

Departmental Disclosure Statement

Victims of Family Violence (Strengthening Legal Protections) 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.

9 August 2023.

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Part One: General Policy Statement

This Victims of Family Violence (Strengthening Legal Protections) Legislation Bill is introduced under Standing Order 267(1)(a). This Standing Order permits an omnibus Bill to amend more than one Act to be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

The Victims of Family Violence (Strengthening Legal Protections) Legislation Bill's policy objective is to strengthen the courts' statutory powers to protect victims of litigation abuse in family proceedings.

Currently, legislation provides for judges to make civil restraint orders limiting future proceedings where someone has filed two or more proceedings that are "totally without merit". Judges also have inherent powers to prevent people from continuing civil proceedings. However, case law (although limited) has highlighted that these statutory and inherent powers are not sufficient to tackle the impact of litigation abuse on victims in family proceedings.

This Bill contributes to work underway addressing family violence and sexual violence across Aotearoa, New Zealand and the experience of victims in the justice system – including contributions to Te Aorerekura – the National Strategy and Action Plan.

The amendments in this Bill implement the single broad policy by amending –

- the Family Court Act 1980
- the District Court Act 2016; and
- the Senior Courts Act 2016.

These amendments establish an alternative pathway for judges to restrain a party from filing further steps in family proceedings in any court. The Court must be satisfied that, having regard to all of the circumstances, a party to a proceeding under a specified Act has exhibited conduct that is an abuse of the court (this includes conduct that is intended to harass or annoy the party); and has given that party a reasonable opportunity to be heard.

The circumstances that the Court can consider will include the party's conduct during the course of the proceeding; and the party's conduct outside of the proceedings (including in any other proceeding under a specified Act) that is intended to harass or annoy any other party to the proceedings; and any other matter that the court considers relevant.

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
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Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<i>Regulatory Impact Statement: Strengthening Legal Protections for Victims of Family Violence and Sexual Violence</i> , by the Ministry of Justice, dated 24 March 2023. To be published once the Bill is introduced at: https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/ ; and https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments .	

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. As outlined on page 6, it was determined the Regulatory Impact Statement did not meet the quality assurance criteria. This is due to the constraints the proposals were developed under, meaning that there was insufficient evidence to meet the convincing criterion and insufficient consultation on the proposals across all the issues.</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
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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
The size and nature of potential costs and benefits of the policy to be given effect by the Bill are detailed at page 41 of the Regulatory Impact Statement prepared by the Ministry of Justice.	

(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
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2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
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(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
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(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
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Assumptions and risks in respect of the individual proposals are outlined in the impact analysis sections of the RIS. Section 2.5 across each issue (page 16, 26, 41) of the RIS summarises risks of cost estimates, and factors that may influence uptake and compliance (and therefore costs and benefits).

Section 3.1 across each issue (page 17, 27, 42) of the RIS summarises implementation risks.

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. However, our ability to consult with iwi or Māori, as well as fulsome Treaty analysis, has been limited due to the urgency in which this work has progressed.

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 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 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)?

YES

The Bill may have some impact on the jurisdiction of the Family Court, District Court and Senior Courts. The Bill sets out in statute actions the Court could take to address litigation abuse by drawing on existing inherent powers or jurisdiction of the courts. This expands the courts' statutory powers but limits their inherent powers or jurisdiction.

The Senior Courts will be able to make orders that limit the rights of people to bring appeals or initiate judicial review proceedings without first getting the leave of the court. This is designed to protect people from the harm caused by abusive litigation in family proceedings.

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

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
The Judiciary and legal bodies, including the New Zealand Law Society, Criminal Bar Association, and Defence Lawyers Association, were consulted to inform the best possible implementation of the policy intent.	

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
The Bill's policy has been reviewed by stakeholders Crown Law, Ministry officials with operational expertise, and other agencies. This feedback has informed the final version of the Bill.	

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
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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
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
This Bill will apply prospectively to proceedings that have already commenced but have not been finally determined.	

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
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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
Judges will be able to make a decision that limits a person's rights to access the courts and pursue proceedings without the leave of the court. This limits a person's right to natural justice, and, if the order is made in the senior courts, their right to access judicial review of judges' decisions. This legislative power designed to protect victims from being further harassed through the court system. The person subject to such an order can seek leave of the courts to pursue these proceedings. Any decision the court makes under these provisions must be consistent with the New Zealand Bill of Rights Act.	

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