

Regulatory Impact Statement - Improving security so that people feel safer in courts

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Justice (the Ministry).

This RIS examines proposals to extend Court Security Officers' (CSOs) existing powers to deny entry to, remove, or detain people in order to better address low level offending and disruptive behaviour in courts. (Judges will retain control of security in their court rooms. Police, Corrections and the Ministry of Social Development will still remain responsible for in-court management of defendants in their custody.)

It seeks to address issues identified by judicial officers and Ministry staff. It also takes account of security concerns expressed in surveys of court users.

The proposals will be implemented within the current budget.

The Ministry review of the Courts Security Act was completed before the Ashburton shootings in September 2014. The proposals were reviewed following this tragedy. The Ministry concluded that these proposals still achieve the most appropriate balance between security and public access to the courts.

A RIS is required because the alternatives to the status quo would require Cabinet approvals and legislative amendment to amend CSOs' statutory powers. These include denying entry to or removing people from courts and detaining people who have committed offences until the Police arrive. CSOs are empowered to use reasonable force if necessary.

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Executive summary

1. Since the 1990s, responsibility for court security has been transitioning from the Police to court security staff. The Courts Security Act 1999 (the Act) was passed in response to a murder committed in a court waiting room. An independent inquiry concluded that court security staff needed statutory powers to protect the safety and security of court users.
2. The Act currently focuses on serious offending and does not enable CSOs to effectively address the disruptive behaviour and low level offending that frequently occurs in courts. This is unnecessarily increasing the stress being experienced by potentially vulnerable court users such as victims, jurors and witnesses. This is an unsatisfactory situation.
3. The Ministry reviewed the Act in 2014 and concluded that amendments should be made to extend CSOs' existing powers to deny entry to, remove, or detain people to enable them to address low level offending and disruptive behaviour. The proposals incorporate best practice from comparable overseas and New Zealand legislation.
4. The Ministry reviewed the proposals arising from the review following the Ashburton shootings in September 2014 and concluded that these still achieve the most appropriate balance between security and public access to the courts.

Status quo

5. The purpose of the Act is to 'provide for the security of the courts and the safety of the public and others who access and use the courts'.¹ This includes the security of judicial officers.
6. Judges control security in their court rooms. The Police, Corrections and the Ministry of Social Development are responsible for in-court management of defendants in their custody.

CSOs' statutory powers

7. The Act requires a CSO to satisfactorily complete a course of approved training, which includes the use of reasonable force and how to 'defuse' tense and potentially dangerous situations.
8. 105 CSOs are employed to provide security services in court buildings in 52 locations. CSOs are permanently based in 26 locations. The allocation of CSOs to other locations is based on an assessment of risk at each site.
9. CSOs can ask people for identification and for their reason for coming to court as they enter, or at any time while they are on court premises.
10. People can also be asked to agree to an electronic search or to a physical search. The latter request can only be made if the CSO has reasonable grounds to believe the person has a potentially dangerous item. Full time x-ray screening of

¹ The Act also authorises the provision of security services to several tribunals. For brevity, the term 'court' has been used to encompass both courts and tribunals.

possessions and 'archway walkthrough' metal detection occurs at five courthouses.² A further twelve courthouses have x-ray searching at peak times.³ Limited screening using handheld metal detector wands is undertaken in other court buildings if a risk is identified. During 2014/15, CSOs undertook around 1.5 million screenings.

11. People can be asked to show a CSO items that are detected in a search, and if the item is potentially dangerous to leave it with the CSO. It is returned when they leave the court building. During 2014/15, CSOs seized nearly 10,000 potential weapons.⁴ This included 78 actual weapons.
12. People can be denied entry to or removed from the court if they do not agree to these requests. CSOs can use reasonable force. People are informed that they can enter or re-enter if they agree to the request. In 2014, CSOs refused entry to 277 people and removed 327 people.
13. CSOs can detain people who are alleged to have committed or attempted to commit one of the very serious offences that are listed in the Act. (These are listed in Appendix A.) The Police must be called immediately. The Police decide whether or not to arrest the person. If the person is not arrested, they must be released from detention immediately.
14. In 2014, CSOs detained 39 people. Most were subsequently released by the Police. (Only very serious offending warrants immediate arrest. People can be released and subsequently summoned to appear in court if the Police decide to prosecute.)

Problem definition

15. Since the 1990s, responsibility for court security has been transitioning from the Police to court security staff. The 1999 Act was passed in response to a murder in a court waiting room. An independent inquiry concluded that court security staff needed statutory powers to protect the safety and security of court users. Prior to this, CSOs relied on persuasion as many security services still do.
16. Currently CSOs can only use their powers when there is a credible risk of violence to court users or harm to property. Their powers cannot be used to address relatively low level disruptive behaviour that is causing distress to other court users or is interfering with the orderly operation of the courts. CSOs have to try to secure the co-operation of disruptive individuals. This is not always possible.
17. Disruptive behaviour falling short of the serious offending covered by the Act continues to be a common problem. This is unnecessarily increasing the stress being experienced by potentially vulnerable court users such as victims, jurors and witnesses. In 2014, CSOs reported 116 instances of disorderly conduct,

² The five courts are Auckland, Manakau, Palmerston North, Wellington and Christchurch District Courts

³ The twelve courts are the Supreme Court, the Auckland and Wellington High Courts, and the Whangarei, Waitakere, Hamilton, Gisborne, Napier, Tauranga, New Plymouth and Wanganui District Courts.

⁴ Potential weapons include objects such as sports equipment and trade tools that could be used as a weapon.

25 instances of wilful damage, 17 instances of fighting or intimidation and 7 instances of theft. The Police were called in most instances.

Surveys of court users

18. Surveys of court users, lawyers and prosecutors have shown that most people (80-90%) feel 'very safe' or 'fairly safe' in courts.
19. Those who felt unsafe reported that the most unsafe areas were the waiting area/ area outside the court room followed by the entrance and the area outside the court. The reasons cited included the type of people encountered in these areas such as gang members.

Review of the Courts Security Act

20. The Act has not been reviewed or changed significantly since enactment in 1999. It reflects the legislation governing security at the time of its enactment. A conservative approach was deliberately adopted because most people behave appropriately in courts.
21. The Act was one of the first courts security acts passed in comparable jurisdictions. It was largely based on two Australian court security acts and took account of comparable New Zealand security legislation. Since then, further courts security acts have been passed in Australia and Canada. Comparable New Zealand security legislation such as the Corrections Act 2004, the Civil Aviation Act 1990 and the Maritime Security Act 2004 (which govern security services in prisons, airports and sea ports respectively) has also been updated in the meantime. The key elements of these acts are described in Appendix B.
22. Judicial officers and Ministry staff have identified constraints and deficiencies in the Act over a number of years.
23. The Ministry reviewed the Act in 2014 and concluded that amendments should be made to enable CSOs to deal effectively with disruptive behaviour and low level offending in courts. The proposals incorporate best practice from comparable overseas and New Zealand legislation.
24. The Ministry review was completed before the Ashburton shootings in September 2014. The proposals were reviewed following this tragedy. The Ministry concluded that further legislative changes could not prevent this type of situation occurring in a court because these need to be accessible to the public.

Objectives

25. Safe, secure and orderly courts are essential for the credibility and integrity of the justice system. Legislative changes are proposed to increase the range of situations in which CSOs can use their existing statutory powers to:
 - deny people entry to or to remove people from a court;
 - detain people who have committed or tried to commit an offence in a court.

26. The legislative proposals were assessed against the following objectives:

- effective security services that contribute to modern, accessible people-centred justice services;
- maintenance of an appropriate balance between people's rights – particularly the rights to enter court buildings and to participate in court proceedings, and the prohibitions against unreasonable searches and seizures, and arbitrary detention under the New Zealand Bill of Rights Act 1990 - and the courts' need for a safe, secure and orderly operating environment in order to function in an efficient, effective and timely manner.

Options and impact analysis

Proposal 1: Expanding CSOs' statutory power to deny entry to or to remove people from a court, or to detain disruptive users

27. The proposal entails legislative change to:

- expand the purpose of the Act to include promoting the orderly operation of courts;
- state that the right to enter and to remain in a court is conditional upon compliance with orders of CSOs that are reasonable and necessary for the safe, secure and orderly operation of courts;
- authorising CSOs to deny entry to, to remove or to detain people who are intimidating, abusive, or otherwise causing disruption. This will include people whose disruptive behaviour is due to the effects of alcohol or other drugs;

28. People will be warned of the risk of removal from the building or detention, and will be given an opportunity to modify their behaviour before a statutory power is exercised. This warning is expected to be all that will be required in most cases.

29. The proposals reflect best practice drawn from court security legislation in comparable jurisdictions. These provisions are summarised in Appendix B.

30. The existing features of these powers will be retained, including:

- the use of reasonable force;
- people being able to enter or re-enter if they modify their behaviour;
- inability to attend court due to being denied entry or removed from the building is not an acceptable reason for failing to appear. This provides an incentive to behave appropriately in court buildings;
- the Police being called immediately after a person is detained.

Analysis

31. The Ministry considers the proposal will contribute towards the first objective of effective security services that contribute to modern, accessible people-centred justice services by providing CSOs with the powers needed to effectively deal with disruptive behaviour.

32. The second objective of maintaining an appropriate balance between the rights of disruptive court users and a safe, secure and orderly court environment is inherently subjective. The proposal will increase the number of people who are denied entry to or removed from court buildings. However, people will be warned before coercive action is taken and they will be advised they will be able to attend court if they agree to behave appropriately. The Ministry expects that most people will modify their behaviour. The proposal will also make it easier for most court users to exercise their rights to enter courts and to participate in court proceedings. On balance, the Ministry considers the proposal will achieve an appropriate balance.
33. The Ministry acknowledges this proposal will exacerbate the existing inconsistency between Criminal Procedure Act 2011 and the Courts Security Act - namely:
- section 118 of the Criminal Procedure Act 2011 states that certain defendants must attend court unless specified exemptions apply (this was a new requirement);
 - section 22 of the Courts Security Act states that inability to attend court due to being denied entry or removed for security reasons is not a valid reason for not attending a hearing.
34. This inconsistency will continue to be managed operationally. People can currently be removed or denied entry if they refuse to co-operate with the searching and screening processes. In such situations, CSOs ask the person why they have come to court. They are advised that if their refusal prevents them from attending court, a warrant to arrest could be issued. They are also advised that they may return and be granted entry if they agree to co-operate. Most people agree to co-operate. When this does not occur, the court is advised of the reasons for their non-attendance and a warrant to arrest could be issued or the person could be summoned to appear at a later date.
35. There are revenue implications for the Ministry if an offender does in fact miss a hearing and the hearing cannot proceed in their absence. For example, the average cost of:
- a first or second appearance is approximately \$175 per appearance (these comprise the majority of appearances);
 - a judge alone trial of two hours is approximately \$630;
 - sentencing is approximately \$190.
36. The Police also incur additional costs if another summons has to be personally served or a warrant to arrest has to be executed.
37. This situation occurs very rarely.

Alternative options

38. The Ministry also considered whether court security risks justified authorising CSOs to undertake non-electronic searches *without* reasonable grounds to believe the person was carrying a potentially dangerous object.
39. CSOs' existing search powers are the same as those for *most* security searches under the Corrections Act 2004, the Civil Aviation Act 1990 and the Maritime Security

Act 2004, and also for warrantless searches under the Search & Surveillance Act 2012. CSOs can undertake searches using a scanner or another electronic screening device. CSOs must have reasonable grounds to believe a person is carrying a potentially dangerous item before they can ask a person to consent to a non-electronic search.

40. Searches without reasonable suspicion or belief that specified matters exist are authorised in very limited circumstances. For example, the Civil Aviation Act does *not* require reasonable grounds for searches in a 'security enhanced area'. The Corrections Act authorises the search of vehicles in prison grounds without reasonable grounds being required. In these circumstances - the post 9/11 international aviation environment and the need for secure prison premises respectively - may justify such powers.
41. The Ministry concluded that court security risks did not meet this high standard.
42. The Ministry also considered and rejected the following options:
 - an increased Police presence in court buildings to deter disruptive behaviour and low level offending. This option is not viable because Police resources are focussed on work that is of higher priority for Police;
 - the retention of the status quo. Persuasion has proved to be insufficient to address disruptive behaviour.

Proposal 2: Expanding CSOs' statutory power to detain people who commit offences

43. CSOs can currently detain people who commit or attempt to commit very serious offences that are specified in the Act. (These are listed in Appendix A.)
44. The proposal entails replacing the prescribed list of offences with a power to detain in the following circumstances:
 - when an offence has been committed in a court that threatens the safety or security of a person or their possessions, or seriously damages court premises, including attempts to do so;
 - when illegal drugs and associated paraphernalia have been detected during a search. (The illegal drugs will be seized and given to the Police);
 - refusing to leave the court after being required to do so or attempting to re-enter;
 - refusing to obey a direction from a CSO to do or not to do anything that is reasonably necessary to protect the safety and security of people being escorted outside the court on court related business, including threats to the CSO. For example, CSOs escort judicial officers to and from mental health hearings each week in most courts;
 - refusing to give a CSO their full name, address and date of birth after committing a minor offence such as graffiti that warrants referral to the Police but does not warrant arrest. (This information is needed to enable a complaint to be made to the Police about the offending.)
45. In the last three situations, people will be immediately released from detention if they subsequently agree to comply – that is, by voluntarily leaving the building, obeying the CSO's order or providing the information requested.

46. The person will first be warned of the risk of detention and given an opportunity to modify their behaviour.
47. The definition of the court precinct is to be modernised to include all parts of the building that are used for court-related activities including the court cells and the footpath immediately outside the court entrance. (The entrance of some court buildings is on the public footpath.) Court users need to be able to safely enter or leave the building, and safely move around within the building. CSOs can currently use their powers only in court rooms, 'servicing areas' and the 'immediately adjacent grounds'.
48. The other features of the existing detention power will be retained. For example:
- CSOs can use reasonable force to undertake rub-down searches of detained persons without consent if they have reasonable grounds to believe the person may have items that could cause harm or facilitate escape;
 - CSOs may handcuff detained persons where they have reasonable grounds to believe that it is necessary to do so;
 - CSOs are required to deliver the person to the Police promptly.
49. A maximum time limit for detention will be set of four hours or until the Police arrive whichever occurs first. Four hours is also the maximum detention period under the Customs and Excise Act and the Biosecurity Act.
50. The detention proposals also reflect best practice drawn from court security legislation in comparable overseas jurisdictions and New Zealand security legislation. These provisions are summarised in Appendix B.

Analysis

51. The Ministry considers the proposal will contribute towards the first objective of effective security services that contribute to modern, accessible people-centred justice services by authorising CSOs to detain any person who commits an offence in a court.
52. The second objective of maintaining an appropriate balance between the rights of these court users and a safe, secure and orderly court environment is inherently subjective. The proposal will increase the number of people who are detained because CSOs will be able to detain people who commit the less serious offences that are frequently encountered. For example, in 2014, CSOs reported 116 instances of disorderly behaviour, 25 instances of wilful damage and 5 instances of illegal drugs being found. However, it will also make it easier for most court users to exercise their rights to enter court buildings and to participate in court proceedings. On balance, the Ministry considers the proposal will achieve an appropriate balance between the rights of disruptive court users to access court buildings and the courts' need for a safe, secure and orderly environment.
53. The number of detentions will not increase significantly because past experience indicates that, in many cases, the potential for detention will be sufficient incentive for modification of behaviour.

54. Any increased risk of physical harm to CSOs arising from the preferred option will be minimised by providing adequate training in use of reasonable force and in diffusing potentially dangerous situations.
55. CSOs will still focus on promoting security in courts rather than enforcing the law. The Police will continue to decide whether or not to arrest and/or to prosecute detainees.

Alternative options

56. One alternative option was to amend the Act to include further criminal offences. This option was not pursued because of the length of the potential list and the risk that it still might not include all low level offences that could be committed in a court.
57. The Ministry also considered the option of creating an offence of failing to comply with a CSO's order. The Ministry concluded this was not necessary because:
- the CSO is responding to behaviour that is already an offence. For example, the behaviour of a person who refuses to 'obey a direction that is reasonably necessary to protect safety and security' would fall within the scope of existing offences on the spectrum of disorderly behaviour to assault, or offences against property;
 - this could change CSOs' focus from security to law enforcement.
58. The Ministry considers these alternatives would not satisfy the objectives as effectively as the preferred option.

Consultation

59. The following agencies were consulted on this RIS: Accident Compensation Corporation, Crown Law, the Departments of Corrections, Inland Revenue and Internal Affairs, Land Information New Zealand, the Ministries of Business, Innovation, and Employment, Health, Pacific Island Affairs, Social Development, Transport, New Zealand Customs, New Zealand Police, New Zealand Transport Agency, the Office of the Privacy Commissioner, Real Estate Agents Authority, the State Services Commission and Te Puni Kōkiri.
60. The Department of the Prime Minister and Cabinet, The Treasury and the Parliamentary Counsel Office were informed.
61. Heads of Bench (including the Principal Youth Court Judge and the Principal Family Court Judge), Tribunal Chairs and the Criminal Practice Committee were consulted on these proposals.
62. The Ministry has also consulted the following sector organisations on these proposals:
- New Zealand Law Society;
 - Auckland District Law Society;
 - Criminal Bar Association;
 - NZ Bar Association.
63. All comments were considered and where the Ministry considered this to be appropriate, the proposals were modified accordingly.

Conclusions and recommendations

64. The Ministry considers the extension of CSOs' powers to deny entry, remove or detain will achieve the first objective of effective security services that contribute to modern, accessible people-centred justice services.
65. The second objective of maintaining an appropriate balance between the rights of some court users and a safe, secure and orderly court environment is inherently subjective. On balance, the Ministry considers the proposals achieve an appropriate balance that meets the needs of the courts and protects the rights of most court users. The Ministry acknowledges these proposals infringe the rights of a small minority of court users whose misbehaviour cannot be appropriately dealt with using the current statutory powers.
66. The extension of CSOs' powers to detain people who have committed or attempted to commit low level offences will have minimal impact on the criminal justice sector because the Police are already called in most such instances. The principal difference will be that CSOs will be able to prevent or stop the offending by detaining the person if they refuse to modify their behaviour or to leave the court.

Implementation plan

67. The proposals will be enacted through the Courts and Tribunals Enhanced Services Bill. These will be brought into effect by Order in Council or two years after royal assent, whichever occurs first.
68. The implementation of the proposals will increase the use of CSOs' coercive powers and will thus expose them to greater personal risk. The Ministry considers the approved training programme required by the Act adequately prepares CSOs for these risks.
69. As with any statutory power, there is a risk of misuse. The risk will be managed through training and supervision.
70. Following enactment, CSOs will receive training on the scope of their new powers. Other court staff will be fully briefed on their new powers. Court users will be informed through means such as pamphlets and posters in court buildings.

Monitoring, evaluation and review

71. The Ministry will continue to monitor trends in offending and security incidents in courts.
72. The effectiveness of the reforms will be assessed through surveys of court users and feedback from judicial officers and Ministry staff.

Appendix A: Current detention powers

A CSO can detain a person when s/he has reasonable grounds to believe the person has recently committed, attempted to commit or may be about to commit a 'specified offence'.

A specified offence is defined in section 2 of the Act as being one of the following offences:

Crimes Act 1961

- Riot (section 87);
- Assisting escape from lawful custody (section 121);
- Murder (sections 167 & 168);
- Manslaughter (section 171);
- Attempt to murder (section 173);
- Counselling, or attempting to procure murder (section 174);
- Conspiracy to murder (section 175);
- Accessory after the fact to murder (section 176);
- Wounding with intent (section 188);
- Injuring with intent (section 189);
- Injuring by unlawful act (section 190);
- Aggravated wounding or injury (section 191);
- Aggravated assault (section 192);
- Assault with intent to injure (section 193);
- Assault on child or by male on female (section 194);
- Common assault (section 196);
- Disabling (section 197);
- Discharging firearm or doing dangerous act with intent (section 198);
- Using any firearm against law enforcement officer (section 198A);
- Commission of a crime with a firearm (section 198B);
- Acid throwing (section 199);
- Possession of offensive weapon or disabling substance (section 202A);
- Assault with a weapon (section 202C);
- Providing explosive to commit crime (section 305);
- Threatening to kill or do grievous bodily harm (section 306).

Summary Offences Act 1981

- Common assault (section 9);
- Things endangering safety (section 13);
- Possession of knives (section 13A).

Arms Act 1983

- Carrying or possessing firearms, airguns, pistols, restricted weapons or explosives except for lawful, proper, and sufficient purpose (section 45).

Appendix B: Do other security services have these powers?

Power to remove people or to deny entry

1. The Australian and New South Wales (NSW) court security legislation specifically authorises security staff to remove or deny entry to people who are harassing, obstructing, intimidating or threatening violence.
2. The NSW legislation also states that the right to enter and to remain in court is conditional upon compliance with orders of judicial officers and security staff.
3. The United Kingdom and some Canadian legislation authorises security staff to remove or exclude unco-operative or disruptive people, including through the use of reasonable force to enable court business to be undertaken, to maintain order or for safety reasons.

Detention powers

4. The Australian and NSW legislation authorises the detention of any person who has committed an offence or tried to commit an offence if this is necessary 'to prevent violence to a person on the court premises or serious damage to the court premises'. Disruptive people can be detained if they persistently refuse to comply with a security officer's direction to modify their behaviour. The person must be delivered to the Police promptly.
5. The (New Zealand) Civil Aviation and Maritime Security Acts authorise detention for:
 - refusing to leave when required to do so;
 - trying to re-enter after being required to leave;
 - persisting with attempts to enter after being warned;
 - refusing to be searched or screened.
6. The detained person must be delivered to the Police as soon as possible.
7. The Newfoundland and Labrador Court Security Act is the only comparable court security legislation that specifically includes illegal drugs and associated paraphernalia in the prohibited items that cannot be brought into court. Security staff can search for these items and either deny entry or remove the person if they are found.
8. The Australian legislation is the only comparable court security legislation that authorises the use of reasonable force to protect the safety of people who are being escorted for court-related business or the security officer. Security officers can give directions to a person to do or not to do anything that is reasonably necessary to protect the safety of the people being escorted or the security officer. It is a detainable offence to not comply with a direction after being warned that it is an offence.

9. The Victorian Court Security Act 1980 is the only comparable court security legislation that includes footpaths within the area in which security personnel can exercise their statutory powers.