

Family Courts Amendment Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Family Court Proceedings Reform Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- Care of Children Amendment Bill (No 2) comprising clauses 1 and 2 and Part 1
- Child Support Amendment Bill (No 3) comprising subpart 1 of Part 5
- Children, Young Persons, and their Families Amendment Bill (No 2) comprising subpart 2 of Part 5
- Domestic Violence Amendment Bill (No 2) comprising Part 2
- this bill comprising subpart 2A of Part 5
- Family Dispute Resolution Bill comprising Part 3
- Family Proceedings Amendment Bill (No 2) comprising subpart 3 of Part 5
- Legal Services Amendment Bill (No 2) comprising Part 4
- Property (Relationships) Amendment Bill (No 2) comprising subpart 4 of Part 5

- Protection of Personal and Property Rights Amendment Bill comprising subpart 5 of Part 5
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Family Courts Amendment Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

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Hon Judith Collins

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Contents

	Page
1 Title	2
2 Commencement	2
• • • • •	
81A Principal Act	2
81B New sections 9A to 9C inserted	2
9A Duty of lawyers to promote conciliation	2
9B Role of lawyer appointed to represent child or young person in proceedings	2
9C Role of lawyer appointed to assist court	3
81C New section 12A inserted (Evidence)	3
12A Evidence	4
81D Section 16B amended (Regulations)	4
81E New section 16D inserted (Regulations relating to payments to professionals)	5
16D Regulations relating to payments to professionals	5
81F Section 17 amended (Certain enactments amended)	8
81G New section 17A inserted (Repeals)	8
17A Repeals	8
• • • • •	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Family Courts Amendment Act **2013**.

2 Commencement

This Act comes into force on **1 October 2014** unless it is 5
earlier brought into force on a date appointed by the Governor-
General by Order in Council.

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81A Principal Act

This subpart amends the Family Courts Act 1980 (the **prin-**
cipal Act). 10

81B New sections 9A to 9C inserted

After section 9, insert:

“9A Duty ~~on~~ of lawyers to promote conciliation

“(1) A lawyer acting for a party in any proceeding in the Family 15
Court must, so far as possible, promote conciliation.

“(2) In **subsection (1)**, **party** includes a proposed party.

**“9B Role of lawyer appointed to represent child or young
person in proceedings**

“(1) The role of a lawyer who is appointed to represent a child or 20
young person in proceedings is to—

“(a) act for the child or young person in the proceedings in
a way that the lawyer considers promotes the ~~child’s~~
welfare and best interests of the child or young person:

“(b) ensure that any views expressed by the child or young 25
person to the lawyer on matters affecting the child or
young person and relevant to the proceedings are com-
municated to the court:

“(c) assist the parties to reach agreement on the matters in
dispute in the proceedings to the extent to which doing
so is in the best interests of the child or young person: 30

- “(d) provide advice to the child or young person, at a level commensurate with that child’s or young person’s level of understanding, about—
 - “(i) any right of appeal against a decision of the court; and 5
 - “(ii) the merits of pursuing any such appeal:
- “(e) undertake any other task required by or under any other Act.
- “(2) To facilitate the role set out in **subsection (1)(b)**, the lawyer must meet with the child or young person and, if it is appropriate to do so ~~having regard to that child’s age and maturity~~, ascertain the child’s or young person’s views on matters affecting the child or young person relevant to the proceedings. 10
- “(3) However, **subsection (2)** does not apply if, because of exceptional circumstances, a Judge directs that it is inappropriate for the lawyer to meet with the child or young person. 15
- “(4) A lawyer appointed to represent a child or young person in proceedings may—
 - “(a) call any person as a witness in the proceedings:
 - “(b) cross-examine witnesses called by any party to the proceedings or by the court. 20
- “9C **Role of lawyer appointed to assist court**
- “(1) The role of a lawyer who is appointed to assist the court in proceedings is to—
 - “(a) provide independent legal advice to the court on any complex factual or legal issue requested by the court: 25
 - “(b) offer an impartial perspective in relation to any issue arising in the proceedings:
 - “(c) undertake any other task required by or under any other Act. 30
- “(2) A lawyer appointed to assist the court in proceedings may—
 - “(a) call any person as a witness in the proceedings:
 - “(b) cross-examine witnesses called by any party to the proceedings or by the court.”
- 81C **New section 12A inserted (Evidence)** 35

After section 12, insert:

“12A Evidence

- “(1) This section applies to a proceeding—
- “(a) under an Act ~~described~~ specified in **subsection (2)**;
and
 - “(b) in a court described in **subsection (3)**. 5
- “(2) The Acts referred to in **subsection (1)(a)** are as follows:
- “(a) ~~the~~ Adoption Act 1955:
 - “(b) ~~the~~ Care of Children Act 2004:
 - “(c) ~~the~~ Child Support Act 1991:
 - “(d) ~~the~~ Children, Young Persons, and Their Families Act 10
1989:
 - “(e) ~~the~~ Domestic Violence Act 1995:
 - “(f) ~~the~~ Family Proceedings Act 1980:
 - “(g) ~~the~~ Property (Relationships) Act 1976:
 - “(h) ~~the~~ Protection of Personal and Property Rights Act 15
1988.
- “(3) The courts referred to in **subsection (1)(b)** are as follows:
- “(a) a Family Court:
 - “(b) a District Court that has concurrent jurisdiction with a
Family Court: 20
 - “(c) a District Court acting under section 15:
 - “(d) a District Court hearing a proceeding under section 151
of the Children, Young Persons, and Their Families Act
1989:
 - “(e) any other court hearing a proceeding that is— 25
 - “(i) under an Act ~~described~~ specified in **subsection
(2)**; and
 - “(ii) not a criminal proceeding; and
 - “(iii) one in which the court receives evidence or fur-
ther evidence. 30
- “(4) The effect of section 5(3) of the Evidence Act 2006 is that that
Act applies to the proceeding. However, the court hearing the
proceeding may receive any evidence, whether or not admis-
sible under the Evidence Act 2006, that the court considers
may assist it to determine the proceeding.” 35

81D Section 16B amended (Regulations)

- (1) In the heading to section 16B, after “**Regulations**”, insert “**re-
lating to court fees**”.

(2) Repeal section 16B(1)(g).

81E New section 16D inserted (Regulations relating to payments to professionals)

After section 16C, insert:

- “16D Regulations relating to payments to professionals 5**
“Fees and expenses for lawyers for child and lawyers to assist court
- “(1) In subsections (2) to (5), lawyer means either of the following:**
- “(a) a lawyer appointed under any of the following provisions to represent a child or young person:** 10
- “(i) section 7 of the Care of Children Act 2004:**
- “(ii) section 226 of the Child Support Act 1991:**
- “(iii) section 159(†) of the Children, Young Persons, and Their Families Act 1989: 15**
- “(iv) section 81(1)(b) of the Domestic Violence Act 1995:**
- “(v) section 162(†) of the Family Proceedings Act 1980:**
- “(vi) section 37A(†) of the Property (Relationships) Act 1976; or 20**
- “(b) a lawyer appointed under any of the following provisions to assist the court:**
- “(i) section 130 of the Care of Children Act 2004:**
- “(ii) section 226A of the Child Support Act 1991: 25**
- “(iii) section 160 of the Children, Young Persons, and Their Families Act 1989:**
- “(iv) section 81(1)(a) of the Domestic Violence Act 1995:**
- “(v) section 162A of the Family Proceedings Act 30 1980:**
- “(vi) section 65A of the Protection of Personal and Property Rights Act 1988.**
- “(2) The Governor-General may, from time to time, by Order in Council, make regulations for determining— 35**
- “(a) the fees payable to a lawyer in respect of the lawyer’s appointment:**

- “(b) the expenses payable to a lawyer in respect of the lawyer’s appointment.
- “(3) Regulations under **subsection (2)(a)** may—
- “(a) prescribe the maximum hourly rate or rates for the fee payable, and different rates may be prescribed depending on— 5
- “(i) the complexity of the proceedings:
- “(ii) the number of proceedings in which the lawyer is engaged during a specified period:
- “(b) prescribe the maximum number of hours for which the fee is payable, and different numbers of hours may be prescribed depending on— 10
- “(i) the complexity of the proceedings:
- “(ii) the number of proceedings in which the lawyer is engaged during a specified period: 15
- “(c) provide that any rate prescribed under **paragraph (a)**, or any number of hours prescribed under **paragraph (b)**, or both, may be increased by the court in a particular proceeding if the court is satisfied that the increase is justified because of exceptional circumstances. 20
- “(4) If no regulations are made under **subsection (2)(a)** in respect of any lawyer, the fees payable to that lawyer are to be determined by the Registrar of the court.
- “(5) Regulations under **subsection (2)(b)** may prescribe— 25
- “(a) the types of expenses for which a lawyer may claim reimbursement:
- “(b) the rate of reimbursement of those expenses:
- “(c) the circumstances in which expenses may be reimbursed.
- “*Fees and expenses for report writers under Care of Children Act 2004* 30
- “(6) In **subsections (7) to (10)**, **report writer** means any of the following:
- “(a) a person who prepares a cultural report when requested to do so under section **133(2)** of the Care of Children Act 2004: 35

- “(b) a person who prepares a medical report when requested to do so under section **133(2)** of the Care of Children Act 2004:
- “(c) a person who prepares a psychiatric report when requested to do so under section **133(2)** of the Care of Children Act 2004: 5
- “(d) a person who prepares a psychological report when requested to do so under section **133(5)** of the Care of Children Act 2004.
- “(7) The Governor-General may, from time to time, by Order in Council, make regulations for determining— 10
- “(a) the fees payable to a report writer for doing either or both of the following:
- “(i) preparing a report:
- “(ii) attending as a witness in the proceedings for which the report writer prepared the report: 15
- “(b) the expenses payable to a report writer for doing either or both of the following:
- “(i) preparing a report:
- “(ii) attending as a witness in the proceedings for which the report writer prepared the report. 20
- “(8) Regulations under **subsection (7)(a)** may—
- “(a) prescribe the maximum hourly rate or rates for the fee payable, and different rates may be prescribed depending on— 25
- “(i) the type of report:
- “(ii) the complexity of the proceedings:
- “(iii) the number of proceedings in which the report-writer is engaged during a specified period:
- “(b) prescribe the maximum number of hours for which the fee is payable, and different numbers of hours may be prescribed depending on— 30
- “(i) the type of report:
- “(ii) the complexity of the proceedings:
- “(iii) the number of proceedings in which the report-writer is engaged during a specified period: 35
- “(c) provide that any rate prescribed under **paragraph (a)**, or any number of hours prescribed under **paragraph (b)**, or both, may be increased by the court in a particular

proceeding if the court is satisfied that the increase is justified because of exceptional circumstances.

- “(9) If no regulations are made under **subsection (7)(a)** in respect of any report writer, the fees payable to that report writer are to be determined by the Registrar of the court. 5
- “(10) Regulations under **subsection (7)(b)** may prescribe the following:
- “(a) the types of expenses for which a report writer may claim reimbursement:
- “(b) the rate of reimbursement of those expenses: 10
- “(c) the circumstances in which expenses may be reimbursed.”

81F Section 17 amended (Certain enactments amended)

Repeal section 17(2).

81G New section 17A inserted (Repeals) 15

After section 17, insert:

“17A Repeals

The following provisions are repealed:

- “(a) section 24 of the Adoption Act 1955:
- “(b) section 128 of the Care of Children Act 2004: 20
- “(c) section 228 of the Child Support Act 1991:
- “(d) section 195 of the Children, Young Persons, and Their Families Act 1989:
- “(e) section 84 of the Domestic Violence Act 1995:
- “(f) ~~section~~ sections 4 and 5 of the Family Courts Amendment Act 2008: 25
- “(g) section 164 of the Family Proceedings Act 1980:
- “(h) section 36 of the Property (Relationships) Act 1976:
- “(i) section 77 of the Protection of Personal and Property Rights Act 1988.” 30

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Family Courts Amendment Bill

Legislative history

18 September 2013

Divided from the Family Court Proceedings
Reform Bill (Bill 90–2) by committee of the whole
House as Bill 90–3E
