

Legislative Statement: Family Court (Family Court Associates) Legislation Bill – Third Reading

Introduction

1. The Family Court (Family Court Associates) Legislation Bill (the Bill) is an omnibus Bill that establishes a new role in the Family Court, the Family Court Associate. The purpose of the Family Court Associate is to improve the process for people participating in Family Court proceedings, particularly children, by reducing delay.

Background

2. In May 2018, the Government established an independent panel (the Panel) to examine reforms that were made to the Family Court in 2014 [CAB-18-MIN-0190]. The Panel's final report, Te Korowai Ture ā-Whānau was released in June 2019. Among the Independent Panel's findings were that:
 - 2.1. delay of resolution of issues in court is widespread and impacts on most other areas in the family justice system; and
 - 2.2. judges have a high administrative workload which is a contributing factor towards delay in the Family Court.
3. The Panel recommended that the Family Court Act 1980 be amended to establish a position to take on some of the judicial workload.
4. This Bill is part of a wider work programme to respond to the Panel's recommendations.

Provisions of the Family Court (Family Court Associates) Legislation Bill

As Introduced

Part 1 – Amendments to the Family Court Act 1980

5. Part 1 of the Bill establishes the Family Court Associate as a judicial officer in the Family Court with a fixed term of up to seven years, that can be renewed.
6. The Family Court Associate role will have the following features:
 - 6.1. they can be removed for neglect of duty, inability, bankruptcy or misconduct proved to the satisfaction of the Governor-General;
 - 6.2. the remuneration for the role will be set by the Remuneration Authority and a Family Court Associate's remuneration cannot be reduced while they are in office;
 - 6.3. they will be able to deal with disruptive behaviour in proceedings over which they preside; and
 - 6.4. they have immunity when acting within their jurisdiction.

7. The Bill sets out the requirement that the Family Court Associate be a lawyer with at least seven years' experience.
8. The Family Court Associate will be able to transfer a proceeding to a Family Court Judge if the matter is complex.
9. Part 1 also inserts a new Schedule 2 into the Family Court Act. Schedule 2 gives the Family Court Associate jurisdiction and powers of a Family Court Judge under specified enactments.
10. Schedule 2 also contains a provision that allows the Family Court Associate to make the same decisions as a Family Court Registrar.

Part 2 – Amendments to other legislation

11. Part 2 of the Bill amends other family law related legislation to enable the Family Court Associate to exercise specified powers under these Acts.
12. The Acts amended by Part 2 of the Bill are the Adoption Act 1955; Care of Children Act 2004; Child Support Act 1991; Family Proceedings Act 1980; Family Violence Act 2018; Marriage Act 1955; Oranga Tamariki Act 1989; Property (Relationships) Act 1976; Protection of Personal and Property Rights Act 1988; and Status of Children Act 1969.

Changes made at Select Committee

13. The Justice Committee examined the Bill and recommended that it be passed with amendments consistent with the original policy of the Bill:
 - 13.1. Narrowing the grounds for the removal of the Family Court Associate to inability or misbehavior, and to include the jurisdiction of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.
 - 13.2. Expanding the immunity of a Family Court Associate to that of a Judge.
 - 13.3. Introducing a requirement for the Ministry of Justice to no later than five years after the commencement of the Bill, review whether the Family Court Associate role has assisted in reducing delays in the Family Court, and whether any amendments are required.
 - 13.4. Allowing a Family Court Associate to direct a Registrar to appoint a lawyer to assist the court under several Acts.
 - 13.5. Allowing a Family Court Associate to direct a Registrar to convene a settlement conference under the Care of Children Act 2004.

- 13.6. Removing the power for a Family Court Associate under section 141 of the Care of Children Act 2004, to order that a person can only commence proceedings with leave if they have previously persistently instituted vexatious proceedings.
- 13.7. Providing that a Family Court Associate can give leave to commence proceedings if a person is subject to an order regarding vexatious proceedings.
- 13.8. Limiting the power of a Family Court Associate to only preside over an undefended application for a declaration as to paternity under section 10 of the Status of Children Act 1969.

Changes introduced via Supplementary Order Paper

14. Amendments have been made to the Bill via Supplementary Order Paper (SOP) to:
 - 14.1. adjust the timing of the review of the Family Court Associate role required by the Bill
 - 14.2. add the Family Court Associate to the officers required to take the oath of allegiance and judicial oath under the Oaths and Declarations Act 1957
 - 14.3. remove the clauses from the Bill that give a Family Court Associate the powers of a judge under the Oranga Tamariki Act.