



Children's voices in the Family Court

The government has announced a number of proposals which will make significant changes to New Zealand's Family Court. Many of these will improve the way the court functions.

However, some of the significant proposed changes will have a negative impact on New Zealanders who find themselves in the Family Court. Family lawyers are concerned that if nothing is done to stop the changes, many of the people who need assistance from the Family Court will be disadvantaged by the changes the government has proposed.

The Family Court Review

The Family Court was established in 1981. At the time it was seen as a radical new institution which was world-leading in the solutions and measures it introduced for solving disputes and matters involving families. New Zealand's focus on the interests of the child as the building block for all our family law has also been viewed as a model approach.

Rapid social and economic changes meant that a review of the Family Court was timely in 2011. Representing about 1,000 experienced family lawyers, the Law Society's Family Law Section identified a number of changes which could make the processes and systems more attuned to present needs. These were presented by the Section at the Symposium at Parliament in June 2011. As well as then Justice Minister Simon Power, participants represented lawyers, judges, counsellors, psychologists, social workers and other people involved in our Family Court system.

The Family Law Section made a comprehensive submission, and Section members were also key members of a special advisory group established by the Minister to support and advise the Ministry of Justice on the development of policy proposals for the review of the Family Court.

In August 2012 Justice Minister Judith Collins released a set of proposals for changes to the Family Court. Many of these have taken account of input from lawyers and other people involved in making the Family Court work. However, there are some proposed changes which are alarming and were never raised in the government's discussion document nor were they discussed with the Minister's advisory group.

Children and the Family Court: current situation

Currently in the Family Court, the welfare and best interests of a child must be the first and paramount consideration in determining the care arrangements for a child.

In determining what serves the child's welfare and best interests, the child must be given reasonable opportunity to express views, and any views expressed must be taken into account.

The United Nations Convention on the Rights of a Child requires state parties to ensure that children who are capable of forming their own views have the right to express those views freely in all matters that affect them. In particular, children are to be provided the opportunity to be heard in any judicial and administrative proceedings affecting them.

The state is further obligated to ensure that a child is not separated from his or her parents against their will, unless such separation is necessary in the best interests of the child. There is a requirement that all interested parties be entitled to make their views known.

Children's views are ascertained in a variety of ways, including by lawyers acting for children, social workers, psychologists, parents and judicial interviews.

What is proposed

The government's proposals significantly reduce the voice of children in proceedings which affect them. There is no proposal that a child's views be ascertained for the purposes of Family Dispute Resolution, nor in many cases involving a child's contact with his or her parent. The proposal is that lawyers are not appointed in any Simple track matter, nor in any Standard track matter until the point of hearing, unless serious issues are identified.

No proposal has been made that provides an alternative way of independently ascertaining children's views and making these known before binding Court Orders are made.

Why this worries the Law Society

New Zealand is recognised as a leader in meeting obligations under the United Nations Convention on the Rights of a Child. The proposals significantly reduce compliance with our international obligations.

Children have a very important role in the family. Frequently the child's perspective is important in determining their care arrangements. Children often speak truth into proceedings that parents are unable to do during the time of their separation.

The failure to ascertain and have expressed the views of the child risks:

- a. Orders being made that should not be.
- b. Unsafe arrangements being made, particularly where there is an unequal balance of power between the parties.
- c. Important information not being ascertained and made available. This may raise issues of safety and may well result in a reduction of time that a child spends with a non-caregiving parent.

Traditionally lawyers have obtained a variety of important third party information regarding children. This information may be obtained from school teachers, other professionals working for the children, the police and social workers. There is a danger that critical information necessary for the protection of a child, or the maintenance or enhancement of their relationship with a parent, may no longer be available to the Court.

If a child does not have a voice in proceedings, there is a real risk that parenting agreements and Orders will be made that are contrary to their reasonably held views.

Frequently, children disclose information to their lawyers which is critically important in the outcome of proceedings.

What should happen?

The Law Society strongly advocates the importance of obtaining a child's views as part of ascertaining what is best for their welfare and best interests. Sustainable and safe agreements and Orders cannot be made without obtaining the child's perspective.

The Law Society does not argue that only lawyers should be responsible for the ascertaining and reporting of a child's views.

If the government is determined to reduce the use of lawyers to represent children, an alternative and robust means of ascertaining and making known children's views needs to be investigated and implemented.

The failure to ensure that a robust process occurs places the safety of children at risk and increases the prospects that inappropriate Parenting Orders will be made and that a parent will lose contact with their child.

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).