

Departmental Disclosure Statement

Legal Services Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

19 January 2024

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Part One: General Policy Statement

The Legal Services Amendment Bill will remove legal aid funding for a report or statement (whether oral or written) by a person called by an offender under section 27 of the Sentencing Act 2002. Section 27 of the Sentencing Act 2002 allows the court to hear any persons called by the offender in relation to the offender's background and its relationship to the offending, as well as the support the offender has from family, whānau or community that might help prevent further offending. This information informs judicial decisions about the type and length of a sentence.

For offenders who are legally-aided, the cost of section 27 reports can also be met by the government under their grant of legal aid. There has been a significant increase in the use of section 27 written reports. In 2017 there were nine section 27 reports funded by legal aid and the Public Defence Service, costing a total of \$17,164. In comparison, in 2022 there were 2,429 reports at a cost of \$6.45 million.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	N/A

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<i>Removing Taxpayer Funding for Reports Under Section 27 of the Sentencing Act 2002, prepared by the Ministry of Justice, 7 December 2023. Published at: https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments</i>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
Cabinet suspended the requirement for quality assurance of Regulatory Impact statements (RIS's) for decisions relating to 100-Day Plan proposals.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>(a) Details of the current costs and benefits following commencement of the Act are in the RIS at paragraph 13 and under Option Two on the chart on pages 12 to 19.</p> <p>(b) Persons who are currently funded by legal aid grants to write section 27 reports will lose that source of income, as noted on page 23 of the RIS.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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It is unclear how the proposal fits with New Zealand's international commitments, such as the International Convention on the Elimination of All Forms of Racial Discrimination. Māori are overrepresented in the criminal justice system and the funding change may exacerbate this disparity, as a higher proportion of Māori (and Pacific Peoples) offenders receive a legally aided section 27 report, compared with New Zealand Europeans/others. Due to time constraints no steps have been taken to conclusively determine the effect of the Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry consulted with Te Puni Kōkiri, who did not support the policy, but due to time constraints under the 100-day plan no other consultation with Māori has taken place.

The issues of alleged discrimination and institutional racism in the sentencing process and legislative provisions is included in live claims filed with the Waitangi Tribunal in Te Rau o te Tika – the Justice System Kaupapa Inquiry (Wai 3060). There will likely be scrutiny of the use and funding of section 27 reports by the Waitangi Tribunal as part of the response to the Kaupapa Inquiry, with a possible focus on any disproportionate impacts on Māori due to legislative changes.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Crown Law has assessed the Legal Services Amendment Bill. Its advice has been provided to the Attorney-General, which is expected to be available on the Ministry of Justice's website upon introduction of the Bill: <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
The Bill does not directly amend offences or penalties. It removes legal aid funding for s27 reports which, as noted above, provide information that informs judicial decisions about the type and length of a sentence.	

3.4.1. Was the Ministry of Justice consulted about these provisions?	N/A

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
No consultation has taken place due to the time constraints under the Government's 100-Day Plan.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
<p>The Bill does not amend the right under section 24(f) of the Bill of Rights Act 1990 to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance. The Commissioner's decision-making power in determining who is entitled to legal assistance provided by a lawyer is unchanged. The Bill does remove the Commissioner's discretion to approve or refuse funding for a third person to prepare a section 27 report, but does not have a significant impact on a decision-making power with regard to the right to legal assistance without cost or to a fair hearing by the court.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO