

# Departmental Disclosure Statement

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Courts Matters Bill
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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 certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

July 2017

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## Part One: General Policy Statement

The Courts Matters Bill and the Tribunals Powers and Procedures Legislation Bill (the **Tribunals Bill**) form an integrated package of amendments that will contribute towards the goal of a modern, efficient, and effective courts and tribunals system. The Business Committee has agreed to the introduction of these Bills as cognate Bills under Standing Order 269.

Independent, fair, and efficient courts and tribunals are a cornerstone of our democracy. People's experiences of courts and tribunals shape their views of justice system integrity.

The Courts Matters Bill and the Tribunals Bill amend courts and tribunals legislation respectively to—

- reduce the time it takes to hear and resolve matters and to improve users' experience of the courts and tribunals system;
- enable greater use of modern technology to further improve efficiency, effectiveness, and timeliness;
- simplify and standardise statutory powers and procedures to improve productivity and efficiency;
- provide better consumer protection and redress, and greater access to justice.

The Business Committee has agreed to the introduction of the Courts Matters Bill as an omnibus Bill under Standing Order 263(c).

The Courts Matters Bill amends—

- the Courts Security Act 1999, to improve users' experience by making courts and tribunals safer and more secure;
- the Criminal Procedure Act 2011, to improve the efficiency, effectiveness, and timeliness of criminal processes;
- the Summary Proceedings Act 1957, to improve the efficiency, effectiveness, and timeliness of fines enforcement;
- 11 other acts to improve the efficiency, effectiveness, and timeliness of the courts.

The major initiatives in the Bill are described below.

### Part 1: amendments to Courts Security Act 1999

This Part seeks to improve court users' experience by making courts and tribunals safer and more secure.

It will expand court security officers' (**CSOs**) powers to enable them to deal with low-level offending and disruptive behaviour in court more effectively.

#### *Giving CSOs more powers to deal with disruptive people*

*Part 1* authorises CSOs to deny entry to or to remove or to detain people who are intimidating, abusive, or otherwise causing disruption in court. This will include people whose disruptive behaviour is due to the effects of alcohol or other drugs.

The changes reflect best practice drawn from court security legislation in comparable jurisdictions.

Currently, CSOs can only use their powers when there is a credible risk of violence to court users or harm to property. Court security officers cannot use their powers to address relatively low-level disruptive behaviour that is causing distress to other court users or is interfering with the orderly operation of the courts.

#### *Empowering CSOs to detain for a wider range of offending*

*Part 1* will increase CSOs' authority to detain people who they believe have committed or attempted to commit a wider range of offences in a court. This power is currently limited to a small number of very serious offences. It does not include common offending such as disorderly behaviour and wilful damage. This limits CSOs' ability to provide a safe, secure, and orderly court environment. Court security officers need to be able to respond decisively to all offending.

*Part 1* will also expand the range of circumstances in which a CSO can detain a person to include—

- carrying illegal drugs and associated paraphernalia detected by a CSO during a search;
- committing or attempting to commit an offence that a CSO believes on reasonable grounds threatens the safety or security of another person or their property, or may cause serious damage to court premises;
- refusing to give a CSO their full name, address, and date of birth after committing an offence on court premises;
- refusing to leave the court after being required to do so or attempting to re-enter;
- refusing to obey a direction from a CSO to do or not to do anything that is reasonably necessary to protect the safety and security of people being escorted outside the court on court-related business.

*Part 1* will also empower CSOs to pursue people who are to be detained, or are in lawful custody, and who flee or otherwise escape from court premises. The power to pursue is authorised while that person is within a short distance of the CSO.

#### **Part 2: amendments to Criminal Procedure Act 2011**

*Part 2* amends the Criminal Procedure Act 2011 (the **CPA**) to improve the efficiency, effectiveness, and timeliness of criminal powers and procedures. The key changes are described below.

#### *Re-classifying Category 2 offences as Category 1 offences*

*Part 2* amends the CPA to re-classify Category 2 offences with a maximum penalty of community work as Category 1 offences. This will increase efficiencies, as, for example, defendants can plead guilty to Category 1 offences by a written notice, whereas defendants in Category 2 cases are required to appear in court.

#### *Broadening powers to issue warrants to arrest*

*Part 2* amends the CPA so that a judicial officer or Registrar can issue a warrant to arrest for a Category 2, 3, or 4 offence (**imprisonable offences**), whether or not a summons has been served, in certain circumstances.

The CPA enables the prosecutor, when commencing a prosecution, to seek a warrant to arrest a defendant if reasonable efforts to summons the defendant to court have been unsuccessful. There are a number of situations where service of a summons is an unnecessary or impractical first step. These include, for example, where Police are seeking to extradite a person from overseas for a prosecution commenced in New Zealand or where the Police do not know a defendant's location.

### **Part 3: amendments to Summary Proceedings Act 1957**

*Part 3* will improve the efficiency, effectiveness, and timeliness of fines enforcement. The key changes are described below.

#### *Authorising automated decision making for time payment arrangements*

The Chief Executive of the Ministry of Justice will be authorised to approve automated decision making for imposing attachment orders to collect overdue fines, approving online offers to voluntarily pay fines, and adding further overdue fines to existing payment arrangements.

Most fines are paid through a time payment arrangement. These amendments will improve customer service, productivity and the credibility of fines.

#### *Authorising unilateral and immediate cancellation of voluntary time payment arrangements*

Court Registrars will be authorised to cancel voluntary time to pay arrangements for fines (including reparation) when they have genuine and reasonable grounds to do so (for example, if the person provided false or misleading financial information). On appeal, a District Court Judge can confirm, change, or reverse the Registrar's decision.

#### *New procedures for placing charges on land and forcibly selling land to pay fines*

Procedural amendments are made to the ability to impose statutory land charges and orders for the sale of property where defendants have overdue fines of \$5,000 or \$50,000 respectively.

### **Part 4: amendments to other Acts**

*Part 4* amends 11 Acts to improve the efficiency, effectiveness, and timeliness of the courts. The key changes are described below.

#### *Reversing the order of inquiries under the Criminal Procedure (Mentally Impaired Persons) Act 2003*

*Subpart 5* reverses the order of the "involvement" and the "fitness" judicial inquiries required by the Criminal Procedure (Mentally Impaired Persons) Act 2003 so that the "fitness" inquiry is held before the "involvement" inquiry. Only defendants who are found to be "unfit" will proceed to an "involvement" inquiry. The criminal trial will resume for defendants who are found "fit" to stand trial. This will reduce the burden on victims and other witnesses, who sometimes have to attend and give evidence at both the "involvement" inquiry and the criminal trial (if the defendant is found fit to stand trial).

*Simpler and quicker jury processes under the Juries Act 1981*

*Subpart 7* authorises registrars to excuse potential jurors who are not confident of their understanding of the English language to provide a simpler and quicker process. In addition, court staff will be able to communicate with jurors electronically. Jurors will receive the information they need sooner and by a more convenient method.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>NO</b>

### Relevant international treaties

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

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>Regulatory Impact Statements (RIS) were prepared by the Ministry of Justice in May 2016 on</p> <ul style="list-style-type: none"><li>- reversing the order of inquiries prescribed under the Criminal Procedure (Mentally Impaired Persons) Act for assessing defendants' fitness to stand trial;</li><li>- unilateral cancellation of voluntary time to pay arrangements for fines;</li><li>- extending Court Security Officers' statutory powers to allow them to better address low level offending and disruptive behaviour.</li></ul> <p>A copy of these RIS can be found at: <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements/</a> and <a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a>.</p> <p>After consultation with the Treasury it was determined that the other amendments were not subject to the regulatory impact analysis requirements because they will have no or only minor impact on individuals, businesses or not-for-profit entities.</p>	

<b>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?</b>	<b>NO</b>
<b>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?</b>	<b>NO</b>

### Extent of impact analysis available

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

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
Potential costs and benefits were quantified in the Regulatory Impact Statements.	

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



## 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?**

The Ministry has not identified any obligations that conflict with the policies contained in 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?**

Changes promoted through this Bill are not considered to have specific implications for Māori as individuals, communities or tribal groupings.

### 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?**

NO (TBC)

### 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)?**

YES

The following changes are being made to the jurisdiction of the courts.

Currently a prosecutor can seek a warrant to arrest a defendant if reasonable efforts to summons the defendant to court have been unsuccessful. The Bill will authorise a judicial officer or Court Registrar to issue a warrant to arrest for Category 2, 3, or 4 offence (imprisonable offences), whether or not a summons has been served, in certain circumstances (for example where the location of the defendant is not known).

District Court Judges and Community Magistrates will be authorised to impose a 'sale order' – the forcible sale of the defendant's real and personal property to pay overdue fine/s of \$50,000 or more - in the criminal jurisdiction, provided this will not cause undue hardship to the defendant or their dependants. (For example, the defendant's home will not be able to be sold.)

District Court Registrars will be authorised to register a statutory land charge against land owned by defendants with overdue fine/s of \$5,000 or more.

**3.4.1. Was the Ministry of Justice consulted about these provisions?**

N/A

## Privacy issues

<b>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?</b>	<b>YES</b>
The Bill authorises the collection of additional information to enable electronic communications with jurors.	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>

## External consultation

<b>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?</b>	<b>YES</b>
<p>The Ministry of Justice has undertaken three rounds of consultation. In May 2015, the Ministry undertook targeted consultation on some of the policy proposals with</p> <ul style="list-style-type: none"> <li>• Heads of Bench</li> <li>• the Criminal Practice Committee</li> <li>• Criminal Bar Association</li> <li>• New Zealand Bar Association</li> </ul> <p>The responses were generally supportive. The comments received were taken into account when the policy proposals were finalised.</p> <p>The Ministry consulted with government agencies and departments on the draft Bill. We received a number of comments, which were taken into account in finalising the Bill.</p>	

## Other testing of proposals

<b>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?</b>	<b>YES</b>
<p>The Ministry is already administering statutory land charges and sale orders for other purposes. These processes will be adapted for the new purpose of District Court fines enforcement.</p> <p>The Ministry is trialling the automated imposition of attachment orders to the extent possible within the current law. Automatically generated attachment orders are being reviewed and approved by a registrar before issue. This will ensure that the fully automated process is robust when it is implemented following enactment.</p> <p>The Ministry has developed the necessary business procedures to implement the automated approval of online offers to voluntarily pay fines through time payment arrangements.</p> <p>The other initiatives either address existing operational issues or will improve the operation of existing processes</p>	

## 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 affecting individuals

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

### 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?	YES
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Part 1 will authorise:

- the Minister for Courts to extend the application of the Courts Security Act to include further courts and tribunals by amending the meaning of the defined terms - 'court' and 'tribunal'.
- the Chief Executive of the Ministry of Justice to exempt regular court users such as lawyers from the statutory search and screening processes when they enter all or specified courts. The exemption will be able to be cancelled if necessary. All users will benefit from swifter search and screening.

**4.8. Does this Bill create or amend any other powers to make delegated legislation?**

**YES**

The bill amends the regulation making power in the Summary Proceedings Act 1957 to authorise additional methods of service to be approved by regulations. This will avoid the need for further amendments to authorise the adoption of new technologies in future.

(The Act already authorises electronic service. This amendment is intended to cover future unforeseen technologies that fall outside the scope of this provision.)

### **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**