

**Hon Kiri Allan**  
Minister of Justice

**Proactive release – Family Court (Family Court Associates) Legislation Bill**

Date of issue: 15 May 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

No.	Document	Comments
1	<b>Family Court (Family Court Associates) Legislation Bill – Supplementary Order Paper</b> <i>Cabinet paper</i> Office of the Minister of Justice <i>Lodged: 23 March 2023</i>	Released with some information withheld under section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials and section 9(2)(g)(i) of the OIA to protect free and frank expression.
1a	<b>Family Court (Family Court Associates) Legislation Bill – Supplementary Order Paper</b> <i>Cabinet Minute</i> <i>SWC-23-MIN-0023</i> Cabinet Office <i>29 March 2023</i>	Released in full

## In Confidence

Office of the Minister of Justice

Chair, Cabinet Social Wellbeing Committee

## Family Court (Family Court Associates) Legislation Bill – Supplementary Order Paper

### Proposal

- 1 I seek approval to table the attached Supplementary Order Paper (SOP) which implements changes to the Family Court (Family Court Associates) Legislation Bill (the Bill).

### Relation to government priorities

- 2 The establishment of the Family Court Associate role is one part of the long-term programme of change to the family justice system. It responds to the Government's manifesto commitment to implement the recommendations of *Te Korowai Ture ā-Whānau: The final report of the Independent Panel examining the 2014 family justice reforms* (Te Korowai).

### Executive Summary

- 3 On 16 February 2022, the Social Wellbeing Cabinet Committee agreed to establish the Family Court Associate role by amending a range of family law related Acts to specify powers that may be carried out by Family Court Associates [SWC-22-MIN-0010 refers].
- 4 The Bill received its first reading on 2 August 2022 and was referred to the Justice Select Committee. The Select Committee reported back to the House of Representatives on 16 December 2022.
- 5 I seek approval to table a Government SOP that amends three aspects of the Bill. The most substantive amendment is to remove the Oranga Tamariki Act 1989 provisions where a Family Court Associate exercises the powers of a judge from the Bill. The SOP is expected to be presented in the House of Representatives for consideration by the Committee of the Whole House.

### Background

- 6 This Bill establishes a new role in the Family Court, the Family Court Associate, to improve outcomes in the Family Court by reducing delay [SWC-22-MIN-0010 refers]. The role will be that of a judicial officer, with a requirement for any appointee to have at least 7 years of legal experience.
- 7 The Family Court Associate will reduce delay by taking on some of the administrative workload of Family Court judges, including decisions made at

the early stages of proceedings and interlocutory applications.<sup>1</sup> Some judicial decisions will remain with judges because of their substantive impact on people, impact on human rights or complexity. Modelling indicates that introducing the Family Court Associate role will free up 25% of Family Court judge time.

- 8 The Bill amends several family law related statutes to enable the Family Court Associate to undertake some of the powers of a judge:
  - 8.1 Family Court Act 1980;
  - 8.2 Adoption Act 1955;
  - 8.3 Care of Children Act 2004;
  - 8.4 Child Support Act 1991;
  - 8.5 Family Proceedings Act 1980;
  - 8.6 Family Violence Act 2018;
  - 8.7 Marriage Act 1955;
  - 8.8 Oranga Tamariki Act 1989;
  - 8.9 Property (Relationships) Act 1976;
  - 8.10 Protection of Personal Property Rights Act 1988;
  - 8.11 Remuneration Authority Act 1988; and
  - 8.12 Status of Children Act 1969.
- 9 The role is based on a recommendation made in 2019 by the Independent Panel that examined the 2014 reforms to the family justice system in their report, Te Korowai. The Independent Panel found that delay of resolution of cases in the Family Court is widespread and impacts on most other areas in the family justice system.
- 10 The Justice Committee considered the Bill and received submissions from 30 individuals or organisations. Fourteen oral submissions were presented to the Committee. Fourteen submitters expressed support for the Bill or its intentions. Six submitters opposed the Bill. Ten submitters did not expressly support or oppose the Bill, with their submissions largely focused on issues outside of the scope of the Bill and on wider reform in the Family Court system.
- 11 The Bill was reported back by the Justice Committee on 16 December 2022.

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<sup>1</sup> Interlocutory applications and hearings relate to matters of procedure or secondary issues to the orders or declarations sought in the substantive proceedings.

## Supplementary Order Paper

- 12 The SOP makes amendments to the Bill to three aspects of the Bill. The most substantive amendment is to remove the Oranga Tamariki Act provisions where a Family Court Associate exercises the powers of a judge from the Bill. The other two amendments are more minor. These amendments add the Family Court Associate to the officers required to take the oath of allegiance and judicial oath, and adjust the timing of the review of the Family Court Associate role required by the Bill.

### *Oranga Tamariki Act 1989 provisions*

- 13 The Oranga Tamariki Act sets out the law where children need care and protection. The FCA Bill expressly delegates six judicial powers under the Oranga Tamariki Act to a Family Court Associate. These powers are:
- 13.1 Section 74 (Court may direct persons involved in care and protection proceedings to participate in counselling);
  - 13.2 Section 160 (Appointment of a lawyer to assist court);
  - 13.3 Section 162 (Power to review a decision of a Registrar relating to the invoice of a lawyer for fees and expenses);
  - 13.4 Section 169 (Power to grant leave to any person to make representations to the court on behalf of a party to proceedings who is a parent, guardian, or other person having care of the child);
  - 13.5 Section 170 (Power to ask a Registrar to convene a mediation conference); and
  - 13.6 Section 201 (Power to adjourn proceedings before the Family Court).
- 14 The Family Court Associate also has:
- 14.1 all the powers of a Registrar and may exercise those powers in respect of a proceeding under the Oranga Tamariki Act, and
  - 14.2 power equivalent to that of an issuing officer (Registrars, Deputy Registrars, Community Magistrates and Justices of the Peace, if authorised by the Attorney-General) in respect of two provisions if a judge is not available. These are:
    - 14.2.1 Section 39 (Enabling the issuing of a warrant in the event that no District Court Judge is available. A warrant may be issued authorising the search for and, if necessary, the uplifting of a child or young person suspected to be suffering ill-treatment, neglect, deprivation, abuse, or harm); and
    - 14.2.2 Section 40 (Enabling the issuing of a warrant in the event that no District Court Judge is available. A warrant may be issued authorising the search for and, if necessary, the uplifting of a

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child or young person who is believed to be suffering ill-treatment, serious neglect, abuse, serious deprivation, abuse, or serious harm).

- 15 Several public submissions to the Justice Committee on the Bill discussed the need to involve iwi and communities in making decisions relating to care and protection proceedings (which fall under the Oranga Tamariki Act) in the Family Court. These submitters suggested introducing a Family Court Panel, comprising a legally trained convenor (Family Court Associate or Family Court Judge), and qualified representatives from iwi and the community. They considered iwi and community decision-making would be a significant step towards re-building community confidence in the Family Court, particularly in relation to care and protection proceedings, and an opportunity to make a significant and meaningful change in a manner that improves outcomes for communities.
- 16 The submitters also expressed concern that the Family Court Associate would create an additional layer of bureaucracy and potential for fragmentation.
- 17 **Section (9)(2)(f)(iv)**  
[REDACTED]
- 18 **Section (9)(2)(f)(iv)**  
[REDACTED]  
I consider it would be best to remove the Oranga Tamariki Act provisions where a Family Court Associate exercises the powers of a judge from the Bill. I am however, retaining the provisions under the Oranga Tamariki Act where a Family Court Associate exercises the same powers as Registrars (including as an issuing officer under sections 39 and 40). **Section (9)(2)(f)(iv)**  
[REDACTED]
- 19 Removing the provisions results in some loss in the efficiency of the role. However, this loss in efficiency is relatively small. The Oranga Tamariki provisions in the Bill were already limited because of the complexity and substantive impact of decisions in the care and protection space. Modelling shows, in respect of judge powers, the Family Court Associate may free up approximately 23% of judge time, as opposed to 25% if the powers were included.
- 20 The SOP I now seek leave to present, amends the Bill to remove the ability for a Family Court Associate to exercise the powers of a judge in in respect of a proceeding under the Oranga Tamariki Act.

*Other amendments*

- 21 The other amendments in this SOP are not as material in nature. These are:
- 21.1 Amending the Oaths and Declarations Act 1957 to require a Family Court Associate to take the oath of allegiance and the judicial oath, consistent with other judicial roles; and
  - 21.2 Amending the requirement to review whether the role has reduced delays in the Family Court to clarify that the review must commence no later than 5 years following passage of the Bill.

### **Financial Implications**

- 22 There is no additional funding sought through the amendments in the SOP.
- 23 Previous modelling shows these changes may save approximately 23% of judge time, as opposed to 25% if the powers were included. However, any change in efficiency will depend on how the role is implemented. The number of Family Court Associates will be small in comparison to the number of judges, and so the change may mean they can be given a greater share of judges' other work, for example, Care of Children Act proceedings.

### **Legislative Implications**

- 24 The SOP is amending the Family Court (Family Court Associates) Legislation Bill and will be presented in the House of Representatives.

### **Impact Analysis**

#### *Regulatory Impact Statement*

- 25 The Minister of Justice had delegated authority to approve the policy for this Bill, and therefore Cabinet's impact analysis requirements do not apply to this paper.

#### *Climate Implications of Policy Assessment*

- 26 The Climate Implications of Policy Assessment CIPA requirements do not apply to this proposal as the threshold for significance is not met.

### **Compliance**

- 27 The SOP complies with:
- 27.1 the principles of Te Tiriti o Waitangi / the Treaty of Waitangi;
  - 27.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 27.3 the disclosure statement requirements (a supplementary disclosure statement prepared by the Ministry of Justice is attached);
  - 27.4 the principles and guidelines set out in the Privacy Act 2020;



27.5 relevant international standards and obligations; and

27.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

### Consultation

28 The Principal Family Court Judge and Pou Tangata Iwi Leaders Groups have been consulted on these changes.

29 Oranga Tamariki, Crown Law, Ministry of Business, Innovation and Employment, Department of Corrections, Ministry for Social Development, Department of Prime Minister and Cabinet, Ministry for Ethnic Communities, Ministry of Health, Inland Revenue Department, Department of Internal Affairs, Te Puna Aonui, Police, Te Arawhiti, Te Puni Kōkiri, Ministry for Women, Ministry for Pacific Peoples, Treasury, and Whaikaha/Office for Disability Issues were also consulted.

30 Section 9 (2)(g)(i)

Section (9)(2)(f)(iv)

31 Section 9 (2)(g)(i)

32 Section (9)(2)(f)(iv)

### Binding on the Crown

33 The Bill is binding on the Crown. The SOP will not change this.

### Creating new agencies or amending law relating to existing agencies

34 The SOP does not create new agencies or amend the law relating to existing agencies.

### Allocation of decision-making powers

35 The SOP does not affect the allocation of decision-making powers between the Executive, the courts, and tribunals.

### Associated regulations

- 36 Regulations are not needed to bring the SOP into operation. Amendments to the Family Court Rules 2002 and Criminal Procedure (Transfer of Information) Regulations 2013 are required to further specify powers and functions of the Family Court Associate.

### Other instruments

- 37 The amendments do not include any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments.

### Definition of Minister/department

- 38 The amendments do not contain a definition of Minister, Department, or Chief Executive of a department.

### Commencement of legislation

- 39 The SOP when incorporated into the Bill, will come into effect on the same date as the Bill. The Bill will come into force 4 months after Royal Assent.

### Parliamentary stages

- 40 The Family Court (Family Court Associate) Legislation Bill was introduced on 5 July 2022 and received its first reading on 2 August 2022. The Bill began Second Reading on 9 March.
- 41 The SOP is expected to be presented in the House of Representatives for consideration by the Committee of the Whole House.

### Proactive Release

- 42 I propose to release this Cabinet paper and related Minute with any necessary redactions in accordance with Cabinet Office circular CO (18) 4, following the presentation of this SOP in the House of Representatives.

### Recommendations

The Minister of Justice recommends that the Committee:

- 43 **note** that in February 2022, Cabinet authorised the Minister of Justice to approve the final list of specific functions and powers of the Family Court Associate [SWC-22-MIN-0010].
- 44 **approve** the presentation of the Supplementary Order Paper to the Family Court (Family Court Associates) Legislation Bill in the House of Representatives.
- 45 **agree** that the Minister of Justice be authorised to make any additional minor and technical drafting decisions that may be required before the Supplementary Order Paper is presented in the House of Representatives.



**IN C O N F I D E N C E**

Authorised for lodgement

Hon Kiri Allan

Minister of Justice

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# Cabinet Social Wellbeing Committee

## Minute of Decision

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### Family Court (Family Court Associates) Legislation Bill: Supplementary Order Paper

**Portfolio**                      **Justice**

On 29 March 2023, the Cabinet Social Wellbeing Committee (SWC):

- 1        **noted** that:
  - 1.1      in February 2022, SWC agreed to establish the Family Court Associate in legislation and authorised the Minister of Justice to approve the final list of specific functions and powers of the Family Court Associate [SWC-22-MIN-0010];
  - 1.2      the Family Court (Family Court Associates) Legislation Bill began its second reading in the House on 9 March 2023;
- 2        **noted** that the Supplementary Order Paper attached under SWC-23-SUB-0023:
  - 2.1      removes the ability for a Family Court Associate to exercise the powers of a judge in respect of a proceeding under the Oranga Tamariki Act 1989;
  - 2.2      amends the Oaths and Declarations Act 1957 to require a Family Court Associate to take the oath of allegiance and the judicial oath, consistent with other judicial roles;
  - 2.3      clarifies that a review of the Family Court Associate role must commence no later than 5 years following passage of the Bill;
- 3        **approved** the presentation in the House of Representatives of the Supplementary Order Paper to the Family Court (Family Court Associates) Legislation Bill [PCO 21825-1/5.0];
- 4        **authorised** the Minister of Justice to make any additional minor and technical drafting decisions that may be required before the Supplementary Order Paper is presented in the House of Representatives.

Rachel Clarke  
Committee Secretary

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**Attendance (see over)**

**Present:**

Hon Carmel Sepuloni (Chair)  
Hon Grant Robertson  
Hon Dr Megan Woods  
Hon Dr Ayesha Verrall  
Hon Willie Jackson  
Hon Kiri Allan  
Hon Peeni Henare  
Hon Priyanca Radhakrishnan  
Hon Barbara Edmonds  
Hon Meka Whaitiri  
Hon Willow-Jean Prime  
Hon Rino Tirikatene

**Officials present from:**

Office of the Prime Minister  
Office of the Chair  
Officials' Committee for SWC