

Submission on the
Proposed New Operating Model for District Courts in Auckland Discussion Document
from WAVES Trust, Waitakere Community Law Centre and Community Waitakere

To Programme Director
Auckland Service Delivery Programme
Level 4, Auckland District Court
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Introduction

We have prepared this submission in response to the Discussion Document on the Proposed New Operating Model for District Courts in Auckland, which requests feedback on how this model could be enhanced. Our submission focuses on the proposal's impact on the Waitakere Family Court (WFC). We present our submission from the viewpoint of Waitakere community members and their organisations, users of the WFC and their legal representatives.

We oppose the implementation of this model on the basis that it will not meet the needs of our community for the following reasons:

1. WFC is the one of the most efficient Courts in the country and is the fourth largest of its type. We do not believe the proposal pays sufficient attention to protecting the factors that promote the Court's efficiency or how to mitigate the possibility of a reduction in current efficiencies at a local level.
2. The model involves a relocation of significant Court staff and all file storage but has provided us with no evidence to show that it will improve our local Court services.
3. The community has not been adequately consulted during the development of this model and has not been given adequate information or time to assess its value for our Courts.

The following submission expands on the reasons why we oppose the model and believe that it will not operate to improve the services available at WFC but may work to their detriment instead. We suggest that a better model could be found that protects the integrity of efficient courts and prioritises the delivery of good justice outcomes.

This submission is made on behalf of:

Waves Trust (Waitakere Anti Violence Essential Services)

Community Waitakere

Waitakere Community Law Centre

CC4J–Community Coalition for Justice. This is the group established from a Public Meeting of approximately fifty stakeholders, held on 11 May 2011.

We wish to speak to this submission. The contact persons for this submission are:

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Summary

The WFC is at the heart of our community in Waitakere. The Court's work is vital to the wellbeing of families and vulnerable people and it is often called upon to adjudicate sensitive matters in people's lives at times of great stress and anxiety for them. We are proud of our Court and its achievements and we write this submission with the intention of championing the integrity of our local WFC.

The authors of the Discussion Document state the proposed model will promote 'a shared service vision and purpose across District Courts.'¹ With respect, we believe that there is not a problem with service vision or purpose at the WFC. We are informed by Barristers in Waitakere that the WFC is the fourth largest Court in the country and one of the most efficient Courts in terms of meeting both the Ministry's performance expectations and the needs of our local community.

We believe the proposed new operating model for District Courts in Auckland is more likely to work to the detriment of Waitakere Court users than to their advantage. We find the Discussion Document too narrowly focused on internal staff location and task reorganisation. It fails to acknowledge the factors contributing to the success of the WFC or show how the new model will protect and nurture these factors or improve upon them. Its emphasis on regional consistency does not acknowledge the possibility of adverse impacts at a local level. In addressing these concerns, this submission follows three main themes:

1. Highlighting the factors that make WFC one of the most efficient Courts in the country and how workplace culture and easy access to files contributes to progressing cases through the Court efficiently.
2. Outlining how any reduction in WFC services as a result of the new model will be to the detriment of families and vulnerable people, increasing the costs associated with using the Court and reducing its accessibility, and possibly putting children and vulnerable adults at risk of harm unnecessarily.
3. Commenting on the lack of information received about the proposal, the lack of transparency with which this process has been conducted, and the lack of opportunities for community stakeholders to participate in shaping changes to our Court.

¹ Ministry of Justice, *Proposed New Operating Model for District Courts in Auckland*, Wellington, 2011, p. 2. (Discussion Document).

1.0 WFC Performance

1.1 The authors of the Discussion Document have outlined a number of reasons why they believe this model will produce more efficient Court processes. They identify as an impediment to efficiency the relative independence of each extant Courthouse and the opportunities this independence presents for locally distinctive practices to evolve.² We believe WFC has been advantaged by its ability to respond innovatively to the needs of our communities with the help of a good management team, fulfilling work practices, and a strong community focus. Strong relationships exist between the Judiciary, Court staff, Barristers, and social service agencies and all of these parties support Court users as they move through the system. However, we believe that the proposed new model pays insufficient attention to the role these relationships play in progressing Court activities.

1.2 WFC staff live and work in the community they serve. The WFC has very low staff turnover, around 6-7 years compared with a dramatically smaller duration in the CBD. Our long serving staff members are an asset to the Court and its users, are supported by a management team with a strong focus on providing a flexible workplace where individuals undertake varied tasks promoting high levels of job satisfaction and producing a stable workforce. As we understand it, the current model at WFC sees individual staff assigned responsibility for all actions required to see a file progressed through from beginning to end of the relevant processes. The culture of the Court adds to staff members' abilities to execute complex tasks and coordinate relationships with the judiciary and external stakeholders in a timely and efficient way producing good outcomes for Court users.

1.3 Local Barristers tell us that the good relationships between them, Court staff who manage files, and the judiciary are crucial to their work with the Court. Barristers consider the staff subject to the proposed centralisation to be frontline staff. These staff members are available by phone or at the counter and are sufficiently familiar with the files they manage to be able to answer queries quickly and efficiently. WFC experience shows that staff flexibility to move between file processing and engaging with both resident judiciary and external legal advisors increases efficiency and produces good justice outcomes for Court users. In contrast the authors of the Discussion Document appear to see flexibility and autonomy of Court staff as impediments to efficiency. The proposed new operating model places value on specialisation of staff across multiple files to gain economies of scale. We question the wisdom of multiple individuals handling files and documents, opening the way for bottlenecks in processing to hold up large numbers of files.

1.4 Barristers inform us that there is much to be gained by storing active files on site at WFC. Family Court matters are often complex involving a number of family members and multiple files under different legislation categories. It is not uncommon for Judges to call for delivery of additional files while conducting a hearing as people appearing before the Courts often have multiple files of relevance to proceedings. For example, to facilitate decision-making a Youth Court Judge might request information from a young person's Care of Children Act file or CYF Act file, or from DV Act protection order applications. These files are quickly available under the current system, but many

² Ibid., p. 8.

we have spoken to fear this will not be the case if all files are centralised to the CBD. Short cause fixtures may become less efficient as a result.

1.5 Other professionals liaising with the Courts may also be affected by the storage of files offsite. We understand from contacts who have worked with the Police and CYF that the officials from these agencies often pick up original documents from the Court because facsimiles are not valid for their purposes. We question how efficient this process will be if they must pre-order files and wait until the next delivery. WFC staff expedite urgent orders for lawyers and government officials to protect vulnerable clients, and these can be signed by Court Registrars if a Judge is not available at short-notice. These external stakeholders fear that the replacement of Court Registrars with Team Leaders or Deputy Registrars will leave gaps in the abilities of local staff to meet this demand and result in urgent matters being sent to the CBD instead, taking valuable time and possibly increasing the risk to their clients. We have not seen any evidence that proposed new model will put in place measures to prevent this problem from occurring.

2.0 Effects on Court Users

2.1 The authors of the Discussion Document did not focus specifically on the users of the Court and the document lacked any analysis of the effect of the proposal on justice outcomes at a local level. The primary focus was fiscal concerns and economic justification for centralising staff and redistributing tasks among them. The proposal reflects the authors 'emphasis on the use of business analysis and reporting to support strategic and operational decision making.'³ We disagree that a business model is appropriate for family Courts generally and we are very concerned that the document does not address the possible social costs and reduction in justice outcomes and how these might be manifested locally.

2.2 There is a general consensus in Waitakere that the WFC works well and efficiently produces good outcomes for Court users. Centralisation will, in the view of one local Barrister, 'dumb down' our outstanding Court for the purpose of raising the quality of service elsewhere in Auckland. On a local level, the possibility of losing some of the efficiencies WFC staff and officials bring to their work is troubling, especially in terms of its impact on the cost and accessibility of Court services and the social costs to vulnerable people.

2.3 There is doubt in our community as to whether this restructuring proposal will have the desired fiscal benefits. Any loss of WFC efficiencies incurred by the proposed new model will naturally be a cost to the public. Legal professionals' time is paid for either directly by their clients or by the State provision of legal aid. Ultimately taxpayers will pay more if it takes longer to get information from the Court if Courtroom scheduling is hampered by failures in file transfers, or if incorrect information is given over the phone by staff looking at files with which they are unfamiliar. The effects of failures in these arenas will be passed on in costs to the clients, making the Court more expensive and less accessible to those in need of its services.

³ Ibid., p. 2.

2.4 It is important to remember that people often enter the Family Court in a vulnerable and fragile state both financially and emotionally. Among others, the Court protects the interests of children, victims of Family Violence, the ill, and the elderly. If the proposed model fails to deliver the same level of service at the WFC that we currently enjoy then the social costs may be very high. Children are the most vulnerable people reliant on the Court and they are the most powerless. They are the least likely to be able to seek other forms of protection, and the most likely to be harmed if left unprotected by Court delays. An efficient Court is also vital for protecting the rights of adults experiencing family difficulties as a result of age, illness, or abuse. We foresee that if the new model does not replicate WFC's already outstanding turnover and outcomes it has the potential to put vulnerable children and adults at risk of harm unnecessarily.

2.5 It is not unreasonable to expect a shift of lawyers and workers away from Waitakere. This makes economic sense for lawyers who require ready access to Court files and staff. If this proposal is adopted, travel time and cost of travel will make it more difficult and expensive to be a lawyer in Waitakere. The loss of local legal professionals will have adverse effects for the Court in Waitakere. The local lawyers bring strength through their long-term involvement in the Waitakere community. There is a substantial knowledge base which contributes great benefit to the users of the Court.

2.6 The transfer of these staff positions to the CBD will affect the Court and our wider community. The presence of local Court staff contributes to the success of local businesses and shopping centres, their children attend local schools and like many who live and work in Waitakere families benefit from work/life balance. On the other hand, motorways and public transport into the city are already filled to capacity, and commuting times and delays are a constant source of frustration for many working in the CBD. The impact of sending our local staff into the CBD will be to add to the burden on our roads and public transport, increase stress levels among staff and reduce disposable income, extend the time their children are in care, as well as adding to the ranks of our unemployed those for whom centralisation is not an option.

3.0 Lack of Evidence, Information, and Consultation

3.1 We are most concerned that the Discussion Document produced by the Ministry for public consultation with external stakeholders has not met the usual standards for a consultation process. The terms of reference and limits were not clearly defined at the start, and it suffers from the following inadequacies:

1. The discussion is narrowly focused on staff, resource, and task allocation;
2. There is no evidence presented to show how the proposed changes will produce benefits for local Courts;
3. There is no analysis of possible negative flow-on effects to the public or discussion about how these might be mitigated.
4. The Ministry did not advertise for consultation with the community but rather targeted particular groups, such as staff, and legal and health professionals. In addition we are informed by Ministry staff there has been no consultation with Iwi initiated or planned. Each of these points will be discussed further below.
5. We are not told why centralisation is the best option or what other models might have been considered.

3.2 The narrow focus on staff, resource and task allocation fails to acknowledge that the Court's success might also be influenced by other factors. The significant factor in the success of the WFC is that the workers live and work in the community they serve, have strong knowledge of the files and families involved, and are accessible to these families' legal representatives. There are good relationships between the Judiciary, Court staff, lawyers and clients at WFC and these underpin quality justice outcomes and fiscal efficiencies. We want to see the workplace culture that supports these internal-external relationships maintained through any structural changes, but the current proposal neither acknowledges its existence nor incorporates this into the proposed new model.

3.3 The authors of the discussion document argue that economies of scale will improve efficiency across the region. We disagree. We know that some Courts are more efficient than others and that WFC is one of the best. It does not necessarily follow that reducing disparities between courts across the region will maintain the current high levels of service at the WFC. It is our view that abandoning the workplace culture which promotes that efficiency will have serious effects on staff morale and performance, and this should be planned for in any new model. However, there is no discussion in the proposal about how centralisation will be achieved without reducing efficiency for those local Courts like WFC that already function well. Likewise, centralised storage of files is not discussed in terms of the risks it poses to Courtroom efficiency and no evidence is produced to support the notion that file centralisation is more cost effective than local storage.

3.4 We have attempted to gather information from the Ministry about how they have reached the conclusion that centralisation will benefit our local Court and whether the issues we have raised in this submission have or have not been considered. We have asked for more information on the costs of day to day transfers, any risk analysis of the effect of failures in file transfers on Court scheduling, and details of survey questionnaires completed by Waitakere Court users.⁴ The Ministry has not supplied this, telling us instead that 'the Ministry of Justice itself is best placed to ascertain whether our current service delivery model is sustainable into the future'.⁵ The Ministry asks us to give feedback on how the proposed model might be improved but we feel we have been denied sufficient information to address that question in full, and therefore we have been denied adequate consultation.

3.5 In our view, the content of the Discussion Document does not adequately address the risk of negative impacts on Court users and does not show any demonstrable commitment (in policy or planning) to mitigating those risks. Our concern about the possibility of harm to vulnerable people is heightened by the Ministry's refusal to acknowledge whether they have undertaken a risk analysis around file transfers (see above). This deficit is of great concern to the people of Waitakere who rely on our local Court to protect the vulnerable.

3.6 The Discussion Document authors describe a need for 'sustainable' local Court services. Yet they do not acknowledge the reasons why costs have increased in recent years. In part these relate to successive Governments increasing the burdens on the Court through legislative and policy

⁴ Tiaria Fletcher, WAVES Trust to Andrew Hampton, Deputy Secretary Operations, 13 May 2011.

⁵ Andrew Hampton to Tiaria Fletcher, 17 May 2011.

reform, including for example greater reference to children's views promoted by the 2004 Care of Children Act and the adoption of new IT systems for the Family Court. We are told in the document that efficiencies can be made through adoption of IT to facilitate file transfers between Courts. If this is so then why do document processing staff members need to be centralised as well? Electronic technologies reduce the problems associated with distance between staff rather than requiring centralisation. We do not believe it is reasonable for the Ministry to claim that benefits will accrue from adopting new technology without giving some evidence to show what the problems are and how these will be fixed. Again there is no evidence presented in the Discussion Document to show how the adoption of IT systems will reduce operating costs, nor any evidence that a risk analysis has been conducted to mitigate the impact of possible system failures.

3.7 Alongside the lack of information given about the relative costs savings of centralisation we are concerned that we have not been told about the loss of other initiatives to support our Courts. There are a number of statements in the Discussion Document about buildings and capital resources which require further clarification. These statements address regional capacity, not local - we are not informed whether there are plans to alter, reduce, or scrap the longstanding plans by previous Governments to erect a purpose-built Courthouse in Waitakere. This suggests to us that there may be cost savings associated with centralisation that are not divulged in the Ministry's proposal, adding to our concerns that the process has not been transparent.

3.8 One of the most pressing concerns for community groups is the way that an inadequate consultation document has been combined with a short turnaround time for feedback. As representatives of our community, we aim to produce informed, well researched, and useful feedback to Government. This is the purpose of consultation. But our efforts have been stymied in this case by the opacity of the documentation and its lack of evidence, the Ministry's refusal to give us more meaningful information, and an impossibly short time frame of just 14 days (granted this has been extended by three working days but remains far too short). It is not beyond the Ministry of Justice to produce good consultation documents and processes, as evidenced by the recent Bail Review.⁶ We suggest that the Auckland Service Delivery Programme would do well to learn more about the skills needed for consultation with stakeholders and the public.

3.9 It is important that Iwi be consulted before any changes to the WFC are implemented. This issue is particularly important to Iwi as the Maori population are over-represented in the Family Court system⁷, and thus any changes to this system may directly impact many whanau and the Maori community as a whole. The impact of any changes has direct consequences for the Maori whanau of the area, and it is appropriate to consult the Tangata Whenua before implementing the proposed actions. The spirit of the Treaty of Waitangi and Maori status as tangata whenua also supports local Iwi status as a stakeholder requiring consultation. Indeed, this is a natural part of the consultation process.

3.10 Finally, there is no evidence that any alternatives to centralisation have been considered or reasons given why centralisation is thought to be the best option. Even if there are projected cost

⁶ <http://www.justice.govt.nz/policy/criminal-justice/review-of-aspects-of-the-bail-system>

⁷ For example, 49% of Maori women experience partner abuse at some time in their life, compared with 24% of Pakeha women. Source: *Te Puni Kokiri Family Violence Literature Review 2010*, p. 7

benefits to region of the proposed new model, it presents unpalatable consequences and high risk for local communities. There is a doubt in our community whether such a wide-ranging restructure is necessarily the only or even the best way of delivering benefits. There are other options that will increase efficiency and result in better outcomes for users of the Courts.

3.11 We support the notion that WFC could provide a model of an effective workplace culture that drives greater output and better justice. We uphold the model of the WFC as an example of an efficient, well respected Family Court that meets the needs of its users. Whilst there is agreement that the Family Courts need some reforming, we believe that a factory-line approach to justice is not the answer. The Waitakere community is willing to work with the Ministry to resolve any issues of sustainability together, because there is a responsibility to work in consultation on this issue to reflect better outcomes for the families of Waitakere.

4.0 Concluding Remarks

4.1 There has been a lack of transparency surrounding development of this discussion document and the process around the consultation. Overall, we feel that the Discussion Document and the consultation process behind it have been poorly presented to the communities affected by this proposal. The document's business focus and its presumption that 'economies of scale' are a necessary part of a good justice system render invisible the real purpose of the Family Court, which is to adjudicate in family disputes and protect vulnerable people. Claims are made about the benefits to the region of centralisation but we are not told whether any consideration has been given to the impacts on a local level. It has ignored the contribution to Court efficiency made by workplace culture and relationships with external stakeholders. We have been asked to give feedback on how the Ministry could improve this model but we have not received adequate information to do that and see instead the proposal could lead to a disastrous erosion of the good service we currently receive from the WFC. This may place vulnerable people at risk of harm unnecessarily.

4.2 Delivering good justice means not only resolving the disputes within a community, but empowering a community to resolve its own disputes and eliminate the drivers that push people toward the justice system. That lofty goal will occur only when the community has trust and ownership in its justice system and institutions. Apart from reduced staff levels, the current proposal promises nothing in this regard. There is growing evidence that localised delivery of justice appears to be a win-win: it improves justice outcomes, including social justice, and reduces both the fiscal and human costs of disputes.

4.3 It is important to remember that when seeking alternatives to the current Family Court arrangements that waiting times are only one indicator of the effectiveness of how well the system is working. As we have pointed out in this submission, the potential social costs associated radical reforms need to be mitigated. We suggest that a better way of reducing Family Court costs is to focus instead on the drivers of demand for the Court system. This is not addressed by the Discussion Document. Moving greater resources to the spoke Courts addresses this point, as it will address the unique problems of each community. Community justice initiatives have been found to reduce fiscal

costs in the long term as there is less demand for the Family Court. It also reduces drivers of crime, reducing social costs of family law issues in the community.

4.4 If the Ministry is serious about reducing the burden of disputes and the costs of resolving them through the justice system it needs to ask the community, the users of the justice system, what they need from that system. The challenge is there for the Ministry to forge a true partnership with the community to collectively tackle the drivers of crime and reduce the fiscal and social costs of family disputes. We advocate that the proposed actions be delayed until the full review is completed with adequate consultation. This will allow greater examination of the various issues by Court staff. It will also give an opportunity for a partnership between the Ministry and the community to be forged.

4.5 We thank you for this opportunity to respond to this matter and look forward to presenting verbally to our submission.