

# **Family Proceedings Amendment Bill**

Government Bill

As reported from the committee of the whole  
House

This bill was formerly part of the Legal Assistance Amendment 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:

- Legal Services Amendment Bill comprising clauses 1 and 2, and Part 1
- Accident Compensation Amendment Bill comprising subpart 1AA of Part 2
- Care of Children Amendment Bill comprising subpart 1 of Part 2
- Child Support Amendment Bill (No 2) comprising subpart 2 of Part 2
- this bill comprising subpart 5 of Part 2
- Property (Relationships) Amendment Bill comprising subpart 6 of Part 2.



*Hon Judith Collins*

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### **Contents**

		Page
1	Title	2
2	Commencement	2
3	Principal Act	2
	• • • • •	
45	Appointment of barrister or solicitor to assist Court or represent children	2
46	New sections 162B to 162E inserted	2
	162B Costs of Court-appointed barrister or solicitor	2
	162C Order requiring refund of payments in respect of barrister or solicitor representing child	3
	162D Enforcement of orders to refund fees and expenses of Court-appointed barristers or solicitors	4
	162E Time for payment of orders to refund fees and expenses of Court-appointed barristers or solicitors may be extended	5
48	Transitional provisions relating to reimbursement of costs of Court-appointed counsel	5
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**The Parliament of New Zealand enacts as follows:**

**1 Title**

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

**2 Commencement**

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions. 5
- (2) If any provision of this Act has not earlier been brought into force under **subsection (1)**, it comes into force on the day that is 1 year after the date on which this Act receives the Royal assent. 10

**3 Principal Act**

This Act amends the Family Proceedings Act 1980 (the **principal Act**). 15

. . . . .

**45 Appointment of barrister or solicitor to assist Court or represent children**

Section 162(6) is repealed.

**46 New sections 162B to 162E inserted**

The following sections are inserted after section 162: 20

**“162B Costs of Court-appointed barrister or solicitor**

- “(1) Despite section 162(3), where any fees and expenses have been paid under that subsection that relate to an appointment under section 162(1)(a), the Court may, if it thinks it is appropriate, order a party to the proceedings to refund to the Crown an amount the Court specifies in respect of those fees and expenses. 25
- “(2) Despite section 162(3), where any fees and expenses have been paid under that subsection that relate to an appointment under section 162(1)(b), the Court must make an order under 30

**section 162C**, unless the Court declines to do so in accordance with that section.

**“162C Order requiring refund of payments in respect of barrister or solicitor representing child**

- “(1) An order referred to in **section 162B(2)** must order the parties to refund to the Crown the prescribed proportion of the amount paid by the Crown, under section 162(3), in respect of the appointment of the barrister or solicitor under section 162(1)(b). 5
- “(2) Each party must pay an equal share of the prescribed proportion. 10
- “(3) Despite **subsection (1)**, the Court may decline to make an order against a party if satisfied that the order would cause serious hardship to the party or to a dependent child of the party. 15
- “(4) Despite **subsection (2)**, if the Court is satisfied that, in view of the circumstances of the case, including the conduct of any party, it would be inappropriate to require a party to pay the amount payable in accordance with that subsection, the Court may substitute, for that party, a different amount not exceeding the prescribed proportion. 20
- “(6) In this section,—
  - “**dependent child**, in relation to a party, means a child whose care is substantially the responsibility of the party
  - “**prescribed proportion** means the same proportion that is prescribed by regulations made under section 147 of the Care of Children Act 2004 for the purposes of **section 131A** of that Act 25
  - “**serious hardship**, in relation to a party or a dependent child of the party,— 30
    - “(a) includes significant financial difficulties that arise because of—
      - “(i) the party’s inability to meet minimum living expenses according to normal community standards; or 35

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- “(ii) the cost of medical treatment for an illness or injury of the party or a dependent child of the party; or
  - “(iii) a serious illness suffered by the party or by a dependent child of the party; or 5
  - “(iv) the cost of education for a dependent child of the party:
  - “(b) does not include significant financial difficulties that arise because—
  - “(i) the social activities and entertainment of the party or those of a dependent child of the party may be limited; or 10
  - “(ii) the party is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards. 15
- “**162D Enforcement of orders to refund fees and expenses of Court-appointed barristers or solicitors**
- “(1) The amount that a party is ordered to refund under **section 162B(1)** or **162C** is a debt due to the Crown by that party and may be enforced in a District Court or the High Court, as the case may require, in the same manner as a judgment of that Court. 20
  - “(2) Despite section 113 or 123 of the District Courts Act 1947 or section 100A of the Judicature Act 1908, no Court fee is payable by a person who seeks to enforce, on behalf of the Crown, an order referred to in **subsection (1)**, but the fee that would otherwise be payable— 25
    - “(a) is to be added to the amount sought to be enforced; and
    - “(b) must be paid to the Registrar of the Court out of any proceeds that result from the enforcement. 30
  - “(3) For the purposes of section 14(1)(b) of the Crown Proceedings Act 1950, the Secretary for Justice may, on behalf of the Crown, enforce a debt under this section.

**“162E Time for payment of orders to refund fees and expenses of Court-appointed barristers or solicitors may be extended**

- “(1) If an amount that a party is ordered to refund under **section 162B(1)** or **162C** is outstanding, the Registrar may enter into an arrangement with the party to allow for either or both of the following:
  - “(a) a greater time for payment:
  - “(b) payment to be made by instalments.
- “(2) No arrangement under **subsection (1)** may permit an amount to remain unpaid for more than 5 years after the date on which the arrangement is entered into.
- “(3) No action to enforce an amount that is the subject of an arrangement under this section may be taken as long as the arrangement continues in force and is duly observed.
- “(4) If an amount may be paid by instalments and default is made in the payment of any instalment, proceedings may be taken against the person in default as if default had been made in the payment of all instalments then remaining unpaid.”

**48 Transitional provisions relating to reimbursement of costs of Court-appointed counsel**

- (1) Section 162(6) of the principal Act, as in force immediately before the commencement of **section 45** of this Act, continues to apply to proceedings commenced before that commencement.
- (2) This subsection applies to—
  - (a) any order made under section 162(6) of the principal Act as in force before the commencement of **section 45** of this Act, but only if, before that commencement, no steps had been taken to enforce that order; and
  - (b) any order made, after that commencement, under section 162(6) of the principal Act as continued by **subsection (1)**.
- (3) Despite **subsection (1)**, in relation to any orders to which **subsection (2)** applies, section 162(6) of the principal Act, as continued by **subsection (1)**, must be read as if for the words “, by order of a District Court or the High Court as the

**Family Proceedings Amendment Bill**

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case may require, in the same manner as a judgment of that Court” there were substituted the words “in a District Court or the High Court, as the case may require, in the same manner as a judgment of that Court”.

- (4) **Sections 162B, 162C, and 162D(1)** of the principal Act as enacted by **section 46** of this Act do not apply to proceedings commenced before the commencement of **section 46**. 5
- (5) **Sections 162D(2) and (3) and 162E** of the principal Act, as enacted by **section 46** of this Act, apply, with any necessary modifications, to any orders to which **subsection (2)** applies. 10

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**Legislative history**

2 July 2013

Divided from Legal Assistance Amendment Bill  
(Bill 316–2) by committee of the whole House as  
Bill 316–3E

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