

JDRN Country Report

New Zealand/Aotearoa

This report provides an overview of the Judicial Dispute Resolution (JDR) processes in New Zealand.

Introduction to New Zealand and its legal framework

Overview

The law in New Zealand until 1840 was a mixture of predominately tikanga Māori and Māori customary law – the customs and methods of governance by which Māori society existed, and to a far lesser extent, English/European law based on settlers who had arrived in New Zealand.

After the British Crown and Māori signed Te Tiriti o Waitangi (the Treaty of Waitangi) in 1840, the British presence significantly increased and bringing with it English law. New Zealand subsequently adopted the common law legal system.

Today, there are two main sources of law:

- Statutes (the laws passed by Parliament); and
- The common law, which is developed by judges over time, and may be amended and developed by the courts to meet changing circumstances. Parliament may repeal, modify, or develop the common law by statute.

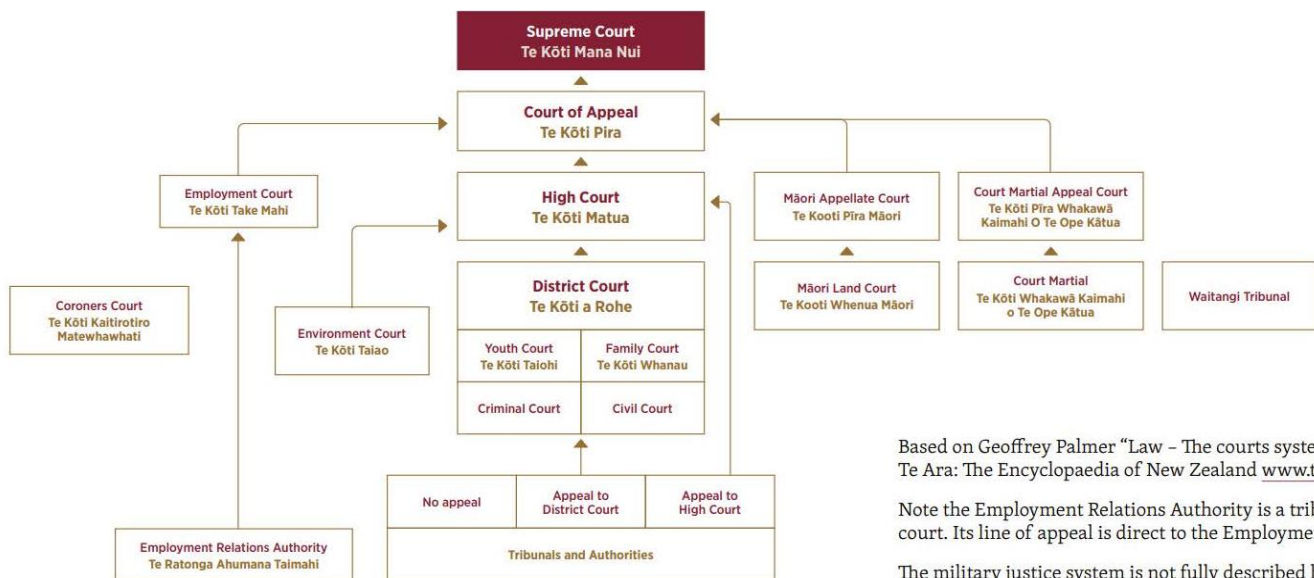
The structure of the courts is set out in the diagram below. It includes Tribunals and Statutory Authorities and Boards.

The Statutory Boards have regulatory and administrative functions but also quasi-judicial functions especially in or around disciplinary issues for their members. Each of these Boards generally appeal to the District Court or in some instances, directly to the High Court.

The Authorities and Tribunals are specialist bodies which by statute serve particular roles in our community. Examples include the Tenancy Tribunal (dealing with all residential tenancy disputes under the Residential Tenancy Act 1986); the Motor Vehicle Disputes Tribunal (dealing with all motor vehicle disputes between dealers and consumers under the Motor Vehicle Sales Act 2003); the Disputes Tribunal Act (which deals with most civil disputes up to

a monetary cap of \$30,000 under the Disputes Tribunals Act 1988); and the Employment Relations Authority (which deals exclusively with employment disputes between employers and employees under the Employment Relations Act 2000).¹

The Structure of the Courts



The District Court is the busiest of all the courts in New Zealand, dealing with over 200,000 cases (across all jurisdictions) annually.² For civil matters, the District Court has a general jurisdiction to hear claims up to a value of \$350,000.³ The High Court has no monetary cap in its civil jurisdiction.

Objectives of the Judicial Dispute Resolution Process in the High Court and District Court

High Court

High Court judges through its rules (HCR) can require parties to attend a Judicial Settlement Conference (JSC). Whether a JSC should be convened is raised at the First Case Management Conference (CMC).⁴ A JSC may be convened where the monetary value might not justify a lengthy trial or where the parties request a JSC.

¹ The Employment Relations Authority appeals to the Employment Court which in turn appeals to the Court of Appeal.

² See <https://www.districtcourts.govt.nz/reports-publications-and-statistics/statistics/statistics-2021>.

³ District Court Act 2016, s 74.

⁴ HCR 7.3 Schedule 5 considerations.

Rule 7.79 of the HCRs specifically provide for a High Court judge to convene and assist the parties in negotiations to settle the proceedings. Under this rule the judge may also, with the consent of the parties, direct the parties to attend a mediation or other form of alternative dispute resolution process.⁵

JSCs are generally set down for a day and are conducted mostly by Associate Judges rather than Justices.⁶

District Court

Across each of the jurisdictions of the District Court, different dispute resolution processes are engaged.

In its civil jurisdiction, the District Court Act 2016 (DCA) and the District Court Rules 2014 (DCR) set out the standard procedure for civil proceedings in the District Court. The objectives of the DCR have as their focus the ‘just, speedy, and inexpensive determination’ of any proceeding or interlocutory application.⁷

In the family jurisdiction, the Family Court Rules 2002 (FCR) also emphasise the need for family proceedings to be dealt with ‘fairly, inexpensively, simply, and speedily’ as is consistent with justice.

In the criminal jurisdiction (which includes adult and youth offending), the Criminal Procedure Act 2016 and the Oranga Tamariki Act 1989/Children’s and Young People’s Well-being Act 1989 each have their own protocols which deal with early resolution of criminal charges. In some instances, this may result in significantly reduced sentences, discharges without convictions,⁸ or no conviction being entered.⁹

Legal Framework for the JDR Processes in the District Court

This commentary will focus on the civil and family jurisdictions.

There are several procedures governed by legislation which support the JDR process in the District Court. These include CMC, JSC, and family group conferences (FGC) in the family

⁵ HCR 7.79(5)

⁶ Although HCR 7.79 does provide for a full Justice to convene and conduct a JSC.

⁷ Rule 1.3.

⁸ Especially in relation to the rehabilitation Courts such as the Alcohol and Other Drug Treatment Court.

⁹ In the case of a Youth Offender where an Alternative Action Plan is followed, or a plan agreed and implemented following a Family Group Conference.

jurisdiction where the State will have concerns (and the ability to intervene) about the care and welfare of children.

Case Management Conferences

Case management is the key to ensure parties will focus on the issues which will be determined at trial. At the first CMC the parties will be asked if they wish to attend a JSC. A JSC is generally compulsory unless it is clear the parties have no intention of settling. A JSC is held at the earliest opportunity in the proceeding to avoid parties incurring legal costs.

Part 7 of the DCR provides for the case management regime for the management of all civil proceedings in the District Court to promote their just, speedy, and inexpensive determination.

The purpose of a CMC is to enable the judge to assist the parties to:¹⁰

- identify, define, and refine the issues requiring judicial resolution;
- determine what steps need to be taken to prepare the proceeding for hearing or trial;
- decide how best to facilitate the conduct of the hearing or trial; and
- ensure that the costs of the proceeding are proportionate to the subject matter of the proceeding.

Judicial Settlement Conferences

A JSC is a type of mediation conference convened by a Judge. It aims to resolve a dispute without the need for trial. JSCs are available to parties in both the family¹¹ and civil jurisdictions.

JSCs are conducted similar to private mediations. They enable parties to identify the real issues in dispute and work constructively in a less formal setting toward reaching a solution they can accept. JSCs will be set down for a 3 hour fixture or, a full day if the issues are complex.

JSCs are conducted by a Judge in the civil jurisdiction who, unless the parties agree, will not undertake the trial.

Judges or Family Court Associates will undertake JSCs in the family jurisdiction.

¹⁰ DCR, r 7.1(2).

¹¹ In relation to private relationship and custody disputes between parties.

Settlement Conferences and Family Group Conferences

Case management in the family jurisdiction, similar to the civil jurisdiction, is the key to early identification of issues and where possible the resolution of the proceedings. A significant focus is placed on JSCs conducted at an early stage in the proceedings.¹²

A FGC is a meeting convened or reconvened by a care and protection co-ordinator in accordance with s 21 of the Oranga Tamariki Act 1989/Children's and Young People's Well-being Act 1989.

The FGC procedure follows seven stages:¹³

- the FGC is opened in a way the family/whānau have requested; followed by introductions; health and safety issues; explanation that the conference is a privileged meeting; explanation of the family group conference process; explanation of the roles of participants and the purpose of the conference.
- explanation of the care and protection grounds upon which the FGC has been convened;
- discussion about whether there is agreement to the care or protection concerns;
- information sharing from professionals and other information sharers;
- family/whānau private deliberations (also called “family time”);
- development of a plan (where this is agreed to by the participants);
- closing of the family group conference in the way the family/whānau have requested.

The Tenancy Tribunal, Disputes Tribunal and Employment Relations Authority

The Disputes Tribunal and the Tenancy Tribunal, both of which appeal to the District Court, have built in settlement processes.

The Tenancy Tribunal mediation is often the first step, followed by a Tribunal hearing if mediation fails. The mediator, who is a neutral third party, will help parties discuss the problem

¹² FCR 174-181

¹³ See the Oranga Tamariki practice centre guidelines: <https://practice.orangatamariki.govt.nz/our-work/interventions/family-group-conference/care-and-protection-family-group-conference/holding-the-care-and-protection-family-group-conference>.

and come up with a workable solution. Any settlement which is reached is binding on the parties and can be made into an Order as if it was an Order following a hearing.¹⁴

Similarly, a Disputes Tribunal Referee, instead of determining a matter may assist the parties to reach a settlement. If a settlement is reached, then again, the terms of any agreement can be made into an Order which the Tribunal could have otherwise made.¹⁵

The Employment Relations Authority (ERA) determines most matters concerning employment issues.¹⁶ Prior to any matter being investigated by the ERA, it will consider whether the parties should attend mediation before the investigation proceeds any further.¹⁷ Mediation facilities are provided by Mediation Services which is independent from the ERA.¹⁸ Parties can seek mediation assistance at any stage for an employment relationship issue even where proceedings have not been issued.

Details of the JDR Process

Eligibility Criteria for the JDR Process

Most participants in the civil and family jurisdictions of the District Court will be eligible for some form of dispute resolution.

In the civil jurisdiction, JSC's are governed by DCR 7.3 and will be held in every case unless a judge orders otherwise, or the parties have agreed to a different form of alternative dispute resolution.

Pursuant to r 174 of the FCR, the Family Court can direct a JSC be held to determine any application made in the Family Court.

Description of the JDR process

Which dispute resolution modalities (e.g. early neutral evaluation, judicial mediation) are practised?

There is no real distinction between the types of dispute resolution processes. As noted the JSCs are conducted similar to a private mediation.

¹⁴ Section 88(2) of the Residential Tenancies Act 1986

¹⁵ Section 18(3) of the Disputes Tribunal Act 1988.

¹⁶ See s 161 of the Employment Relations Act 2000 as to jurisdiction.

¹⁷ Ibid ss 159(1)(a) and (b)

¹⁸ Ibid ss 144 to 154

Debate does occur between judges (although it is left to the individual judge to decide) whether a view is expressed by the judge as to the merits of the parties' arguments. Some parties may specifically ask for a judge to express a view. To the extent an Early Neutral Evaluation (ENE) occurs, this is a practice adopted in New Zealand in private JDR processes, but it is also very much part of (and not independent of) the JSC process.

Parties can appoint an evaluator on a private basis as they can a private mediator. Proceedings are adjourned to a CMC to allow for that process to be concluded.

In person or AVL?

Most JSCs are conducted in person. However, based on the location of parties leave is often sought and generally given, for a party to attend by way of AVL.

During Covid-19 AVL (Microsoft Teams) was commonly used to conduct JSCs. This depended on the individual Judge and their confidence in using this technology.

Training of Judges Conducting the JDR Process

Te Kura Kaiwhakawā, also known as the Institute of Judicial Studies,¹⁹ is responsible for providing ongoing education and support for judges. This includes facilitating seminars, providing online resources, and engaging with experts.

Training is undertaken using expert independent mediators and judges with specific expertise and training in mediation to act as facilitators to teach various mediation practices. It includes theoretical approaches, practical 'tips and tricks' and live demonstrations. It also includes practical involvement of judges in 'mock' JSCs dealing with different case scenarios. The most recent JSC training for the District Court judges was in August 2025.

Statistics on the JDR

There are no formal published statistics relating to the effectiveness of the JDR process in the District Court. However, it is generally accepted that settlement conferences have a high success rate in resolving cases that would otherwise require significant court time and resources.

Private mediation statistics confirm success rates of over 80% are generally achieved in New Zealand. JSC rates are unlikely to be as high as this rate but would be somewhere between 60-

¹⁹ Te Kura Kaiwhakawā is the education arm of the judiciary. It provides judicial education to New Zealand judges and judges in the Pacific through its Pacific Justice Sector Programme.

80%. The significant differences (and the reason why a higher rate of success is achieved in private mediation) relate to the willingness of parties wanting to attend a private mediation (they are in the 'mediation mode'), whereas parties in a JSC are attending because they are required to and/or may not have experienced a lengthy (and therefore expensive) litigation journey to that point.