



ANALYSIS

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1980, No. 161

An Act to establish Family Courts as divisions of District Courts, and to provide for the constitution, jurisdiction, powers, and procedures of Family Courts

[21 January 1981

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Family Courts Act 1980.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the 1st day of October 1981.

(3) Section 6 of this Act shall come into force on the date on which this Act receives the Governor-General's assent.

2. Interpretation—In this Act, unless the context otherwise requires, the term “Family Court Judge” includes the Principal Family Court Judge.

3. Act to bind the Crown—This Act shall bind the Crown.

4. Establishment of Family Courts—Every District Court shall have a division, to be known as the Family Court.

5. Appointment of Family Court Judges—(1) The Governor-General shall from time to time, by warrant under his hand, appoint sufficient Family Court Judges to exercise the jurisdiction of Family Courts.

(2) A person shall not be appointed to be a Family Court Judge unless—

(a) He is, or is eligible to be, a District Court Judge; and

(b) He is, by reason of his training, experience, and personality, a suitable person to deal with matters of family law.

(3) If the appointee is not, at the time of his appointment, a District Court Judge, he shall be appointed to that office.

(4) Notwithstanding his appointment as a Family Court Judge, any Family Court Judge may from time to time sit as or exercise any of the powers of a District Court Judge.

(5) Subject to subsection (6) of this section, every Family Court Judge shall hold that office so long as he holds office as a District Court Judge.

(6) With the prior approval of the Governor-General, any Family Court Judge may resign that office without resigning his office as a District Court Judge.

6. Principal Family Court Judge—(1) The Governor-General shall from time to time, by warrant under his hand, appoint a Principal Family Court Judge.

(2) Subject to subsection (3) of this section, the Principal Family Court Judge shall hold that office so long as he holds office as a District Court Judge.

(3) With the prior approval of the Governor-General, the Principal Family Court Judge may resign that office but continue in office as a Family Court Judge.

7. Acting Family Court Judges—(1) Whenever by reason of illness, absence from New Zealand, or any other cause the Principal Family Court Judge is prevented from exercising

the duties of his office, the Governor-General may, by writing under his hand, appoint one of the Family Court Judges to act as the Principal Family Court Judge until the Principal Family Court Judge resumes his duties.

(2) The Governor-General may at any time during the illness or absence of any Family Court Judge, or for any other temporary purpose, by warrant under his hand, appoint one or more District Court Judges (including any Judge appointed pursuant to section 10 of the District Courts Act 1947 and also including any acting District Court Judge appointed pursuant to section 10A of that Act) to be a Family Court Judge or Family Court Judges to hold office for such time as is specified in the warrant.

8. Counselling supervisors, counsellors, and other officers—

(1) There shall from time to time be appointed under the State Services Act 1962, as an officer of the Department of Justice, a person whose principal responsibility shall be to perform such duties as the Secretary for Justice may direct to facilitate the proper functioning of the Family Courts and of counselling and related services.

(2) Without limiting subsection (1) of this section, there may from time to time be appointed under the State Services Act 1962 such counselling supervisors, counsellors, and other officers as may be necessary to enable Family Courts to perform any function conferred on them by any enactment.

(3) Every such counselling supervisor, counsellor, and other officer, while performing any duty under the auspices of a Family Court, shall for the purposes of the District Courts Act 1947 be an officer of that Court.

9. Stationing of Judges and sittings of Courts—(1) Each Family Court Judge shall be stationed in such town and shall sit in such Court as may from time to time be determined by the Principal Family Court Judge.

(2) Notwithstanding anything in subsection (1) of this section, the fact that a Family Court Judge sits in any particular Court shall be conclusive evidence of his authority to do so, and no exercise of any jurisdiction or power by a Family Court Judge shall be questioned on the ground that he was not stationed in the town or authorised to sit in the Court where he exercised the jurisdiction or power.

(3) Subject to subsection (4) of this section, sittings of a Family Court for the dispatch of its business shall be held

on such days and at such times as may be appointed by the Judge exercising the jurisdiction of the Court at the place at which the sittings are held.

(4) The days appointed for regular sittings of a Family Court shall be subject to the approval of the Principal Family Court Judge.

(5) In exercising his powers under this section, the Principal Family Court Judge shall consult with the Chief District Court Judge.

10. Avoidance of unnecessary formality—(1) Family Court proceedings shall be conducted in such a way as to avoid unnecessary formality.

(2) Neither Judges sitting in Family Courts, nor counsel appearing in such Courts, shall wear wigs or gowns.

11. Jurisdiction of Family Courts—(1) A Family Court shall hear and determine all such proceedings as are to be heard and determined by such a Court under or by virtue of any of the provisions of—

- (a) The Marriage Act 1955:
- (b) The Adoption Act 1955:
- (c) The Guardianship Act 1968:
- (d) The Domestic Actions Act 1975:
- (e) The Matrimonial Property Act 1976:
- (f) The Family Proceedings Act 1980:
- (g) Sections 271 to 271I of the Social Security Act 1964:
- (h) Any other enactment for the time being in force.

(2) Subject to subsection (3) of this section, any jurisdiction or power conferred on a Family Court under or by virtue of any enactment shall be exercised by a Family Court Judge.

(3) Nothing in this section shall prevent a District Court, or a District Court Judge who is not a Family Court Judge, from exercising any jurisdiction or power that is vested in it or him under or by virtue of any enactment to the extent and in the manner specified in that enactment.

12. Commencement of proceedings—Except as provided in or under the Act under which any proceedings are to be brought in a Family Court, all proceedings in a Family Court shall be commenced and dealt with by way of originating application under the District Courts Rules 1948.

13. Court may state case for High Court—A Family Court may, on the application of any party to any proceedings before the Court, or of its own motion, state a case for the opinion of the High Court on any question of law arising in any matter before the Court.

14. Transfer of proceedings to High Court—Subject to the Act under which any proceedings are brought, a Family Court may, on the application of any party to the proceedings, or of its own motion, order that the proceedings be transferred to the High Court if it is satisfied that, because of the complexity of the proceedings or of any question in issue in the proceedings, it is expedient that the proceedings be dealt with by the High Court; and in any such case the High Court shall have the same power to adjudicate on the proceedings as the Family Court had.

15. District Courts may exercise certain jurisdiction—Notwithstanding anything in section 11 of this Act, a District Court may—

- (a) Deal with any interlocutory matter relating to any proceedings that are being or are to be heard by a Family Court:
- (b) Hear and determine any *ex parte* applications relating to any such proceedings:
- (c) By the consent of all the parties to the proceedings, make any order or exercise any power—
 - (i) That, by virtue of any enactment or rule of law, may be made or exercised by the consent of all the parties; and
 - (ii) That could have been made or exercised by a Family Court.

16. Application of District Courts Act 1947—(1) Subject to the succeeding provisions of this section, the District Courts Act 1947 shall apply, with any necessary modifications, to Family Courts and Family Court Judges in the same manner and to the same extent as it applies to District Courts and District Court Judges.

(2) Where any of the provisions of this Act conflict with any of the provisions of the District Courts Act 1947, the provisions of this Act shall prevail.

(3) Nothing in section 9 or section 22 of the District Courts Act 1947 shall apply in respect of Family Court Judges or the business of Family Courts.

17. Certain enactments amended—(1) The enactments specified in the first column of the Schedule to this Act are hereby consequentially amended in the manner specified in the second column of that Schedule.

(2) Section 2 (1) of the Adoption Amendment Act 1965 is hereby consequentially repealed.

18. Transitional and saving provisions—(1) Subject to subsections (2) and (3) of this section, all matters and proceedings commenced under any enactment before the commencement of section 11 of this Act and required by virtue of that section to be heard and determined in a Family Court, shall be continued in a Family Court.

(2) All matters and proceedings commenced in the High Court under the Matrimonial Proceedings Act 1963 or the Guardianship Act 1968 before the commencement of section 11 of this Act and required by virtue of that section to be heard and determined in a Family Court, shall, notwithstanding that section, be continued in the High Court.

(3) Where the hearing of any matter or proceeding referred to in subsection (1) of this section has commenced in a District Court before the commencement of this Act, the matter or proceeding shall be continued in a District Court as if this Act had not been passed.

SCHEDULE

Section 17

ENACTMENTS AMENDED

Enactment	Amendment
1924, No. 11—The Acts Interpretation Act 1924 (Reprinted R.S. Vol. 1, p. 7)	By inserting in section 4, before the definition of the term “financial year”, the following definition: “‘Family Court’ means the division of a District Court known, in accordance with section 4 of the Family Courts Act 1980 as a Family Court; and ‘Principal Family Court Judge’ and ‘Family Court Judge’ have corresponding meanings:”.
1947, No. 16—The District Courts Act 1947 (1957 Reprint, Vol. 8, p. 647)	By omitting from subsection (2) of section 5 (as amended by section 5 of the District Courts Amendment Act 1980) the expression “75”, and substituting the expression “83”. By inserting in subsection (1) of section 6 (as substituted by section 2 of the District Courts Amendment Act 1978 and amended by section 7A of the District Courts Amendment Act 1980), after the words “the Chief District Court Judge”, the words “, the Principal Family Court Judge.”.
1955, No. 92—The Marriage Act 1955 (1957 Reprint, Vol. 9, p. 365)	By omitting from section 18 (6) the word “Magistrate”, and substituting the words “Family Court Judge”. By omitting from section 19 the word “Magistrate” in every place where it occurs, and substituting in each case the words “Family Court Judge”. By omitting from section 26 (1) the word “Magistrate”, and substituting the words “Family Court Judge, or, if a Family Court Judge is not immediately available, to a District Court Judge”. By omitting from section 26 (3) the word “Magistrate” where it first occurs, and substituting the words “Family Court Judge (or a District Court Judge)”. By omitting the word “Magistrate” where it secondly and thirdly occurs, and substituting in each case the words “Family Court Judge”. By omitting from section 34 (2) the word “Magistrate” where it first occurs, and substituting the words “Family Court Judge”.

SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1955, No. 92—The Marriage Act 1955 (1957 Reprint, Vol. 9, p. 365)— <i>continued</i>	By omitting from section 34 (2) the word “Magistrate” where it secondly occurs, and substituting the word “Judge”.
1955, No. 93—The Adoption Act 1955 (Reprinted R.S. Vol. 1, p. 35)	By omitting from section 2 the definition of the term “Court” (as substituted by section 2 (1) of the Adoption Amendment Act 1965), and substituting the following definition: “‘Court’ means a Family Court or a District Court of civil jurisdiction; and includes the High Court acting in its jurisdiction on appeal under this Act:”.
1964, No. 136—The Social Security Act 1964	By inserting in the definition of the term “Court” in section 271, after the words “District Court”, the words “or Family Court”.
1975, No. 53—The Domestic Actions Act 1975	By omitting from subsections (1) and (2) of section 9 the word “Magistrate’s” whenever it occurs, and substituting in each case the word “Family”.
1976, No. 166—The Matrimonial Property Act 1976	By omitting from section 2 (1) the definition of the term “Magistrate’s Court”. By omitting from section 22 (1) the word “Magistrate’s” in both places where it occurs, and substituting in each case the word “Family”. By omitting from section 22 (2) the word “Magistrate”, and substituting the words “Family Court Judge”. By omitting from section 22 (3) the word “Magistrate’s” in both places where it occurs, and substituting in each case the word “Family”. By omitting from section 27 (4) the word “Magistrate’s”, and substituting the words “District Court or a Family”. By repealing subsection (1) of section 39, and substituting the following subsection: “(1) The provisions of the District Courts Act 1947 relating to appeals to the High Court against a decision of a District Court shall apply with respect to any order or decision of a District Court or a Family Court under this Act.”

SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1976, No. 166—The Matrimonial Property Act 1976— <i>continued</i>	<p>By omitting from paragraph (a), and also from paragraph (b), of section 42 (3) the words “Magistrate’s Court or the Supreme Court”, and substituting in each case the words “District Court or the High Court”.</p> <p>By omitting from section 43 (1) the words “the Court” where they first occur, and substituting the words “the High Court or a District Court or a Family Court”.</p> <p>By omitting from section 44 (1) the words “the Court” where they first occur, and substituting the words “the High Court or a District Court or a Family Court”.</p> <p>By omitting from section 45 (1) the words “or a Magistrate”, and substituting the words “of the High Court or a District Court Judge”.</p> <p>By adding to section 51 the following subsection: “(5) In this section the term ‘Court’ means the High Court, a District Court, or a Family Court; but a District Court shall not exercise any power which could be exercised on an application under this Act unless it is empowered to do so under any enactment (other than this section).”</p> <p>By repealing subsection (3) of section 53, and substituting the following subsection: “(3) In addition to all other powers conferred by the District Courts Act 1947, the Governor-General may from time to time, by Order in Council, make rules regulating the procedure of Family Courts and District Courts in proceedings under this Act, and providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and its due administration.”</p>

This Act is administered in the Department of Justice.