

Departmental Disclosure Statement

Family Court (Supporting Children in Court) Legislation 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.

23 July 2020

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	3
Part Three: Testing of Legislative Content.....	7
Part Four: Significant Legislative Features	10

Part One: General Policy Statement

The Family Court (Supporting Children 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 Bill amends the Care of Children Act 2004 and the Family Dispute Resolution Act 2013, to:

- establish children's participation as a guiding principle, which will reinforce the expectation that parents and guardians will consult, where appropriate, with children on important matters that affect those children, taking account of the children's age and maturity;
- provide express reference the United Nations Convention on the Rights of the Child;
- establish appointment criteria for lawyer for child to ensure that they are suitably qualified by reasons such as personality, cultural background, training, and experience, to represent the child or young person;
- require a lawyer for child to explain proceedings to their clients;
- establish an obligation on lawyers to facilitate the just resolution of disputes according to the law, as quickly, inexpensively and efficiently as possible, and with the least acrimony in order to minimise harm to children, families and whānau;
- establish a cross reference to the principles in section 4 of the Family Violence Act 2018;

Extensive reforms of the care of children regime took effect in 2014. These reforms were intended to encourage individual responsibility and shift the focus from in-court resolution to encouraging parents to reach agreement themselves, through out-of-court processes. Following the reforms, concerns were raised that some reforms had a negative impact on children, parents, families and whānau and exacerbated existing issues.

The final report of the Independent Panel examining the 2014 family justice system reforms found that there is limited participation by children in issues that affect them and there is concern as to whether their voices are heard, and whether their views are taken into account both in and out of court. The panel heard that children can experience immediate and long-term consequences if they are not listened to, including feeling isolated, lonely, anxious and having difficulty coping with stress. In court, lawyer for child is appointed to determine and represent the child's views. The Independent Panel found that there was considerable variation in how lawyers for child approach this task.

The policy implemented by the amendments in this Bill is to enhance child wellbeing in care of children proceedings, both directly and by assisting parents to resolve parenting disputes. Provisions in the Bill signal that children are expected to be provided with opportunities to input into decisions about their care, and that family violence should be

considered in all decisions about children's care. Appointment criteria and additional obligations on lawyers to ensure a clear and timely process are intended to lead to better, less harmful, outcomes for the child. The changes also ensure that the Care of Children Act 2004 reinforces existing expectations around the voice of the child, giving better effect to children's rights under the United Nations Convention on the Rights of the Child.

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
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	

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. Published 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. No additional funding is required to implement the changes.	

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?

The Ministry of Justice did not identify any inconsistency with New Zealand's international obligations during policy development.

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 Ministry of Justice conducted a Treaty analysis on the provisions in the Bill, briefly summarised below:

The Panel found that Māori whānau are likely to engage more effectively with a lawyer who they can identify with partly because Māori lawyers have a better understanding of whānau, hapū and iwi. The recommendation to add lawyer for child criteria for appointment may help reduce poor analysis of risk and will help tamariki and whānau engage with the process.

Māori consider that children should be nurtured and cherished as precious taonga. Introducing criteria for lawyer for child appointments and the children's participation principle are a way of acknowledging that children are precious and that their voices needs to be heard. By establishing a criteria for appointment, tamariki Māori will have the benefit of support through a stressful time from counsel who understand their heritage.

The proposed amendments aim to emphasize the importance of children having their voice heard when it comes to decisions about their care. However, the unintended consequence of taking a child centric lens is the risk that we move further away from Māori tradition. where the value of the child is enhanced by virtue of the fact that she or he is a link in the chain of descent. The proposed amendments are part of the first phase of a planned long-term programme of change to the family justice system, and we anticipate that future phases will consider how to ensure the family justice system works for parents, families, and whanau including better recognition of te ao Māori and Tikanga (based on the recommendations of the Independent Panel).

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
Advice has been provided to the Attorney-General by the Crown Law Office. The Attorney-General has agreed that the Bill is not inconsistent with the Bill of Rights Act 1990. 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/ .	

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

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 family and 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 following agencies have been consulted on the Bill: Crown Law; Police; Te Arawhiti; Te Puni Kōkiri; the Ministries of 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 for Seniors; the Treasury; the Family Violence and Sexual Violence Joint Venture Business Unit; and DPMC.</p> <p>Agencies 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 provisions in this Bill have been tested with other agencies.</p> <p>The Ministry of Justice received initial comments from the Chief Justice and the Principal Family Court Judge on the Independent Panel’s report and will continue to engage with the judiciary on the proposed Bill.</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