

# **Family Court (Supporting Families in Court) Legislation Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The Family Court (Supporting Families 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 ensure that parties to care of children disputes can be supported with the provision of early legal advice.

The Bill will allow legal representation in all proceedings under the Care of Children Act 2004 and the provision of legal aid for eligible parties. The Bill amends the Care of Children Act 2004 and the Legal Services Act 2011.

Extensive reforms of the care of children regime took effect in 2014. One of the most significant changes was the removal of legal representation and legal aid in the early stages of on-notice proceedings under the Care of Children Act 2004. The removal of legal representation created an incentive for parties to file applications without notice to obtain a lawyer. This has placed extra pressure on the Family Court and resulted in delay and unresolved conflict. It has also meant that on-notice applications that require urgent resolution by the Family Court, such as those involving unidentified family violence, are delayed and affect parties' personal safety.

The final report of the Independent Panel examining the 2014 family justice system reforms showed that parties want legal representation when navigating issues relating to care of children. The Bill will remove the statutory limitations on acting for a party in proceedings under the Care of Children Act 2004 and the provision of legal aid for eligible parties. It will ensure that families and whānau are well supported with early legal advice and help to reduce the level of delay in resolving issues in the Family

Court, including the disproportionate number of without-notice applications currently being made.

### 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=255>

### Regulatory impact assessment

The Ministry of Justice produced a regulatory impact assessment 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 assessment 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/ria>

### 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 **1 July 2020**.

## Part 1

### Amendments to Care of Children Act 2004

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

*Clause 4* repeals section 7A so that there is no longer any statutory limitation on a lawyer acting for a party in proceedings under the Care of Children Act 2004.

*Clause 5* consequentially repeals section 143(3A)(c), which concerns appeals to the High Court, and which refers to section 7A (repealed by *clause 4*).

*Clause 6* amends Schedule 1AA to insert a *new Part 2*, which provides that a lawyer can act for a party in proceedings commenced, but not completed, before 1 July 2020, even though before the repeal of section 7A on that date (by *clause 4*) the party could not be represented.

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## Part 2

### Amendments to Legal Services Act 2011

*Clause 7* provides that this Part amends the Legal Services Act 2011.

*Clause 8* inserts *new section 4A*. *New section 4A* provides that the transitional, savings, and related provisions set out in *new Schedule 1AA* (inserted by *clause 10*) have effect according to their terms.

*Clause 9* repeals section 7(3A), (3B), and (6). Those subsections concern the application of section 7A of the Care of Children Act 2004, which *clause 4* repeals.

*Clause 10* inserts *new Schedule 1AA* (transitional, savings, and related provisions). *New Schedule 1AA* provides that legal aid may be granted in respect of proceedings under the Care of Children Act 2004 commenced, but not completed, before 1 July 2020, even though before the repeal of section 7(3A), (3B), and (6) on that date (by *clause 9*) legal aid was not available.



*Hon Andrew Little*

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## **Contents**

	Page
1 Title	2
2 Commencement	2
<b>Part 1</b>	
<b>Amendments to Care of Children Act 2004</b>	
3 Amendments to Care of Children Act 2004	2
4 Section 7A repealed (Lawyers acting for parties)	2
5 Section 143 amended (Appeals to High Court)	2
6 Schedule 1AA amended	2
<b>Part 2</b>	
<b>Amendments to Legal Services Act 2011</b>	
7 Amendments to Legal Services Act 2011	3
8 New section 4A inserted (Transitional, savings, and related provisions)	3
4A Transitional, savings, and related provisions	3
9 Section 7 amended (Proceedings for which legal aid may be granted: civil matters)	3
10 New Schedule 1AA inserted	3
<b>Schedule</b>	
<b>New Schedule 1AA inserted</b>	
	4

**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Family Court (Supporting Families in Court) Legislation Act **2020**.
- 2 Commencement** 5  
This Act comes into force on **1 July 2020**.

**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 7A repealed (Lawyers acting for parties)**  
Repeal section 7A.
- 5 Section 143 amended (Appeals to High Court)**  
Repeal section 143(3A)(c).
- 6 Schedule 1AA amended** 15  
In Schedule 1AA, after Part 1, insert:

**Part 2**  
**Provisions relating to Family Court (Supporting Families in Court)  
Legislation Act 2020**

- 3 Interpretation** 20  
In this Part,—  
**2020 Act** means the Family Court (Supporting Families in Court) Legislation Act **2020**  
**pending proceedings** means any proceedings commenced under this Act before 1 July 2020 but not completed by that date. 25
- 4 Lawyers may act in pending proceedings** 30  
On and from 1 July 2020 a lawyer may act for any party to a pending proceeding (including representing a party at a settlement conference) even though before the repeal on that date of section 7A of this Act (by **section 4** of the 2020 Act) a lawyer could not act for the party.

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**Part 2**  
**Amendments to Legal Services Act 2011**

- 7 Amendments to Legal Services Act 2011**  
This Part amends the Legal Services Act 2011.
- 8 New section 4A inserted (Transitional, savings, and related provisions) 5**  
After section 4, insert:
- 4A Transitional, savings, and related provisions**  
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 9 Section 7 amended (Proceedings for which legal aid may be granted: civil matters) 10**  
Repeal section 7(3A), (3B), and (6).
- 10 New Schedule 1AA inserted 15**  
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.

**Schedule**  
**New Schedule 1AA inserted**

s 10

**Schedule 1AA**  
**Transitional, savings, and related provisions**

5

s 4A

**Part 1**  
**Provisions relating to Family Court (Supporting Families in Court)**  
**Legislation Act 2020**

- 1 Interpretation** 10
- In this Part,—
- 2020 Act** means the Family Court (Supporting Families in Court) Legislation Act **2020**
- pending proceedings** means any proceedings commenced under the Care of Children Act 2004 before 1 July 2020 but not completed by that date. 15
- 2 Legal aid may be granted for pending proceedings**
- Legal aid may be granted under section 7 in respect of pending proceedings even though before the repeal of section 7(3A), (3B), and (6) on **1 July 2020** (by **section 9** of the 2020 Act) legal aid could not have been granted in respect of those proceedings. 20