

Family Court (Supporting Children in Court) Legislation Bill

Government Bill

Explanatory note

General policy statement

The Family Court (Supporting Children in Court) Legislation Bill (the **Bill**) is an omnibus Bill introduced under Standing Order 263(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The policy implemented by the amendments in this Bill is to enhance child wellbeing in care-of-children cases, both directly and by assisting parents to resolve parenting disputes. The Bill will amend the Care of Children Act 2004 and the Family Dispute Resolution Act 2013.

Extensive reforms of the care-of-children regime took effect in 2014. These reforms were intended to encourage individual responsibility and shift the focus from in-court resolution to encouraging parents to reach agreement themselves through out-of-court processes. Following the reforms, concerns were raised that some reforms had a negative impact on children, parents, and whānau and exacerbated existing issues.

The final report of the Independent Panel examining the 2014 family justice system reforms found that there is limited participation by children in issues that affect them and there is concern as to whether their voices are heard, and whether their views are taken into account both in and out of court. The panel heard that children can experience immediate and long-term consequences if they are not listened to, which include feeling isolated, lonely, and anxious and having difficulty coping with stress. In court, a lawyer for a child is appointed to determine and represent the child's views. The Independent Panel found that there was considerable variation in how lawyers for children approach this task.

This Bill will assist in enhancing child wellbeing in care-of-children proceedings, both directly and by assisting parents to resolve parenting disputes. Provisions in the

Bill signal that children are expected to be provided with opportunities to give input into decisions about their care, and that family violence should be considered in all decisions about children's care. Appointment criteria and additional obligations on lawyers to ensure a clear and timely process are intended to lead to better, less harmful, outcomes for the child. The changes also ensure that the Care of Children Act 2004 reinforces existing expectations about the view of the child, giving better effect to children's rights under the United Nations Convention on the Rights of the Child.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2020&no=323>

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 13 February 2020 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill comes into force on the day after the Bill receives the Royal assent.

Part 1

Amendments to Care of Children Act 2004

Clause 3 provides that this Part amends the Care of Children Act 2004.

Clause 4 amends section 5 to insert a new principle relating to a child's welfare and best interests. The new principle is that a child should have reasonable opportunities to participate in decisions affecting their care and welfare and that their views should be taken into account commensurate with their age and maturity.

Clause 5 amends section 5A to require that where there has been previous evidence of family violence, the court, when dealing with proceedings under the Care of Children

Act 2004, must again have regard to the principles set out in section 4 of the Family Violence Act 2018.

Clause 6 inserts *new section 6(IAAA)*, which states that the purpose of section 6 is to implement Article 12 of the United Nations Convention on the Rights of the Child.

Clause 7 inserts *new section 7(2)* to require that, when appointing a lawyer to represent a child, a lawyer's personality, cultural background, training, and experience must be taken into account.

Clause 8 inserts *new section 7AA*, which requires that, so far as is reasonably practicable, a lawyer appointed to represent a child must explain the nature of the proceedings to the child in a manner that the child is most likely to understand.

Clause 9 inserts *new section 7B(2)*, which imposes a new duty on lawyers. Before commencing a proceeding, a lawyer must take any steps that, in the opinion of the lawyer, will promote conciliation and that will enable the issues in dispute to be resolved as fairly, inexpensively, simply, and speedily as is consistent with justice.

Part 2

Amendment to Family Dispute Resolution Act 2013

Clause 10 provides that this Part amends the Family Dispute Resolution Act 2013.

Clause 11 amends section 11 to require a family dispute resolution provider to make every endeavour to facilitate participation by children who are the subject of a family dispute in the discussions between the parties during a family dispute resolution process.

Hon Andrew Little

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Family Court (Supporting Children in Court) Legislation Bill **2020**.
- 2 Commencement** 5
This Act comes into force on the day after the date of Royal assent.
- Part 1
Amendments to Care of Children Act 2004**
- 3 Amendments to Care of Children Act 2004** 10
This Part amends the Care of Children Act 2004.
- 4 Section 5 amended (Principles relating to child’s welfare and best interests)**
After section 5(f), insert:
(g) a child who is capable of forming their own views about any matter affecting their care and welfare should be given reasonable opportunities to participate in any decision affecting them and that, commensurate with their age and maturity, their views should be taken into account. 15
- 5 Section 5A amended (Family violence to be taken into account)**
After section 5A(1), insert:
(1A) In taking into account the principle in section 5(a), the court must have regard to— 20
(a) the purpose of the Family Violence Act 2018, under which an order specified in subsection (1)(b) was made; and
(b) the principles set out in section 4 of that Act guiding the achievement of that purpose. 25
- 6 Section 6 amended (Child’s views)**
Before section 6(1), insert:
(1AAA) The purpose of this section is to implement in New Zealand Article 12 of the United Nations Convention on the Rights of the Child.
- 7 Section 7 amended (Appointment of lawyer to represent child in proceedings)** 30
In section 7, insert as subsection (2):
(2) When appointing a lawyer to represent a child, the court or Registrar must, so far as is reasonably practicable, appoint a lawyer who is, by reason of their per-

sonality, cultural background, training, and experience, suitably qualified to represent the child.

8 New section 7AA inserted (Lawyer appointed to represent child must explain proceedings to child)

After section 7, insert:

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7AA Lawyer appointed to represent child must explain proceedings to child

A lawyer appointed under section 7 to represent a child must, if it is reasonably practicable to do so having regard to the age and maturity of the child, explain the nature of the proceedings to the child in a manner that the child is most likely to understand.

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9 Section 7B amended (Duties of lawyer when giving advice)

(1) Replace the heading to section 7B with “**Duties of lawyers**”.

(2) In section 7B, insert as subsection (2):

(2) Before commencing a proceeding under this Act, a lawyer must take any steps that, in the opinion of the lawyer, assist—

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(a) in promoting conciliation; and

(b) in enabling the issues in dispute to be resolved as fairly, inexpensively, simply, and speedily as is consistent with justice.

Part 2

Amendment to Family Dispute Resolution Act 2013

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10 Amendment to Family Dispute Resolution Act 2013

This Part amends the Family Dispute Resolution Act 2013.

11 Section 11 amended (Duties of FDR providers)

After section 11(2)(b), insert:

(ba) facilitate the participation in those discussions of the children involved in the dispute, to the extent (if any) that the FDR provider considers appropriate; and

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