

Family Proceedings (Dissolution for Family Violence) Amendment Bill

Member's Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Family Proceedings (Dissolution for Family Violence) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

This is a Member's bill in the name of Hon Dr Deborah Russell and first introduced by Angie Warren-Clark. This bill seeks to reduce the harm caused by family violence. It would amend the Family Proceedings Act 1980 to create a ground for dissolving a marriage or civil union on the basis of family violence. The bill would also remove the requirement for parties to the marriage or civil union to live apart for two years prior to a dissolution on the ground of family violence.

This ground would be established if the applicant is a protected person under a protection order made against the applicant's spouse or civil union partner. The following types of protection order would establish the ground for an order of dissolution:

- a protection order made under the Family Violence Act 2018
- a protection order made under the Sentencing Act 2002
- a registered foreign protection order.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Title of the bill

We propose changing the title of the bill to Family Proceedings (Dissolution of Marriage or Civil Union for Family Violence) Amendment Bill. This would more clearly describe what the bill seeks to do.

Commencement date

The bill as introduced would come into force 6 months after it receives Royal assent. We recommend that the bill be amended so that it would come into force 12 months after Royal assent. We consider that this longer period is more appropriate because it would allow time for the Family Court, the legal profession, and community-based advocacy groups to prepare for the change, and for secondary legislation and the courts management system to be updated.

Existing protection orders could be used as evidence

The bill as introduced is unclear about whether existing protection orders granted before the bill came into force would be admissible evidence for the new ground of family violence. We recommend that the bill be amended to insert new Schedule 1AA, so that existing protection orders which are in force when the Act commences would be admissible evidence.

Admissible evidence

Some submitters suggested expanding the range of admissible evidence to dissolve a marriage or civil union on the new ground of family violence beyond a protection order. We consider that this could create complexities for the operation of the bill.

The admissible evidence in the bill as introduced was a temporary or final protection order. A protection order is made by the court if it is satisfied that the respondent has inflicted or is inflicting family violence against the applicant. This establishes an objective legal ground of family violence on which a dissolution could then be granted.

If what was deemed admissible was broadened to include subjective evidence, the evidence would still need to be tested in court, and the respondent provided with the opportunity to defend the claim. It would be contrary to natural justice principles to have untested evidence used as the basis to establish a legal ground.

We are also concerned that broadening admissible evidence could create inequities. Those who hold a protection order could have their dissolution granted by a Registrar in undefended proceedings. However, applicants relying on evidence of a family violence offence, for example, may need to have their dissolution considered by a Judge (as a judicial determination may be necessary to establish if a family violence offence had occurred). This process is likely to take longer.

Therefore, we recommend that protection orders are retained as the only admissible evidence in the bill. This would better reflect the policy intent of the bill, while also balancing natural justice rights.

Temporary protection orders as admissible evidence

The admissible evidence in the bill as introduced was a temporary or final protection order. Temporary protection orders may be made without notice to the respondent if the court is satisfied that there is a risk of harm or undue hardship to the applicant. A temporary protection order can be defended within three months after the date on which the order is made. A temporary protection order automatically becomes a final protection order after three months unless the respondent defends the order or the order is discharged by a Court.

We are concerned that allowing temporary protection orders as admissible evidence could result in an increase in defended applications. The increase would likely be from individuals wanting to defend a protection order due to the potential for it to be used as a ground to dissolve a marriage or civil union, or to defend an order dissolving their marriage or civil union made on the basis that they have committed family violence. We consider that an increase in contested applications would not be in the best interests of victims or children.

Further, a temporary protection order is usually applied for without notice to the respondent. If temporary protection orders could be used to establish the new ground, a party may apply for a dissolution of their marriage or civil union on that basis before the respondent had an opportunity to challenge the order. This would be contrary to natural justice.

We recommend amending the bill to insert new section 39A(9) so that only final protection orders can be relied on to establish the new ground rather than temporary protection orders. We acknowledge that this would mean that the bill captures a smaller proportion of victims of family violence. However, we consider that this approach carries fewer risks. These risks include a potential increase in adversarial and protracted court hearings and encroachment on natural justice principles.

Ability for respondent to a protection order to apply for dissolution

The bill as introduced would allow a respondent to a protection order to apply for a marriage or civil union to be dissolved on the ground of family violence. This is despite the respondent not being a protected person under the protection order. We consider that this is contrary to the intent of the bill. We therefore recommend amending section 39A(1) of the bill so that only a person who is a protected person under a protection order would be able to apply for a dissolution of a marriage or civil union on the ground of family violence.

We also recommend inserting new section 39A(2) so that both parties to a marriage or civil union would only be able to apply for a dissolution on the ground of family violence when each party has a protection order in place against the other party.

Appeal period for admissible evidence

It is not clear in the bill as introduced whether an application for an order dissolving a marriage or civil union can be made before the appeal period in relation to a protection order has expired or when an appeal is still to be determined. If a dissolution order were made based on a protection order that may be appealed or is pending appeal, there is a risk that the dissolution order could also be appealed.

We recommend amending the bill to provide that a person who is a protected person under a protection order would have to wait until the appeal period for the protection order has lapsed, or an appeal has been determined, before they may seek a dissolution on the ground of family violence.

Appendix

Committee process

The Family Proceedings (Dissolution for Family Violence) Amendment Bill was referred to the Justice Committee of the 53rd Parliament on 30 August 2023. The committee called for submissions on the bill with a closing date of 20 October 2023. It received and considered submissions from 30 interested groups and individuals.

The bill was reinstated with this committee in the 54th Parliament on 6 December 2023. It heard oral evidence from seven submitters at hearings in Wellington.

Advice on the bill was provided by the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

James Meager (Chairperson)

Hon Ginny Andersen

Jamie Arbuckle

Cameron Brewer

Tākuta Ferris

Paulo Garcia

Dr Tracey McLellan

Rima Nakhle

Tamatha Paul

Todd Stephenson

Hon Dr Duncan Webb

Hon Dr Deborah Russell participated in our consideration of this bill.

Related resources

The documents received as advice and evidence are available on the Parliament website.

**Family Proceedings (Dissolution for Family Violence)
Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr Deborah Russell

Family Proceedings (Dissolution for Family Violence) Amendment Bill

Member's Bill

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Schedule
New Schedule 1AA inserted

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Family Proceedings (Dissolution of Marriage or Civil Union for Family Violence) Amendment Act **2023**.

2 Commencement

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This Act comes into force on the day that is ~~6~~ 12 months after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Family Proceedings Act 1980.

Part 1

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Substantive amendments to principal Act

3A New section 2A inserted (Transitional, savings, and related provisions)

After section 2, insert:

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

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3B Section 37 amended (Application for dissolution of marriage or civil union)

(1) Replace the heading to section 37 with “**Application for dissolution of marriage or civil union: irreconcilable breakdown**”.

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(2) In section 37(1), after “made”, insert “on the ground set out in section 39(1)”.

4 Section 38 amended (Power to make order for dissolution)

(1) In section 38(2)(d)(i), after “established under section 39(2)”, insert “or **section 39A(2)**”.

(1) Replace the heading to section 38 with “**Power to make order for dissolution: irreconcilable breakdown**”.

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(2) Replace section 38(1) with:

(1) Subject to subsection (2), every application for an order dissolving a marriage or civil union made on the ground set out in section 39(1) must be heard and determined by the Family Court.

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- (3) In section 38(2), replace “where” with “on the ground set out in section 39(1) if”.

5 Section 39 amended (Grounds for dissolution)

- (i) In section 39(1), replace “An application” with “Subject to **section 39A**, an application”. 5

- (1) Replace the heading to section 39 with “**Ground for dissolution: irreconcilable breakdown**”.

- (2) In section 39(1), delete “only”.

6 New section 39A inserted (Dissolution for family violence)

After section 39, insert:

39A Dissolution: for family violence

- (1) ~~Despite section 39, an application for an order dissolving a marriage or civil union may be made on the ground that a party to the marriage or civil union has been the victim of family violence inflicted by the other party.~~

- (2) ~~The ground for the order is established in law if—~~ 15

(a) ~~a party to the marriage or civil union is a protected person under a protection order or under a registered foreign protection order; and~~

(b) ~~the other party is the respondent.~~

- (3) ~~For the purposes of **subsection (2)**, it is sufficient evidence to provide a copy of—~~ 20

(a) ~~the court’s decision to make or register the protection order under the Family Violence Act 2018, or to make the order under the Sentencing Act 2002; or~~

(b) ~~the order.~~

- (4) ~~Where the ground for the making of the order is established under **subsection (2)**, the court shall, subject to section 45, make an order dissolving the marriage or civil union.~~ 25

- (5) ~~To avoid doubt, there is no requirement that the parties to the marriage or civil union live apart for 2 years for this ground to be established.~~

- (6) ~~In this section—~~ 30

~~**protection order** has the meaning given in section 8 of the Family Violence Act 2018 and includes an order made under section 123B of the Sentencing Act 2002.~~

~~**family violence, protected person, protection order, registered foreign protection order, and respondent** have the meanings given in section 8 of the Family Violence Act 2018~~ 35

6 New section 39A inserted (Additional ground for dissolution: protected person under protection order)

After section 39, insert:

39A Additional ground for dissolution: protected person under protection order

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Application for dissolution

(1) A party to a marriage or civil union (the **applicant**) may apply for an order dissolving the marriage or civil union on the ground that the applicant is a protected person under a protection order made against the applicant's spouse or civil union partner.

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(2) The parties to a marriage or civil union may apply jointly for an order dissolving the marriage or civil union on the ground in **subsection (1)** if each party is a protected person under a protection order that is made against the other party.

(3) An application under **subsection (1) or (2)** may be made only if, at the time of the filing of the application, at least 1 party to the marriage or civil union is domiciled in New Zealand.

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(4) The parties to the marriage or civil union need not—

(a) be living apart at the time an application is made under **subsection (1) or (2)** (the **application**); or

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(b) have been living apart for the period of 2 years immediately before the filing of the application.

Evidence

(5) The following is sufficient evidence that the applicant is a protected person:

(a) a copy of the protection order; and

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(b) if the protection order is a registered foreign protection order, evidence of its registration under section 219 of the Family Violence Act 2018.

Order for dissolution

(6) A Registrar, or the Family Court, must make an order dissolving the marriage or civil union if satisfied that—

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(a) the ground in **subsection (1)** is established; and

(b) any appeal rights in respect of the protection order have been exhausted or have expired; and

(c) the matters in section 45 have been addressed.

(7) A Registrar may only make an order under **subsection (6)** if the proceedings are undefended.

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(8) An order made under **subsection (6)** continues in force even if the protection order relied upon to establish the ground in **subsection (1)**—

- (a) is discharged under section 109 of the Family Violence Act 2018:
 - (b) is a registered foreign protection order that—
 - (i) has its registration cancelled under section 223 of the Family Violence Act 2018:
 - (ii) ceases to be enforceable in the country in which it was made. 5
- (9) In this section, —
protection order means—
- (a) a final protection order made under the Family Violence Act 2018; or
 - (b) a protection order—
 - (i) made under section 123B of the Sentencing Act 2002; and 10
 - (ii) that becomes a final order under section 123G of the Sentencing Act 2002; or
 - (c) a registered foreign protection order
- protected person** and **registered foreign protection order** have the meanings given in section 8 of the Family Violence Act 2018. 15

6A New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.

Part 2

Other amendments to principal Act 20

7 Section 174 amended (Appeals from decisions of District Court and Family Court)

In section 174(9), replace “under section 34 or section 39(4)” with “under section 34, ~~section 39(4)~~, or ~~section 39A(4)~~**39A(6)**”.

8 Section 175 amended (Appeals from decisions of High Court) 25

In section 175(2), replace “under section 34 or section 39(4)” with “under section 34, ~~section 39(4)~~, or ~~section 39A(4)~~**39A(6)**”.

Schedule
New Schedule 1AA inserted

s 6A

Schedule 1AA
Transitional, savings, and related provisions

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s 2A

Part 1
Provisions relating to Family Proceedings (Dissolution of Marriage or Civil Union for Family Violence) Amendment Act 2023

1 Interpretation

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In this Part,—

amendment Act means the Family Proceedings (Dissolution of Marriage or Civil Union for Family Violence) Amendment Act **2023**

commencement means the date on which the amendment Act comes into force.

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2 Persons with protection orders before commencement

A person who is a protected person under a protection order that is in force immediately before commencement is a protected person for the purposes of section 39A(1).

Legislative history

11 May 2023
30 August 2023

Introduction (Bill 247–1)
First reading and referral to Justice Committee