

Legislative Statement: Family Court (Family Court Associates) Legislation Bill – First reading

Introduction

1. The Family Court (Family Court Associates) Legislation Bill (the Bill) is an omnibus Bill that establishes a new role in the Family Court, the Family Court Associate. The purpose of the Family Court Associate is to improve outcomes for people participating in Family Court proceedings, particularly children, by reducing delay. This new role will take on some of the Family Court judges' workload in order to reduce delay.

Background

2. In May 2018, the Government established an independent panel (the Panel) to examine reforms that were made to the Family Court in 2014 [CAB-18-MIN-0190]. The Panel's final report, Te Korowai Ture ā-Whānau was released in June 2019.
3. Among the Independent Panel's findings were that:
 - 3.1. delay of resolution of issues in court is widespread and impacts on most other areas in the family justice system. It is a significant factor in undermining confidence in the Family Court and can contribute to deepening parent, family and whānau conflict; and
 - 3.2. judges have a high administrative workload which is a contributing factor towards delay in the Family Court.
4. The Panel recommended that the Family Court Act 1980 be amended to establish a position to take on some of the judicial workload.
5. This Bill is part of a wider work programme to respond to the Panel's recommendations.

Provisions of the Family Court (Family Court Associates) Legislation Bill

Part 1 – Amendments to the Family Court Act 1980

6. Part 1 of the Bill establishes the Family Court Associate as a judicial officer in the Family Court with a fixed term of up to seven years, that can be renewed.
7. As a judicial officer, the Family Court Associate role will have the following features which are set out in Part 1:
 - 7.1. they can be removed for neglect of duty, inability, bankruptcy or misconduct proved to the satisfaction of the Governor-General;
 - 7.2. the remuneration for the role will be set but the Remuneration Authority and a Family Court Associate's remuneration cannot be reduced while they are in office. Subpart 10 of Part 2 of the Bill amends Schedule 4 of the Remuneration Act 1977 to include the Family Court Associate in the list of officers the Remuneration Authority is responsible for setting remuneration for;
 - 7.3. the Family Court Associate will be able to deal with disruptive behaviour in proceedings over which they preside; and

- 7.4. the Family Court Associate has immunity when acting within their jurisdiction.
8. The Bill sets out the requirement that the Family Court Associate be a lawyer with at least seven years' experience.
9. The Family Court Associate will be able to transfer a proceeding to a Family Court Judge if the matter is complex.
10. Part 1 also inserts a new Schedule 2 into the Family Court Act. Schedule 2 gives the Family Court Associate jurisdiction and powers of a Family Court Judge to:
 - 10.1. appoint counsel to assist the court, for the parties, the subject person and for children;
 - 10.2. review decisions of a Registrar relating to an invoice of a lawyer appointed by the court; and
 - 10.3. obtain any necessary reports: cultural, medical, psychological or psychiatric.
11. Schedule 2 also contains a provision that allows the Family Court Associate to make the same decisions as a Family Court Registrar.
12. Schedule 2 also provides that the Family Court Associate has jurisdiction under specified enactments (these enactments are amended in Part 2 of the Bill).

Part 2 – Amendments to other legislation

13. Part 2 of the Bill amends other family law related legislation to enable the Family Court Associate to exercise specified powers under these Acts.
14. The sections below set out some of the key powers of the Family Court Associate under subparts 1 – 9 and 11 of the Bill.

Subpart 1 - Amendments to the Adoption Act 1955:

15. The Family Court Associate may:
 - 15.1. dispense with the consent of a parent or guardian to the adoption of a child and make orders relating to service of an adoption application on a parent or guardian who has a mental disability;
 - 15.2. order that adoption records be produced, or open for inspection, in certain circumstances.

Subpart 2 – Amendments to the Care of Children Act 2004

16. The Family Court Associate may:
 - 16.1. direct parties to Family Dispute Resolution, parenting information programmes or counselling after proceedings have commenced;
 - 16.2. direct and preside over settlement conferences;

- 16.3. set matters down for hearing;
- 16.4. order supervised contact upon joint application of both parents;
- 16.5. order reports from other persons – cultural, medial, psychiatric;
- 16.6. if no judge is available grant a warrant to prevent a child from leaving New Zealand; and
- 16.7. grant leave in certain cases to commence substantially similar proceedings.

Subpart 3 - Amendments to the Child Support Act 1991

17. The Family Court Associate may:
 - 17.1. depart from formula assessment in special circumstances; and
 - 17.2. issue a charging order on property.

Subpart 4 - Amendments to the Family Proceedings Act 1980

18. The Family Court Associate may:
 - 18.1. hear and determine undefended applications for paternity orders;
 - 18.2. recommend a parentage test be carried out;
 - 18.3. request a report on the financial circumstances of the party; and
 - 18.4. when undefended, order that a person in a Convention country is entitled to recover maintenance from a person residing in New Zealand.

Subpart 5 - Amendments to the Family Violence Act 2018:

19. The Family Court Associate may:
 - 19.1. deal with objections from respondents to attend a non-violence programme; and
 - 19.2. make directions and orders in relation to programmes when a matter (e.g. non-compliance) is brought to the attention of a Family Court Associate or judge.

Subpart 6 – Amendments to the Marriage Act 1955

20. The Family Court Associate may discharge a caveat that has been lodged against an intended marriage.

Subpart 7 - Amendments to the Oranga Tamariki Act 1989

21. The Family Court Associate may:
- 21.1. if no judge is available, order a place of safety warrant;
 - 21.2. if no judge is available, order a warrant to remove child or young person;
 - 21.3. grant leave to make representations; and
 - 21.4. convene a mediation conference.

Subpart 8 - Amendments to the Property (Relationships) Act 1976

22. The Family Court Associate may:
- 22.1. make a consented interim order for the sale of any relationship property and directions as to respect to proceeds; and
 - 22.2. make an order restraining disposition of property or direct that proceeds of the disposition be paid into court.

Subpart 9 - Amendments to the Protection of Personal and Property Rights Act 1988:

23. The Family Court Associate may:
- 23.1. make any consent order under Part 1 of the Act; and
 - 23.2. convene and preside over a pre-hearing conference.

Subpart 11 - Status of Children Act 1969:

24. The Family Court Associate may make a declaration of paternity.