

Departmental Disclosure Statement

Family Court (Family Court Associates) 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.

27 June 2022.

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 (Family Court Associates) Legislation Bill is an omnibus Bill introduced under Standing Order 267(1)(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 single broad policy implemented by the amendments in this Bill is to improve outcomes for people participating in Family Court proceedings, particularly children, by creating a new role to take on some of the Family Court Judges' workload in order to reduce delay.

The Bill amends the Family Court Act 1980 to provide for the appointment of Family Court Associates and to confer on Family Court Associates some of the functions and powers of a Family Court Judge. The Bill also expressly modifies a number of other family law statutes, including the following:

- Adoption Act 1955
- Care of Children Act 2004
- Child Support Act 1991
- Family Proceedings Act 1980
- Family Violence Act 2018
- Marriage Act 1955
- Oranga Tamariki Act 1989
- Property (Relationships) Act 1976
- Protection of Personal and Property Rights Act 1988
- Status of Children Act 1969.

The Family Court Associate role is based on a recommendation from the Independent Panel that examined the 2014 reforms to the Family Court in their report, Te Korowai Ture ā-Whānau.

The Independent Panel found that the delay in the resolution of issues before the Family Court is widespread and impacts on most other areas in the family justice system. Judges' high administrative workload contributes towards that delay. Delay is a significant factor in undermining confidence in the Family Court and can contribute to deepening parent, family, and whānau conflict.

A Family Court Associate will be a judicial officer (but not for the purposes of section 12B of the Remuneration Authority Act 1977). As a judicial officer, Family Court Associates will be independent of the Executive and will have powers additional to those of a Registrar. They will be able to take on some work currently undertaken by Judges, including decisions made at the early stages of proceedings. This will enable Judges to focus on progressing casework. Substantive decisions in proceedings will continue to be made by Judges because of the social significance of those decisions, the impact those decisions have on human rights, and the complexity of the decisions.

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
The Family Court Associate role is based on a recommendation made by the Independent Panel that examined the 2014 reforms to the Family Court in their 2019 report, Te Korowai Ture ā-Whānau. family-justice-reforms-final-report-independent-panel (2).pdf	

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?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Regulatory Impact Statement (RIS): Family Court Associate, Ministry of Justice, 9 February 2022. A copy of the RIS will be made available on Regulatory Impact Assessments New Zealand Ministry of Justice .	

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

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
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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
The estimated marginal costs and benefits of the analysis are outlined on page 37 of the RIS.	

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.

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

Crown Law has been provided a draft of the Bill and will provide advice to the Attorney-General on consistency with the Bill of Rights Act.

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

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

NA

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

The Bill does not create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information.

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 Policy was developed in consultation with the judiciary and the New Zealand Law Society. An exposure draft of the Bill was released to the judiciary, New Zealand Law Society, and the Remuneration Authority prior to the Bill being introduced. They provided feedback on the nature of the role.</p> <p>The following agencies have been consulted on this paper: Crown Law Office; NZ 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; Ministry for Ethnic Communities; the Treasury; the Family Violence and Sexual Violence Joint Venture Business Unit; Inland Revenue and Department of Prime Minister and Cabinet.</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?	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?	YES
Clause 4 of the Bill inserts new section 7H in the Family Court Act which gives the Family Court Associate immunity for any act done unless it exceeds their jurisdiction or they act without jurisdiction. This provision protects the independence of the Family Court Associate as a judicial officer. It is consistent with the immunity of other judicial officers such as Community Magistrates. However, it is not as extensive as the immunity of judges.	

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?	YES
<p>The Family Court Associate will have the ability to make specified decisions in the Family Court, such as those at the early stages of proceedings. Substantive decisions in proceedings will continue to be made by judge because of their significance, potential to impact on human rights and complexity.</p> <p>The Bill will allow the Family Court Associate to issue warrants if a Judge isn't available:</p> <ul style="list-style-type: none">• cl 25, which amends s 117(3) of the Care of Children Act, and• cls 72 and 73, which amend s 39 and 40 of the Oranga Tamariki Act. <p>Decisions of the Family Court Associate will be able to be appealed to the High Court in the same way as other decisions in the Family 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
<p>The Family Court Act 1980 has an existing provision (section 16A) to make delegated legislation. Changes to the Family Court Rules 2002 will be required.</p>	

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