

## UTA Review 2016

Submission from <sup>s 9(2)(a)</sup>

Barrister and Arbitrator

s 9(2)(a)

### PROPOSAL

That any review of the UTA , and in particular its Dispute Resolution provisions, include where appropriate provision for disputes to be resolved by Arbitration under the Arbitration Act 1996.

### AT PRESENT

The statutory scheme, whilst now actively and appropriately incorporating recognition of Mediation as a component part of the dispute resolution process, seems to have overlooked the role which private Arbitration services can play. Both the UTA and the dispute process as outlined by MBIE in its material around the resolution options are silent on the role of Arbitration and seem to be solely focussed on the traditional statutory processes of Tenancy Tribunal, District Court and High Court.

In my experience, and in appropriate cases, Arbitration offers stakeholders a very real option which has a number of advantages:

- It is private and proceeds on a user pays basis. It is not institutionally based.
- It offers an opportunity to the parties to select their own adjudicator, perhaps someone with particular skills relevant to the context of their dispute.
- It can be flexible in its procedures as appropriate to the matter in hand , but still with the full backing of the law as developed through many cases clarifying the Arbitrators jurisdiction and fundamental obligation to proceed with natural justice
- It is usually speedier than the traditional institutional approach. Time is money in this game and so with an appropriately tailored approach expense can be minimised.

My impression is that the advantages of Arbitration are not widely understood and that may be an impediment to its use. But as we look to find reliable dispute resolution mechanisms, which minimise polarisation of the parties and get to the nub of the problem without undue expense then Arbitration is a must have on the agenda.

There are appropriate safeguards in place to address any areas of concern

- The jurisdiction is consensual so committing to it requires both parties to agree.
- But having agreed, the Courts will hold you to that commitment
- Arbitrators, if the appointment itself cannot be agreed, are frequently appointed by respected organisations such as the NZLS or AMINZ
- The Arbitration Act 1996 has sufficient confidence in the process to prescribe that Arbitrators, unless otherwise agreed, may award any relief or remedy that could have been ordered by the High Court if the dispute had been the subject of civil proceedings in that court [S.11].
- The Act and its Articles provide a comprehensive and well proven set of rules for adjudication.

MY RECOMMENDATION FOR CONSIDERATION IS :

1. That the Dispute process for UTA disputes include the option, where all affected parties agree, for determination under the Arbitration Act 1996
2. That the Act further provide that the Arbitrators powers should include powers to order the same relief as the Tenancy Tribunal, the District Court and the High Court in like proceedings.