

Departmental Disclosure Statement

Judicature Modernisation 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.

18 November 2013

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Part One: General Policy Statement

General policy statement

The Judicature Modernisation Bill is an omnibus Bill (the Bill) introduced in accordance with Standing Order 260(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The Bill implements the Government's response to the Law Commission's report *Review of the Judicature Act 1908: Towards a New Courts Act* [NZLC R126 available at www.lawcom.govt.nz]. It also implements a number of other, related courts system changes. It is intended that the Bill will be divided into separate Bills at the committee of the whole House stage, so that—

- Part 1 becomes the Senior Courts Bill, which will, when enacted, include Schedule 1, the High Court Rules:
- Part 2 becomes the District Court Bill:
- Part 3 becomes the Judicial Review Procedure Bill:
- Part 4 becomes the Interest on Money Claims Bill:
- Part 5 becomes the Electronic Courts and Tribunals Bill: and
- Part 6 becomes 17 separate Bills, as a result of amendment to their respective Acts.

Part 1

Senior courts

Part 1 repeals and replaces the Supreme Court Act 2003 and Judicature Act 1908. The latter Act is particularly outdated and, in places, inconsistent and difficult to follow. The Bill contributes to a more people-centred, modern and accessible justice system by improving the transparency, flexibility and relevance of senior courts (High Court, Court of Appeal and Supreme Court) processes for court users. The Bill aims to enhance public confidence in the justice system through clearer, updated statements of how the senior courts are arranged and operated.

The main features of Part 1 are—

- The creation of a single statute covering arrangements relating to all senior courts:
- Retention, with updated language where necessary, of many existing provisions from the Supreme Court Act and Judicature Act:
- Streamlining of current arrangements as to who can be appointed as a non-permanent judge including limiting appointments to former or current judges (the latter from a less senior court), rather than directly from the Bar, and generally setting more consistent appointment periods and age limits across courts:
- The establishment of a judicial panel in the High Court from which judges can be allocated to hear specified types of commercial cases. This will match recognised judicial expertise to cases where parties wish to have a panel judge assigned:
- Repeal of the Commercial List, which is set out in the Judicature Act and applies a number of case management approaches at the pre-hearing stage to defined types of commercial proceedings:
- Providing the High Court with the power to issue a range of orders restricting parties from further civil litigation based on having already initiated a proceeding or proceedings that are totally without merit. This approach provides more flexibility than the one currently available order. That order can only be made by the High Court and prevents all further civil proceedings in any court from being initiated without leave:
- Introduction of requirements on—
 - The Judiciary to publish: information relating to the delivery of reserved judgments, recusal from cases, the suitability of judges holding employment or other office, all final written judgments unless good reason exists not to:

- The Attorney-General to publish the process he or she follows when making judicial appointments.
- Extension of court rule-making powers available to the Governor-General in Council, with the Rules Committee's concurrence – this ensures court rules are made within parameters agreed by Parliament.

Part 2

District Court

Part 2 repeals and replaces the District Courts Act 1947, and establishes a unitary District Court. The Bill contributes to a more people-centred, modern and accessible justice system by improving the transparency, flexibility and relevance of District Court processes for its users. The Bill aims to enhance public confidence in the justice system through clearer, updated statements of how the District Court is arranged.

The main features of Part 2 are—

- Retaining, with updated language where necessary, the existing provisions of the District Courts Act 1947:
- Reconstituting the District Courts as a single court with divisions for a Family Court, a Youth Court and a Disputes Tribunal:
- Increasing the monetary limit of the District Court's civil jurisdiction from \$200,000 to \$350,000:
- Updating the maximum financial penalty for a number of offences against the court:
- Providing the District Court with the power to issue a range of orders restricting parties from undertaking meritless civil litigation:
- Introduction of requirements on—
 - The Judiciary to publish: information relating to the delivery of reserved judgments, recusal from cases, the suitability of judges holding employment or other office, all final written judgments unless good reason exists not to:
 - The Attorney-General to publish the process he or she follows when making judicial appointments.

Part 3

Judicial review procedure

Part 3 re-enacts the Judicature Amendment Act 1972 which when divided from the Bill will be a stand-alone Act with modernised language. The Bill continues the process and procedure for judicial review applications that is currently set out in the Judicature Amendment Act 1972.

Part 4

Interest on money claims

Part 4 implements the Government's response to the Law Commission's report *Aspects of Damages: The Award of Interest on Money Claims* [NZLC R28 available at www.lawcom.govt.nz].

Part 4 introduces a single statutory system for the award of interest. It will provide greater certainty for the court award of interest on money claims. It will promote clarity, simplicity, consistency, and will deter litigation.

The Bill will replace all current legislation for the award by courts and tribunals of interest on money claims and create a single Act. It will apply to most money claims. Claims will no longer be distinguished between the pre-judgment or post-judgment period; both periods will be eligible

for interest. The Bill will replace the use of simple interest as in current legislation and will instead use compounding interest to better reflect the market value of loss.

There will be some limited circumstances as to when interest should not be awarded under the Bill. These relate to instances where it would be unjust to do so (for example, for debts of \$5,000 or less), or there are provisions in other places to the contrary (eg, contractual agreements).

The Bill will extend to a number of statutes that reference current provisions, primarily section 87 of the Judicature Act 1908.

Part 5

Electronic courts and tribunals

Part 5 sets out legislation to enable and govern the use of electronic technology in court and tribunal proceedings while protecting access to justice for all people. The legislation is overarching in nature such that all paper-based requirements in existing courts and tribunals could be interpreted as allowing electronic processes.

Part 6

Amendments to other enactments

Part 6 amends 17 other statutes. The main changes are—

- Relocation of several, either commercially-oriented or trans-Tasman focused, provisions from the Judicature Act 1908 to other statutes. These statutes provide a better fit for the provisions since the matters in question are not central to court arrangements:
- Amendment of specialist courts legislation (covering the Employment Court, the Environment Court, and the Māori Land Court) by applying a number of provisions contained in Parts 1 and 2 to the specialist courts. These provisions are of a largely generic nature with most relating to judicial matters such as requirements to provide public guidance on recusal from cases and publication of final written judgements:
- Amendment of the Arbitration Act 1996 to replace the definition of an arbitral tribunal and to permit the Minister of Justice to appoint a body to resolve certain matters relating to an arbitration:
- Amendments to increase flexibility and provide a presumption that audio-visual technology will be used in certain court proceedings.

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
<ol style="list-style-type: none"> 1. Review of the Judicature Act 1908: towards a new courts act (2012). Law Commission R126. Accessible at: www.lawcom.govt.nz 2. Review of the Judicature Act 1908: towards a consolidated Courts Act. Law Commission IP20 (2012). Accessible at: www.lawcom.govt.nz 3. Towards a new courts act: a register of judges' pecuniary interests? Law Commission IP21 (2012). Accessible at: www.lawcom.govt.nz 4. Aspects of damages: The award of interest on money claims (1994). Law Commission R28. Accessible at: www.lawcom.govt.nz 5. Civil fees review (2012). Ministry of Justice. Accessible at: www.justice.govt.nz 	

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?	N.A.

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Five regulatory impact statements (RISs) have been prepared to inform policy decisions taken by Government and reflected in the Bill. These are:</p> <ol style="list-style-type: none"> 1. Review of the Judicature Act and consolidation of courts legislation. Ministry of Justice. 28 February 2013. 2. Judicature Modernisation Bill: Review of the Judicature Act 1908 – Second Paper. Ministry of Justice. 29 August 2013. 3. Enabling Service Transformation through an electronic operating model. Ministry of Justice. 18 September 2013. 4. Responding to Law Commission Reports: Aspects of Damages” The Award of Interest on Money Claims. Ministry of Justice. 19 November 2007. 5. Civil fees review. Ministry of Justice. 27 May 2013. <p>Some decisions were deemed to have no, or only a minor, impact on businesses, individuals or not-for profit entities and so were not included in RIS consideration. The five RISs are available at: http://www.justice.govt.nz/policy/regulatory-impact-statements or http://www.treasury.govt.nz/publications/informationreleases/ris.</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

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
<p>The regulatory impact statements prepared in relation to the Judicature Modernisation Bill provide analysis on the impacts relating to various policy proposals. This analysis relates to new or amended policies only and does not cover existing policies carried over from existing legislation. Many of the policy changes are aimed at improving transparency and understanding of the court system and, as such, do not lend themselves to a monetary assessment of costs and benefits.</p>	

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
<p>The Ministry expects that compliance will be very high because the changes generally place obligations on the courts or government.</p>	

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's scan of international obligations has not identified any obligations that conflict with the policies contained in the Bill.

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?

Changes relating to the Maori Land Court have been discussed with the Head of Bench of that Court and consulted on with Te Puni Kōkōri. Other changes promoted through this Bill were not considered to have specific implications for Māori as individuals, communities or tribal groupings.

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 provided to the Attorney-General by Crown Law, or a Bill of Rights Act 1990 section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon a Bill's introduction. Any such advice, or reports, will be accessible on the Ministry's website at:

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>.

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)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>The Bill amends penalty levels for a number of offences namely:</p> <ul style="list-style-type: none"> • Clause 40 relating to failure to comply with a witness summons. The fine increases from \$500 to \$1000; • Clause 252 relating to misconduct of court officers. The fine increases from \$300 to \$2000 for each offence; • Clause 253, which updates the fine if an officer of the court is found to have acted as a lawyer from \$150 to \$1000; • Clause 409, which updates the fine if a constable does not assist the court or a judge from \$75 to \$1000; and <p>The Bill repeals the offence of assaulting an officer of the court contained in section 18 of the District Courts Act 1947. This offence is already duplicated by a number of more recent offence types.</p> <p>The Bill also increases the jurisdiction limit of the District Court for civil proceedings from \$200,000 to \$350,000.</p>	

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

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?	YES
<p>The Bill clarifies the status of court record information, including which elements of that information are held by the Ministry of Justice and therefore subject to the Official Information Act 1982, Privacy Act 1993, and Public Records Act 2005.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner was consulted on this proposal as part of the development of the Cabinet paper.</p> <p>Further work has been signalled by Cabinet to develop an access mechanism for government agencies for court record information, and consultation will take place with the Office as and when required.</p>	

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>Many of the policy changes effected by the Bill reflect the Law Commission's review recommendations. The Law Commission consulted widely during the development of its report by releasing two issues papers and receiving submissions. Submissions were either received or sought from the judiciary, legal profession, New Zealand Centre for Public Law and other academics. The Commission also received feedback from community law centres, New Zealand Bar Association, New Zealand Law Society, Royal Federation of NZ Justices Associations Inc, and the Rules Committee.</p> <p>During the development of the Bill, the Judiciary, New Zealand Law Society, Auckland District Law Society, New Zealand Bar Association and Criminal Bar Association were consulted.</p> <p>A range of government agencies and departments were also consulted during development of the various proposals agreed to by Cabinet and included in the Bill.</p> <p>Public consultation was undertaken on the changes relating to civil fees.</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 policy proposals contained in the Bill have been consulted on with the judiciary, the Ministry's operational staff and with other agencies and individuals. This process has confirmed that the proposals are workable following appropriate implementation preparation.</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?	YES
<p>The Bill amends the power for a High Court Registrar to charge a fee for the sale or lease of a property to satisfy a judgment for unpaid rates. The Bill will make the fee payable upfront rather than after the transaction is concluded, to ensure some of the costs the Court incurred in preparing for the sale are recovered.</p> <p>The Bill also:</p> <ul style="list-style-type: none"> enables regulations to be made enabling fees in the Employment Court to be waived, reduced, postponed or refunded in whole or in part, according to criteria consistent with those in the courts of general jurisdiction; enables regulations to be made prescribing the way in which Employment Court registrars' powers in relation to fee waivers, reductions, postponements and refunds are to be exercised, consistent with the courts of general jurisdiction; makes Employment Court registrars' decisions regarding fees reviewable by a judge; and makes fees paid for a review of a District Court registrar's decision refundable in cases where a judge overturns the registrar's decision in its entirety. 	

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
<p>The Bill carries over an existing reverse onus offence for a witness who fails to attend a court hearing.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
<p>The Bill carries over the existing immunities to prosecution which:</p> <ul style="list-style-type: none"> • District Court judges (cl 203) have in relation to acts done; • Community Magistrates (cl 225) have in relation to acts done, unless they exceed their jurisdiction or act without jurisdiction; • bailiffs, and people acting under bailiffs' authority, (cl 353) have in relation to the sale of goods seized under a warrant to seize goods, and the payment of proceeds of the sale; • bailiffs, constables, and District Court judges (cl 378) have in relation to warrants for the recovery of land which were not lawfully obtained; • officers of the court (cl 384) have in relation to trespass by virtue of an irregularity or informality in a warrant which they execute. • An acting Associate Judge of the High Court while acting as a member of the High Court (cl 117) • An acting Judge, while acting as a member of the High Court (cl 117). 	

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 Bill amends an existing power of the High Court to make orders preventing people from continuing or commencing civil proceedings if they have previously instituted persistent and vexatious proceedings. The High Court will continue to have the power to stop a person from undertaking any civil proceedings in any court in light of previous without merit applications. However, other courts will also be able to make similar, albeit more limited, orders.</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
<p>The Bill carries over an existing provision which allows rules to be made amending a schedule to the Bill. This schedule contains the High Court Rules.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill carries over a number of regulation making powers already in existence. It also makes the following amendments to powers to make delegated legislation:</p> <ul style="list-style-type: none"> • amends the Employment Relations Act 2000 to enable regulations to be made: <ul style="list-style-type: none"> ○ allowing fees in the Employment Court to be waived, reduced, postponed or refunded in whole or in part according to criteria consistent with the courts of general jurisdiction; and ○ prescribing the way in which Employment Court registrars' powers in relation to fee waivers, reductions, postponements and refunds are to be exercised, consistent with the courts of general jurisdiction; • amends the District Court Bill to enable regulations to be made allowing a fee paid for a review of a District Court registrar's decision to be refundable in cases where a judge overturns the decision in its entirety • clarifies that the power to make High Court Rules under the Senior Courts Act enables rules to be made for matters of court practice and procedure, and any other matters necessary to facilitate the just, speedy and inexpensive dispatch of court business and administration of justice, including: <ul style="list-style-type: none"> ○ providing for the enforcement of judgments or orders, including by any of the following: <ul style="list-style-type: none"> ○ an attachment order: ○ a charging order: ○ a sale order: ○ a possession order: ○ a freezing order: ○ an arrest order: ○ a search order: ○ a contempt order: ○ a sequestration order: ○ providing that the purchaser of personal property sold by order of the court by way of enforcement of a judgment obtains good title to the property free of all ownership interests and other proprietary interests held in the property before that sale. 	

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