

Departmental Disclosure Statement

Family Court (Supporting Families in Court) Legislation 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 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.

12 May 2020

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	4
Part Three: Testing of Legislative Content.....	6
Part Four: Significant Legislative Features	8

Part One: General Policy Statement

The Family Court (Supporting Families in Court) Legislation Bill (the **Bill**) is an omnibus bill introduced under Standing Order 263(a). That Standing Order provides that an omnibus bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The policy implemented by the amendments in this Bill is to ensure that parties to care of children disputes can be supported with the provision of early legal advice.

The Bill will allow legal representation in all proceedings under the Care of Children Act 2004 and the provision of legal aid for eligible parties. The Bill amends the Care of Children Act 2004 and the Legal Services Act 2011.

Extensive reforms of the care of children regime took effect in 2014. One of the most significant changes was the removal of legal representation and legal aid in the early stages of on-notice proceedings under the Care of Children Act 2004. The removal of legal representation created an incentive for parties to file applications without notice to obtain a lawyer. This has placed extra pressure on the Family Court and resulted in delay and unresolved conflict. It has also meant that on-notice applications that require urgent resolution by the Family Court, such as those involving unidentified family violence, are delayed and affect parties' personal safety.

The final report of the Independent Panel examining the 2014 family justice system reforms showed that parties want legal representation when navigating issues relating to care of children. The Bill will remove the statutory limitations on acting for a party in proceedings under the Care of Children Act 2004 and the provision of legal aid for eligible parties. It will ensure that families and whānau are well supported with early legal advice and help to reduce the level of delay in resolving issues in the Family Court, including the disproportionate number of without-notice applications currently being made.

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?	YES
<p>Te Korowai Ture ā-Whānau: the final report of the Independent Panel examining the 2014 family justice system reforms (May 2019). https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-final-report-independent-panel.pdf</p>	

Relevant international treaties

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Strengthening the Family Court – First stage initiatives to enhance child and whānau wellbeing</i>, prepared by the Ministry of Justice. To be published when the Bill is introduced at: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements/ and https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments</p> <p>Parts of the regulatory impact assessment have been withheld in accordance with the grounds set out in the Official Information Act 1982. The particular withholding grounds are noted in the regulatory impact assessment.</p>	

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
<p>The Regulatory Impact Statement did not meet the threshold for receiving an independent opinion on quality from the Regulatory Impact Analysis Team based in the Treasury.</p> <p>The Regulatory Impact Statement was assessed internally by the Ministry of Justice Regulatory Impact Assessment Quality Assurance Panel. It was determined to partially meet the quality assurance criteria.</p>	

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?	NO
Section 5.2 (from page 29) of the Regulatory Impact Statement estimates the size of the potential costs and benefits. Funding has been received to implement the Bill through Budget 2020.	

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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The Ministry of Justice did not identify any inconsistency with New Zealand's international obligations during policy development.
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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 of Justice did not identify any inconsistency with the principles of the Treaty of Waitangi during the development of the Bill and its policy. The Independent Panel (the Panel) who reviewed the 2014 family justice system reforms consulted widely in developing their report and recommendations, including with Māori. The Panel identified that delays in Family Court processes are causing harm to whānau, especially children. Delay in the Family Court can lead to long term separation of family members that may damage strong connections that tamariki Māori have with their whānau, hapu and iwi. Being able to build knowledge of their whakapapa is vital to identity and well-being. The policy given effect by this Bill aims to reduce delay so that these connections are not disrupted.

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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Advice will be provided to the Attorney-General by the Crown Law Office. If the Attorney-General agrees to waive legal privilege, advice on the Bill's compliance with the New Zealand Bill of Rights Act 1990 will be published shortly after introduction at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/ .
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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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

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?	YES
<p>In completing its report, the Panel who reviewed the 2014 family justice system reforms undertook significant public consultation. Those most intimately affected by the 2014 reforms – children and young people, parents, caregivers, guardians, grandparents and other whānau members – were extensively surveyed. The Panel’s engagement also included practitioners, providers, academics, government agencies, the judiciary, and community groups.</p> <p>The Ministry of Justice received initial comments from the Chief Justice and the Principal Family Court Judge on the Panel’s report.</p> <p>The Ministry of Justice consulted with the following agencies as part of the Cabinet approval process for the progression of the policy proposals to be given effect in this Bill: Crown Law; Police; Te Arawhiti; Te Puni Kōkiri; the Ministries of/for Social Development, Health, Pacific Peoples, Women, and Business, Innovation and Employment; Oranga Tamariki; Department of Corrections; Department of Internal Affairs; Office for Disability Issues; Office of Ethnic Communities; the Treasury; the Family Violence and Sexual Violence Joint Venture Business Unit; and Department of Prime Minister and Cabinet.</p> <p>Those consulted were generally supportive of the proposals being given effect in this Bill.</p>	

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?	YES
<p>The Bill reinstates the entitlement of families and whānau to procure legal representation in early on-notice Care of Children Act 2004 proceedings, with the provision of legal aid for eligible parties, which existed prior to the 2014 Family Justice reforms. The Bill’s policy and drafting has been tested with the Ministry of Justice Operations and Implementation teams. Funding has also been received to implement the Bill through Budget 2020.</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

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?	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