

Changes to New Zealand's Family Court system

Every year over 58,000 New Zealand families will be involved in Family Court proceedings. The Family Court is an important part of our justice system and makes decisions impacting on the wellbeing of hundreds of thousands of children and families.

A major review of the Family Court has resulted in government proposals for some major changes in the way it operates. Many of these will lead to major improvements in the way the Court resolves family disputes and more efficient procedures. However, some of the proposals have alarmed many family lawyers. The Law Society believes it is important to draw the potential impact of these to the attention of all New Zealanders.

Key areas of concern

The Family Court proposals suggest changes that do not take into account the upheaval caused to people by separation. While it is important to take account of the current economic situation, these changes seem to be driven purely by cutting costs as much as possible and not by finding the best way of helping children and adults deal with traumatic events such as the breakdown of relationships.

The Law Society says the review is not protective of the child and will silence children's voices' in the Family Court. Whatever happens, we must ensure that the child's perspective is retained.

The Law Society says the most at risk in the proposed changes are women and children and that everyday New Zealanders should not be expected to conduct themselves in the courtroom without legal representation.

Law Society view of the proposed new Family Court processes

First step: Compulsory Parenting through Separation programme

The Law Society supports this process and believes the decision not to charge a fee recognises the need to ensure all parties involved receive the full benefit of the programme.

Second step: Family Dispute Resolution Service (FDR)

The FDR service will become a compulsory pre-court requirement and will cost \$897 (GST inclusive). It is proposed that both parties share the cost.

The Law Society is concerned that the cost of FDR will become a barrier to entry of the service and that one party may take control over whether or not it occurs by simply refusing to pay their share.

Third step: Court proceedings

If the pre-court steps fail, there is a proposed three-track system for court proceedings: Fast track (without notice), Simple track or Standard track.

Fast track: The client has the right to a lawyer, and legal aid (if they qualify). A lawyer for the child is appointed after a defence is filed if there are serious issues raised.

Simple tracks: An application is filed and the Judge decides on which track the case should go. It is proposed to exclude lawyers from Simple track or Single issue matters such as contact arrangements for the child. No legal aid will be available and no lawyer for the child will be appointed.

The Law Society says Simple track should be used where there are one or two things left to negotiate and that the Family Court needs the ability to transfer matters between the tracks to resolve such issues.

Standard track: Lawyers are excluded from the Standard track where there are multiple or more serious issues such as daily care arrangements for the child, until the point of hearing. Legal aid is not available until the point of hearing. A lawyer for the child will only be appointed if there is a serious issue.

The Law Society does not argue with clients representing themselves. However, it believes all New Zealanders should have the right to choose to be represented by a lawyer. Lawyers provide the parties with a level footing regardless of relationship dynamics by:

- Reality testing and exploring settlement options.
- Providing intimate and up-to-date knowledge of the law and accuracy in drafting court orders.
- Righting power imbalances.
- Ensuring proper legal representation to those incapable or unwilling to represent themselves.

Rights of the Child

The proposed changes breach the United Nations Rights of the Child and the Care of Children Act 2004.

The Family Law Section

This backgrounder has been produced by the New Zealand Law Society's Family Law Section. The Section represents about 1,000 family lawyers and has been an active voice on matters such as ensuring the independence and effective management of the Family Court, family law reform, legal aid and assistance and ensuring New Zealanders receive effective representation in family law.

Further information on the Family Courts Review and the position of the Family Law Section is available from our website at www.familylaw.org.nz, or from our Section Manager Kath Moran (phone 04 463 2996 or email kath.moran@lawsociety.org.nz).