

**Hon Ginny Andersen**  
Minister of Justice

**Proactive release – Better Outcomes for Victims: approvals for introducing legislation**

Date of issue: 11 October 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (23) 4.

No.	Document	Comments
1	<b>Better Outcomes for Victims: approvals for introducing family violence legislation</b> <i>Cabinet paper</i> Office of the Minister of Justice 9 August 2023	Some information has been withheld in accordance with: <ul style="list-style-type: none"><li>• Section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials.</li><li>• Section 9(2)(g)(i) of the OIA to protect the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organization or officers and employees of any public service agency or organization in the course of their duty.</li></ul>
2	<b>Better Outcomes for Victims: approvals for introducing family violence legislation</b> <i>Cabinet Minute – LEG-23-MIN-0150</i> Cabinet Office 17 August 2023	Released in full.

**In Confidence**

Office of the Minister of Justice

Cabinet Legislation Committee

**Better Outcomes for Victims: approvals for introducing family violence legislation**

**Proposal**

1. This paper seeks approval for the introduction of the Victims of Family Violence (Strengthening Legal Protections) Legislation Bill.

**Policy**

2. The Victims of Family Violence (Strengthening Legal Protections) Legislation Bill ("the Family Violence Bill") will strengthen the courts' statutory powers to protect victims of litigation abuse in family proceedings.
3. The Bill forms one part of the Government's cross-sector work programme to improve victims' experiences in the courts [SWC-23-MIN-0020 and CAB-23-MIN-0107 refers]. It continues the Government's largest ever investment in victims with a goal of ensuring a justice system that serves all New Zealanders.

**Victims of Family Violence (Strengthening Legal Protections) Legislation Bill**

*Background*

4. On 31 March 2023 and 3 April 2023, Cabinet agreed to a cross-sector work programme designed to achieve better outcomes for victims [SWC-23-MIN-0020 and CAB-23-MIN-0107 refers].
5. This included legislative changes to strengthen legal protections for victims of family violence by amending relevant legislation to respond to litigation abuse by providing the courts with the power to restrain a party from filing family-related applications (including interlocutory applications) or responses to applications at any stage of proceedings, where a holistic view of the case indicates the applicant or respondent is using the proceedings as a means to abuse the other party.
6. Litigation abuse is where the court system is used to perpetuate family violence. It involves an individual using court processes as a tool to force contact and/or cause ongoing harm to their victim rather than to resolve genuine issues. Methods of litigation abuse include filing excessive, sometimes abusive, documents that require a response, and/or causing the victim to attend multiple court sessions to respond to the application.

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7. The changes to litigation abuse are part of a package of reform to improve victims' experiences in the courts and wider justice system. Additional changes include:
  - a. Giving sexual assault victims more control in court processes around their name suppression (being progressed in the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill)
  - b. Aligning the penalty for sexual connection with a child to a maximum sentence of 20 years' in prison (being progressed in the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill)
  - c. Three new pilots to improve victims' safety, ensure they're heard in bail decisions and strengthened support for child victims of sexual violence
  - d. Additional funding for victims' support organisations.

*The Family Violence Bill creates a new statutory power for the Court to make an order restraining family proceedings*

8. With the delegated authority granted to me by Cabinet, I have agreed to address litigation abuse by amending the Family Court Act 1980, District Court Act 2016, and Senior Courts Act 2016 to create a new civil restraint framework for family proceedings.
9. The Family Violence Bill amends these Acts to provide the court with the power to restrain a party from filing further steps in family proceedings in any court. The Court must be satisfied that, having regard to all of the circumstances, a party to a proceeding under a specified Act has exhibited conduct that is an abuse of the court; and has given that party a reasonable opportunity to be heard.
10. The Bill addresses known gaps in the legislative framework, as articulated by victims, their advocates, and specialist service providers. I view these changes as the next step in New Zealand's shift towards a more victim-focused legislative framework – while also making significant and quick gains for victims and their families.
11. The Bill will apply to family proceedings. This includes core family matters such as proceedings related to the care and guardianship of children, family violence and relationship property. However, it does not include matters under the Oranga Tamariki Act 1989 where children are in need of care and protection. These proceedings are different in nature from many other family proceedings in that Oranga Tamariki is generally involved in bringing such proceedings, rather than the proceedings involving a civil dispute between family members. Including additional limitations on when such proceedings can be brought, or steps can be taken in a proceeding, may undermine the ability to act to respond to the care and protection needs of tamariki or rangatahi.
12. The circumstances that the Court can consider will include the party's conduct during the course of the proceeding; and the party's conduct outside of the proceedings (including in any other proceeding under a specified Act) that is intended to harass or

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annoy any other party to the proceedings; and any other matter that the court considers relevant.

13. These changes will ensure that:

- all relevant court documents can be used as grounds for an order,
- the threshold is appropriate for family proceedings; capturing documents that may have merit but nonetheless are abusive, and
- access to the courts is preserved where needed (an abusive litigant may file multiple documents and applications, but this could also be true of a concerned parent).

### Impact Analysis

14. A regulatory impact statement was prepared to accompany the first Cabinet paper outlining the policy proposals [SWC-23-MIN-0020 refers].

### Compliance

15. The Bill complies with:

- a. the disclosure statement requirements (a disclosure statement prepared by the Ministry of Justice is attached),
- b. the principles and guidelines set out in the Privacy Act 2020,
- c. relevant international standards and obligations, and
- d. the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

### *New Zealand Bill of Rights Act 1990*

16. The Bill may engage the right to justice under section 27 of the New Zealand Bill of Rights Act 1990 (NZBORA). From a policy perspective, I consider that any limitation on this right is justified because the changes balance the need to protect victims from undue harm, with the need to protect the respondent's right to access the justice system. In particular, the ability to apply to the court with leave preserves the ability to access justice, as well as the requirement for the judiciary to interpret legislation in a manner that is consistent with the Bill of Rights.

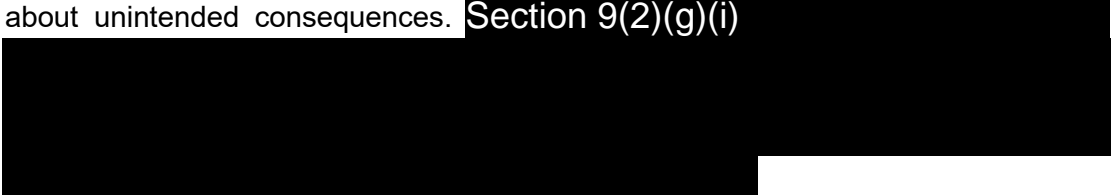
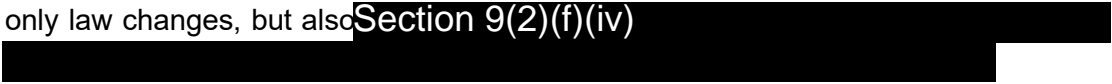
17. Crown Law Office will provide advice to the Attorney-General on consistency with NZBORA.

### Consultation

*Consultation to inform drafting of the Bill, including with the judiciary*

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18. Following Cabinet's decisions, we undertook targeted consultation to inform the drafting of the Bill. This included consultation with the Judiciary and legal bodies, (the New Zealand Law Society (NZLS), Criminal Bar Association, Defence Lawyers Association, and South Auckland Bar Association) and agencies. Our timeframes have not allowed us to share a draft version of the Bill with the judiciary and legal professional bodies.
19. During consultation on implementation of the proposal, the Judiciary had concerns about unintended consequences. **Section 9(2)(g)(i)**  

20. The Judiciary considers that litigation abuse is a complex issue; that any statutory change targeting family court cases requires careful consideration and that there are significant risks of unintentionally worsening the existing situation by acting too quickly.
21. A further comment from the judiciary is that existing tools are rarely used partly due to a widespread lack of understanding of the law. They recommend that we consider not only law changes, but also **Section 9(2)(f)(iv)**  

22. The New Zealand Law Society considers that litigation abuse is not currently widespread but are supportive of the change as it is a significant problem when it occurs.

*Agency consultation*

23. The following agencies were consulted on this paper and the Bill: Crown Law Office, the Treasury, Department of Prime Minister and Cabinet, New Zealand Police, Oranga Tamariki, Department of Corrections, Ministry for Women, Ministry of Social Development, Ministry for Pacific Peoples, Ministry for Ethnic Communities, Te Puni Kōkiri, Te Puna Aonui, Te Arawhiti, Department of Internal Affairs, Ministry of Health, Whaikara – Ministry for Disabled People, and Inland Revenue.
24. The Chief Victims Advisor was consulted throughout the policy development process and is supportive of the legislative changes outlined in this paper.
25. The government caucus will be consulted prior to the Bill being introduced.

**Binding on the Crown**

26. Cabinet Circular (02)4: Acts Binding the Crown: Procedures for Cabinet Decision notes that bills that are amending existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown. The principal Acts bind the Crown, and the Bill will follow that position. The Bill will therefore bind the Crown.

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

27. The Bill does not create any new agencies.

**Allocation of decision-making powers**

28. The Bill amends judicial powers by providing statutory power to the judiciary. It does not change the allocation of decision-making powers between the executive and judiciary.

**Associated regulations**

29. Amendments to the Family Court Rules 2002, District Court Rules 2014 and the High Court Rules 2016 may be required relating to the court's power to prevent a party from filing court documents without leave of the court.
30. The Bill will commence 6 months after Royal Assent (or earlier by Order in Council) to allow for drafting and consideration of any further regulations or court rule amendments by LEG.

**Other instruments**

31. The Bill does not include any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments.

**Definition of Minister/department**

32. The Bill does not contain a definition of Minister, department, or Chief Executive of a department.

**Commencement of legislation**

33. The Bill will come into force 6 months after the date of Royal assent or earlier by Order in Council.

**Parliamentary stages**

34. The Bill holds a category 4 priority on the 2023 Legislation Programme (to be referred to Select Committee before the 2023 general election).
35. I propose that the Bill be introduced on or after 21 August 2023.
36. I propose that the Bill be referred to the Justice Committee for consideration.

**Proactive Release**

37. I propose proactively releasing this paper and any relevant materials following the introduction of the Bill, with any appropriate redactions in accordance with Cabinet Office Circular CO(18)4.

## Recommendations

38. I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Bill holds a category 4 priority on the 2023 Legislation Programme (to be referred to Select Committee before the general election);
- 2 **note** that the Bill will strengthen legal protections for victims of family violence by expanding the court's powers to recognise and respond to litigation abuse;
- 3 **approve** the Victims of Family Violence (Strengthening Legal Protections) Legislation Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4 **agree** that the Bill be introduced on or after 21 August 2023 following confirmation by Cabinet;
- 5 **agree** that the Government propose that the Bill be:
  - 5.1 referred to the Justice Committee for consideration, and
  - 5.2 enacted by the end of 2024.

Authorised for lodgement

Hon Ginny Andersen

**Minister of Justice**

/ /2023



# Cabinet Legislation Committee

## Minute of Decision

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*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

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### Better Outcomes for Victims: Approvals for Introducing Family Violence Legislation

**Portfolio**                      **Justice**

On 17 August 2023, the Cabinet Legislation Committee:

- 1        **noted** that the Bill holds a category 4 priority on the 2023 Legislation Programme (to be referred to Select Committee before the general election);
- 2        **noted** that the Bill strengthens legal protections for victims of family violence by expanding the court's powers to recognise and respond to litigation abuse;
- 3        **approved** the Victims of Family Violence (Strengthening Legal Protections) Legislation Bill [PCO 25683/5.0] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4        **agreed** that the Bill be introduced on or after 21 August 2023 following confirmation by Cabinet;
- 5        **agreed** that the government propose that the Bill be:
  - 5.1       referred to the Justice Committee for consideration;
  - 5.2       enacted by the end of 2024.

Rebecca Davies  
Committee Secretary

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**Present:**

Hon Grant Robertson (Chair)  
Hon Dr Ayesha Verrall  
Hon Damien O'Connor  
Hon Andrew Little  
Hon Kieran McAnulty  
Hon Ginny Andersen  
Hon Willow-Jean Prime  
Hon Dr Duncan Webb  
Hon Rachel Brooking  
Hon Jo Luxton  
Tangi Utikere, MP (Chief Government Whip)

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG