

# Departmental Disclosure Statement

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Regulatory Systems (Courts) Amendment 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.

December 2024

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## Part One: General Policy Statement

This Bill is included in a package of Bills amending regulatory systems administered by the Ministry of Justice.

The package also contains the following Bills that will improve the quality of existing regulation, court timeliness, efficiency, and access to justice:

- the Regulatory Systems (Occupational Regulation) Amendment Bill;
- the Regulatory Systems (Tribunals) Amendment Bill;
- the Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill.

These Bills will improve the effectiveness and efficiency of the courts and tribunals, occupational regulation, and criminal law (anti-money laundering and countering financing of terrorism) regulatory areas.

Regulatory systems amendment bills capture the smaller issues and opportunities for improvement within the legislation governing regulatory systems. Opportunities to make these amendments may eventually come via bills progressing larger amendments to a specific Act. Many years can, however, elapse between Act-specific amendment bills. Regulatory systems amendment bills allow for efficient use of House time as numerous amendments can be made across multiple pieces of legislation through one bill.

The Bill will do this by—

- addressing legislative inconsistencies, relieving administrative burdens and
- reducing duplication, gaps, errors, and anomalies; and
- clarifying the roles and expanding the powers and jurisdiction of judicial officers,
- consistent with their existing roles and other powers.

The Bill amends the following 15 Acts:

- the Bail Act 2000;
- the Care of Children Act 2004;
- the Coroners Act 2006;
- the Courts Security Act 1999;
- the Criminal Disclosure Act 2008;
- the Criminal Procedure Act 2011;
- the Criminal Procedure (Mentally Impaired Persons) Act 2003;
- the District Court Act 2016;
- the Employment Relations Act 2000;
- the Family Court Act 1980;
- the Inspector-General of Defence Act 2023;
- the Juries Act 1981;
- the Property (Relationships) Act 1976;
- the Protection of Personal and Property Rights Act 1988;
- the Senior Courts Act 2016.

The Bill also makes consequential and associated amendments to the following secondary legislation:

- the Coroners (Doctors Fees) Regulations 2022:
- the Courts Security Regulations 2019:
- the Jury Rules 1990.

Cumulatively, the amendments will support the maintenance and continuous improvement of the courts system. This will help ensure that the system is fit for purpose and serves all people fairly, effectively, and efficiently.

## 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>
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### 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>
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### 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>The Ministry of Justice produced a Regulatory Impact Statement (RIS) on 19 June 2024: 'Regulatory Impact Statement: Regulatory Systems (Justice) Amendment Bill'. A copy of the RIS can be found on:</p> <ul style="list-style-type: none"><li>the Ministry of Justice website: <a href="#">Regulatory Impact Assessments   New Zealand Ministry of Justice</a></li><li>the Ministry for Regulation website: <a href="#">Regulatory impact statements (RISs) - Ministry for Regulation</a></li></ul> <p>Only one proposal in the Regulatory Systems (Courts) Amendment Bill was determined by the Treasury and Ministry for Regulation as requiring regulatory impact analysis. The other amendments were deemed by the Treasury and Ministry for Regulation as suitable for RIS exemptions, and as such, they are not analysed in the RIS.</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>
<p>The RIS did not meet the threshold for requiring a quality review from the Regulatory Impact Analysis (RIA) Team at the Ministry for Regulation. The Ministry of Justice's internal RIA panel provided an independent opinion on the quality of the RIS. It concluded the RIS met the Quality Assurance criteria.</p>	

<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>
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### 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>
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<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>
<p>Where applicable, analysis on the expected benefits and costs for the amendments included in this Bill is available in the RIS, which can be found on:</p> <ul style="list-style-type: none"> <li>the Ministry of Justice website: <a href="#">Regulatory Impact Assessments   New Zealand Ministry of Justice</a></li> <li>the Ministry for Regulation website: <a href="#">Regulatory impact statements (RISs) - Ministry for Regulation</a></li> </ul> <p>This information can also be found in the Cabinet paper 'Regulatory Systems (Justice) Amendment Bill Package: Policy Proposals' which is available on the Ministry of Justice website: <a href="#">Proactive-release-20240715-CAB-Regulatory-Systems-Justice-Amendment-Bill_Final.pdf</a></p>	

<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

<b>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?</b>
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The Ministry of Justice has not identified any international obligations that conflict with the policies contained in the Bill.
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### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
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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 criteria <sup>1</sup> that amendments were assessed against for inclusion in this Bill ruled out proposals with significant implications on constitutional arrangements, including the Crown's Treaty obligations.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>	<b>YES</b>
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Crown Law has been provided with a draft of the Bill and has provided advice to the Attorney-General on consistency with the New Zealand Bill of Rights Act 1990.
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A copy of their advice is available at:

<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports>

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<sup>1</sup> Amendments were deemed suitable for inclusion in the Bill if they make continuous improvements and repairs or maintain the regulatory system (without major policy or system design changes, or significant financial implications), can be progressed in the timeframes for the Bill, and can attract broad political support.

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p><b>(a)</b></p> <p><u>Amendments to the Coroners Act 2006</u></p> <p>The Bill amends the wording of the offence provisions in sections 117, 135 and 137 of the Coroners Act 2006.</p> <p>The perjury offence in section 117 is being amended to include false evidence given under oath or affirmation to a Justice of the Peace taking oral evidence on behalf of a coroner under section 91. This addresses a legislative gap.</p> <p>The offence in section 135 of providing false or misleading evidence to a coroner is being consequentially amended to include:</p> <ul style="list-style-type: none"> <li>evidence that is not in writing and is not signed. <ul style="list-style-type: none"> <li>New section 79(3) will authorise Coroners to accept unwritten and unsigned evidence for hearings on the papers if the evidence cannot readily be put into writing and signed, for example, CCTV footage.</li> <li>Section 79(3) currently requires all evidence to be in writing and signed by the witness.</li> </ul> </li> <li>reports provided by nurse practitioners. <ul style="list-style-type: none"> <li>Section 40 is being amended to authorise coroners to require nurse practitioners to provide reports on patients they were treating prior to their deaths.</li> </ul> </li> </ul> <p>The offence in section 137 of failing or refusing to provide a report required by a coroner is being consequentially amended to include the failure or refusal of a nurse practitioner to provide a report required under section 40.</p> <p><b>(b)</b></p> <p>New section 65A of the Coroners Act 2006 authorises a coroner to close an inquiry without completing it in specified circumstances.</p> <p><u>Amendment to the Criminal Procedure Act 2011</u></p> <p>New section 198B of the Criminal Procedure Act 2011 and the amendments to sections 11A and 25 of the Courts Security Act 1999 clarify the powers of judicial officers to protect health, safety, and security in courtrooms.</p> <p><u>Amendment to the Senior Courts Act 2016</u></p> <p>The amendments to sections 20 and 22 of the Senior Courts Act 2016 will enable Associate Judges of the High Court to case manage and decide interlocutory applications for proceedings <i>in rem</i> (directly against a ship) under the Admiralty Act 1973. Currently only High Court judges have jurisdiction in proceedings <i>in rem</i>, but Associate Judges have these powers for other admiralty proceedings.</p>	
<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>NO</b>
The Ministry of Justice led the development of this Bill.	

## 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>
<p>The Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP) is being amended to ensure that health assessors who are fulfilling their legislative role to provide section 38 CPMIP or section 88 Sentencing Act 2002 reports can access previous reports submitted to court regardless of:</p> <ul style="list-style-type: none"> <li>• whether they are employed or contracted,</li> <li>• which agency they are employed/contracted by.</li> </ul> <p>The Criminal Disclosure Act 2008 is being amended to clarify that information that identifies or could lead to the identification of the work address of a witness or informant cannot be disclosed to the defendant, except with permission of the court, unless the information is relevant to the charge or the case against the defendant.</p> <p>Amendments to section 236 of the District Court Act 2016 and section 173 of the Senior Courts Act 2016 clarify that access to 'court information' is governed by those Acts and court rules. Access to 'judicial information' is prohibited. These sections are not subject to any other statutory provisions providing for access to information.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Office of the Privacy Commissioner (OPC) was consulted and provided feedback on the Cabinet papers seeking policy approvals and the RIS. Their feedback is reflected in the final policy decisions.</p> <p>The Ministry of Justice also completed a Privacy Threshold Assessment for the amendment to the Criminal Procedure (Mentally Impaired Persons) Act 2003. This concluded that no Privacy Impact Assessment was required.</p>	

## 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 undertook targeted consultation with key legal professional groups<sup>2</sup> over a two-week period to test our understanding of the policy problems, and the extent to which the proposed amendments addressed them. This consultation also provided an opportunity for these groups to highlight risks or suggest alternative ways to address the problems. Overall, the feedback received was supportive of the proposed amendments.</p> <p>The Ministry did not formally consult on the Bill's policy or draft text as the Bill does not make major policy or system design changes. The Ministry has engaged with the Judiciary throughout the process of developing the Bill, and on select draft provisions that directly impact court operations.</p>	

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<sup>2</sup> The Ministry of Justice consulted the New Zealand Law Society, New Zealand Bar Association, Criminal Bar Association, Defence Lawyers Association of New Zealand, Māori Law Society, and the Law Association. Only the New Zealand Law Society provided feedback.

## 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>Some of the amendments to the Courts Security Act 1999, Criminal Procedure Act 2011 and the Juries Act 1981 were tested through temporary COVID-19 legislation and have been in place since 2022. These amendments were automatically repealed on 25 November 2024.</p> <p>The amendments to the Bail Act 2000 formalise the judicial direction preventing registrars from granting or varying bail in cases involving family violence offences. That direction has been in place since 2021 and has shown to be workable in the three years since.</p> <p>The New Zealand Law Society commented on some proposals at an early stage. Their feedback was that most proposals were workable. Where concerns were raised, these were considered in further policy development.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>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?</b>	<b>YES</b>
Proposals relating to the Protection of Personal and Property Rights Act 1988 will amend decision making powers to enable Family Court Associates, in addition to Family Court Judges, to make decisions relating to living arrangements, attendance of institutions, and medical treatment of an adult who lacks capacity. This relates to section 10, 11, 12, 14, 30 and 31 of that Act. This engages the right to refuse to undergo medical treatment (NZBORA, s11), the right to freedom of association (NZBORA, s17), the right to freedom of movement (NZBORA, s18) and the right to justice (NZBORA, s27). Limitations to a Family Court Associate's decision-making power in regard to these sections will ensure that a decision is appropriately made by a Family Court Associate and take account of the rights of the individual.	

### **Powers to make delegated legislation**

<b>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?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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### **Any other unusual provisions or features**

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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