sufficient incentives for lawyers to make every effort to resolve complaints internally.

Ministry of Justice Website

Law Commission recommendation

108. The Commission recommends that the Ministry of Justice website should provide, with explanatory notes, information on the costs of going to court, including the cost recovery scales.

Proposed new initiative – cost information on internet

109. The Ministry of Justice will review its website content with a view to providing the type of information on costs suggested by the Commission. This work will form part of the broader review of the information provided by the Ministry outlined in paragraph 49.

Advertising and Comparative Price Information

Law Commission recommendation

110. The Commission recommends that the New Zealand Law Society, or an independent body, should assume responsibility for providing independent comparative cost information for consumers on legal fees.

Comment

111. The Government does not agree with this recommendation as such information would be problematic to obtain, verify, present and regularly update. It would impose an administrative burden on the provider that would likely result in additional costs being passed on to consumers of legal services. Other professions and industries that provide essential services are not subject to such requirements. The Government considers a better approach is through the requirements in the Lawyers and Conveyencers Bill for practice rules relating to fees disclosure which will result in consumers being provided with information enabling them to make their own comparisons between services.

Alternatives to Legal Aid

Law Commission recommendations

112. The Commission recommends that the Ministry of Justice should undertake further research into alternatives to legal aid, such as contingency legal aid funds, for funding or supporting litigation.

Comment

113. The Government is committed to ensuring that users of legal services who fall in the gap between those who can afford to employ a lawyer and those on low incomes who can obtain legal aid are not be prevented from accessing justice.

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114. The Ministry of Justice's 1998 Review of Legal Aid explored three alternative options to legal aid: contingency fees, legal expenses insurance and legal loans. The review found that while each of these schemes did address part of the issue, none were an adequate alternative for legal aid. The legal aid scheme is part of a complementary regime which also includes legal assistance available through the Police Detention Legal Aid Scheme, Community Law Centres, and the Duty Solicitor Scheme. As set out in other areas of this response, there may be changes to enhance these services.

115. The Government does not intend to undertake further research into supplements to legal aid at this time. The initiatives already underway (which are outlined below) are intended to contribute to a reduction in the level of unmet need.

Work currently underway – legal aid eligibility review

116. The Government notes that the Ministry of Justice's legal aid eligibility review already under way is reviewing eligible proceedings, the merits tests, and the threshold for financial eligibility. It will consider whether there are areas where need is unmet because the threshold for access to legal aid is too high or because legal aid is not currently available for certain proceedings.

Work currently underway – conditional fees (Lawyers and Conveyancers Bill)

117. The Commission raises the possibility of contingency legal aid funds as an example of alternatives to legal aid. The Government has agreed to incorporate into the Lawyers and Conveyancers Bill provisions allowing lawyers to enter into conditional fee arrangements with their clients that enable a success uplift fee on a normal fee (however this will not apply to Family Court, Immigration and criminal cases as these are considered unsuitable for contingency fees). This means that a fee is set at a normal rate for work of that kind, but includes an uplift or additional payment to compensate the lawyers for the risk of non-payment and the disadvantage of payment being deferred.

Comment – alternatives to Legal Aid suggested by the Commission

118. The Commission suggests some alternatives to legal aid that the Government considers have already been looked into previously or future work in those areas is planned.

- *Staggered grants*

119. Staggered grants, recommended in the Law Commission report, already operate, although in a different way to that discussed by the Commission. The LSA will usually decline to grant aid in civil (and family) cases if the applicant has income and assets above a specified threshold, but has the discretion to grant aid, depending on the individual's situation. If the LSA grants aid, it will require the legally aided person to repay some or all of the grant if they are able (called a contribution), either by lump sum, regular instalments or on the sale of assets. In some situations the LSA will grant aid where the applicant cannot access funds, for example capital in the applicant's house, but will place a charge over the applicant's assets so that the grant can be repaid when the assets are sold. In criminal legal aid, the LSA assesses whether the applicant can afford to pay for representation costs. If the applicant can

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fund part of their costs, the LSA will usually grant aid and establish a contribution, although in some situations, the LSA may decline aid and invite the applicant to reapply once their funds are expended. The LSA grants aid in stages that correspond to the stages of the legal case, with each stage being granted as a "maximum grant" representing the LSA's maximum committed liability.

- *Legal lending scheme*

120. The Government notes that the concept of a legal lending scheme was raised as an option to consider as part of the legal aid eligibility review. This option will not be pursued in the eligibility review. The current scheme allows people to access legal aid if they meet the financial threshold. It is important to set the financial threshold at an appropriate level to allow access to justice for those who can not meet the costs of their legal services. Until the financial eligibility threshold has been reviewed, and any adjustment made, it is not possible to assess if there will be a need for a legal lending scheme.

- *Insurance*

121. The Commission suggest legal insurance should be considered further. Legal expenses insurance is predominantly used in overseas jurisdictions for personal injury compensation claims, or defence to them, in the civil jurisdiction. Personal injury claims in New Zealand are covered by the provisions of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (ACC).

Court fees

Law Commission recommendation

122. The Commission recommends that there should be ongoing evaluation of the effect of court fees on court usage and that the availability of a waiver of court fees should be publicised in a way that is likely to reach unrepresented litigants.

Work currently underway – review of civil court fees

123. In 2000, the former Department for Courts undertook a major review of court fees. The first stage of that review was completed in October 2001 and the second and final stage was completed recently. The aim of the review was to establish robust and fair recommendations on civil court fees for consideration by the Government.

124. The Government will continue to monitor trends in court use to ensure that fees do not unreasonably restrict access to courts. In March this year the Government agreed that there be regular reviews of the levels of court fees in all civil jurisdictions, which take account of agreed cost recovery levels, Consumer Price Index movements, and changes in input costs and volumes in civil courts. These reviews will occur on a two-yearly basis.

Comment – fee waivers

125. There are a number of ways that information about the waiver is currently communicated as well as opportunities for better communication in the future. Currently information about fee waivers is provided on the Ministry of Justice

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website. The Ministry also requires notices about fee waivers to be displayed within courthouses. Additionally, the work to provide internet-based information on court costs as well as the Ministry reviewing its information about court proceedings, both referred to above, will provide opportunities for assessing how information on waivers can better be communicated.

126. Other opportunities (such as the recent decision to extend eligibility for fee waiver to legally aided persons) to publicise the waiver will be considered as other fees and costs-related information is developed.

Recommendations : Encompassing Diversity

Law Commission recommendations generally

127. The Commission makes a number of recommendations to improve access to the courts for people whose ethnic descent, culture, gender or physical ability differs from the dominant group in society. The Commission identify several groups of New Zealanders who face challenges over and above those experienced by other New Zealanders in accessing justice through the courts, or whose particular needs may give them a different perspective on the courts' operation.

Response

Comment

128. The Government agrees that being responsive to the groups of people identified by the Law Commission is central to the goal of a fairer, more credible and more effective justice system. The Government considers that many of the issues identified for these particular groups and the options for addressing them will also benefit the majority of New Zealanders.

<u>Liaison Officers and Community Liaison</u>

Law Commission's recommendation

129. The recommends that the Ministry of Justice should investigate the designation of staff as liaison officers or facilitators to assist groups with particular access issues arising from their ethnicity, disability or any other special concerns. The liaison officers would advise the court about ways to improve services for these people as well as staff training to assist people with special needs for assistance with court processes. The Commission also recommends the establishment of Community Liaison Officers and Community Court Consultation Groups to facilitate a more general dialogue between the Community Courts and local communities to enhance the effectiveness of court processes.

Comment – liaison officers and community consultation groups

130. The Government does not agree with the Law Commission's specific recommendations for liaison officers or Community Court Consultation Groups. The Government notes the benefits that have accrued to Pacific communities in South Auckland as a result of the establishment of a Pacific Community Liaison Officer at Manukau District Court. However, liaison between Courts and

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community is likely to be most successful where particular needs have been recognised and targeted responses are developed to meet these needs. The Government is concerned that establishing general consultation groups with a necessarily broad focus on community need may lead to real and perceived inequalities between different areas, unrealistic expectations among community members, and unnecessary conflict in increasingly heterogeneous communities where views and needs are likely to diverge significantly.

131. The Government acknowledges the Law Commission's concerns and is committed to supporting more specific community initiatives and encouraging a culture of community responsiveness within the Courts. There is a need to improve the relationship with, and responsiveness to, the groups identified by the Commission as facing particular challenges in accessing the courts (including, Māori , other ethnic communities, people with disabilities, and victims). The Government will, therefore, be introducing other initiatives to address these issues.

132. As set out earlier the Government plans to phase in the implementation of a 'meet and greet' information service providing a stationary information desk and mobile information officer in courts. This initiative aims to improve the courthouse experience for all users and will be beneficial to address the concerns of the groups identified by the Law Commission. The service could become a point of reference for community groups and organisations to link with, to access information for members. It is envisaged that information officers' training will incorporate diversity issues.

Work currently underway – court and case management roles

133. In addition to the new initiative referred to above, the Government notes that responsibility for community liaison is already an integral part of the various roles carried out within the Courts. Court managers are responsible for facilitating access for and addressing issues from their communities. The implementation of case management in District Courts means that case managers are the appropriate point of contact and source of information relating to their case for individuals. Also, Customer Service Officers are responsible for the provision of information on court processes and case specific information. Victim Advisers, Restorative Justice Co-ordinators, and Family Court Co-ordinators also provide information and services to specific groups and court users.

Building Links with Communities

Comment

134. The Government is committed to ensuring that courts are responsive to community need and that they have systems and practices in place that encourage flexibility and to enable individual solutions to be found for the diverse groups that come into contact with the court system. Government also wishes to explore different ways of making links with communities, including, for example, through schools, noting this as one aspect of the 'civics' information project referenced in paragraph 29.

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Work to be undertaken – building links with the community

135. Recognising the Law Commission's concern that courts need to "forge links and relationships with members of the community", the Government has noted the success of current initiatives such as the Court Open Days and work of the Family Court Co-ordinators in promoting contact between courts and community. However, the Government also notes that, while there are significant activities in place in various courts, this tends to be on an occasional basis, and is not consistently undertaken throughout the country.

136. The Government considers that these existing activities need to be expanded, both across the country, as well as to all jurisdictions and activities within the court system. Additionally, it is desirable that any activities are given sufficient focus to attract the public. The Government has therefore directed officials to develop a proposal for a programme of activities in District Courts (other than small courts) to be concentrated into a single week. What is envisaged is:

- A Court Open Day;
- Special forums, seminars and information sessions on topics of interest;
- Organised tours of the court; and
- Articles/ releases for media at a local level.

137. The case for any additional funding required will be made through normal budget processes. It is intended that the first week of events will occur in the 2005/2006 financial year.

Interpreters

Law Commission's recommendation

138. The Commission recommends that the Ministry of Justice should develop a national policy for the hiring of interpreters, including setting minimum qualifications, standards and other requirements.

Comment

139. Everyone who is charged with an offence has the right to have the free assistance of an interpreter if they cannot understand the language used in the Court[5]. The Government notes the concerns raised that the need for interpreters is often not identified early enough in the process, that not all interpreters are appropriately qualified and that in the case of interpreting for Deaf people there is a shortage of sign language interpreters in New Zealand. The Government notes the recent establishment of a pilot telephone interpreting service, "Languageline", established by the Office of Ethnic Affairs to enable some government agencies to access interpreters for 35 languages when communicating with people of non-English speaking background.

[5] New Zealand Bill of Rights Act 1990, s 24(g)

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Work currently underway – courts interpreters project

140. The Government recognises that consistent provision of professional interpreters is essential to increase the accessibility and equality of the court experience for people of ethnic or cultural minorities, hearing disabled and Deaf people. The Ministry of Justice is currently developing a project on national standards for using, and guidelines for hiring, interpreters. The scope of the project covers standards and appointment processes, fees and expenses. The Government looks forward to the implementation of this project in 2005.

141. The Ministry will comply with the guidelines developed for New Zealand Sign Language as part of the New Zealand Sign Language Bill.

142. The Ministry of Justice will consider whether it is appropriate for the 'Languageline' service referred to above to be used for some of the Ministry's functions.

Work currently underway – judicial training

143. The Government notes that the Institute of Judicial Studies is considering the issue of interpreters and is developing a project to address the issue of judicial training in the use of interpreters in court.

New Zealand Disability Strategy

Law Commission recommendation

144. The Commission recommends that, in accordance with the New Zealand Disability Strategy, the Ministry of Justice should review court facilities from the perspective of all types of impairment and experience of disability, to determine specific measures that will improve access to justice for people with disabilities.

Work currently underway – improving accessibility for people with disabilities

145. The Government is committed to ensuring that barriers to court facilities, information, and court processes for people with disabilities are reduced.

146. All government departments (including the Ministry of Justice) are required to develop annual Disability Strategy implementation work plans with goals and actions. At the end of each year, departments are required to prepare a progress report. The Minister for Disability Issues is required to report annually to Parliament on progress in implementing the Strategy.

147. The Ministry of Justice's New Zealand Disability Strategy Implementation Work Plan includes, among other aspects:

- A partnership programme with the Public Service Association, which includes forums with specific groups (including people with disabilities) to enable people to influence the ongoing policy direction and implementation of the Ministry's work;
- Affirmative action, which includes a review of all the Ministry' corporate policies and practices which can, or do, contribute to the New Zealand Disability Strategy; and
- Accessibility of court buildings.

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Improvements for Victims

Law Commission recommendation

148. The Commission recommends that the treatment of victims should be enhanced by the implementation of two measures:

- Discretion for all witnesses to be screened while giving evidence, or to give evidence on video where need is established, regardless of the nature of the crime; and
- Victims should have access to separate rooms at all courts.

Work currently underway – improving accessibility for victims

149. The Government notes that generally there is already discretion for witnesses to be screened while giving evidence if a Judge views this as necessary. All courts have a secure facility that can be made available if there is a need for that facility on any given day. Furthermore, the Government notes that all major courts and all new courts or major upgraded courts built since 1997 have remote evidence capacity so that evidence can be played back to the courtroom.

150. The Government is committed to ensuring victims have access to separate rooms in courts where possible so that they are not forced to encounter offenders. The Government notes that the Ministry of Justice includes in its Service Charter that separate rooms be provided for distressed victims. The Ministry takes this requirement into consideration with any courthouse refurbishments.

Work currently underway – Courthouse Design Standards

151. The former Department for Courts (now the Ministry of Justice) developed Courthouse Design Standards in 1997, which set out the requirements for designing new courthouses and refurbishing existing buildings. The Standards require new courthouses to be designed in accordance with legislation governing access to buildings for people with disabilities. The Standards also require new courthouses to have a private room available for victims as well as a remote evidence giving room.

152. The Ministry of Justice is confronted with an ageing portfolio of courthouses and associated buildings. Of the 72 properties owned by the Ministry, 11 are over 100 years old, 35 are over 50 years old and 20 have Heritage classifications. These buildings were designed to meet the needs of a bygone era when the demands and behaviour of society were such that operational, facility and security needs were much less. The ageing portfolio presents challenges to the Ministry including, maintaining operational effectiveness and certainty, increased maintenance requirements and associated costs, maintaining statutory compliance, providing adequate security and meeting Courthouse Design Standards and technology requirements.

153. Government has spent over $100 million since 1995 on establishing and upgrading court buildings. A significant level of funding will be required to bring all court buildings up to statutory compliance and Courthouse Design Standards. Where particular courthouses are not compliant in all respects with the Courthouse Design

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Standards (due mainly to the age of the buildings and, in some cases, issues regarding heritage classification), there are management plans in place to deal with special requirements such as a secure witness requirement or a disabled person giving evidence or requiring particular services.

154. The condition and maintenance requirements of the Ministry of Justice's buildings and properties are currently being assessed by its Property team. This will inform decisions, as part of the Ministry's baseline review (refer to paragraph 13) about the level of funding required to maintain those buildings and properties to a compliant and fit-for-purpose state, including identifying shortfalls against design standards.

Improving Access and Support Generally

Law Commission recommendation

155. The Commission recommends that the Ministry of Justice should, when implementing recommendations to improve access and support for people coming to court, consider the diverse needs of minority groups, including their particular concerns about:

- Access to useful information;
- Provision for support people in court proceedings; and
- Alternatives to mainstream criminal justice processes.

Comment

156. The Government considers that the initiatives set out elsewhere respond to these recommendations.

Recommendations: The Place of Alternative Criminal Justice Processes

Law Commission recommendations generally

157. The Commission makes a number of recommendations aimed at ensuring issues that can be resolved outside the courtroom are disposed of without the need for judicial determination and that where this occurs, there is a principled and transparent framework in place. The Commission recommends a statutory framework for infringements and minor offences, replacement of the police diversion process with a formal police caution process, a framework for restorative justice, and guiding principles for alternative criminal justice processes.

Response

158. The Government agrees that to the extent possible matters which can be resolved outside the court process or the courtroom are so resolved by alternative dispute resolution, which is quicker, more direct and less costly.

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Infringements and Minor Offences

Law Commission recommendation

159. The Commission recommends that:

- One statutory framework should be developed to regulate the establishment of infringement offence schemes and procedures;
- Penalties for infringement offences should be reviewed to ensure there is proportionality between the behaviour being regulated and the penalty imposed; and
- The minor offence regime should be examined to determine whether some minor offences should be reclassified as infringement offences, or removed from the statute books altogether.

Comment

160. The Government notes the concerns about the increased growth of infringement schemes including the absence of a framework to establish infringement schemes, the proliferation of such schemes, and the disparity between different schemes. The Government is committed to addressing these issues and work is underway in this area, as noted below.

Work currently underway – review of infringement scheme

161. The Ministry of Justice (in conjunction with the Law Commission) is undertaking a comprehensive review of the infringement scheme. The review encompasses all aspects from governance of the infringement system and of individual infringement regimes through to the creation of new regimes and the imposition, collection, enforcement and resolution of penalties. The recommendations made by the Law Commission will be addressed through this review.

162. The streams of work for the review include:

- Identification and analysis of the current issues and development of options for reform. This analysis will include the development of some general principles for an effective infringement system against which options for reform can be evaluated; and
- An analysis of the operational issues that are impeding efficiency followed by some recommendations for how these issues might be resolved ahead of any wider reform.

163. The Law Commission will also be undertaking work on:

a) The nature and purposes of infringement offences, including:
   - The types of conduct they should sanction and any limitations;
   - Whether they should be treated as civil or criminal breaches, or whether they should have a separate jurisdiction; and
   - The basis on which they should be distinguished from general offences

b) The desirability of subsuming minor offences into the infringement offence procedure; and

c) The principles and process for determining penalty levels including consideration of the relativities between court-imposed fines and infringements and the appropriateness and efficacy of fixed monetary penalties and sanctions.

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164. Officials will be making final recommendations for reform of the infringement system to Cabinet by 30 June 2005.

Police Warnings and Formal Cautions

Law Commission recommendation

165. The Commission recommends that a new formal police caution process should replace the current police diversion process.

Comment

166. The Government is committed to ensuring that appropriate and consistent frameworks for dealing with cases that do not warrant the full intervention of the law exist, and that Justice Sector resources involved in administering such frameworks are utilised in an efficient and effective way.

167. The options of police warnings or diversion arise before a criminal case goes to court. These options have long been an integral part of the criminal justice process providing informal resolution of minor offending.

168. The Government does not propose to immediately replace the Police Adult Diversion Scheme (diversion) with the formal caution process proposed by the Law Commission. The Government considers that the diversion review currently being undertaken by Police, as set out below, will address the Commission's concerns about the consistency of approach to diversion decisions. In addition, further work is being scoped by Police on the application of the Solicitor-General's Prosecution Guidelines, also set out below.

169. The Government considers that potential savings in judicial and court time that may result from the proposed formal caution process may be largely offset by additional resources that the Police would require to implement the proposed process. These additional resource requirements are likely to be required due to the:

- Additional stages required in the proposed process compared to what is required for diversion at present;
- Steps required to bring both the case and the offender before the Court if the offender later chooses not to participate in the caution process; and
- Administrative and oversight role the Commission proposes for the Police Prosecution Service (PPS) would require additional resources – particularly in non-metropolitan areas where PPS prosecutors currently service large geographical areas on a periodic basis.

170. While the Court appearance of the offender as part of diversion affords only minimal judicial input, the experience of the Court process may assist in demonstrating the gravity of the situation and the potential consequences of having to continue through the formal Court process to the offender.

171. The Government considers that these factors, combined with work currently underway and set out below, makes it premature to consider the structural changes and costs of the proposed formal cautioning system at this time.

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Work currently underway – Police diversion review

172. Police are in the process of implementing a review of the Police Adult Diversion Scheme. The review will address a number of variances in the way diversion is run in different locations, and to ensure better consistency through the application of best practice within a national framework.

173. The policy aspects of the review were completed in late 2003 and looked at diversion practices around the country and international guidelines to establish a best-practice framework to guide diversion practices on a nation-wide basis. A draft practice guide has been developed and it is proposed to pilot it in selected PPS offices during the 2004-05 year before implementing it more generally around the country. Police will also be consulting on the proposed process with interested external stakeholders as part of its validation work. The review will address the concerns of the Law Commission with inconsistencies in diversion at the time when its report was written.

Work currently underway – education and training within Police on the application of the Solicitor-General's Prosecution Guidelines

174. The PPS is currently scoping a project to consider how the Solicitor-General's Prosecution Guidelines can be more effectively applied within Police to ensure that better prosecution decisions are made from the outset and throughout the prosecution process generally. This work is at a very early stage and will involve substantial internal consultation before any possible changes can be implemented. Consultation will also take place with the Crown Law Office and other relevant external stakeholders as the work progresses.

175. Overall, more consistent use of diversion and improved prosecution processes by Police should result in better charging decisions, more efficient use of Court resources, and fairer outcomes relative to the offence. Many of the Law Commission's concerns will therefore be mitigated by policy changes already underway or proposed.

Restorative Justice

Law Commission recommendation

176. The Commission makes two key recommendations about restorative justice:

- Policies should be developed for the operation of restorative justice programmes under the Sentencing Act 2002 and Victims' Rights Act 2002; and
- Regulations should be developed to provide for best process standards in the provision of restorative justice programmes and the monitoring and enforcement of offenders' plans prior to sentencing.

Work currently underway – framework for restorative justice

177. The Government recognises that restorative justice processes have been developing in an ad hoc manner across the country and that these processes should operate in accordance with best practice. The Sentencing, Parole and Victims' Rights Acts

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2002 gave restorative justice processes explicit statutory recognition in the adult criminal justice system for the first time. The Government recognises the need to ensure that the relevant provisions are implemented appropriately and effectively.

178. The Commission's recommendations are already being addressed by the Ministry of Justice. In particular, the Ministry is developing a framework to facilitate the continuing development of restorative justice processes in New Zealand. A significant part of this policy framework involved the development of *Principles of Best Practice* for the use of restorative justice processes in criminal cases. The principles (developed in consultation with restorative justice providers, judiciary, and government agencies) were published in May 2004. The next phase of this work is the:

- Implementation of the *Principles of Best Practice* so that those working with restorative justice are aware of the Principles and understand how they should be applied ($4m over four years was provided in Budget 2004 for this purpose);
- Development of a consistent funding policy for restorative justice.

179. The Government disagrees with the Commission's recommendation that best practice process standards should be contained in regulations as this may lead to unnecessary and inappropriate rigidity. It is preferable, given the current stage of development of restorative justice, for standards to be aspirational and flexible rather than mandatory requirements to be followed in every case.

Work currently underway – current funding of restorative justice programmes

180. The Government funds a number of restorative justice initiatives. In July 2001, the former Department for Courts received new funding to pilot and evaluate a court-referred restorative justice process. The pilot is underway in the Auckland, Waitakere, Hamilton and Dunedin District Courts. The restorative justice process takes place pre-sentence and the pilot includes a range of moderately serious offences (eg, fraud, arson, burglary, aggravated robbery). The evaluation of the pilot has been underway since February 2002 and is expected to be completed towards the end of 2005. The evaluation aims to determine whether participation in the pilot results in increased resolution of the effects of crime and increased satisfaction with the criminal justice system for victims, and a reduction in offenders' re-offending. It is intended that the findings of the pilot's evaluation will inform decisions about any expansion of court-referred restorative justice.

181. In 2002/03 the Crime Prevention Unit (within the Ministry of Justice) funded 18 community managed restorative justice programmes. This funding has significantly increased since 1995/96. The types of crime most frequently dealt with are property offences (eg. burglary, theft of and from cars) and lower levels of violence. Two of these programmes are currently being evaluated.

Guiding Principles for Alternative Criminal Justice Processes

Law Commission recommendations

182. The Commission recommend a set of guiding principles should be developed for alternative criminal justice models operating outside the direct supervision of the

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court, with such legislative amendment as necessary to ensure the rights and interests of victims and defendants are protected.

Comment

183. The Government agrees with the Law Commission in wanting consistency, transparency and accountability in the development of alternative criminal justice processes. Consequently, guidance is already in place for two of the most significant alternative criminal justice processes available in New Zealand: restorative justice and pre-trial diversion. As outlined above, the Ministry of Justice has recently finalised principles to guide the use of restorative justice processes. The Police also have guidelines for the operation of pre-trial diversion. However, no guidance is in place for the use of alternative criminal justice processes more generally.

184. The Law Commission's report reflects a more general concern about the lack of guidance for any processes that may be operating either now or in the future, rather than any processes it considers are of immediate concern. The Government is not aware of any specific processes (outside of restorative justice and pre-trial diversion) that are operating to any significant extent. It is likely that these processes operate on an ad hoc basis, in a variety of forms, and in response to the particular circumstances of individual cases. Some information on the use of these processes may be gathered through a stocktake of restorative justice processes that is planned as part of work in 2004/05 to develop a long-term restorative justice funding framework, described above.

185. The Government considers that the development of guiding principles for alternative criminal justice processes may be useful in the future. However the timing of this work will depend on developments in the future or issues with particular processes being identified. The Government considers that this recommendation should be kept under review and actioned if and when necessary.

Recommendations: Mediation

Law Commission's recommendation

186. The Law Commission supports the use of mediation as a way of encouraging early, satisfactory and inexpensive resolution of civil disputes. The Commission makes two significant recommendations:

(a) One organisation should take responsibility for coordinating all state-managed mediation services and mediation should be available through the coordinated service, for a small fee, to parties with general civil disputes under $50,000; and
(b) A presumption that cases filed on the standard case management track in the proposed Primary Civil Court and the High Court will go to mediation before the 13th week after filing with provisions that:

- The Judge should have discretion to excuse parties from mediation, or to allow the parties to delay mediation;
- A multi-disciplinary working group of mediation practitioners, lawyers, policy-makers and trainers should oversee the implementation of court-mandated mediation and advise on:
    - The qualification level required for mediators to be placed on the court

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list;
    - A code of ethics and review or complaints procedure; and
    - Rules for privilege and confidentiality, mediator immunity and good faith of the parties in the mediation.
- Parties should be free to choose their own mediator or to use one contracted by the Ministry of Justice;
- Parties using a mediator contracted by the Ministry of Justice should pay an additional fee set at a level that protects access to justice, in accordance with established principles for setting civil court fees (the fee should be a percentage of the relevant setting down fee);
- Waivers available for court fees should also apply to mediation fees; and
- Judges should be able to order the parties to an appeal to attend mediation prior to the hearing.

Response

Comment – state-managed mediation

187. The Government considers that there is merit in exploring ways to improve coordination of state-managed mediation services, but does not agree that these services should be extended to general disputes under $50,000. State-managed mediation operates in several specialist jurisdictions where it is seen to have benefit because of the particular nature of the proceedings. The Government considers there would be advantages from improved coordination of these services, such as consistent standards of training, a wider range of expertise, quality assurance and training, economies of scale, reduced duplication and increased profile of mediation.

188. An initiative underway across government is the convening of the Public Sector Mediator Network, which was established to explore ways to facilitate collaboration amongst the public sector mediators. There are a range of models that could be used for better collaboration of state-managed mediation services, however the Government does not favour bringing all of the services into one organisation because mediators could lose their subject expertise by not being attached to the relevant subject matter agency.

189. The Government's recent decision to establish the Department of Building and Housing provides the opportunity to better integrate, co-ordinate and realise economies of scale through the co-location of the Residential Tenancies Service, the Weathertight Homes Resolution Service and administration of the Retirement Villages and the Construction Contracts Acts. The new Department will also be required to advise on the case for and options for resolving all building disputes affecting home owners.

190. The Government has directed the Ministry of Justice to report back with options for better collaboration of state-managed mediation services by December 2005.

191. The Government does not favour broadening the availability of these services to general disputes under $50,000 because of there is the potential for net-widening (whereby more parties are drawn into a state-managed system than otherwise might have been the case). Current evidence also indicates that there is already significant and increasing private take-up of mediation.

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Comment – Court-mandated mediation

192. The Government acknowledges that there are considerable benefits in using mediation. However, mediation is most effective when the parties to a dispute share a willingness to mediate and continue to see some value in their relationship. The Law Commission's recommendation for court-mandated mediation also raises a number of policy issues including limiting people's access to justice, undermining the successful features of mediation and compromising the role of the courts. In addition, claims that mediation is cheaper and quicker only hold true where mediation is successful. In cases where mediation is unsuccessful, costs and delay can be increased. Any potential for savings could simply be offset in the state funding mediation as well as the compliance costs involved in overseeing mediation.

193. Recent research[6] indicates that the level of awareness of Alternative Dispute Resolution among disputants and the influential position of lawyers is critical in determining whether disputants seek resolution through Alternative Dispute Resolution. Drawing on this research, the Government considers there are preferable options for promoting the use of mediation than the recommendations proposed by the Law Commission.

194. The Government has directed the Ministry of Justice to further explore and report back with options on how to promote the use of mediation (including appropriate incentives and increased awareness of the availability and benefits of mediation) by December 2005. The Government directs that the Ministry specifically consider, as part of this work, whether a pilot of court-mandated mediation in the civil jurisdiction of a District Court should be initiated.

Recommendations: Primary Courts Structure

Law Commission recommendations

195. The Law Commission recommends a structure in which there are nine "Primary Courts", whose principal function is to conduct the first formal hearing of a case and make a decision. Each Court would have its own Principal or Chief Judge (or Coroner) and, together with a Chief Primary Court Judge, these Judges would make up a Primary Courts Consultative Council to oversee and co-ordinate the work of the Primary Courts.

196. The main points of difference with the existing structure are that:

- The general jurisdiction of the District Courts would be split into three new courts (the Community Court, the Primary Civil Court and the Primary Criminal Court), each with their own Principal or Chief Judge;
- The Family and Youth Courts would become 'Courts', and not divisions of the District Court;

[6] *"Alternative Dispute Resolution: General Civil Cases"*, published June 2004 summarises the findings from a programme of research on Alternative Dispute Resolution (ADR) in NZ. The research was commissioned by the former Department for Courts and the report prepared for the Ministry of Justice by the Centre for Research Evaluation and Social Assessment.

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- The Environment, Employment and Māori Land Courts would be more closely integrated with the other primary courts;
- There would be greater flexibility for Judges to sit in more than one of the nine courts;
- There would be a Chief or Principal Coroner; and
- There would be a Chief Primary Court Judge to oversee all primary court jurisdictions.

197. The Commission recommends that the Community Court should deal with all high volume, less serious cases; the Primary Court should hear most criminal jury trials apart from the most serious (for example, murder), which would continue to be heard in the High Court; and the Primary Civil Court should have jurisdiction for cases up to $500,000 (higher than the level in the present District Courts which is $200,000).

Response

Comment

198. The Government is committed to ensuring that New Zealand's court structure provides a clear and coherent framework for the administration of justice. It notes the concerns expressed by the Law Commission including:
- Perceived complexity of the current system;
- A perceived absence of clear and consistent jurisdictional boundaries between general courts;
- A lack of understanding of the supervisory role of the High Court and inconsistent appeal rights;
- Problems arising from the high volume and range of work in the District Courts and the Court of Appeal; and
- Lack of flexibility in capturing judicial resource.

While the Government acknowledges many of these concerns, it considers that alternative solutions may be available to address them and favours a systems approach to addressing the problems rather than a structural approach, if this is possible.

199. The Government considers that changes to the current structure of the Courts, such as those recommended by the Commission, would carry with them a significant degree of risk, and are also likely to entail significant costs. The changes recommended would have a wide range of impacts on court processes and infrastructure. These impacts need thorough assessment before decisions regarding the efficacy of pursuing structural change can be reasonably determined.

200. Further, restructuring of the courts can not be expected to deliver solutions to the identified problems in the short, or even the medium, term. The short-term effects of any re-structure inevitably involve some level of disruption to services, and benefits can only emerge on a longer time frame.

201. In the current context, a range of factors mitigate against re-structuring as a realistic short-term solution to the problems identified by the Law Commission. These include an agreed work programme that has committed the available Ministry of Justice resource to different priorities in the coming year. If effort was to be placed on restructuring the courts in the short term the consequence would be that other

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work aimed at enhancing our court system could not be pursued and improvements would be necessarily delayed.

202. In the short term, Government considers that the largest gains for the court system can be achieved most quickly and economically by focussing effort on making improvements to court processes, rather than on making structural change. It therefore intends to implement Law Commission recommendations that can streamline and improve the current structure immediately, and foster attitudes more focussed on 'service delivery', and to consider the recommendations relating to the establishment of the Primary Court structure in the context of a longer term strategy.

Work currently underway – review of Ministry of Justice funding allocation

203. The Government notes that some of the issues lying behind the Law Commission's recommendations to restructure the courts may be, at least in part, linked to issues of resource allocation and targeting. The Ministry of Justice has established a project to review its funding allocation, the purpose of which is to ensure that the organisation has an adequate level of appropriation to enable a robust, sustainable service and strong foundations for future development. Among other things, this project will:

- Identify and examine what influences service delivery in the Higher Courts and District Courts (including the Youth Courts and Family Courts);
- Detail what the actual costs of delivering court services are and/or should be;
- Make recommendations around improving the effective use of funding in the short to medium term; and
- Make recommendations around the implications of forecast service volumes over the next three years.

204. Other recent initiatives that are expected to take some of the current resource pressure off the courts include the following:

- *Increase in Judge Numbers*
  The District Courts Act 1947 was recently amended to increase the number of District Court Judges who may be appointed from 123 to 140. This is expected to ease workload pressure on the District Courts.

- *Digital Audio Technology*
  The Government has committed funding to increase the use of digital audio technology (DAT) to improve evidence recording and contemporaneous transcription. This is expected to result in a 12% reduction in the time hearings using this technology take to complete and should, therefore, also ease pressure on the District and High Courts.

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Work currently underway – building capability

205. The Ministry of Justice has identified the need to address capability gaps as a strategic priority for the year. Within the District Courts, key activities contributing to this goal and recently completed include:

- Phase one of an induction programme, which is designed to ensure new employees understand the work of the District Courts and are trained in the basic requirements of good service;
- Updating and extending of 'Court Skills' documentation, which provides both a training resource to court staff and provides them with the technical information they need to do their jobs;
- Initiatives to provide career pathways for staff, and enable better recruitment processes to be employed;
- Training in project management for management staff and development of more inclusive planning processes;
- Involvement of field staff in key projects to ensure operational knowledge is fully taken into account when developing new initiatives;
- A national operational consistency review; and
- Re-organisation of the District Courts intranet site to make it more user-friendly and to provide resources giving technical and policy information to enable court staff to do their jobs.

206. Key activities started or planned to start in the next year include:

- National implementation of the Induction Programme;
- Development of phase two of the Induction Programme (to provide more detailed role training for new court staff);
- A training needs analysis and development of key technical training programmes for staff;
- Development of a comprehensive workforce plan;
- Development and implementation of a comprehensive internal communication strategy; and
- Further development of the operational consistency review process and the development of a comprehensive, operationally focussed quality assurance framework.

Work to be undertaken – Technology solutions

207. The Government will continue to investigate other technology solutions, such as video conferencing, that can contribute to a reduction in delays, and improve the quality of services.

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Work to be undertaken – consideration of recommendations for structural change

208. Government notes that the baseline review process that the Ministry of Justice has established includes three key stages:

(1) Review to deal with immediate pressures;
(2) Establishment of a new 3 – 5 year strategic direction for the Ministry of Justice; and
(3) Design and implementation of a redefined service according to that strategic direction.

209. The Government has directed officials to incorporate the Law Commission's recommendations regarding court structure into its analysis within the second and third stages of the review.

210. As a result of this review, Government will receive improved information about the performance issues in courts, and about the detailed costs and cost drivers involved in administering the current court system. This information will enhance Government's ability to make future decisions on the Law Commission's recommendations and alternative solutions to addressing the issues.

211. The first stage has commenced and the report from this stage will be finalised in December this year. Stage two of the work has also commenced and will be completed by June 2005. The third stage will follow this.

Work currently underway – transfer of administration of Employment Court to Ministry of Justice

212. The Government has recently agreed that administration of the Employment Court should shift from the Department of Labour to the Ministry of Justice, subject to certain conditions. This transfer is expected to occur no later than December 2004. This shift will enhance Government's ability to make process and procedural changes in a way that is consistent with other jurisdictions, and will reduce risks involved with any future decisions regarding the Employment Court becoming part of the Primary Court structure.

Work currently underway – establishment of Office of Chief Coroner

213. The Government has approved the establishment of an Office of the Chief Coroner, and has issued instructions for a new Coroners Act. This legislation will improve the current arrangements for Coroners, and is consistent with any future decisions to establish a Coroners Court as part of a Primary Court structure.

Recommendations: Court Processes

Law Commission recommendations

214. The Law Commission recommends new, simpler court processes, with more dedicated administrative support, tailored to meet the particular needs of high volume criminal work and less serious civil cases. A number of Rule changes are

recommended to strengthen case management processes and to provide greater clarity in the civil jurisdiction of both the High and District Courts, including:

- A redraft of the rules by a suitably constituted body
- Regular seminars and training on case management should be provided to those involved.

215. The Law Commission also recommends that:

- Streamlining of the criminal list process should be given high priority
- 'Middle banding' should be discontinued;
- The jurisdiction of the Primary Civil Court should be increased to $500,000 (this is higher than the level in the present District Court, which is $200,000.);
- Processes for small civil claims should be simplified, while processes for larger claims in the High and District Courts should be aligned.

Response

Comment

216. As noted above, the Government considers that the largest gains for the court system can be achieved most quickly and economically by focussing effort on making improvements to court processes. Process improvements are therefore accepted as a priority in the short term.

217. The Government also notes that the modernisation of courts' systems and processes has established a basis upon which the vision advanced by the Law Commission can be fostered. The aim of the modernisation programme has been to improve access through active management of cases through the District and High Courts, and new business processes have been introduced to enable (among other things):

- More effective management of cases through the use of case management principles (such as managing cases according to their needs, close supervision of the litigation process to meet agreed time standards and making sure that parties contribute to the process of managing cases) supported by technology;
- Staff to work closely with the Judiciary to manage cases in a clearly defined manner;
- Costs to be reduced through better use of physical and administrative resources;
- Costs to parties to be reduced through fewer appearances by lawyers;
- Technology to produce management information that will enable staff to do their jobs more effectively and with greater flexibility ; and
- The enhancement of the skills profile and individual performance of staff.

Proposed new initiative – support for Rules Committee

218. The Government supports this recommendation. However the Rules Committee is the body constituted to make the rules regulating the practice and procedure of the District Courts, the High Court, the Court of Appeal and the Supreme Court. It is therefore appropriate that the Rules Committee make any decisions on a project to redraft the Rules of Court.

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219. The Secretary for Justice will, therefore, consult with the Rules Committee on whether that Committee agrees with the need to redraft the Rules of Court, and if so:

- What form a project to undertake a redraft of the Rules would take;
- A timeframe for a proposed project; and
- Resources required for the proposed project.

220. Any funding required could be sought in the 2006 budget round.

Proposed new initiative – seminars and training in case management

221. The Government has directed the Ministry of Justice to investigate and consult relevant parties on preferred options for providing training and information on case management, and to report back by February 2005 with a proposal for undertaking this training, if appropriate. The case for any additional funding required will be made through normal budget processes.

222. It is also noted that recent training initiatives within the Ministry of Justice (including 'Court Skills', CMS training and a District Courts Induction Project) include training in case management principles for court staff.

Work currently underway – Summary Court Strategy Group

223. The Government notes that a Committee, the Summary Court Strategy Group has recently been established to lead improvements in the District Courts summary criminal jurisdiction. The Committee consists of senior operations managers from the Ministry of Justice, and representative District Court Judges, and is likely to engage with and involve other agencies concerned with the criminal courts, including Police, the Law Society and the Legal Services Agency.

224. One of the roles of the Summary Court Strategy Group is to ensure that work to improve summary court processes is accorded proper priority. That is, the establishment of this Group addresses Law Commission criticisms that work at the lower end of the criminal jurisdiction may have been seen as less important than other work. Further, the Group has identified several initiatives consistent with many of the recommendations in the Law Commission Report that are to be scoped as projects within its ambit. These include:

- Options to reduce the demands on Judges of keeping the criminal record;
- Optimising the use of Registrar's powers; and
- Options for improving information for defendants, including early information before court appearance.

225. Among the list of projects that the Group will take a role in overseeing is the List Court Pilot which is outlined in the following paragraphs:

List Court Pilot

226. A pilot has been established at the Wellington District Court to trial an alternative approach to the operation of the List Court recognising the Law Commission

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criticism that "*the criminal list is the point where the court system is under the most strain*". The pilot is trialling changes to process and administration aimed at:

- Reducing the amount of waiting time and the number of visits to Court for defendants and others by ensuring that matters are dealt with, with minimal delay, and credible appointment times are given for subsequent appearances;
- Ensuring that administrative matters are dealt with prior to the defendant appearing before a judge so that the Judge's criminal list is reserved for the matters that only a judge should consider, including final disposition and contested issues; and
- Improving defendants' understanding of what is happening in the list court process.

227. The pilot began in February this year and will run for one year. It is the subject of careful evaluation, with the final evaluation report due early in 2005. Early indications are that the pilot has resulted in a number of significant improvements to the list court in Wellington. The Government is therefore optimistic that, once results of the evaluation are clearer, changes to improve list court processes can be introduced across all District Courts, subject to resources.

Work currently underway – simplification of criminal procedure

228. Cabinet has agreed to legislative changes to criminal procedure which would:

- Give effect to the Law Commission's earlier recommendations on criminal simplification; and
- Rationalise and consolidate most criminal procedures into one statute so that the law was more readily accessible.

229. The drafting work associated with these changes is sizeable and relatively complex in nature, requiring reference to numerous pieces of legislation. It has been accorded lower priority than other areas of work. However, Government has asked officials to re-consider what priority should be given to it relative to other sector priorities and to the Law Commission recommendations.

230. The Government notes the Law Commission recommendation to remove middle band offences and has asked officials to address this issue in the context of the work to simply criminal procedures referred to above.

Work currently underway – preliminary hearings

231. The Criminal Procedure Bill 2004, introduced to Parliament in June, contains provisions to streamline preliminary hearings. These proposed changes to criminal procedure will effectively remove a step for most cases, thereby avoiding unnecessary court time and increasing efficiency.

Work currently underway – status hearings

232. Status hearings are a judicial initiative with the purpose of:

- Reducing the number of adjournments to a minimum;
- Ensuring an appropriate plea is entered at the first opportunity; and
- Reducing the time taken to hear each case by limiting the evidence to the facts in issue.

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233. The Ministry of Justice and Law Commission have jointly undertaken research into status hearings and the research report was published in August 2004 together with a discussion paper by the Law Commission, entitled *Reforming Criminal Pre-Trial Processes*. The Summary Court Strategy Group, noted above, is taking an active interest in the research and Law Commission's recommendations with the view to improve summary procedure. The Government will also be considering how it may improve the effectiveness of status hearings, following further consideration of the research report and discussion paper, as appropriate.

Comment – simplification to small civil claims and alignment of process for large claims in the High and District Courts

234. In order to facilitate access to justice for individuals, smaller businesses and other organisations with small claims, Government agrees with the Law Commission that a simplified process, more in proportion to the amount in dispute, is desirable for 'small' claims. For larger claims, Government also agrees that it is desirable that processes should be consistent between the High and District Courts, where possible.

235. As noted above, the Rules Committee is the most appropriate body to consider this issue and the Government notes that the Committee is currently undertaking a review of the rules of procedure for both big and small claims in the District Courts. The Government has further been advised that the Committee has adopted the following principles for its review:

- The procedure for big claims should mirror High Court procedure as far as possible; and
- The procedure for small claims should be proportional to the money at stake.

236. The Secretary for Justice will therefore consult with the Rules Committee on this work as part of the consultation on the Law Commission's proposal to redraft of the Rules and any support such a project may require (refer to paragraph 219).

Comment – Police swearing of informations

237. The Government agrees with the Law Commission that there are likely to be advantages for management of the criminal list if Courts are able to control their caseload. The Government also agrees that there are no longer compelling reasons for Police and other informants, to have to swear informations and that there are advantages in having informations laid electronically. However, these recommendations raise broader issues regarding the use of technology in the courts.

238. Government is cautious of acting without adequate consideration and in a piecemeal fashion to introduce changes regarding the use of technology in courts. Rather, technology should be introduced to courts in a cohesive and consistent manner.

239. Eliminating the need to swear informations can be done without recourse to technology. The Government has therefore asked officials to progress work to enable the appropriate legislative changes that this would require. This work can be done in the context of work to simplify criminal procedures generally (refer above). However, the electronic exchange of information, including the filing of criminal informations, raises a complex set of legislative, administrative and technical issues.

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240. The Government notes that, in addition to the electronic filing of criminal informations, there are a number of examples where information is transferred between the courts, other agencies and individuals by paper. In some of these cases the electronic exchange of the information already occurs so that the paper-based transfer of this information only duplicates the exchange. The Government considers that, as the problems raised in each such example are essentially similar, a consistent approach should be taken to enable electronic transfer of information without the need to also lodge the information on paper.

241. It will be possible to consider new electronic information exchange, as well as the legal status of existing information exchange and whether or not duplicate paper exchange is necessary after the Law Enforcement System (LES) is decommissioned in June 2005. Once the LES is decommissioned, an unnecessary level of complexity is removed allowing for easier consideration of the issues. This work has been included in the scope of the Ministry of Justice's 'Justice Information Strategy', referred to earlier in this response, and will also be considered in the context of the Ministry's Technology Strategy.

242. Identifying the solutions that would be required to enable the courts to manage the list court caseload also raises a set of complex problems for both the courts and Police. Again, these can be considered after LES has been decommissioned.

Work currently underway – the court record and record keeping

243. The Government acknowledges the issues raised by the Law Commission in regard to Judges handwriting decisions. The Ministry of Justice has agreed to undertake work, in conjunction with the Judiciary, to look at options to address these issues, including technology based solutions.

244. A high level plan for a project to simplify the court record and record-keeping process has been developed and work has commenced on the first phase of the project. The Summary Court Strategy Group will oversee this work.

Comment – change to level of claim for High Court civil jurisdiction

245. Changing the jurisdiction of the District Court to hear civil cases up to the value of $500,000 would have a substantial effect on case volumes, and place increased pressure on the District Court. The Government will therefore consider this recommendation concurrently with its later consideration of the recommendations relating to the Primary Court structure.

Recommendations: Juries

Law Commission recommendations

246. The Law Commission recommends raising the threshold for an accused's right to elect a jury trial to offences with a maximum penalty of five years imprisonment or more. The Commission also recommends the urgent implementation of planned legislative reforms in relation to jury trials.

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Response

Work currently underway – legislation on juries

247. The Criminal Procedures Bill, currently before the House, contains provisions for trial by judge alone in some (probably exceptional) cases that are long and complex, or where there is evidence of juror intimidation. The Bill also contains provisions for majority jury verdicts.

248. In addition, the Bill contains:

- New restrictions on the distribution of jury lists;
- Measures to make it more difficult for people to evade jury service;
- Provisions to increase the size of jury districts (meaning more people will be able to be summoned);
- Provisions that create an offence for employers to prejudice the position of an employee because they do jury service;
- Provisions to abolish requirements for jurors to stay overnight in a hotel when they have not finished deliberating a case; and
- Provisions to allow jurors to defer jury service for up to 12 months.

249. It is anticipated that these changes will, among other things, increase efficiency of jury trials and generally improve conditions for jurors.

Comment – Raising threshold for accused's right to elect a jury trial to cases with a maximum penalty of more than five years' imprisonment

250. The Government notes that:

- The New Zealand Bill of Rights Act 1990 contains the provision (in section 24(e)) that anyone who is charged with an offence

  shall have the right, except in the case of an offence under military law tried before a military tribunal, to the benefit of a trial by jury when the penalty for the offence is or includes imprisonment for more than 3 months.

- The Government has already agreed to remove the prosecution right to elect jury trial and create a presumption of trial by judge alone in less serious cases, while retaining an accused's right to elect trial by jury in these cases if chosen. These changes are expected to be made as part of the simplification of criminal procedure noted above.

- While the threshold for jury trial in New Zealand may be considered low on the face of it, it is, in effect, higher. This is because there are very few offences with penalties of 6 months or 1 year and some of these offences are excluded from jury trial. (Notably trial by jury is not available in New Zealand for the offence of minor assault, which carries a maximum penalty of 6 months imprisonment.) This makes the New Zealand position more comparable to jurisdictions such as Australia and England.

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- Eliminating jury trials for some cases would not eliminate those cases from the system but would convert them to summary defended cases (still requiring a hearing before a judge). The actual fiscal impact of making this change is therefore, on analysis, estimated to be small.

251. On balance, Government considers that any benefits that would result from raising the threshold for an accused's right to elect a jury trial to cases with a maximum penalty of more than five years' imprisonment do not warrant making such a change. It will therefore not progress this recommendation.

Recommendations: Tenancy and Disputes Tribunals

Law Commission recommendations

252. The Law Commission reported general satisfaction with the Residential Tenancy and Disputes Tribunals but recommended that Disputes Tribunals hearings be recorded. The Commission also recommends that proceedings in the Disputes Tribunal should be open to the public (with discretion for the Referee to restrict access or reporting only when the public interest requires it).

Response

Comment

253. Government welcomes the view that the Tenancy and Disputes Tribunals are generally working well.

Work to be undertaken – Disputes Tribunal openness and recording

254. The Government agrees that proceedings in the Disputes Tribunal should be open to the public and that those proceedings should be recorded. The Government has directed the Ministry of Justice to report back on the operational implications and costs involved in recording hearings and to seek any funding required through normal budget processes.

255. Opening the Disputes Tribunals to the public would require change to the Disputes Tribunals Act 1988. Government has therefore directed that officials report back on the implications of opening the Disputes Tribunal by December 2005.

Future work to be undertaken – Review of Disputes Tribunals

256. Following other decisions relevant to the Disputes Tribunal (including consideration of the structure of the court system, and openness of the Disputes Tribunal, as noted above), consideration will also be given to whether there is a need for a wider review of the Disputes Tribunal.

Recommendations: Appeals

Law Commission recommendations

257. The Law Commission proposes to strengthen the supervisory role of the High Court by recommending, among other things, that, in general, appeals from all primary

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