

Courts Matters Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Courts Matters Bill, and recommends that it be passed with the amendments shown.

Cognate bills

The Courts Matters Bill and the Tribunals Powers and Procedures Legislation Bill are deemed to be cognate bills due to their closely related nature. Under Standing Order 269, cognate bills may be treated as though they are a single bill throughout the parliamentary process.

The bills seek to contribute to a modern, efficient, and effective courts and tribunals system. They would amend courts and tribunals legislation to improve:

- timeframes for hearing and resolving matters
- users' experience of the courts and tribunals system
- efficiency, effectiveness, and timeliness by enabling greater use of modern technology
- productivity and efficiency by simplifying and standardising statutory powers and procedures
- consumer protection and redress and greater access to justice.

This commentary covers the main amendments that we recommend to the Courts Matters Bill. It does not discuss minor, technical, or consequential amendments.

About the Courts Matters Bill as introduced

The Courts Matters Bill is an omnibus bill which seeks to amend 14 Acts. It aims to improve users' experience by making courts and tribunals safer and more secure, through amendments to the Courts Security Act 1999. It also aims to improve the efficiency, effectiveness, and timeliness of:

- criminal processes (through changes to the Criminal Procedure Act 2011 and the Criminal Procedure (Mentally Impaired Persons) Act 2003)
- fines enforcement (by amending the Summary Proceedings Act 1957)
- the courts generally (through amendments to 11 other Acts).

Amendments to the Courts Security Act 1999

Definition of "Judge"

Clause 5 of the bill as introduced would amend the definitions of "tribunal" and "Judge" in section 2 of the Courts Security Act. The new definition of Judge would include the Chief High Court Judge, Employment Court Judges, and members of bodies declared to be courts and tribunals.

We consider it unnecessary to list the Judges and members of each court and tribunal because the Act is intended to cover the courts and tribunals listed in section 3(5). We therefore recommend replacing the definition of Judge in section 2(1) with a more generic definition.

Power to include additional courts and tribunals under the Act

Section 36(a) provides for the Governor-General to make regulations to extend the scope of the Act by including additional courts and tribunals. Clause 24 of the bill as introduced would repeal section 36(a). Instead, clause 5, amending section 2, and clause 6, amending section 3, would authorise the Minister for Courts to extend the scope of the Act. This would be done by including further courts and tribunals by a notice in the *Gazette*, rather than through regulations.

We received advice from the Regulations Review Committee that it would be more appropriate for courts and tribunals to be added or removed through primary legislation, rather than by regulations or *Gazette* notice. The Regulations Review Committee is also concerned that the public does not always know about, or access, notifications through the *Gazette*.

We were advised that primary legislation would be needed to bring the Employment Court and several tribunals under the jurisdiction of the Act. This is because the Ministry of Justice assumed administrative responsibility for these bodies without a change to legislation. We therefore consider that regulations remain the appropriate mechanism for expanding the courts and tribunals covered by the Act.

Accordingly, we recommend amending clauses 5, 6, and 24 so that courts and tribunals would continue to be extended by regulations, rather than by *Gazette* notice.

Definition of “specified offence”

Clause 5(5), amending section 2, would broaden the definition of “specified offence” to include lower level offences that disrupt how the court operates. The new definition would cover possession of controlled drugs, which is an offence under section 7 of the Misuse of Drugs Act 1975.

We recommend amending section 2 to also include drug paraphernalia (section 13 of the Misuse of Drugs Act) in the definition of “specified offence”.

Expanding the definition of “court”

Clause 6, amending section 3, would expand the definition of “court”. It would include any part of the building being used for services related to the courts, including the footpath between the building and the road. This would enable court security officers (CSOs) to deal with disruptive incidents that continue on to the footpath outside the court.

For clarity, we recommend amending section 3(3)(b)(ii) and (3)(4)(ca) in clause 6(3) and (6) to include any other area between the building and the road. This would mean that areas such as berms or verges between the building and the road would also be covered.

Court premises

We recommend replacing all references to “court premises” with “court” in Part 1 of the bill. We consider that “court premises” is inconsistent with the terminology of the Act.

Removal or disposal of alcohol

Clause 9, inserting new section 15A, would authorise a CSO to require a person to remove alcohol from the court. The CSO could seize and dispose of the alcohol if the person refused or failed to remove it.

We recommend amending clause 9 to insert new section 15A(2). This would make it clear that the powers in section 15A(1) would be limited by sections 24 to 29, which deal with limits on the powers of CSOs.

New powers for CSOs to detain a person

Section 19 of the Act permits a CSO to detain a person if the CSO reasonably believes that a person may have committed a specified offence. Clause 12, inserting new section 19A(1), would extend the powers for CSOs to detain people.

Clause 12, inserting new section 19A(1)(b), would authorise a CSO to detain a person who had refused a direction from a CSO to do anything needed to protect the safety of a person being escorted in or out of the court.

We consider that this clause, as introduced, could imply that it relates to escorting a person in custody. We recommend amending section 19A(1)(b)(i) to replace for “reasons related to appearances in court” with “services related to the court”. This would make it clear that this section is designed to enable CSOs to protect people they are escorting, such as judges and juries, on activities related to court.

Clause 12, inserting new section 19A(1)(c), would empower CSOs to detain a person suspected of committing a specified offence in court who has refused to give their contact details at the request of a CSO, after being warned that they may be detained if they refuse to provide those details.

We consider this section to be inconsistent with section 19 of the Act which allows a CSO to simply detain a person suspected of committing an offence, without asking for name and address information.

We received advice that new section 19A(1)(c) was intended only for people who had committed a relatively minor specified offence. The CSO could use their contact details to file a complaint with the Police about the offending, rather than detaining them. A person’s full name is required for a complaint to be filed with the Police.

We recommend making this process more flexible for CSOs (and reconciling sections 19 and 19A) by deleting section 19A(1)(c) and inserting new clause 11A. This would amend section 19 by inserting

new sections 19(2A) and (2B). Section 19 would allow a CSO, if appropriate, to ask for the suspected offender's contact details instead of detaining them. A CSO could still detain a person if they failed to provide those details.

Powers to seize items and detain persons

Clause 13, amending section 20, would limit the maximum period that a CSO could detain a person who had committed, or attempted to commit, a specified offence in the court.

We consider that this clause, as introduced, implies that a CSO could seize items without also detaining the person from whom they were seized. We recommend amending section 20(1) to make it clear that items could be seized only if the person was detained.

Clause 13, replacing section 20(5), would require that a person be detained separately from other prisoners. We recommend amending this section to require separate detention only if it is practicable.

Power to use reasonable force

Clause 15, amending section 21, would extend CSOs' powers to use reasonable force when exercising their powers or duties. We recommend amending this clause so that the power to use reasonable force also applied (under new section 20A, inserted by clause 14) where a CSO was pursuing a person who had fled or escaped from the court.

Allowing people denied entry or removed from court to re-enter

Clause 11, inserting new section 18A, would empower a CSO to refuse access to, or remove a person from, court if they reasonably believe the person is, or will be, intimidating, violent, or disruptive.

Section 22 of the Act allows a person denied entry, or removed from court under certain sections of the Act, to re-enter if they modify their behaviour. Clause 16, amending section 22, would allow a

person to re-enter if they had been denied entry or removed from the court for their disruptive behaviour (under new section 18A).

We recommend deleting section 22(1) and inserting new section 22(2A). Section 22(2A) would require the CSO to allow a person denied entry or removed from court to re-enter if the CSO is satisfied the person will not repeat their behaviour.

When CSOs can exercise their powers for a person in custody

Section 26 of the Act states that a CSO can exercise their statutory powers to search, seize dangerous items, and detain people who commit specified offences if a presiding judicial officer directs them to. This relates to a person in the custody of the Police or Oranga Tamariki who is about to appear before a presiding judicial officer.

Clause 19, amending section 26, would require a CSO to exercise their powers when directed to by a presiding judicial officer or when the direction has been issued by a Judge who is not in the court.

We recommend amending clause 19 by inserting new section 26(2A). This would specify that the direction given by the presiding judicial officer during a proceeding should prevail if there was any inconsistency with the earlier directions of the Judge.

We recommend inserting section 26(4A) to make it clear that judicial officers could direct CSOs to exercise their statutory powers over a person in Police, Corrections, or Oranga Tamariki custody at any time after the person has been brought to court.

We also recommend amending clause 19, replacing section 26(2), to authorise a CSO to exercise their powers at their own discretion in appropriate circumstances.

When CSOs can exercise their powers in courtroom where proceedings being heard

Section 28 allows a CSO to exercise any of their statutory powers in a courtroom where proceedings are being heard when directed by a

presiding judicial officer. CSOs can also do so at their own discretion. They must reasonably believe that a person may have committed a specified offence in the court and it is not practicable to wait for a direction from the presiding judicial officer.

Clause 20, replacing section 28(1), would allow a CSO to exercise within the courtroom the powers of detention or removal for contempt that are conferred on a judicial officer, if the presiding judicial officer directs the CSO to do so.

We consider that this clause, as introduced, would remove a CSO's authority to exercise their statutory powers at their own discretion when a person has committed a specified offence. It would also mean that CSOs could only detain a person who had committed a specified offence because they would no longer have the authority to identify and seize potentially dangerous items.

We recommend amending section 28 to retain a CSO's existing ability to exercise their statutory powers during a hearing.

Offence to obstruct court security officer

Section 30 of the Act provides that prosecutions for the offence of obstructing a CSO can be heard by a District Court Judge or two or more Justices of the Peace. Clause 22, amending section 30, would also authorise Community Magistrates to hear these prosecutions.

We recommend deleting this clause. This is because obstructing a CSO is classified as a category 2 offence under the Criminal Procedure Act because the maximum penalty includes a term of imprisonment of up to 3 months. The Act generally does not allow Community Magistrates to hear category 2 offences and Community Magistrates are unable to impose prison sentences under the Act.

Amendments to the Criminal Procedure Act 2011

Streamlining the process for adding charges during the trial

To add a charge during a trial, the prosecutor must file a charging document for the new charge. They must also seek the court's leave to add the charge to the existing proceeding. This process may result in the trial being adjourned while the charging document is filed.

We recommend streamlining the process and minimising disruption to the trial by inserting clause 31A, new section 136A. This would remove the requirement for the prosecutor to file the charging document. The court would still need to give leave to add the charge to the existing proceeding. New section 136A is modelled on current section 136, which enables the prosecutor to amend charges during the trial.

Processes for prosecutions when the Solicitor-General assumes responsibility

Sections 187 to 193 of the Act relate to the Solicitor-General assuming responsibility for Crown prosecutions from the Police and other prosecuting agencies. Under the bill as introduced, the prosecutor would need to seek leave to join two sets of charges if the Solicitor-General assumes responsibility for a prosecution after the case review is complete.

To ensure consistency and reflect the law that applied prior to the Act, we recommend inserting clause 33A, new section 192A. This would specify that leave is not required to join charges, regardless of when the Solicitor-General assumes responsibility for the prosecution.

Proceedings that should have been dealt with in Youth Court

Section 380 of the Act provides that a conviction in the District Court for a young defendant is still valid even if it is discovered that

the matter should have been dealt with in the Youth Court. Section 380 also enables the young person to apply for a rehearing of the charge due to the error.

Clause 40, amending section 380, would clarify that this section applies both before and after conviction. At present, when a prosecutor's error is discovered before conviction, the prosecution is stopped and charges are refiled in the Youth Court. The proposed amendment would mean that the prosecution could continue in the District Court, even if halfway through the trial it was discovered that the prosecution should be in the Youth Court.

We recommend deleting clause 40. We consider it unfair that Youth Court processes may be removed from a young person and their family because the charge has been filed in the wrong court.

Transitional provisions regarding formal statements

Formal statements are signed witness statements that the prosecutor must provide to the defendant before a jury trial case. Clause 29, amending section 82(1)(b), would require a witness to acknowledge that a formal statement may be used in court proceedings. At present, the witness is required to declare that the statement will be used in court proceedings.

We recommend adding a transitional provision by inserting clause 25A, new section 5A and new Schedule 2A. This would specify that a formal statement made under the existing provisions would not become inadmissible after the commencement of this legislation. It would ensure a formal statement made under the existing provision could still be used in criminal proceedings after the commencement of clause 29.

Amendments to the Summary Proceedings Act 1957

Allowing Community Magistrates to make decisions about certain claims

Clause 61, amending section 88AE of the Summary Proceedings Act, would authorise District Court Judges and Community Magistrates to order the forced sale of real property such as land in certain circumstances if the defendant owed \$50,000 or more.

Section 100J of the Act specifies the process for ensuring that claims of secured creditors are appropriately treated.

We recommend amending clause 71, section 100J, to also allow Community Magistrates to make decisions about secured creditors' claims to property that is subject to forced sale.

Amendments to the Bail Act 2000

Consolidating variations of conditions of bail

Clause 86, replacing sections 33 and 34 of the Bail Act, would consolidate variations of conditions of bail in the District Court, High Court, Court of Appeal, and Supreme Court. At present, the process is separate for the District Court.

We consider that the proposed wording for the amendment is unclear because the reference to the specific courts has been removed. We recommend amending section 33 to make it clear that the court is the one that has jurisdiction at the time.

Consolidating the procedures for appeal

Clause 87, replacing sections 41 to 52 and the cross-headings, would consolidate the procedures for appeal in the District Court, High Court, Court of Appeal, and Supreme Court.

Clause 87, replacing section 44(1), provides for a situation where an appeal against a decision relating to bail is not granted by the appeal court. In this case, a warrant for the detention of the defendant in custody must be issued by the Judge of the appeal court. As introduced, this clause does not make any reference to bail. For clarity we recommend amending section 44(1) to refer to the granting of bail.

Granting of bail to a person in custody or on home detention appealing to the District Court

Clause 88 would repeal section 53 of the Act. This deals with granting bail to a person in custody or on home detention pending an appeal to the District Court. The section is being repealed because it was considered to have no effect. A person cannot be in custody or on home detention in these circumstances.

We understand that that this section assumes that the sentence would have been imposed by a Justice or Community Magistrate. We also assumed that this section was considered to have no effect because a Justice or Community Magistrate cannot order a sentence of imprisonment.

However, we heard that a Justice or Community Magistrate can order a sentence of imprisonment in limited circumstances—for non-payment of a sum of money, disobeying a court order, or contempt of court. Given this section may not be completely redundant, we recommend retaining it by deleting clause 88.

Granting of bail to a person in custody or on home detention pending appeal

Clause 89 would replace sections 54 and 55. The replacement section 54 would standardise the procedures for bail pending the determination of an appeal. At present, section 54 relates to appeals to the High Court, while section 55 relates to appeals to the Court of Appeal or Supreme Court.

Replacement section 55 would set out when a person is in custody or on home detention for the purposes of section 54. We recommend amending section 55(a) to reflect that the sentence referred to is a cumulative one.

Amendments to the Care of Children Act 2004

Mandatory statement and evidence in applications

Section 47B of the Care of Children Act requires an application for a parenting order to include a statement that the applicant has completed a parenting information programme in the previous 2 years, except in certain circumstances. Clause 93, amending section 47B, would align the list of exemptions with the family dispute resolution provisions under section 46E of the Act.

One such exemption is clause 93, amended section 47B(3)(d), which would exempt an application relating to a child who is the subject of proceedings under Part 2 of the Oranga Tamariki Act 1989.

We heard that, in some situations, children may be placed with another family member when court proceedings are not involved, as the result of agreement at a family conference. Oranga Tamariki usually encourages the child's caregivers to apply for a parenting order under the Care of Children Act to give the arrangements stability and enable caregivers to make decisions in consultation with the parents.

Parenting information programmes focus on issues relating to separating parents and are not relevant when a child is placed in the care of another family member. We therefore recommend amending clause 93, section 47B(3), to exempt a person from attending a parenting information programme where an application for a parenting order is made by a person following intervention by Oranga Tamariki.

Reports from other persons

Section 133 allows the court to obtain psychological reports about a child when needed to help with determining an application under the Act. A party may obtain a second opinion on the report.

If the court declines approval for a second opinion, or a party does not seek approval, a party may apply under section 133(14) and (15) to seek disclosure of the report writer's materials (report, notes, and other materials) to a psychologist employed by the party. The court can only permit disclosure if it is satisfied that the psychologist requires the report or the notes and other materials to help them with their cross-examination at the hearing.

Clause 95, amending section 133(15), provides that the psychological report could still be disclosed to a party's psychologist to help the party prepare for cross-examination. However, any other notes and materials could only be disclosed in exceptional circumstances.

We recommend amending section 133(15) to provide that the release of materials, other than the psychologist's report, be limited to information about the party seeking that information. This would reflect the Judicial Practice Note in relation to section 133 reports.

We also recommend amending this section to provide that the court may permit disclosure of the psychological report, as well as the report writer's notes and other materials used to prepare the psychological report, subject to any terms and conditions the court considers appropriate.

We expressed concern regarding clause 95 that report writers' notes and other materials could be released. We recommend that the House consider further changes to this clause in the Committee of the whole House to prohibit release of any of this material.

Amendment to the Courts (Remote Participation) Act 2010

We recommend that a further Act be amended.

Using audio-visual links in criminal procedural matters

Section 8 of the Courts (Remote Participation) Act sets out when audio-visual link (AVL) technology should be used in criminal procedural matters. If available, it must be used for a participant in custody who is appearing for a criminal procedural matter. However, a judicial officer or Registrar can determine that using AVL is contrary to the interests of justice.

We propose broadening the participants who can appear remotely by AVL for criminal procedural matters. We recommend inserting clause 95B, amending section 8, to allow AVL to be used, if available, even if the participant is not in custody. A judicial officer or Registrar could still determine that using AVL is contrary to the interests of justice.

Amendment to the Protection of Personal and Property Rights Act 1988**Appointing more than one welfare guardian**

Clause 136, amending section 12 of the Protection of Personal and Property Rights Act, would allow a court to appoint more than one welfare guardian for a person if it was satisfied that it is in the person's interests. At present, more than one welfare guardian can be appointed only in exceptional circumstances.

We recommend amending section 12(6) to replace the reference to "interests" with "best interests". This would widen the circumstances where more than one welfare guardian could be appointed and ensure that they are only appointed when it is in the best interests of a person.

We also recommend inserting new section 12(6A) to make it clear that, if the court appoints more than one welfare guardian, they must regularly consult each other.

Reviewing welfare guardians

Section 86 of the Act sets out how personal orders, including welfare guardians, can be reviewed. We recommend amending clause 141, section 86, by inserting new section 86(5A) to make it clear that the court can add or dismiss, without replacing, welfare guardians through the section 86 review process.

Amendments to the Family Court Rules

Clause 136, amending section 12(2) and (3), deals with amendments to forms under the Family Court Rules 2002. We recommend deleting these sections because we consider that the changes should be made by regulations. This would ensure that the required form changes can be adequately considered and quality replacement forms produced.

Appendix

Committee process

The Courts Matters Bill was referred to the Justice and Electoral Committee of the 51st Parliament on 15 August 2017. The bill was reinstated in the 52nd Parliament and referred to the Justice Committee on 8 November 2017.

The closing date for submissions was 16 February 2018. We received and considered 16 submissions from interested groups and individuals. We heard oral evidence from 4 submitters at hearings in Wellington.

We received advice from the Ministry of Justice. The Regulations Review Committee reported to the committee on the powers contained in clauses 5 and 6 in the Courts Matters Bill.

Committee membership

Raymond Huo (Chairperson)

Ginny Andersen

Hon Maggie Barry

Chris Bishop

Hon Mark Mitchell

Greg O'Connor

Priyanca Radhakrishnan

Hon Dr Nick Smith