



ANALYSIS

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1994, No. 32

An Act to amend the Family Proceedings Act 1980

[1 July 1994]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Family Proceedings Amendment Act 1994, and shall be read together with and deemed part of the Family Proceedings Act 1980 (hereinafter referred to as the principal Act).

2. Interpretation—Section 2 of the principal Act is hereby amended by repealing subparagraph (ii) of paragraph (a) of the definition of the term “counsellor”, and substituting the following subparagraph:

“(ii) Nominated by a Court from a list of counsellors prepared by an officer of the Court appointed under section 8 (2) of the Family Courts Act 1980,—”.

3. Requests for counselling—Section 9 of the principal Act (as amended by section 86 of the Public Finance Act 1989) is hereby amended by repealing subsection (3).

4. New sections inserted—The principal Act is hereby amended by inserting, after section 12, the following sections:

“12A. Number of sessions of counselling—The number of sessions of counselling to be carried out pursuant to section 9 or section 10 or section 19 of this Act shall be determined in accordance with such regulations as may be made under this Act or, if no regulations apply, by the Registrar or the Court.

“12B. Counselling fees and expenses—Fees in respect of counselling services carried out pursuant to section 9 or section 10 or section 19 of this Act, and reasonable expenses incurred,—

“(a) May be determined in accordance with regulations made under this Act; and

“(b) Shall be paid out of the Departmental Bank Account from money appropriated by Parliament for the purpose.”

5. Application for dissolution of marriage—Section 37 (3) of the principal Act is hereby amended by omitting the expression “sections 42”, and substituting the expression “sections 38 (2), 42,”.

6. Power to make order for dissolution of marriage—The principal Act is hereby amended by repealing section 38, and substituting the following section:

“38. (1) Subject to subsection (2) of this section, every application for an order dissolving a marriage shall be heard and determined by a Family Court.

“(2) A Registrar may make an order dissolving a marriage where—

“(a) The proceedings are undefended; and

“(b) In the case of a joint application, both applicants consent to the order being made in their absence; and

“(c) In the case of an application other than a joint application, the applicant consents to the order being made in his or her absence and the respondent has not requested an appearance; and

“(d) The application for the order is accompanied by an affidavit stating—

“(i) That the ground for the order is established under section 39 (2) of this Act; and

“(ii) That the provisions of section 45 (1A) of this Act have been complied with.

“(3) If there is a change of circumstances between the time of the filing of the application for the order and the date on which an order made under subsection (2) of this section takes effect as a final order, either party may seek a hearing at any time before the order takes effect as a final order notwithstanding that the person consented to the order being made in his or her absence or did not request an appearance.”

7. Orders dissolving marriage—(1) Section 42 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) An order dissolving a marriage,—

“(a) If made by the Family Court in undefended proceedings, shall take effect as a final order on being made; and

“(b) If made in defended proceedings, shall, subject to subsections (2) and (3) of this section, take effect as a final order at the expiration of one month from the date on which it is made; and

“(c) If made by a Registrar in undefended proceedings, shall, subject to subsection (4) of this section, take effect as a final order at the expiration of one month from the date on which it is made.”

(2) Section 42 of the principal Act is hereby further amended by adding the following subsection:

“(4) Where a party to any undefended proceedings for an order dissolving a marriage seeks a hearing pursuant to section 38 (3) of this Act, the following provisions shall apply:

“(a) The order shall not take effect as a final order while the hearing is pending:

“(b) If the order is confirmed by the Family Court, the order shall take effect as a final order on the confirmation of the order by the Family Court:

“(c) If the order is quashed or set aside by the Family Court, the order shall not take effect as a final order.”

8. Arrangements for welfare of children on dissolution of marriage—(1) Section 45 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) A Registrar shall not make an order dissolving a marriage unless he or she is satisfied that arrangements have been made for the custody, maintenance, and other aspects of the welfare of every child of the marriage who is under the age of 16 years (or, in special circumstances, of or over that age)

and those arrangements are satisfactory or are the best that can be devised in the circumstances.”

(2) Section 45 (3) of the principal Act is hereby amended by omitting from paragraph (a) the expression “subsections (1)”, and substituting the expression “subsections (1), (1A)”.

9. Confirmation of provisional orders made in Commonwealth or designated countries—Section 138 (3) of the principal Act is hereby amended by inserting in paragraph (b), after the word “Judge”, the words “or Registrar”.

10. Confirmation of provisional orders affecting New Zealand maintenance orders—Section 139 (6) of the principal Act is hereby amended by omitting the words “No order”, and substituting the words “No maintenance order in respect of a party to a marriage”.

11. Application for maintenance of child in respect of person resident outside New Zealand—The principal Act is hereby amended by inserting, after section 146, the following heading and section:

*“Applications for Child Maintenance in Respect of Persons
Residing Overseas*

“146A. (1) An application may be made to the Family Court for a provisional maintenance order in respect of a child against a person who is proved—

“(a) To be resident in a country outside New Zealand; or

“(b) To have left New Zealand with the intention of residing in a country outside New Zealand.

“(2) Any such application shall be dealt with in accordance with sections 145B to 145I of this Act as if those sections applied with necessary modifications, except that, in determining whether or not to make an order and its duration, the Court shall also have regard to—

“(a) Whether the respondent is a person from whom child support under the Child Support Act 1991 may be sought in respect of the child; and

“(b) Whether the respondent is resident in a country with which New Zealand has entered into a reciprocal agreement for enforcement of child support.

“(3) Every application made under this section shall be treated as an application for a provisional order in accordance with section 147 of this Act.

“(4) The provisions of sections 91 and 92 of this Act shall apply to any application under this section.”

12. Provisional orders for confirmation overseas—Section 147 (3) of the principal Act is hereby amended by inserting in paragraph (b), before the words “The order”, the words “In the case of a maintenance order in respect of a party to a marriage,”.

13. Appointment of barrister or solicitor to assist Court or represent children—(1) Section 162 of the principal Act (as substituted by section 23 of the Family Proceedings Amendment Act 1991), is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Fees for professional services provided by barristers or solicitors appointed under this section, and reasonable expenses incurred,—

“(a) May be determined in accordance with regulations made under this Act; and

“(b) Shall be paid out of the Departmental Bank Account from money appropriated by Parliament for the purpose.”

(2) Section 162 (6) of the principal Act (as so substituted) is hereby amended by omitting the words “shall then be enforceable in the same manner as a judgment given by the District Court in any civil proceedings”, and substituting the words “, in default of payment of the amount, payment thereof may be enforced, by order of a District Court or the High Court as the case may require, in the same manner as a judgment of that Court”.

14. Appeals from decisions of District Courts and Family Courts—Section 174 (3) of the principal Act is hereby amended by inserting, after the words “Family Court”, the words “or a Registrar”.

15. Regulations—Section 187 of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraphs:

“(ca) Making provision for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of counselling services carried out pursuant to section 9 or section 10 or section 19 of this Act, which fees and expenses may differ according to the number of

sessions of counselling determined to be carried out pursuant to section 12A of this Act and according to whether or not counselling services are to be provided in a specified number of proceedings during a specified period:

- “(cb) Making provision for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of professional services provided by barristers and solicitors appointed under section 162 of this Act, which fees and expenses may differ according to the complexity of the proceedings and the time spent, and according to whether or not professional services are to be provided in a specified number of proceedings during a specified period:
- “(cc) Making provision for the determination of the number of sessions of counselling that may be carried out pursuant to section 9 or section 10 or section 19 of this Act.”.
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This Act is administered in the Department of Justice.
