

**Hon Paul Goldsmith**  
Minister of Justice

**Proactive release – Legal Services Amendment Bill**

Date of issue: 21 February 2024

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

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	<b>Removing taxpayer funding for section 27 reports</b> <i>Cabinet paper</i> Ministry of Justice Meeting date: 13 December 2023	<b>Released in Part.</b> Some information has been withheld in accordance with sections 9(2)(h) of OIA to maintain legal professional privilege, 9(2)(f)(iv) to protect confidentiality of advice tendered by Ministers and officials, and s 6(2)(a) to protect international relation.
2.	<b>Removing taxpayer funding for section 27 reports</b> <i>Cabinet 100-Day Plan Committee Minute [100-23-MIN-0008]</i> Cabinet Office Meeting date: 13 December 2023	<b>Released in full.</b>
3.	<b>Removing taxpayer funding for section 27 reports</b> <i>Cabinet 100-Day Plan Committee Minute [CAB-23-MIN-0491]</i> Cabinet Office Meeting date: 18 December 2023	<b>Released in Part.</b> Some information has been withheld as it is outside the scope of release.
4.	<b>Legal Services Amendment Bill – Approval for Introduction</b> <i>Cabinet paper</i> Ministry of Justice Meeting date: 31 January 2024	<b>Released in Part.</b> Some information has been withheld under s 9(2)(h) to maintain legal professional privilege and s 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown and employees of any public service agency.
5.	<b>Department Disclosure Statement</b> <i>Cabinet Paper Appendix</i> Office of the Minister of Justice Meeting date: 31 January 2024	<b>Released in full.</b> <b>The departmental disclosure statement attached to the paper is publicly available at <a href="http://disclosure.legislation.govt.nz/">http://disclosure.legislation.govt.nz/</a></b>

No.	Document	Comments
6.	<b>Legal Services Amendment Bill</b> <i>Cabinet Paper Attachment</i> Office of the Minister of Justice Meeting date: 31 January 2024	<b>Released in Part.</b> Note that the Bill provided to Ministers with this paper has been withheld in accordance with section 61 of the Legislation Act 2012 and section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege. The legislative instrument is publicly available from <a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a> .
7.	<b>Legal Services Amendment Bill – Approval for Introduction</b> <i>Cabinet 100-Day Plan Committee Minute [100-24-MIN-0005]</i> Ministry of Justice Meeting date: 31 January 2024	<b>Released in full.</b>
8.	<b>Legal Services Amendment Bill – Approval for Introduction</b> <i>Cabinet Minute [CAB-24-MIN-0018]</i> Cabinet Office Meeting date: 7 February 2024	<b>Released in Part.</b> Some information has been withheld as it is outside the scope of the release.

## In Confidence

Office of the Minister of Justice

Cabinet 100-Day Plan Committee

## Removing taxpayer funding for section 27 reports

### Proposal

- 1 This paper seeks Cabinet's agreement to amend the Legal Services Act 2011 to remove government funding of reports or statements, whether written or oral, that seek to address the factors detailed in section 27 of the Sentencing Act 2002.

### Relation to Government priorities

- 2 The Government's priorities for this term include restoring law and order. This proposal relates directly to the Government's 100-Day commitment to "defund section 27 reports."

### Executive Summary

- 3 Section 27 of the Sentencing Act 2002 (the Sentencing Act) allows the Court to hear any persons called by the offender to speak about their background and its relationship to the offending, as well as the support they have from family, whānau or community that might help prevent further offending. This information informs judicial decisions about the type and length of a sentence.
- 4 In recent years, a 'cottage industry' of section 27 report writing has emerged in place of what were originally intended to be statements given by a person known to the offender. The reports typically identify mitigating factors that can contribute to substantial sentence discounts. This trend has benefitted report writers, without a corresponding benefit to victims of crime and the wider public.
- 5 The significant cost of section 27 reports is being met by government-funded legal aid. To improve the quality of government spending, the Government has committed to remove legal aid funding from reports or oral statements that seek to address the factors within section 27. To implement this commitment, I seek Cabinet agreement to amend the Legal Services Act 2011 (the LSA) via a Bill to be introduced within the 100-Day commitment period.<sup>1</sup>
- 6 Implementing the proposal will mean potential savings. The extent to which these can be realised will depend on whether the information currently included in section 27 reports continues to be provided to, or sought by, the Court via other means, such as psychologist reports. These will continue to be legally aided.

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<sup>1</sup> The Legal Services Act 2011 establishes that decisions as to whether to grant legal aid or not, including to cover the cost of section 27 reports, are taken independently by the Legal Services Commissioner.

- 7 This paper proposes that Cabinet authorise the Minister of Finance and I to make final decisions on any transfer or re-allocation of funding when the financial implications of the proposed law change are better known, which will be within the first twelve months following implementation.
- 8 The Government has committed to exploring broader reform of section 27 requirements. This will be undertaken as part of work on wider sentencing-related commitments, which will be enacted during this Parliamentary term.

**Government funding for section 27 reports does not represent good value for taxpayers and contributes to substantial sentence discounts**

- 9 I am concerned that in recent years a ‘cottage’ industry has emerged with the purpose of obtaining sentencing discounts for offenders in a way that was never envisaged when the relevant legislative provisions were introduced. Instead of a person known to the offender speaking on their behalf, there are now formal reports costing thousands of dollars each, with resulting legal aid costs that have increased from almost \$0.02 million in 2017 to approximately \$7.5 million in the past year.<sup>2</sup>
- 10 Consequently, section 27 reports account for 44.9% of the expenditure on specialist reports in criminal legal aid.<sup>3</sup> The reports themselves are variable, as they have no uniform format, and there are no requirements governing who may write the reports, their content, or cost.
- 11 Ministry of Justice analysis of a sample of cases involving a section 27 report shows that on average, Judges are giving a 10% sentence discount for the mitigating factors discussed in the report, and that a discount is offered 89% of the time. These are contributing to significant overall discounts at sentencing, which the government has committed to restricting.

**The sentencing judge can continue to receive information necessary for sentencing**

- 12 Consideration of the background and circumstances of an offender is a core element of sentencing.<sup>4</sup> Section 27 of the Sentencing Act states that an offender may request that the Court hear any persons called by the offender to speak about:

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<sup>2</sup> This increase coincides with guideline judgments from the appellate courts highlighting the relevance of the offender’s background, including their cultural background, at sentencing (see for example *Keil v R* [2017] NZCA 563 at [56]-[58]; *Solicitor-General v Heta* [2018] NZHC 2453 [37] – [38], [66]).

<sup>3</sup> Specialist reports include reports and input by third parties such as psychiatric, medical, and forensic evidence.

<sup>4</sup> Section 8(h)-(i) require the judge to “take into account any particular circumstances of the offender that mean that a sentence or other means of dealing with the offender that would otherwise be appropriate would, in the particular instance, be disproportionately severe”. The judge must also “take into account the offender’s personal, family, whānau, community, and cultural background when imposing a sentence which has a partly or wholly rehabilitative purpose”.

- 12.1 the offender's personal, family, whānau, community and cultural background;
  - 12.2 the way that background may have related to the commission of the offence;
  - 12.3 restorative processes that may have been tried (between the offender and their family, whānau or community and victims); and
  - 12.4 how the offender's background, or support from their family, whānau or community may help prevent offending or may be relevant to possible sentences.
- 13 Unless there is some special reason making it unnecessary or inappropriate to do so, the Court is required to hear from anyone the offender calls to speak on these matters. The information can assist the Judge to identify the appropriate sentence type. Where the Judge determines that the background factors have contributed causatively to the offending, a sentence discount may be made, as is the case with any mitigating factor.
- 14 Section 27 reports are most common in sentencing for more serious offending.<sup>5</sup> As a result of the proposed removal of government funding for section 27 reports, Judges are unlikely to have as much information they are currently receiving to inform an appropriate sentence. However, information relevant to section 27 may still be provided through other means, such as pre-sentence reports, specialist reports, support letters or affidavits from the offender's family or friends, or defence counsel's sentencing submissions.
- 15 The Government has committed to exploring wider reform of section 27 requirements. This will be undertaken as part of work on wider sentencing-related commitments and will consider the emphasis placed on an offender's background information at sentencing.

**Legislative amendments are required to remove funding for section 27 reports**

- 16 Currently, section 27 reports are publicly funded through the legal aid scheme. This includes reports procured by private lawyers funded through the legal aid appropriation, and those procured by lawyers employed by PDS funded through the Ministry's departmental PDS appropriation. Although these are separate appropriations, the authority for expenditure in both is within the LSA.
- 17 The LSA establishes the system that provides legal services for criminal and civil matters to people of insufficient means. For criminal matters, a legally aided person can be assigned to a private lawyer, or a lawyer from the PDS (an independent unit of lawyers within the Ministry of Justice employed to provide criminal legal aid services). The assigned lawyer has a legal obligation to protect and promote their client's interests, which may include, where the case

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<sup>5</sup> 38% of all offenders receiving a prison sentence of over two years had a section 27 report, compared to 13% of all offenders sentenced to two years imprisonment or less who had a section 27 report, and 15% of all offenders sentenced to home detention that had a section 27 report.

has progressed to sentencing, obtaining a report that addresses the factors in section 27.

- 18 The LSA also establishes the role of the Legal Services Commissioner (the Commissioner), who must act independently when performing any of their specified functions. One of these functions is to grant legal aid in accordance with the LSA.

*Proposed legislative amendment*

- 19 In order to bring about change and uphold the Commissioner's independence, a legislative amendment to the LSA is needed. I propose an amendment be made to preclude the Commissioner from approving disbursements for reports or statements, whether oral or written, that address the factors outlined in section 27. This would not extend to submissions by defence counsel, which may traverse aspects of section 27, as this is a standard part of sentencing preparation that does not have a separate disbursement.
- 20 The LSA requires claims for payment for legal services, including disbursements, to be made by the lawyer to the Secretary for Justice, who must then refer the claim to the Commissioner.<sup>6</sup> Section 99(4) of the LSA requires the Commissioner to decline claims for payment in certain situations. I anticipate that the amendment would be made within this section.
- 21 The proposed amendment will be in the form of a standalone Bill and there will not be any consequential impacts on the rest of the LSA or other legislation. As this will be a novel provision, my officials will work closely with the Parliamentary Counsel Office (PCO) to identify the most effective form of legislative amendment.

**Introduction and passage of an amendment Bill**

- 22 As a Bill will be required to give effect to the proposal, it will need to be included on the Legislation Programme. I have confirmed this approach with the Leader of the House and the PCO.
- 23 A Bill can be introduced within the 100-Day commitment period. To meet this timeframe, the Attorney-General may authorise the issuing of drafting instructions on the Bill to the PCO, ahead of Cabinet decisions.
- 24 I anticipate the Bill being introduced to the House in early 2024. I propose the Bill is passed under urgency, rather than progressing through the select committee process, given it is a discrete amendment to a single Act. This would free up Parliamentary time for the passage of other more complex legislation.
- 25 Given the urgent timeline, I seek Cabinet's agreement to make second-tier decisions about minor drafting matters, in consultation with the relevant Justice sector ministers. The Act binds the Crown. The proposed amendment will not change this.

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<sup>6</sup> Sections 97 and 99 of the Legal Services Act.





efforts to clear the backlog of criminal cases, particularly within the District Court. The Government proposes a wider work plan to tackle court delays.

- 32 I propose to work with the Minister of Finance to make final decisions on the allocation of the proposed savings through a future baseline update, after monitoring any changes to the pattern or frequency of other specialist reports obtained at sentencing.

Section 9(2)(f)(iv)

- [REDACTED]
- [REDACTED]
- [REDACTED]

## Impact Analysis

### *Regulatory Impact Statement*

- 36 The requirement for quality assurance of RISs has been suspended for decisions relating to 100-Day Plan proposals. However, a Regulatory Impact Statement (RIS) has been completed and is attached to the Cabinet paper. The Ministry of Justice notes that the limitations on the analysis, the inability to consult directly with affected parties and constraints on available data, are set out in the coversheet of the RIS.

## Implementation

- 37 To carry out implementation activities to operationalise the proposal, a period of six weeks between the date of assent and the Bill's commencement is required. No additional costs have been identified.



## Population Implications

*The proposal is likely to have a disproportionate impact on Māori*

- 38 Māori are overrepresented in the criminal justice system. The funding change may exacerbate this disparity, as a higher proportion of Māori and Pacific Peoples offenders receive a legally aided section 27 report (14% and 11% respectively), compared with New Zealand Europeans/others (7%).<sup>7</sup> Should the proposal result in fewer sentence discounts, or offenders funding reports themselves, there may be flow-on consequences for families and whānau, particularly for Māori tamariki (children) and rangatahi (young people).
- 39 Research shows that children with a parent in prison are 10 times more likely to be imprisoned in the future than are non-prisoners' children. Furthermore, research has established that Māori are disproportionately represented in State care, and the proportion of Māori who had been in State care, and subsequently received a custodial sentence, was much higher than for corresponding non-Māori.<sup>8</sup>
- 40 The Government's other commitments related to sentencing reform will be progressed through separate legislative amendment later in this Parliamentary term. Potential amendments to section 27, including mitigating the impact of removing taxpayer funding, especially for Māori in the criminal justice system, will be explored as part of this wider sentencing reform work.
- 41 The Government's 100-Day Commitment to introduce legislation to extend eligibility to offence-based rehabilitation programmes to prisoners on remand may improve the overrepresentation of Māori in the criminal justice system over time. The approach may also mitigate the potential impact of this proposal on sentence outcomes. For example, where an offender has spent time on remand and has participated in a rehabilitation programme, their progress may help inform sentencing decisions.

## Human Rights Implications

- 42 The Crown Law Office will vet any resulting draft Bill for consistency with the New Zealand Bill of Rights Act 1990 (Bill of Rights).Section 9(2)(h)


[REDACTED]

[REDACTED]

<sup>7</sup> This is based on data from all sentences concluded in 2021 and 2022, where the final sentences were imprisonment, home detention, community detention and/or intensive supervision.

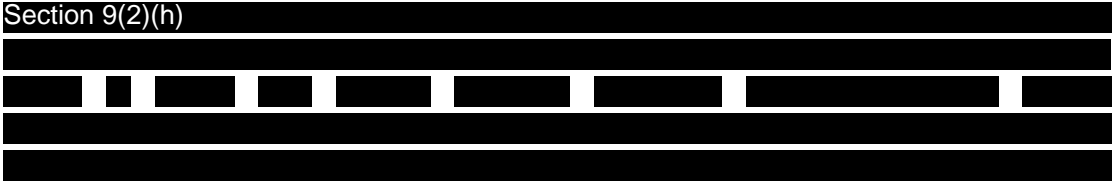
<sup>8</sup> For example, in 1980-1984 42% of Māori compared to non-Māori (Royal Commission of Inquiry Abuse in Care: Care to Custody Incarceration Rates report dated August 2022 at page 9).

Section 9(2)(h)




43

Section 9(2)(h)



Section(6)(a)



#### **Te Tiriti o Waitangi/Treaty of Waitangi considerations**

- 44 As this proposal is likely to disproportionately affect Māori, there is a strong te Tiriti o Waitangi/the Treaty of Waitangi based argument that Māori should, at the very least, be consulted. However, due to time constraints, no consultation with Māori has been undertaken.
- 45 If the law change is found to perpetuate current inequities experienced by Māori, there are likely to be concerns about its consistency with the rights of Māori to equitable access and outcomes in Article 3 of te Tiriti o Waitangi.
- 46 The issues of alleged discrimination and institutional racism in the sentencing process and legislative provisions is included in live claims filed with the Waitangi Tribunal in Te Rau o te Tika – the Justice System Kaupapa Inquiry (Wai 3060). There will likely be scrutiny of the use and funding of section 27 reports by the Waitangi Tribunal as part of the response to the Kaupapa Inquiry, with a possible focus on any disproportionate impacts on Māori due to legislative changes.
- 47 The potential risk of indirect discrimination could be mitigated by developing educational tools on section 27 for offenders, whānau and communities to enable section 27 information to be provided without the need for a costly report, which is currently being explored by officials.

#### **Cost of living implications**

- 48 Officials have not identified any likely impacts on the cost of living at the whole of population level. The proposal is likely to have a significant impact on the income of section 27 report writers who rely on government funded section 27 reports as their only or main source of income.

## Consultation

- 49 Treasury, Corrections, New Zealand Police, Crown Law Office, Te Puni Kōkiri and the Ministry for Pacific Peoples have been consulted. Agency feedback has been incorporated into the paper.
- 50 There has been no public consultation on this proposal, including with Māori. This may compromise the Government's ability to work positively with iwi, hapū, whānau Māori and NGOs on initiatives to improve justice outcomes for Māori.

## Communications

- 51 I intend to issue a press release when the Bill is introduced. I also intend to write to the Legal Services Commissioner, the judiciary, the New Zealand Law Society, the Māori Law Society and the Criminal Bar Association.

## Proactive Release

- 52 I will proactively release this Cabinet paper following the introduction of the Bill, subject to redaction as appropriate under the Official Information Act 1982.

## Recommendations

The Minister of Justice recommends that the Committee:

1. **note** that Government's 100-Day Plan includes a proposal to remove taxpayer funding for section 27 reports.
2. **agree** to amend the Legal Services Act 2011 to preclude government funding of reports or statements, whether oral or written, that address the factors in Section 27 of the Sentencing Act 2002.
3. **agree** that the proposal will be given effect through a Bill.
4. **note** that the Bill will be subject to a bid for the 2024 Legislation Programme.
5. **note** that the Bill is intended to be introduced in early 2024 to meet the 100-Day Plan timeframe.
6. **note** that the Minister of Justice has sought approval from the Attorney-General to issue drafting instructions to the Parliamentary Counsel Office to give effect to the proposal in this paper, including any savings, and transitional provisions.
7. **authorise** the Minister of Justice to make any second tier, **minor** policy decisions that may arise during drafting, in consultation with Justice sector ministers.
8. **note** that savings may be possible because of this legislative change, but the extent of these savings is dependent on whether the information currently included within section 27 reports is provided via other legally aided reports

9. **agree** that decisions about the transfer of any savings resulting from the legislative change should be taken once the financial implications are known through implementation within the first twelve months.
10. **authorise** the Minister of Justice and the Minister of Finance to make final decisions on the transfer or reallocation of any savings.

Authorised for lodgement.

Hon Paul Goldsmith

Minister of Justice



# Cabinet 100-Day Plan 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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### Removing Taxpayer Funding for Section 27 Reports

Portfolio                      Justice

On 13 December 2023, the Cabinet 100-Day Plan Committee:

- 1        **noted** that Government's 100-Day Plan includes a proposal to remove taxpayer funding for section 27 reports;
- 2        **agreed** to amend the Legal Services Act 2011 to preclude government funding of reports or statements, whether oral or written, that address the factors in Section 27 of the Sentencing Act 2002;
- 3        **agreed** that the removal of taxpayer funding will be given effect through a bill;
- 4        **noted** that the bill will be subject to a bid for the 2024 Legislation Programme;
- 5        **noted** that the bill is intended to be introduced in early 2024 to meet the 100-Day Plan timeframe;
- 6        **noted** that the Minister of Justice has sought approval from the Attorney-General to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in the submission under 100-23-MIN-0008, including any savings, and transitional provisions;
- 7        **authorised** the Minister of Justice to make any second tier, minor policy decisions that may arise during drafting, in consultation with Justice sector Ministers, in line with the decisions made in the submission under 100-23-MIN-0008;
- 8        **noted** that savings may be possible because of this legislative change, but the extent of these savings is dependent on whether the information currently included within section 27 reports is provided via other legally aided reports;
- 9        **agreed** that decisions about the transfer of any savings resulting from the legislative change should be taken once the financial implications are known through implementation within the first twelve months;

- 10 **authorised** the Minister of Justice and the Minister of Finance to make final decisions on the transfer or reallocation of any savings.

Jenny Vickers  
Committee Secretary

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**Present:**

Rt Hon Christopher Luxon (Chair)  
Rt Hon Winston Peters  
Hon David Seymour  
Hon Chris Bishop  
Hon Dr Shane Reti  
Hon Shane Jones  
Hon Simeon Brown  
Hon Erica Stanford  
Hon Paul Goldsmith  
Hon Judith Collins  
Hon Mark Mitchell  
Hon Nicole McKee

**Officials present from:**

Office of the Prime Minister  
Department of the Prime Minister and Cabinet



# Cabinet

## Minute of Decision

*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.*

### Report of the Cabinet 100-Day Plan Committee: Period Ended 15 December 2023

On 18 December 2023, Cabinet made the following decisions on the work of the Cabinet 100-Day Plan Committee for the period ended 15 December 2023:

Out of scope

100-23-MIN-0008


**Removing Taxpayer Funding for Section 27 Reports**  
Portfolio: Justice

CONFIRMED

Out of scope



Out of scope



Rachel Hayward  
Secretary of the Cabinet

## In Confidence

Office of the Minister of Justice  
Cabinet 100-Day Plan Committee

## Legal Services Amendment Bill: Approval for Introduction

### Proposal

- 1 This paper seeks Cabinet agreement to introduce the Legal Services Amendment Bill (the Bill).

### Policy

- 2 The Bill amends the Legal Services Act 2011 (the Act) to preclude government funding of reports or statements, whether written or oral, of a person called by an offender under section 27 of the Sentencing Act 2002. The policy was approved by Cabinet on 13 December 2023 [100-23-MIN-0008]. Amending the Act in this way will deliver the Government's 100-Day commitment to 'defund section 27 reports'.
- 3 Over the last seven years, the provision of formal written reports prepared by a person who did not previously know the offender has become the common practice in presenting section 27 material to the court, in preference to less formal oral statements. This is counter to what was originally envisaged by the section and has led to a government funded industry of section 27 report writers.
- 4 The significant cost of section 27 reports, which has grown from almost \$0.02 million in 2017 to approximately \$7.5 million in the last financial year, is being met by legal aid. The proposed legislative changes will help restore the original intent of section 27 reports and improve the quality of government spending by ensuring that the limited funds available are used wisely.
- 5 Specifically, the Bill inserts a subsection into an existing section of the Act that requires the Legal Services Commissioner (the Commissioner) to decline a claim for payment in specified situations. As a result, the Commissioner will decline any claim that is for a disbursement in relation to the cost of a report or statement of a person called by an offender under section 27.
- 6 The Government has committed to a wider review of section 27, which will be undertaken as part of legislative work on sentencing reform over the coming year.

### Risks

- 7 Key concerns likely to be raised are:

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- 7.1 access to justice – some offenders will not be able to afford section 27 reports, and this could result in fewer sentencing discounts; however, the Bill will not affect the offender's right to legally aided advice and representation under a grant of legal aid.
- 7.2 disproportionate impact on Māori – as Māori are disproportionately victims of crime, they have a greater interest in offenders being held to account. However, should the Bill result in longer or more restrictive outcomes in general, Māori are likely to be disproportionately impacted, given the overrepresentation of Māori in the criminal justice system.

- 8 **Section 9(2)(h)**  
[REDACTED]
- 9 The Government has committed to sentencing reform during this Parliamentary term, including exploring reforming section 27 requirements and careful management of the legal aid budget. Rights considerations will inform this work.

### *Need for legislation*

- 10 Currently, section 27 reports can be funded through the legal aid scheme, which is governed by the Act. The Act also establishes that decisions as to whether to grant legal aid or not, including approving disbursements for section 27 reports, are made independently by the Commissioner in accordance with the Act.
- 11 To defund section 27 reports and uphold the Commissioner's statutory independence, a legislative amendment to the Act explicitly precluding the Commissioner from approving disbursements for section 27 reports is needed.

### **The Bill drafting stage led to three refinements**

#### *The phrasing used in the Bill*

- 12 Cabinet agreed to amend the Act to preclude government funding of reports or statements, whether oral or written, that address the factors in section 27 of the Sentencing Act [100-23-MIN-0008].
- 13 This language has been refined during the drafting process to ensure the formulation appropriately articulates the policy. The revised language aligns with the Government's objective to remove taxpayer funding of section 27 reports or statements, without affecting the funding of other specialist reports.

#### *Act to commence two weeks after Royal assent instead of six weeks*

- 14 Cabinet agreed to a period of six weeks between the date of assent and the commencement date to allow for implementation activities to be carried out. The indicative cost to the Government of a six-week transitional period is forecast to be approximately \$900,000 as payments continue.

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## IN CONFIDENCE

- 15 A shortened period of two weeks strikes the appropriate balance between the cost of a transitional period and allowing sufficient time for implementation, including giving legal aid providers reasonable notice of the change.
- 16 On this basis, I recommend that the Bill come into effect two weeks after Royal assent.

*Claims for disbursements for the cost of section 27 reports received by the Commissioner up to commencement date will still be considered*

- 17 The Bill provides that all requests for approval for funding for section 27 reports approved by the Commissioner prior to commencement (two weeks after Royal Assent) will be paid. Requests for approval for funding for section 27 reports received before commencement of the Bill but where no decision has been made by the Commissioner will not be considered.

### **Decision about the use of any savings to come**

- 18 Cabinet agreed that decisions about any transfer or reallocation of any savings resulting from the legislative change will be made by the Minister of Justice and the Minister of Finance when financial implications are known (within the first 12 months of implementation).

### **Impact analysis**

- 19 A Regulatory Impact Statement (RIS) was submitted at the same time as Cabinet policy approvals were sought [100-23-MIN-0008]. However, the requirement for quality assurance of RISs was suspended for decisions relating to 100-Day Plan proposals.
- 20 Accordingly, the RIS was not formally assessed. The limitations and constraints of the analysis and available data, as well as the inability to consult with affected parties, are outlined in the coversheet of the RIS.

### **Compliance**

- 21 The Bill complies with:
  - 21.1 the disclosure statements requirements (a disclosure statement prepared by the Ministry of Justice is attached);
  - 21.2 the principles and guidelines set out in the Privacy Act 2020;
  - 21.3 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.


### *The Treaty of Waitangi*

Some will argue, that if the proposed law change is found to perpetuate current inequities by Māori, it may not be consistent with the rights of Māori to equitable access in Article 3 of the Treaty of Waitangi. The counter view is that Māori, who are

disproportionately affected by crime, have a strong interest in seeing limited legal aid resources used effectively.

*New Zealand Bill of Rights Act 1990*

Section 9(2)(h), Section 9(2)(g)(i)



- 26 **Section 9(2)(g)(i), Section 9(2)(h)**, careful consideration of equity and access to justice rights will inform further work on section 27, which is scheduled as part of Government's wider sentencing commitments.

### **Consultation**

- 27 The Department of Corrections, Crown Law Office, and the New Zealand Police have been consulted on this paper. Feedback has been incorporated into the paper where possible.
- 28 There has been no public consultation on this paper, including with Māori as Treaty partners.

### **Binding on the Crown**

- 29 The Legal Services Act 2011 binds the Crown. The Bill will not change this.

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

- 30 Not applicable.

### **Other instruments**

- 31 Not applicable.

### Definition of Minister/department

32 Not applicable.

### Commencement of legislation

33 As referenced in paragraph 16 of this paper, the Bill will come into force two weeks after Royal assent.

### Parliamentary stages

34 The Bill should be introduced after 1 February 2024, with decisions to be taken on the timing of subsequent Parliamentary stages.

### Proactive Release

35 I intend to proactively release this Cabinet paper following the introduction of the Bill, subject to redaction as appropriate under the Official Information Act 1982.

### Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Legal Services Amendment Bill holds a category 2 priority on the 2024 Legislation Programme;
- 2 **approve** the Legal Services Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 3 **note** that the Bill will amend the Legal Services Act 2011 to preclude government funding of reports or statements, whether written or oral, of a person called by an offender under section 27 of the Sentencing Act 2002;
- 4 **agree** that the Legal Services Amendment Bill be introduced after 1 February 2024;
- 5 **agree** that the Legal Services Amendment Bill commence two weeks after receiving Royal assent.

Authorised for lodgement

Hon Paul Goldsmith

Minister for Justice

# Departmental Disclosure Statement

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Legal Services 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.

19 January 2024



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## **Part One: General Policy Statement**

The Legal Services Amendment Bill will remove legal aid funding for a report or statement (whether oral or written) by a person called by an offender under section 27 of the Sentencing Act 2002. Section 27 of the Sentencing Act 2002 allows the court to hear any persons called by the offender in relation to the offender's background and its relationship to the offending, as well as the support the offender has from family, whānau or community that might help prevent further offending. This information informs judicial decisions about the type and length of a sentence.

For offenders who are legally-aided, the cost of section 27 reports can also be met by the government under their grant of legal aid. There has been a significant increase in the use of section 27 written reports. In 2017 there were nine section 27 reports funded by legal aid and the Public Defence Service, costing a total of \$17,164. In comparison, in 2022 there were 2,429 reports at a cost of \$6.45 million.

## 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?	NO

### 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
<i>Removing Taxpayer Funding for Reports Under Section 27 of the Sentencing Act 2002, prepared by the Ministry of Justice, 7 December 2023. Published at: <a href="https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments">https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments</a></i>	

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
Cabinet suspended the requirement for quality assurance of Regulatory Impact statements (RIS's) for decisions relating to 100-Day Plan proposals.	

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

<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>YES</b>
<p>(a) Details of the current costs and benefits following commencement of the Act are in the RIS at paragraph 13 and under Option Two on the chart on pages 12 to 19.</p> <p>(b) Persons who are currently funded by legal aid grants to write section 27 reports will lose that source of income, as noted on page 23 of the RIS.</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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It is unclear how the proposal fits with New Zealand's international commitments, such as the International Convention on the Elimination of All Forms of Racial Discrimination. Māori are overrepresented in the criminal justice system and the funding change may exacerbate this disparity, as a higher proportion of Māori (and Pacific Peoples) offenders receive a legally aided section 27 report, compared with New Zealand Europeans/others. Due to time constraints no steps have been taken to conclusively determine the effect of 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 consulted with Te Puni Kōkiri, who did not support the policy, but due to time constraints under the 100-day plan no other consultation with Māori has taken place.
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The issues of alleged discrimination and institutional racism in the sentencing process and legislative provisions is included in live claims filed with the Waitangi Tribunal in Te Rau o te Tika – the Justice System Kaupapa Inquiry (Wai 3060). There will likely be scrutiny of the use and funding of section 27 reports by the Waitangi Tribunal as part of the response to the Kaupapa Inquiry, with a possible focus on any disproportionate impacts on Māori due to legislative changes.
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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>
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YES
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Crown Law has assessed the Legal Services Amendment Bill. Its advice has been provided to the Attorney-General, which is expected to be available on the Ministry of Justice's website upon introduction of the Bill: <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/>

## 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>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
The Bill does not directly amend offences or penalties. It removes legal aid funding for s27 reports which, as noted above, provide information that informs judicial decisions about the type and length of a sentence.	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>N/A</b>

## 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>NO</b>

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>

## 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>NO</b>
No consultation has taken place due to the time constraints under the Government's 100-Day Plan.	

## Other testing of proposals

<b>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?</b>	<b>NO</b>

## 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?	NO

### 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

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

### 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?	NO
<p>The Bill does not amend the right under section 24(f) of the Bill of Rights Act 1990 to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance. The Commissioner's decision-making power in determining who is entitled to legal assistance provided by a lawyer is unchanged. The Bill does remove the Commissioner's discretion to approve or refuse funding for a third person to prepare a section 27 report, but does not have a significant impact on a decision-making power with regard to the right to legal assistance without cost or to a fair hearing by the court.</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

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

#### 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



# Cabinet 100-Day Plan 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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### Legal Services Amendment Bill: Approval for Introduction

#### Portfolio

#### Justice

On 31 January 2024, the Cabinet 100-Day Plan Committee (100), having been authorised by the Prime Minister to have Power to Act:

- 1 **noted** that in December 2023, 100 agreed to remove taxpayer funding for section 27 reports, and noted that the bill to do this was intended to be introduced in early 2024 [100-23-MIN-0008];
- 2 **noted** that a bid will be submitted for the Legal Services Amendment Bill (the Bill) for a category 2 priority on the 2024 Legislation Programme (must be passed by the end of 2024);
- 3 **approved** the Bill [PCO 25953/2.5] for introduction, subject to the final approval of the Government caucuses and sufficient support in the House of Representatives;
- 4 **noted** that the Bill will amend the Legal Services Act 2011 to preclude government funding of reports or statements, whether written or oral, of a person called by an offender under section 27 of the Sentencing Act 2002;
- 5 **agreed** that the Bill be introduced after 1 February 2024;
- 6 **agreed** that the Bill commence two weeks after receiving Royal assent.

Jenny Vickers  
Committee Secretary

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#### Present:

Rt Hon Christopher Luxon (Chair)  
Rt Hon Winston Peters  
Hon David Seymour  
Hon Nicola Willis  
Hon Chris Bishop  
Hon Brooke van Velden  
Hon Simeon Brown  
Hon Paul Goldsmith  
Hon Dr Shane Reti  
Hon Shane Jones  
Hon Erica Stanford  
Hon Judith Collins

#### Officials present from:

Office of the Prime Minister  
Department of the Prime Minister and Cabinet



# Cabinet

## Minute of Decision

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### Report of the Cabinet 100-Day Plan Committee: Period Ended 2 February 2024

On 7 February 2024, Cabinet made the following decisions on the work of the Cabinet 100-Day Plan Committee for the period ended 2 February 2024:

Out of scope

100-24-MIN-0005

**Legal Services Amendment Bill: Approval for  
Introduction**  
Portfolio: Justice

CONFIRMED

Out of scope

Rachel Hayward  
Secretary of the Cabinet