justice in civil matters. These proposals respond to submissions received following two earlier consultation papers (earlier analysis [here](#)) and are significantly broader than earlier proposals.

The Rules Committee intends to both report to the Attorney-General (as some of the proposals would require law changes) and reach a view on the appropriate rule changes they can implement directly.



Barriers to accessing civil justice identified

Alongside financial barriers, the Committee is mindful of cultural and informational barriers which can make accessing justice an "alienating" experience, especially for Māori, Pasifika, migrants, refugees and others. The Committee recognises that reform may require significant structural change and proposes recommendations for the Government to inform wide-ranging policy decision-making. No detail on specific suggestions is provided in relation to cultural barriers. The District Court has, however, been undertaking new initiatives to lower barriers (see [here](#) and [here](#)).



Discovery, gone by lunch time

The Committee proposes to end the current discovery regime. Instead, new disclosure rules would be created which would require disclosure of all key and adverse documents when statements of claim and statements of defence are filed. Court-ordered discovery would still be available in appropriate cases.



Fewer hearings?

The Committee proposes introducing a presumption that interlocutory steps are determined on the papers, unless a hearing is needed. This could remove numerous hearings along the way to trial. Interlocutory hearings would be reserved for the most important issues and cases.



Oral evidence - a novelty?

Witnesses giving evidence orally may become a novelty, reserved only for the most significant factual disputes where the Court considers it needs to hear the witnesses. Instead, most evidence, even in the biggest disputes, would be written only.



Engage early, engage often

Judges would engage with the substance of cases much sooner. Early Issues Conferences would see judges engage on the merits before full evidence and submissions. The hope is that judicial involvement will help crystallise key issues, leading to earlier resolution of claims and avoidance of further steps in the litigation.



A picture can paint a thousand words

The Committee reiterates the need for greater emphasis to be placed on the documentary record to establish facts. Documents in the common bundle would be admissible as to the truth of their content, representing a significant departure from the Evidence Act and current practice.



The Committee also recommends increasing the jurisdiction of the Disputes Tribunal and improving the District Court's structural ability to deal with civil claims. Some of these proposals will require legislative change.



Expert evidence would become tightly controlled. Single Court-appointed experts could replace party experts and/or there could be a limit of one expert per topic, per party.



Submit your views

The Rules Committee will reach a final view on the proposals after a second round of consultation. As shown by the expansion of proposals following the initial consultation, submissions can have a real impact.

Consultation ends 2 July 2021

For more information see:

<https://bit.ly/3vfrIBP>