Interim Regulatory Impact Statement: Consultation Document Proposing a New Adjudication Act

Decision sought	Approval to release a consultation document proposing a new out of court statutory adjudication framework that businesses can use to resolve commercial disputes quickly.
Agency responsible	Ministry of Justice
Proposing Ministers	Hon Paul Goldsmith
Date finalised	25 June 2025

The Ministry of Justice has prepared a consultation document that proposes novel out of court adjudication legislation that will give businesses a new way to resolve their civil disputes quickly and privately.

This interim Regulatory Impact Statement (RIS) provides an analysis of the proposal in the consultation document. Consultation will help refine the analysis before we report back to Cabinet.

Our interim assessment is that there will be an economic net benefit from the introduction of the legislation, potentially in the order of $50 million per year.

Summary: Problem definition and options

What is the policy opportunity?

Civil dispute resolution in New Zealand occurs through a wide range of methods. Only five percent of individuals and twelve percent of businesses surveyed in the Ministry of Justice Legal Needs Surveys use the formal justice system, including the Disputes Tribunal and the civil jurisdictions of the District Court and High Court. The vast majority use private methods including lawyers, debt collection or private dispute resolution like arbitration or mediation.

Regardless of the method, civil disputes in New Zealand often take more than a year to resolve, both in and out of court. This has a significant impact on economic productivity. For example, if the legal needs survey of small businesses is representative, in the order of 230,000 businesses could be experiencing half a million disputes every year. If each of these

businesses spends 10 hours on their dispute, the productivity losses for the nation could be in the order of $200 million.

While the Government and wider justice sector are addressing delays in the formal justice system, more could be done to encourage out of court dispute resolution.

There are some sector specific laws that some groups can use that provide an alternative to using the courts or arbitration but there are gaps, especially for disputes between businesses. The only generic private dispute resolution option available to everyone is arbitration under the Arbitration Act 1996. This now takes an average of 11 months and is a similar cost to using the courts.

There is an opportunity to fill this gap by legislating a new way for all businesses to resolve disputes that is designed specifically for speed.

What is the policy objective?

The aim of this work is to develop a new way to support faster out of court dispute resolution that would reduce economic, social and individual impacts that people experience with prolonged disputes. This would:

- provide extra choice for businesses to resolve disputes quickly and privately.
- improve economic productivity.
- free up the courts for other civil disputes.

What policy options have been considered, including any alternatives to regulation?

We considered a number of options that might achieve these objectives. The options are based on models we found in other sector specific legislation or overseas legislation. We only examined statutory options because current voluntary methods do not result in shorter dispute resolution times. The options we considered were:

- requiring businesses to use an authorised dispute resolution scheme (often used in consumer disputes).
- enabling judges to order private dispute resolution.
- statutory mediation.
- fast-track statutory adjudication.

The option that is most likely to meet our objectives is a fast-track statutory adjudication regime similar to the one prescribed in the Construction Contracts Act 2002 but expanded for a wider set of business civil disputes. This would create a legislated adjudication process designed to enable fast dispute resolution to maintain cashflow and keep operations going.

What consultation has been undertaken?

We have discussed the proposal with members of the judiciary, the Law Society and select experts but we have not yet consulted widely. This interim RIS supports a consultation document that we intend to release in late July-August.

The aim of consultation is to understand the level of demand and support for a new Adjudication Act, especially as no other country has introduced generic statutory

adjudication. We also need to ensure that the proposal is fit for purpose and useable and that it will effectively fill the gaps in the wider dispute resolution landscape. In addition to the public, we intend to consult with potential users, practitioners, academics, lawyers, and Māori groups.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?
Yes.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

As this proposal is designed to provide an extra way that businesses can resolve their disputes faster and cheaper, there should be no additional costs for businesses.

There will be some costs for prospective private adjudicators who want to enter the new market to develop and maintain expertise, seek authorisation (if required) and some regulatory costs such as reporting aggregated data on their adjudications. We expect that these costs will be recovered through adjudication fees.

There will also be some potential shifts in the market for commercial lawyers if a large number of businesses choose to use adjudication instead of going to court or arbitration.

Government administrative costs for the new Act are likely to be around 2-3 FTEs initially focussed on education, setting regulations and any required authorisations. This should reduce to 1-2 FTEs to undertake ongoing quality control and ongoing monitoring, once the legislation is bedded in. There may be costs to set up monitoring systems and add enforcement elements to Court systems.

Benefits (Core information)

If 1200 businesses take up adjudication, we estimate businesses will save around $40 million per year. This assumes each business saves around $30,000 to 40,000 in legal costs, court or arbitration fees and direct time savings compared to going to court or arbitration. In addition, the total productivity gain could be in the order of $10 million, assuming that each of the 1200 businesses is able to convert 100 hours of time spent resolving disputes into productive time.

There are also unquantifiable benefits of prompt resolution of disputes through reduced emotional strain and reputational damage.

If fewer businesses are using the courts, we also expect this to free up court time to process other cases and claims, which will contribute to wider access to justice and may help make court processes more efficient.

There is not likely to be significant distributional impacts from the introduction of this policy. For example, it is expected that the impacts on Māori businesses would be equally positive because it will provide an alternative pathway to faster dispute resolution that will provide more flexibility to employ Tikanga based dispute resolution methods.

Balance of benefits and costs (Core information)

Assuming that businesses take up statutory adjudication to resolve their disputes in reasonable numbers, it is likely that there will be a significant net benefit. Our initial estimate, which needs to be tested through consultation, is that it will be in the order of $50 million per annum ($40 million in cost savings plus $10 million in productivity gains).

This may not accrue immediately. It may take time for the market to build capacity to provide services, and for businesses to become familiar with the new process. Initially, people with commercial law experience are likely to take up the opportunity to provide adjudication services. Over time we expect a range of adjudicators with different technical expertise to join the market.

Implementation

When we complete the final RIS after consultation, we will include a fuller assessment of the implementation needs for the legislation. The main aspects will be:

- communicating the existence of the new legislation and developing guidance.
- development of any regulations that may be required.
- any authorisations that may be required.
- development of monitoring and Court enforcement systems.

Limitations and Constraints on Analysis

This interim RIS has been prepared in support of a Cabinet paper seeking approval to consult on the proposal for an Adjudication Act. Consultation will help us to test the assumptions in our assessment further and refine the proposal.

The data we have used to determine demand for statutory adjudication has been extrapolated from small survey sample sizes so we have a low level of confidence in its accuracy. Despite this, the data has been included in the interim RIS to give an estimate of the potential scale of the benefits.

To properly test the data, we need more information on:

- How many businesses will take up adjudication. Our initial assumptions are based on extrapolations of existing data from the Ministry of Justice Legal Needs Survey of small businesses, the number of adjudications in the construction industry and the current court and arbitration volumes.
- The likely average cost and time saving for businesses. Our initial assumptions are based on a review of fees and costs published by dispute resolution providers online.
- How quickly the market will respond to provide statutory adjudication services. This may depend on how quickly demand for adjudication services develops and the availability of qualified people who can be adjudicators.
- The role of government and cost of implementation. Our initial assumptions are based on initial advice from other agencies that have similar functions.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

Kathy Brightwell
General Manager: Civil and Constitutional
25 June 2025

Quality Assurance Statement	
Reviewing Agency: Ministry of Justice	**QA rating:** Meets

Panel Comment:

The Ministry of Justice's Regulatory Impact Assessment Quality Assurance Panel (QA Panel) has reviewed the *Interim Regulatory Impact Statement: Consultation Document proposing a new Adjudication Act* prepared by the Ministry of Justice. The QA Panel considers that the interim RIS meets the Quality Assurance criteria.

The QA Panel has assessed the RIS on the basis that it is an interim RIS accompanying a discussion document. The QA Panel considers the interim RIS contains sufficient analysis of alternative options to support Cabinet's decision to release the discussion document on the preferred option.

The QA Panel notes further refinement of the expected costs and benefits of the proposal will occur and be included in the final RIS seeking policy decisions. This will be important for assessing the overall impacts of the proposal, including its impact on the court system and implementation considerations.

Section 1: Diagnosing the policy opportunity

What is the context behind the opportunity?

There are many different ways to resolve civil disputes in New Zealand

1. Civil disputes can arise between individuals, companies or other organisations including:
    a. disputes over business contracts or intellectual property.
    b. disputes between consumers and businesses.
    c. property disputes such as real estate, relationship property, estates and neighbourly disputes.
    d. civil wrongs to people and property (called 'torts'), e.g. negligence.
    e. debt, insolvency, and insurance issues.
    f. appeal or review of a wide array of public agency administrative decisions.

The courts and tribunals only deal with a small number of all disputes

2. The 2023 Ministry of Justice Legal Needs Surveys of small businesses and individuals found that only 12% of small businesses and 5% of individuals use the formal justice system's courts and tribunals to resolve their disputes[1]. The Disputes Tribunal hears claims up to $30,000 (soon to be $60,000 if the Disputes Tribunal Amendment Bill is passed). The civil jurisdiction of the District Court hears cases up to $350,000. The civil jurisdiction of the High Court hears higher value claims and appeals from the lower courts. Other specialist courts and tribunals also resolve disputes in particular areas such as the Family Court, Employment Tribunal and Tenancy Tribunal.

3. In practice, the courts employ a range of methods to resolve disputes, such as pre-trial judicial settlement conferences, which are similar to mediation. If this fails, then the case will go to a hearing, where an enforceable ruling is made by a judge. The tribunals are less formal and designed to be accessible, fast, and cost effective. Impartial decision-makers are not always a judge. A range of dispute resolution methods such as mediation are used.

Most people and businesses resolve their disputes voluntarily out of court

4. There is also a wide range of ways that people resolve their disputes out of court. For example, the majority of businesses use specialist agencies such as debt collectors, lawyers, dispute resolution services offering mediation, arbitration or adjudication services. Many turn to family and friends. Binding private contracts can include dispute resolution clauses that set out what will happen in the event of a disagreement. Many industry associations also require members to use a prescribed process.

5. In addition over 60 statutes and regulations prescribe a wide range of alternative dispute resolution procedures and methods for particular sectors.[2] These govern processes for private disputes between businesses, consumers, or government agencies. These laws employ the full range of dispute resolution methods. The development of these has been ad hoc, because they are targeted solutions for particular groups or vulnerable parties.

6. An overview of the broader New Zealand dispute resolution landscape is in Figure 1.

[1] Ministry of Justice (2024) Access to Justice 2023 Legal Needs Survey and Business Survey
[2] Hopt and Steffek. (2013) Mediation: Principles and Regulation in Comparative Perspective

Current dispute resolution landscape in New Zealand

Non-regulatory approaches

Legal or specialist support

The vast majority of businesses use specialist agencies like debt collectors, lawyers or dispute resolution services such as mediators or arbitrators. Lawyers are expected to advise clients of the alternatives to court under the Lawyer Code. The Legal Services Act allows legal aid to be used for services other than legal proceedings.

Private Contracts

Users can voluntarily include provision in contracts which are then enforceable under contract law.

Industry Codes

Members of many industry associations are required to use a dispute resolution scheme provided or regulated by the association.

Examples include Real Estate Institute, Master Builders Association, Federated Farmers, Institute of Chartered Accountants, Institute of Architects, Motor Trade Association, Law Society.

Government Support

The Government has developed guidance for dispute resolution design, and model contract clauses.

Government also provides mediation support services in some areas such as disaster recovery e.g., the NZ Claims Resolution Service or the Intellectual Property Office, both of which offer mediation services

Out of Court regulatory approaches

Sector specific regulatory approaches

Disputes with Government

A wide range of laws set out mechanisms for disputes with Government agencies – usually either mediation or adjudication but some with tribunals based on arbitration. Some are binding, some facilitative. There is no systematic approach.

Examples include ACC, education, immigration, social workers, health and disability, police, fisheries and tax.

Consumer Disputes

Many laws govern dispute resolution for consumers. Most require businesses to nominate and use a certified scheme. There is a mix of mediation, adjudication, and arbitration with no systematic approach. The law usually binds the business not the consumer.

Sectors with specific legislation include Utilities (gas, electricity, communications), Finance and insurance, Retirement homes, motor vehicles, Education providers, Weathertight housing and Earthquake Insurance claims.

Disputes between Businesses

Only a few laws regulate disputes between businesses. Mix of adjudication and mediation. Examples include construction contracts, grocery industry competition and farm debt.

Generic Regulatory Approaches

Arbitration Act 1996

Provides for parties to agree to a determinative process outside the courts. Both parties must agree to the process with limited appeal options to Court.

Applies to any civil disputes other than criminal matters, family law disputes, if contrary to public policy or if restricted by statute.

Courts and Tribunals

Disputes Tribunal

Quasi-judicial division of the District Court established under the Disputes Tribunal Act 1988 that provides timely, low-cost, and accessible determinations on civil disputes in contract, tort and under some statutory provisions. Resolves civil claims less than $60,000. Heard 12,459 claims in 2024. 68% of claims are business related

District Court - Civil

Hears claims up to $350,000 and appeals from the Tribunals. Hears nearly 27,000 cases a year, 97% are debt recovery. Not including debt 67% are business related.

High Court - Civil

Hears claims above $350,000 or those that are complex as well as appeals from the District Court. The court has jurisdiction to administer all laws of New Zealand. In 2024 1034 civil cases filed. In 2025, businesses claims were the highest proportion of claims.

Dispute resolution in the Courts

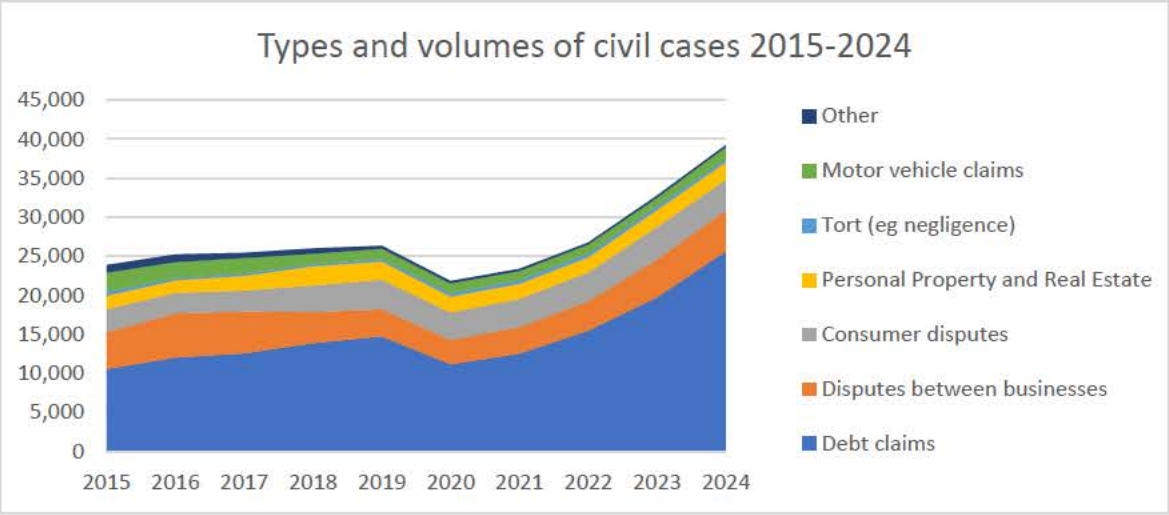
Other specialist courts and tribunals resolve disputes between people in particular sectors. Legislation often specifies a dispute resolution process like mediation. These include employment, tenancy, family and environment jurisdictions.

High Court Rules allows judge directed mediation (by agreement).

Civil disputes in New Zealand take a long time to resolve – both in and out of court

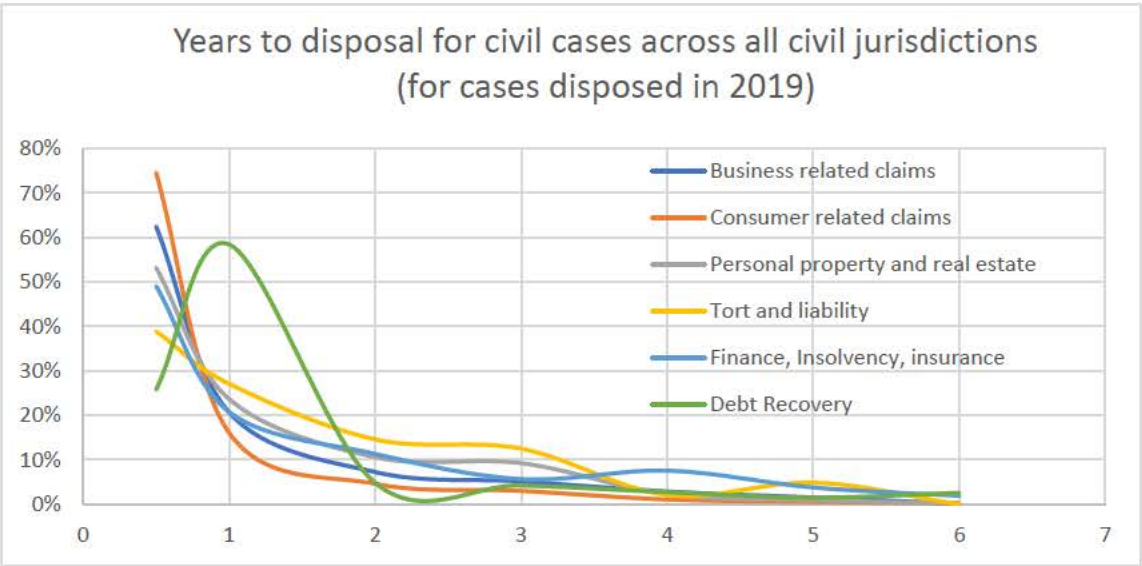
7. In 2024, nearly 40,000 civil cases were filed in the Disputes Tribunal, District Court and High Court. Debt recovery cases made up the majority (65%). Nearly a quarter (23%) related to disputes between businesses or between businesses and consumers. The remainder (11%) were between individuals, such as personal property disputes, tort (where one person wrongs another), or motor vehicle claims (see Figure).

Figure 2: Types and volumes of civil cases 2015-2024. The increase post COVID-19 is driven by debt claims



8. Excluding debt recovery cases (which are often dealt with by the court registry and because of their large number may skew the data), the median time for disposal in 2024 was around three months for Disputes Tribunal claims, nine months for District Court cases and 14 months for High Court cases.[3] All categories of civil cases have a long tail, with many cases taking more than two years to resolve (Figure 3).

Figure 3: Years to disposal for civil cases across all civil jurisdictions (2019)



[3] Median disposal for the first claim on cases filed in each jurisdiction, where the case was not active at 14 April 2025. The data excludes "debt recovery" claims but includes those where the nature of claim was not recorded.

9. Out of court solutions also don't make things faster or better for businesses. The Legal Needs Survey of small businesses showed that more than half of all small business issues are taking over a year to resolve. While 44% of issues were resolved within a year, 34% took between 1-3 years and 22% lasted for more than 3 years.

10. Issues experienced by the general public tend to take a slightly shorter time to resolve out of court than business disputes. In the Legal Needs Survey of the general population nearly three quarters (74%) of issues lasted less than a year.[4] The personal disputes that take longer are issues relating to family relationships or caring or end of life issues which can be complex.

Slow resolution of disputes both in and outside the courts has a significant impact

11. Delays prolong uncertainty, cause stress and add significant cost. This can deter people pursuing legitimate claims or defending themselves, leaving many without a fair opportunity to resolve disputes.

Disputes impact people and society

12. While delays in dispute resolution for individuals tend to be less pronounced than for business, the impacts of these disputes are still high, with 74% of issues having a negative impact such as poor mental health (59% of all issues) and financial loss (38% of all issues).

13. Given that a third of all respondents to the Legal Needs Survey experienced at least one legal issue in the past year these impacts are socially significant. If the survey data is representative, people could be experiencing 1.7 million issues a year. The bulk of the issues reported in the survey were civil in nature with a large number about consumer purchases online.

14. Delays disproportionately impact marginalised communities. The Legal Needs Survey of businesses revealed that 10% of the respondents reported over three quarters of all issues. These respondents were typically from marginalised communities.

15. The recent survey of public confidence in the criminal justice system showed that this may be resulting in low levels of public trust, with only 45% of people surveyed expressing trust in the justice system and just 32% of Māori.[5] Based on the information about cost and delays in the civil court system, it is likely that there are similar levels of confidence in the civil court jurisdiction.

Impacts on businesses are high

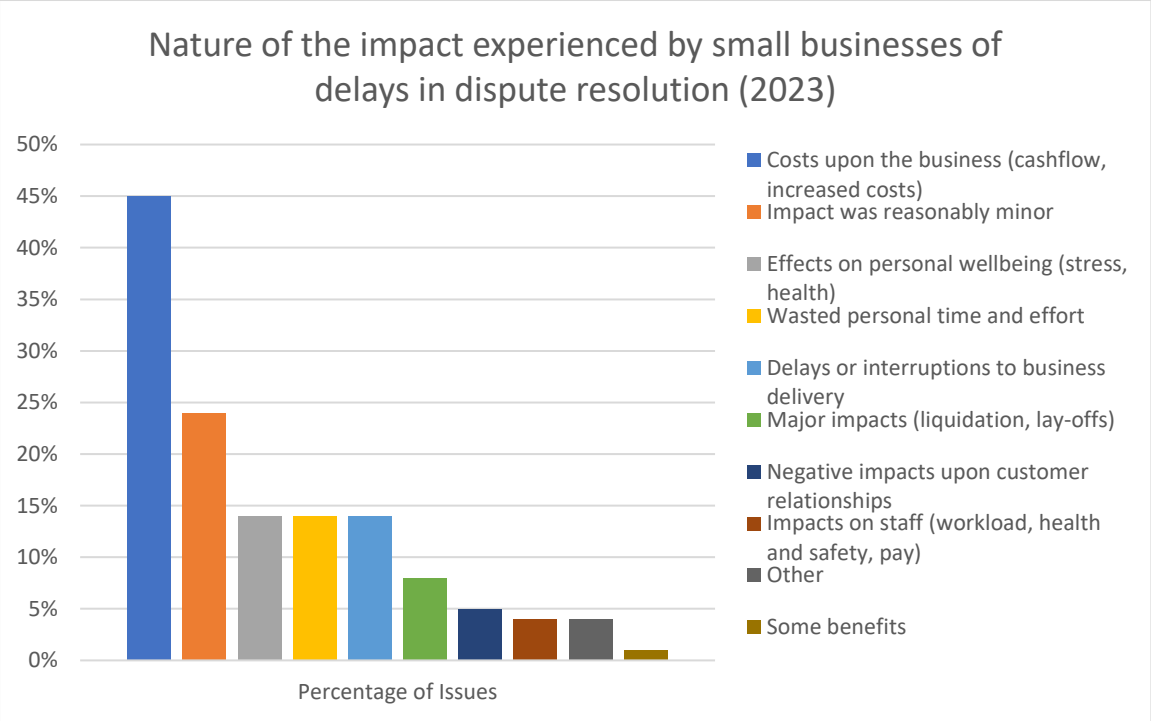
16. Of the 1003 small businesses surveyed in 2023, 40% said that they had experienced a legal issue in the last year with a total of 802 issues reported (an average of two issues per business with a dispute). Of these, 59% were civil in nature such as late payments, customer complaints, disputes with suppliers, raising capital, premises issues, contract issues, marketing and media issues, product liability, business structure and intellectual property.[6]

17. The slow resolution of disputes has a high impact on businesses. Figure 4 below illustrates the impacts reported by New Zealand businesses when disputes occur. These are significant, with over three quarters reporting impacts on cashflow or profitability, business

[4] Ministry of Justice (2024) Access to Justice 2023 Legal Needs Survey
[5] Ministry of Justice (2025) Public Perceptions Module Key Results – Public perceptions of the Justice System
[6] Ministry of Justice (2024) Access to Justice: 2023 Business Survey

interruption, wasted time and impacts on personal wellbeing, customer relationships and staff. Eight percent of the issues caused major impacts such as liquidations and layoffs.

Figure 4: Impacts reported by businesses of slow resolution of legal issues



This has implications for economic productivity

18. The impact on businesses is likely to have significant impact across the New Zealand economy. There are 612,417 businesses in New Zealand and 97% of these (around 594,000) are small businesses with less than 20 employees.[7] If the legal needs survey is representative, it could mean that around 230,000 small businesses may be experiencing close to half a million issues annually with over half of the issues being civil in nature.[8]

19. Slow resolution of such a large number of civil disputes creates a drag on New Zealand's economic productivity by tying up resources that might otherwise be used for growth, innovation, or job creation. Aside from the direct costs to businesses of hiring lawyers, or going to court or arbitration, the impact on economic productivity is significant. For example, if each issue wastes 10 hours of business time, the value of lost productivity could be in the order of $200 million.[9] This is likely a conservative estimate. A 2023 Xero study calculated that the cost of late payments in New Zealand was estimated to be $827 million.[10]

20. There have been some overseas studies estimating the cost of slow resolution. In 2015, the American Arbitration Association calculated direct losses associated with additional time

[7] https://www.business.govt.nz/data-for-business.

[8] See the caveats on this data in para 71.

[9] Based on 2024 average GDP per filled job of $149,163, average labour productivity per hour is $77.5 per hour. https://rep.infometrics.co.nz/new-zealand/productivity/growth.

[10] https://www.xero.com/nz/media-releases/late-payments-cost-kiwi-small-business-over-800-million/.

to trial required for United States (US) District Court cases compared with arbitration totalled approximately USD$10.9-$13.6 billion between 2011 and 2015 in the US.[11]

How is the status quo expected to develop?

The government and wider justice sectors are addressing delays in the courts

21. There are many policy and operational initiatives underway to address issues around civil justice system timeliness and cost, improve access to justice and increase public and business confidence in using the civil court system. These include:

    a. **Gathering more information to support targeted interventions**: Legal Needs Surveys of citizens and small businesses were published in 2023, these will help to better target resource allocation.

    b. **Digitisation**: As part of the Digital Strategy for Courts and Tribunals launched March 2023, a new digital platform to replace the paper-based system is under development called Te Au Reka Digital Caseflow Management System. This is rolling out between 2026-2028 starting with the Family Court. The judiciary is also working on digital tools to improve access to the courts and reduce the complexity of proceedings. This includes an examination of the impact of artificial intelligence on court processes and legal decision making and work on remote hearings.

    c. **Regulatory initiatives**: A series of Bills that introduce changes to the District Court Act 2016, the Senior Courts Act 2016 and the Disputes Tribunal Act 1988, including:

        a. Regulatory Systems (Courts) Amendment Bill: Reducing administrative burdens, clarifying judicial roles, and expanding judicial powers,

        b. Regulatory Systems (Tribunals) Amendment Bill: Removing barriers, simplifying appointment processes, and resolving inconsistencies in legislation,

        c. the Disputes Tribunal Amendment Bill extends the Tribunal's financial jurisdiction to $60,000,

        d. the Judicature (Timeliness) Legislation Amendment Bill which was recently introduced contains a number of changes to improve court timeliness by maximising judicial resources.

    e. **Legal aid scheme review:** This is a review of the current legal aid profile and trends, legal aid eligibility and repayment settings, provider incentives and remuneration, the availability of legal aid across the country, quality assurance, and barriers to civil legal aid.

    f. **Rules Committee initiatives**: Court rules are being reviewed to reduce barriers to bringing civil claims to the District Court and High Court.[12]

[11] AAA (2015) Economic Impact of Delay Micronomics Final Report. https://go.adr.org/impactsofdelay.html.

[12] https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/new/access-to-civil-justice-consultation.

We could do more to encourage uptake of alternative dispute resolution

22. The Wayfinding for Civil Justice National Strategy, released in December 2023, noted that the formal justice system sits within a wider alternative dispute resolution environment and stressed the need for coordinated and accessible dispute resolution mechanisms beyond the court system.[13]

23. Current operational and legislative initiatives will go a long way to improving timeliness in the courts and tribunals. For example, increasing the Disputes Tribunal financial jurisdiction from $30,000 to $60,000 is expected to provide a fast low cost option for many with lower value disputes.

24. Encouraging out of court dispute resolution may also alleviate pressure and help people resolve disputes more quickly, especially for those who have claims over $60,000. It will also provide more choice for people who prefer to resolve their disputes out of the court system.

25. To date, efforts to encourage a more coordinated approach to alternative dispute resolution have been limited to providing guidance and model contract or legislation clauses. Initiatives include:

    a. Best practice alternative dispute resolution has been encouraged through guidance on the Ministry of Business, Innovation and Employment (MBIE) website.[14]

    b. Government and private dispute resolution organisations have developed model contract clauses for alternative dispute resolution that can be used by businesses.

    c. In 2021 the Legislation Development Advisory Committee (LDAC) developed guidance on model clauses for dispute resolution in legislation, so a more systematic approach is taken when designing remedies in law.[15]

26. Existing government efforts to encourage the use of out of court dispute resolution methods do not appear to have resulted in lower out of court dispute resolution times for civil claims.

27. We considered an option to recommend allocation of more resource to disseminate the guidance material. However just providing more guidance may not ultimately provide the structure, certainty, and enforceability that parties need to resolve disputes.

What is the policy opportunity?

Some sectors have effective out of court dispute resolution options, but there are gaps

28. When statutory approaches to encourage out of court dispute resolution have been implemented for specific sectors or groups, they have been successful. This is because a statutory approach provides structure around dispute resolution. It gives people confidence that their dispute will be resolved in a timely way, using a fair process by a qualified person and the determination is enforceable in the courts.

29. Statutory approaches also save claimants money and time. Examples include the dispute resolution scheme prescribed for a utilities dispute in the Electricity Industry Act 2010. In 2024 NZIER estimated that resolving customer disputes through the process in the

[13] https://www.justice.govt.nz/assets/Documents/Publications/Wayfinding-for-Civil-Justice-English.pdf
[14] Government Centre for Dispute Resolution: https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution
[15] LDAC 2021 Legislation Guidelines Chapter 29: Including alternative dispute resolution clauses in legislation

legislation instead of the Disputes Tribunal saved between 130,000-260,000 hours, valued at $4 million to $8 million in time savings for customers.[16]

30. Similarly, in 2023, construction companies using the statutory adjudication process in the Construction Contracts Act 2002 enjoyed an average of 29-44 days to resolution of their dispute (a third of the median disposal time for the Disputes Tribunal). The privately operated Building Disputes Tribunal (approved under that Act as an Authorised Nominating Authority) reported that 16% were judicially reviewed, and just 2% of judicial reviews were successful in Court.[17]

31. While some sectors have access to a statutory dispute resolution scheme that lays out a clear dispute resolution process, defined timelines and enforcement remedies, a large number of sectors and groups do not. Examples include some consumer purchases, relationship and other property disputes and a wide range of disputes between businesses in sectors such as technology, services, retail and wholesale, healthcare, manufacturing, transport and logistics and hospitality and tourism.

32. The only generic legislation governing out of court dispute resolution that anyone can use is the Arbitration Act 1996. This offers a private alternative to the courts and follows a similar procedure. Arbitral determinations are final with limited appeal rights.

33. While arbitration is effective it is not fast or low cost. The average time to an arbitration determination is 10.85 months and costs are similar to taking a claim to the courts.[18]

34. A report by the Infrastructure Commission in 2024 that included interviews with people in the infrastructure sector for example, found that dispute resolution processes within contracts are seen as a last resort, expensive, and often producing unsatisfactory outcomes.[19]

35. There is no equivalent to the Arbitration Act that provides a private fast track, lower-cost, widely applicable dispute resolution process, except for the Disputes Tribunal which is limited to lower value claims.

An opportunity for a new private dispute resolution mechanism

36. There is an opportunity to fill this gap by developing additional generic and widely accessible legislation that provides the structure and certainty of outcome that people need to resolve their disputes privately but that that is also designed for speed. This legislation could be used as an alternative to the courts or arbitration.

37. Improving alternative pathways for people and businesses to resolve their civil legal issues faster would provide more choice and significant time and cost savings for the vast majority who prefer to resolve their issues out of court and who value certainty and timeliness over the finest legal distinctions.

38. If enough people use the new option, it may also improve overall economic productivity and alleviate pressure on the courts.

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[16] NZIER (2024), Independent Dispute Resolution Cost Benefit Analysis: NZIER report to Utilities Disputes Limited

[17] Building Disputes Tribunal (2023) Tracking the Trends: A report on statutory Adjudication in Aotearoa New Zealand 2003-2023

[18] Hindle and Kirk in collaboration the NZDRC. *The Inaugural Aotearoa New Zealand Arbitration Survey*, 2022

[19] NZ Infrastructure Commission (2024) Towards better contracts: Building better relationships for better project outcomes: Interviews summary report

Section 2: Assessing options to address the policy opportunity

Options for new fast-track private dispute resolution legislation

Objective: New legislation to support faster out of court dispute resolution

39. To develop a new way to support faster out of court dispute resolution that would reduce economic, social and individual impacts that are experienced with prolonged disputes, both in and out of court. The goals would be to:

    a. provide extra choice to resolve disputes quickly and privately at lower cost

    b. improve economic productivity

    c. free up the courts for other civil disputes.

Identifying options for new fast-track private dispute resolution legislation

40. The preferred option in this interim RIS was originally suggested as part of the performance plan process within the Ministry of Justice. To test whether this was the best way to achieve our objective, we canvassed other options that could also potentially provide extra choice for people to resolve their disputes privately and more quickly, enhance economic productivity and reduce pressure on the courts.

41. To develop the options, we undertook a full literature review, collated data on the range of different types and number of disputes and reviewed data from the Ministry of Justice Legal Needs Surveys in 2023 which provided information about the nature and volume of disputes occurring out of court. We also identified models from the existing range of sector specific legislation as well as legislation available in other countries.

42. Each option (with the exception of the status quo) represents a different statutory approach to addressing the core issue of slow resolution of civil disputes both in and out of court. We focussed on statutory options because current voluntary approaches are not resulting in shorter dispute resolution times.

    a. **Option One**: Status quo: The existing framework continues to apply.

    Mandatory requirements to use alternative dispute resolution:

    b. **Option Two:** Require businesses to nominate an authorised scheme that will be used in the event of a dispute.

    c. **Option Three:** Enable judges to order alternative dispute resolution where this is appropriate.

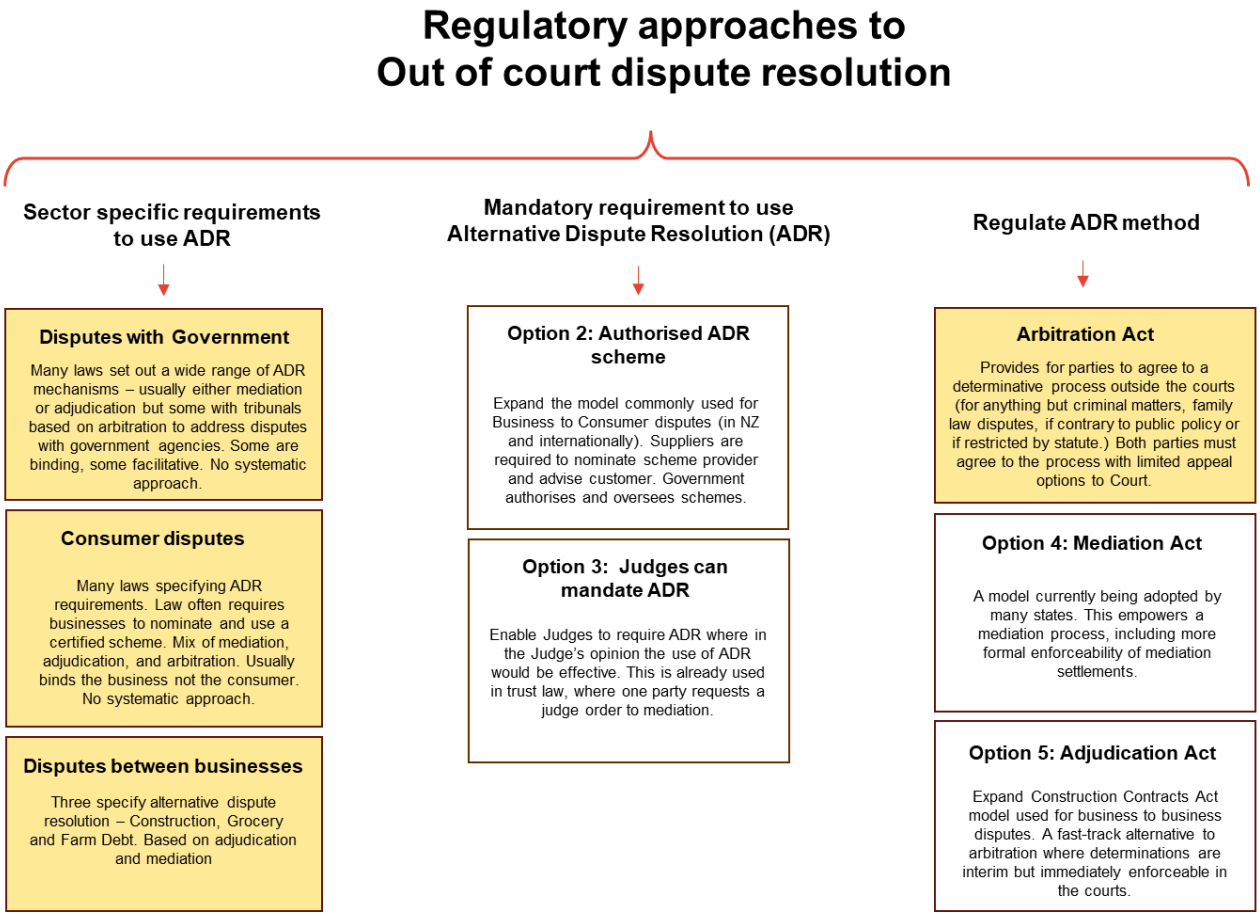
    Regulation of other methods of dispute resolution (companion legislation to Arbitration):

    d. **Option Four:** A Mediation Act: regulating the processes for mediation where mediation settlements are enforceable in the courts.

    e. **Option Five:** An Adjudication Act: providing a fast-track alternative to Arbitration where determinations are interim but immediately enforceable in the courts.

43. The options could all fill the gaps in in the existing out of court dispute resolution landscape (see Figure 5). The yellow shaded boxes are the status quo, while the white boxes are the suggested additional options that could fill the gap and achieve the objectives.

Figure 5: Options for filling the gaps in the out of court dispute resolution landscape.



Criteria for assessing options for new fast track private dispute resolution legislation

44. Drawing on the guidance provided by the Legislation Design and Advisory Committee[20] and the Centre for Dispute Resolution Standards[21], we identified five principles to guide our assessment of options:

    a. ***Efficiency:*** The preferred option needs to enable fast and low-cost resolution of civil disputes and be simple to implement and use.

    b. ***Suitability:*** Because the focus is on speed, the option needs to be suitable to address relatively low complexity civil disputes with no other parties affected, and evidence needs to be in a form that can be quickly processed.

    c. ***Flexibility:*** The preferred option should allow us to resolve civil disputes differently. It should be able to be used by a wide range of sectors. It should also not limit different

[20] LDAC 2021 Legislation Guidelines Chapter 29: Including alternative dispute resolution clauses in legislation
[21] https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/guidance-on-dispute-resolution/aotearoa-best-practice-dispute-resolution-framework/about-the-principles

types of approaches for example Tikanga Māori dispute resolution methods or potential future methods such as integrated artificial intelligence adjudications.

d. ***Public confidence and certainty:*** People need to trust that the process will be effective, or they will not use it. They need to be confident that the outcome of the dispute resolution process can be promptly enforced.

e. ***Safeguarding natural justice****:* There should be no bias, a fair opportunity for both parties to be heard and a reasoned decision. There should also be limited power imbalances between the parties to ensure a fair process or if this is not the case, protection for weaker parties.

Discussion of options

Option One – Status Quo

45. The status quo option is no change. It assumes:

    a. Existing initiatives will reduce pressure in the formal justice system.

    b. Many sectors will continue to use the wide array of legislation governing sector specific dispute resolution.

    c. People would continue to develop contracts that provide for dispute resolution that can then be enforced in accordance with contract law.

    d. The private sector will continue to provide alternative dispute resolution options.

    e. The existing guidance, model contract clauses and industry led-dispute resolution solutions would continue to help people understand the range of options available.

46. The existing programme of work will help to reduce timeframes overall and so we are likely to see some improvement even if we do nothing. We do not yet have a full understanding of how much these reforms will potentially result in cost savings and efficiency/productivity gains, thus reducing the benefit of introducing a new out of court option.

47. To improve the current system further, we could also put more effort into increased guidance, standards and court encouragement of voluntary use of out of court dispute resolution.

48. As previously noted, the work already completed has not resulted in overall shorter timeframes for dispute resolution. In addition, the vast majority of disputes are dealt with out of court. Adding more resource to guidance, or standards is not likely to provide the structure, certainty and enforceability that people need to be confident that their disputes will be resolved quickly and fairly and will not fill the gap for the sectors or groups that do not have bespoke dispute resolution legislation.

Option Two – Require businesses to nominate an authorised scheme that will be used in the event of a dispute

49. In this option, all businesses providing products or services would be required to nominate an authorised dispute resolution scheme provider and advise customers (other businesses or the public). The government would oversee schemes to ensure a common standard. This model is already frequently used in a wide range of business-consumer legislation in different sectors, e.g. utilities and finance. There are also examples overseas, where some

countries impose obligations on all businesses to nominate authorised schemes for dispute resolution and include this information in their terms. [22]

50. The legislation would create a consistent approach to the use of alternative dispute resolution that might provide additional confidence to people who purchase goods or services. It would fill gaps for consumers in many sectors.

51. However, it is unlikely to result in increased efficiency and it would also create significant compliance costs for businesses and the government in establishing the schemes and ensuring ongoing use of them. Overseas these schemes have had varying success, because of the effort required to educate businesses and consumers, and implement them.

52. Care would also need to be taken with this option as it could also have unintended consequences given there are already many overlapping laws that govern dispute resolution between businesses and consumers that are already in operation.

Option Three - Enable judges to mandate alternative dispute resolution

53. In this option, the court rules could be modified to give judges the power to order the parties to attend an alternative dispute resolution process at the request of one of the parties. A similar model exists in the Trusts Act 2019 which gives judges the power to order mediation. A few examples exist overseas, for example, the Brazilian Mediation Act (Law No. 13.140/2015) which is supported by a Civil Procedure Code that requires cases to go through conciliation or mediation before presenting a formal defence.

54. While this option gives judges more flexibility to ensure that court time is not wasted, it is highly likely to add time and costs on the parties. It also reduces choice for the parties as it would be a mandatory requirement.

55. Including a power for a judge to order the parties to go to private mediation, adjudication or arbitration may require the development of a legislated process, to ensure that people have confidence in the out of court process that has been ordered. This means that options four or five below, which propose regulation of dispute resolution methods may still be necessary.

Option Four – Generic statutory mediation

56. In this option, legislation governing the process of mediation would be developed. It would set out a common statutory process for mediation, including a mechanism to make mediation settlements enforceable through the courts. This model is used by a number of countries overseas.[23] Internationally, a core objective of a more consistent approach to mediation is to ensure that countries that work closely together or that have a lot of cross-border trade use consistent and agreed approaches to mediation.

57. Such legislation may provide a more structured process for people wanting to use mediation and would provide an extra level of certainty as it would create clear

[22] The EU Alternative Dispute Resolution Directive (2013/11/EU) and the UK Alternative Dispute Resolution Regulations 2015 both require all businesses to nominate a scheme and advise their customers.
[23] Examples include the Singapore Mediation Act 2017, Brazilian Mediation Act (Law No. 13.140/2015), EU Mediation directive. The US has a Uniform Mediation Act that has been adopted by a number of States. Many countries and some US states have adopted the United Nations' Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Mediation. A number of African countries have adopted a modified template called the OHADA Uniform Act on Mediation, developed by the Organization for the Harmonization of Business Law in Africa (OHADA).

enforceability of mediation settlements. Mediation as a process can also be more flexible than arbitration or adjudication so is suitable for a wide range of disputes.

58. However, mediation is by nature a voluntary process that assists parties to reach an acceptable compromise. This often takes time and so may not respond well to legislated short timeframes. It is therefore unlikely to be the most efficient option. Mediation also does not always result in an outcome so this option may not engender as much confidence.

Option Five – Generic statutory adjudication – preferred option

59. Statutory adjudication is a legislated process where parties ask an experienced and neutral third party to make a determination on their dispute. Speed is prioritised, with short timeframes (typically up to six weeks). The adjudicator uses a simplified process to make an immediately enforceable determination, usually 'on the papers'. It differs from arbitration, in that the determination is not final. If a party doesn't like the outcome they can still go to arbitration or apply to the Disputes Tribunal or a court to have their case heard.

60. The legislation would provide structure around the process, include fast legislated timeframes and make determinations enforceable in the courts. It could also provide some certainty about the quality of adjudicators.

61. Statutory adjudication is used in the construction sector. The process appears successful based in reports by the privately operated Building Disputes Tribunal. Average processing times are 29 days for low value claims and 45 days for general claims. Judicial reviews have only been taken to court after 14% of adjudications with only 2% successful. Although we do not have data on the number of adjudications in New Zealand that are subsequently relitigated, a 2024 survey in the UK concluded that compliance with an adjudicator's determination is high, with over half of practitioners reporting that none of their determinations had been referred to litigation or arbitration.[24]

62. This implies that parties have confidence in the adjudicator's decision, with most adjudications a permanent resolution of the dispute. The process takes half the time of the Disputes Tribunal and is significantly lower in cost and time than the courts or arbitration.

63. Statutory adjudication would not be as low cost as the Disputes Tribunal (which has low filing fees and does not allow legal representation) so it may not be used as much for claims under $60,000 unless the parties want a more private process or if they choose to be self-represented at adjudication.

[24] Nazzini and Godhe (2024) 2024 Construction Adjudication in the United Kingdom: Tracing trends and guiding reform

Preferred Option – Generic Statutory Adjudication

64. Table 1 sets out a comparison of the options against the status quo.

Table 1: How do the options compare to the status quo/counterfactual?

	Status Quo	**Option Two –** Require use of authorised ADR scheme	**Option Three-** Enable judges to order ADR	**Option Four -** Generic statutory mediation	**Option Five** Generic statutory adjudication
Efficiency Faster than existing options, cost effective and simple process	0	0 Pre-emptive nomination of schemes so disputes may be resolved more quickly. However, it adds additional cost and complexity to business processes.	- Adds an extra step for people so would not reduce time or cost and makes the process more complex for claimants. Helps court timeliness.	0 Mediation is not always faster, it requires face to face contact and cannot be done 'on the papers'. It can be cost effective and the process is straightforward.	++ Adjudication by nature is designed to be a fast-track simple process. It is much more cost effective than arbitration or the courts.
Suitability Suitable for non-complex disputes with no public interest in outcome and accessible evidence	0	+ Can be used for a range of different types of disputes of differing complexity. As it is often used for consumer disputes there may sometimes be public interest in the outcome. There may not always be accessible evidence	++ Allows judges discretion to direct people to a more suitable dispute resolution option that meets these criteria.	++ Suitable for a wide range of private non-complex disputes with no public interest in the outcome. Can be done with or without accessible evidence.	++ Suitable for non-complex disputes with no public interest in the outcome. Best for disputes where there is evidence to assess.

Flexibility/ Choice Able to be used by everyone, allows different approaches	0	- Reduces choice as it is a mandatory requirement for businesses to nominate a dispute resolution scheme. Could allow flexibility to select different schemes.	- Reduces choice for some parties if judges are able to mandate alternative dispute resolution. Allows different approaches to dispute resolution.	++ Gives a new option and increased flexibility to resolve disputes differently. Provides the greatest flexibility and choice of all the options.	+ Gives a new option and increased flexibility to resolve disputes differently.
Public confidence Provides confidence in process and certainty of enforceability	0	+ Likely to improve confidence that a process is available and schemes are authorised. However, certainty stems from the fact that suppliers will be required to use a process rather than the enforceability of outcome	++ The process occurs within the court system so would be ultimately enforceable. May require additional legislation to ensure confidence in the alternative scheme ordered.	+ Mediation may not always result in an outcome but if so, will be enforceable. Provides additional confidence in the quality of the process. Would not prevent people from continuing to court.	+ As it is a determinative process it creates a level of confidence of a certain outcome for parties. Interim determination does not prevent people from continuing to court.
Natural justice No bias, reasoned decision, protects weaker parties	0	++ Works well to protect weaker parties, schemes will be authorised to ensure decision making standards around natural justice are met.	++ The process occurs within the court system so will protect principles of natural justice.	+ Fair and impartial process designed around building respect between the parties. May not be as useful if there is power imbalance.	+ Fair, impartial process, with decision by the adjudicator so there is adequate protection for weaker parties - but care required due to the speed of the process

Overall assessment	0	**SCORE 3+** While it may result in increased public confidence and delivers on natural justice criteria it is a higher cost option, and is not as efficient, suitable or flexible.	**SCORE 4+** This option protects natural justice and there would be high confidence in the outcome. It would not be as efficient and reduces choice for claimants.	**SCORE 6+** This option is suitable for a wide range of disputes, but it wouldn't necessarily be more efficient. Outcomes are not as certain because it relies on people to agree.	**SCORE 7+** Suitable for non-complex disputes. The most efficient option that provides flexibility and choice, the process is also enforceable. Care would be required to protect principles of natural justice due to the speed of the process

Key

++	much better than the status quo
+	better than the status quo
0	about the same as the status quo
-	worse than the status quo
- -	much worse than the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

65. The option that best fits our criteria is option five – generic statutory adjudication. It will enable increased efficiency because it is fundamentally designed for speed, it suits non-complex disputes where evidence is easily assessed on the papers and allows flexible approaches to the dispute resolution process. Because it is a determinative process that is enforceable, there will be reasonable confidence and certainty of outcome (although the non-final nature of the adjudication means that it does not provide absolute certainty). Precautions may need to be put in place to ensure natural justice due to the speed of the process

Section 3: Benefits and costs of the proposal

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

66. The Minister's preferred option is the same as the preferred option in this RIS.

Consultation on proposals for an Adjudication Act is needed to support final decisions and the final regulatory impact analysis

67. This Interim RIS supports a Cabinet paper that seeks approval to consult on the preferred option, an Adjudication Act. We have prepared an interim RIS because the consultation document does not seek comment on all the options set out in this interim RIS, instead the consultation focusses on testing support for the preferred option and its proposed elements. This will help us to refine our analysis, including the costs and benefits of the preferred option. The interim RIS will also be included as a supporting document on the Ministry of Justice consultation web page for people who are interested in the analysis that led to the proposal for an Adjudication Act.

68. The interim impact assessment below assumes that the proposed Adjudication Act will have the key features presented in the consultation document *Fast dispute resolution – Consultation on a new statutory adjudication framework*. These are:

a. All businesses will be able to use statutory adjudication under the Act to resolve disputes between each other. Businesses include companies, incorporated societies, building societies, partnerships, and charitable trusts as well as iwi trusts and other Māori organisational forms.
b. Parties can ask an experienced and neutral third party (an 'adjudicator') to make a determination on their dispute using the processes set out in the legislation.
c. Adjudication under the Act will be voluntary for both parties.
d. Adjudication services will be delivered by the private sector. Fees will also be set by the market.
e. Very short timeframes (weeks) prescribed for the adjudication process.
f. Flexible approaches to provision of adjudication services will be enabled (e.g. use of Tikanga Māori).
g. Determinations will be immediately binding, but interim (i.e. parties can still file a new claim in court or seek a judicial review of the decision if they don't like the outcome).
h. Adjudicators will be able to award costs if he or she considers a party has incurred costs unnecessarily.
i. The legislation will include provisions to enforce determinations in court if a party does not comply, as well as provisions to incentivise prompt compliance.
j. An administering government agency will have a role to ensure quality, including setting regulations, any authorisation of adjudicators or adjudicating bodies and ongoing monitoring.
k. Future proofing provisions will enable addition of other types of disputes (beyond business to business in the future) if it is appropriate and there is demand.

69. The proposals in the consultation document are largely modelled on elements of the Construction Contracts Act 2002 and the Arbitration Act 1996 with some variations that reflect our objectives for generic statutory adjudication. Both these laws have been operating for decades and we could not find any significant criticism of the way they are functioning. We also reviewed other sector specific legislation that includes adjudication-like provisions[25] and the United Nations Commission on International Trade Law's model clauses on specialised dispute resolution, including adjudication, adopted in 2024.[26]

Interim impact assessment: We anticipate a net benefit from the introduction of an Adjudication Act

70. As the legislation will be designed to provide additional choice by enabling a faster, lower cost dispute resolution method that businesses can choose to use instead of arbitration or the courts, it will not impose additional cost on businesses.

71. We expect a net benefit from the introduction of the legislation. Table 3 presents an initial estimated potential net benefit of $50 million per annum. This figure has been extrapolated from surveys of businesses with small samples sizes so it should not be read as an accurate reflection of the likely benefit. It has been included as it is indicative of the possible scale of the net benefit. A discussion of the assumptions and limitations behind this figure is set out below.

Data limitations

72. It is difficult to fully estimate the magnitude of the benefit because we do not yet know how many businesses are likely to use the new method or what the specific costs of adjudication are likely to be relative to going to court or arbitration. We also don't know how much time might be saved by each business from using the new method. As adjudication determinations are interim, we don't know how many disputes would continue to a fresh litigation or arbitration (which could result in increased overall costs for those businesses). Finally we don't know how quickly providers will build capability to provide services.

73. We have completed a rough estimate for the purposes of this interim RIS using data we do have but note that the certainty level of these figures is low. Specifically, a key data point underpinning our initial analysis in this interim RIS is our estimation of 230,000 businesses that could be experiencing civil disputes each year. We extrapolated this figure from the Ministry of Justice Access to Justice 2023 Business Survey. This surveyed 1003 small businesses using robust survey methods and found that 40% of the small businesses surveyed had experienced at least one legal issue.

74. We used this data from this survey, combined with Ministry of Business, Innovation and Employment business data to estimate the total number of businesses nation-wide that might be experiencing civil disputes. However, due to the very small sample size we do not have a high level of confidence in the accuracy of our extrapolation and there will be a large

[25] Domestic legislation that includes adjudication provisions that we reviewed includes: Grocery Industry Competition Act 2023, Electricity Industry Act 2010, Gas Act 1992, Telecommunications (Property Access and Other Matters) Amendment Act 2017, Financial Services Providers (Registration and Dispute Resolution) Act 2008, Retirement Villages Act, Education and Training Act 2020, Weathertight Homes Resolution Services Act 2006. Some legislation governing disputes with Government also contains provisions similar to adjudication such as Tax Administration Act.

[26] United Nations (2024) UNCITRAL Model Clauses on Specialised Express Dispute Resolution

margin of error associated with this figure. Further economic modelling and sensitivity analysis would be required to provide a more accurate assessment of the net benefit.

Estimated number of statutory adjudications under the new legislation

75. We estimate that around 1200 businesses may use statutory adjudication each year if it was available. This estimate is based on existing data on the construction industry and the current court and arbitration volumes as follows:

    a. In 2023 one of the six private authorised nominating authorities under the Construction Contracts Act (the Building Disputes Tribunal) reported around 100 adjudications in the industry across 80,613 construction companies (0.12% of all construction companies).[27] Assuming that the same proportion of the 230,000 businesses with civil disputes use adjudication as the construction industry, that is **276 adjudications per year**.

    b. At present around 4000 businesses are using the Courts and Disputes Tribunal to resolve their civil claims per year (excluding debt recovery claims).[28] If 20% of these chose statutory adjudication instead, that is **800 adjudications per year.**

    c. We also know that 200 arbitrations per year are conducted under the Arbitration Act 1996.[29] If half of these choose statutory adjudication, this could be **100 adjudications per year.**

76. This figure appears reasonable because the Ministry's survey of small businesses indicated that 43% of the businesses with a civil issue already pay to use out of court dispute resolution specialists or lawyers to help resolve their disputes.[30] If our extrapolated figure of 230,000 businesses is correct (noting the caveats in paras 72-74), it could mean nearly 100,000 businesses might be inclined to consider statutory adjudication. This indicates the potential size of the new market.

Average time and cost saving of going to adjudication rather than going to court or arbitration

77. Table 2 includes a general comparison of the approximate relative costs that we have identified from reviewing online pricing for construction adjudication, the Disputes Tribunal, arbitration and court litigation. These estimates are for a typical non-complex case that might ordinarily require a one or two day hearing in arbitration or litigation.

[27] Building Disputes Tribunal (2023) Tracking the Trends: A report on Statutory Adjudication in Aotearoa New Zealand 2003-2023. We note that this report is a private company report from one of the six authorised nominating authorities under the Act. We do not have information on the survey methods used for this report, but it is the only report on statutory adjudication in New Zealand.

[28] Data extracted from Ministry of Justice civil claims reporting from the District Court and High Courts and Disputes Tribunal. Data excludes debt recovery claims.

[29] Hindle and Kirk in collaboration the NZDRC. *The Inaugural Aotearoa New Zealand Arbitration Survey*, 2022

[30] Ministry of Justice (2024) Access to Justice: 2023 Business Survey

Table 2: Comparison of time and costs between different types of dispute resolution – A typical–non-complex civil case

	Statutory adjudication	Disputes Tribunal	Arbitration	Court Litigation
Median time to resolve	4-8 weeks	3 months	11 months	9-36+ months
Estimated cost of time spent by claimants[31]	15 hours $500	30 hours $1000	110 hours $3500	90- 360 hours $3000 - $12,000
Cost per claim including legal fees and disbursements	$10,000 – $20,000[32]	$59-$468 No legal fees	$15,000- $70,000+[33]	$15,000 – $74,000+[34]
Emotional Stress	Low: Quicker resolution, no public scrutiny, some financial strain	Low: Quicker resolution, minimal public scrutiny, low financial strain	Medium: May be drawn out but no public scrutiny, high financial strain	High: long, drawn-out process, public scrutiny, high financial strain
Productivity loss[35]	$1200	$2300	$8500	$7000-$28,000

Our initial estimated economic benefit of new adjudication legislation is approximately $50 million per year

78. If 1200 businesses take up adjudication, we estimate business savings of approximately $40 million per year. This assumes each business saves around $30,000 to $40,000 in legal costs, court or arbitration fees and direct time savings compared to going to court or arbitration. This does not account for any savings in general costs such as travel costs to attend hearings.

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[31] Assumes an average of 10 hours per month spent by the claimant to participate in the process with cost of time $32/hr (using cost of time value from NZIER research in their 2024 report on cost benefit analysis of independent dispute resolution in the utilities sector). Does not include opportunity cost or other tangible costs such as travel costs for hearings.

[32] Data on adjudication fees is based on the Building Disputes Tribunal's published fees. Note we are assuming that adjudication costs are likely to be similar to construction adjudications, but this is not yet clear. https://buildingdisputestribunal.co.nz/adjudication/fees/

[33] Arbitration fees based on the International Arbitration Centre website administration fees. These are based on a combination of fixed registration, administration and maximum arbitrator fees, relative to the amount claimed, https://nzdrc.co.nz/arbitration/arbitration-fees/nzdrc-institutional-arbitration-fees/

[34] Martin Dillon https://martindillon.nz/civil-problems/civil-litigation-costs/ estimate of total costs for a claimant (including disbursements) in 2017 to be between 8,000 and 42,000 for a straightforward 1-2 day trial in a court. In 2024 the Law society reported that operational costs had increased by 15 percent every year since 2021. If this has translated to legal fees, the total costs in 2025 for litigation of a claim with a 1-2 day hearing could range from $15,000 to $74,000.

[35] Based on 2024 average GDP per filled job of $149,163, average labour productivity per hour is around $78 per hour. https://rep.infometrics.co.nz/new-zealand/productivity/growth

79. In addition, on a macro-economic level, the total productivity gain from the proposal could be in the order of $10 million, assuming that each of the 1200 businesses is able to convert 100 hours of wasted time into productive time. This is a rounded figure based on an average 2024 New Zealand labour productivity per hour rate of around $78 per hour.

80. There are also unquantifiable benefits from improvement in owner and staff mental health and reduction of reputational harm.

Other issues to consider

81. These benefits may not accrue immediately. The current statutory adjudication market is very small. It will take time for the dispute resolution sector to build up the capacity to be able to provide more adjudications per year.

82. We anticipate that initially, commercial lawyers are likely to add adjudication to their service offering, particularly as work available to support businesses in the civil court system could reduce. Not all will have experience in adjudication and there may not be adjudicators with particular technical capability to resolve the new types of disputes in scope. During this period it will be important to monitor the development of the market to ensure it is providing the expected service.

83. In addition, while demand for original claims in the courts may reduce there could be an increase in demand in the courts for enforcement of determinations. S9(2)(f)(iv) . We are also consulting on ways to incentivise prompt compliance with the adjudicator's determination.

84. Design of the legislation will also need to ensure that there are no unintended overlaps with other sector specific legislation that currently includes a statutory adjudication provision.

85. If statutory adjudication becomes a popular alternative to going to court, a longer-term implication of the extraction of a large number of commercial claims from the civil court system could be a reduction in case law for business civil disputes. This could impact the quality of court processes.

Table 3: Costs and benefits of a statutory adjudication regime for businesses

Affected groups	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised*	**Evidence Certainty** *High, medium, or low*
Additional costs of the preferred option compared to taking no action			
Users – Businesses eligible to use statutory adjudication	The purpose of the legislation is to provide additional choice to businesses and reduce time and cost. We are confident that there will be limited additional costs to businesses over the status quo.	Low	High
Adjudicators and Lawyers	Dispute resolution specialists and lawyers also have a choice to enter the market, but if they do they may require training and will accrue reporting costs. We expect that these costs will be recovered through adjudicator fees. There may be some costs to lawyers who currently provide services to businesses for court claims, particularly commercial lawyers. Some may add adjudication to their list of services, others may see a reduction in business.	Low – full cost recovery through fees	Medium
Judiciary and the court system	There is likely to be an increase in debt recovery claims and applications for enforcement orders in the court if a lot of businesses use statutory adjudication for dispute resolution. It is possible that this additional load could be balanced by a reduction in civil cases from businesses who are going to adjudication instead. The impact on the courts will depend on the behaviour of businesses – how many choose adjudication over going to court, and how many choose adjudication who would have used other methods. There is also a risk of a reduction in case law if a large number of businesses choose adjudication over the courts. Our certainty level of this estimate is low	Low	Low
Government	Government will accrue additional costs associated with administering legislation, including regulation development, authorisation and oversight (which may be partially cost recovered through application fees) and monitoring the effectiveness of the new Act – such as managing reporting	1-3 FTEs	Low

	requirements. There may be a need for a database of authorised bodies, or if the role includes reviews, standards, or compliance checks it may need an IT solution. Our data on the number of FTEs is based on initial discussions with government agencies with similar functions. We do not have a high level of confidence because we do not know how large the market is likely to become or the final role of Government in providing oversight		
Total monetised costs	-	-	-
Non-monetised costs		Low 1-3 FTE Govt costs	Medium

Affected groups	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised*	**Evidence Certainty** *High, medium, or low*
Additional benefits of the preferred option compared to taking no action			
Users – Businesses eligible to use statutory adjudication	There could be reduced legal and filing costs as well as direct time savings for an estimated 1,200 businesses per year (out of potentially 100,000 who might be inclined to consider statutory adjudication if it was available). Assumes $30,000-$40,000 savings per business excluding extra costs such as travel costs to attend hearings. This data is based on extrapolation of business survey data with small sample sizes. In addition, cost saving information is extrapolated from fees advertised online, there are no formal studies available on overall costs of going to court or arbitration. As a result our evidence certainty is low but the figure is included as gives an estimate of the potential scale of the savings for businesses.	$40 million	Low

Users – unquantifiable benefits	Businesses will have reduced emotional strain, and reputational damage if they can resolve disputes quicky and privately. We have concluded this based on survey data of small businesses which showed a high level of impact from slow dispute resolution.	High	High
Adjudicators	We anticipate a growth in the market due to an increase in demand for adjudicators. This might build from around 100 to approximately 1200 additional statutory adjudications per annum. As per our previous notes, there is currently a low level of certainty that this benefit will accrue especially as it may take time for the market build capability and respond to the demand.	High	Low
Other people with civil claims	There may be shorter processing times for other people with claims if 800 businesses are not taking up court time, resulting in cost savings, and reduction in financial and emotional strain for these groups. This includes personal disputes like property, insolvency, estates or consumer disputes as well as tortious claims. As we are not certain about the total number of businesses that would choose adjudication rather than going to court this benefit is also reported with low certainty.	Medium	Low
Māori and other population groups	We expect that the flexibility, public confidence and natural justice criteria in the design of the policy should have positive implications for Māori. Provision of additional out of court options for Māori may enable greater use of Tikanga based processes, and so create more flexibility to resolve disputes in different ways. Ensuring that the option can be trusted as effective and enforceable may address some of the issues around Māori low levels of trust of the judicial system. Safeguarding natural justice will address issues relating to power imbalance, fairness and the opportunity to be heard. These benefits are likely to accrue also to other population groups such as disabled people (16.3% of disabled people between 15-64 years are sole traders), if the legislation is designed with the flexibility to recognise different adjudication methods that support specific needs.	Medium	Medium
Overall Productivity gains	Assuming 1200 businesses are able to convert 100 hours saved to productive work, at $78 average labour productivity per hour. We have	$10 million	Low

	estimated the time savings and the number of businesses so evidence certainty is low. The figure is included as gives an estimate of the potential scale of the savings for businesses.		
Total monetised benefits		$50 million per annum	Low
Non-monetised benefits		Medium	

Section 3: Delivering a statutory adjudication regime

Implementing and monitoring the proposal

86. This is an interim RIS that supports a cabinet paper seeking approval to consult on the proposals.

87. When we complete the final RIS, we will include an assessment of the implementation needs for the legislation. This will include:

    a. communicating the existence of the new legislation and developing guidance
    b. development of any regulations that may be required
    c. approval of any authorised agencies or adjudicators
    d. instigation of a process to collect and analyse data reported by adjudicators
    e. development of any supporting systems required, both within the courts (for enforcement purposes) and as part of a wider oversight function.