

Legislative Statement
for
The Family Court (Supporting Children in Court) Legislation Bill

Presented to the House of Representatives

In accordance with Standing Order 272

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Introduction

- 1 This legislative statement supports the third reading of the Family Court (Supporting Children in Court) Legislation Bill (the Bill).
- 2 The Bill forms part of a long-term programme of change, focused on improving access to justice for children, parents and whānau in care of children disputes.
- 3 The Bill is intended to enhance child wellbeing in care of children cases, both directly and by assisting parents to resolve parenting disputes. The Bill will amend the Care of Children Act 2004 and the Family Dispute Resolution Act 2013. There are currently around 16,000 children that are the subject of Care of Children Act proceedings in the Family Court each year.
- 4 The Bill will:
 - a) strengthen the expectation that children are to be provided with opportunities to give input into decisions about their care, and that family violence should be considered in all decisions about children's care;
 - b) promote better, outcomes for children by amending the appointment criteria for lawyer for child and provide additional obligations on lawyers to promote conciliation; and
 - c) give better effect to children's rights under the United Nations Convention on the Rights of the Child.

Background

- 5 The final report of the Independent Panel examining the 2014 family justice system reforms released in June 2019 found that:
 - a) there is limited participation by children in issues that affect them. There is concern as to whether their views are heard, and taken into account in both out of court and court processes;
 - b) there is considerable variation in how lawyers for child approach obtaining and representing the child's views and that there is no legislative requirement for lawyers to understand the child's cultural background;
 - c) delay in resolution of issues in court is widespread and impacts on most other areas in the family justice system. It is a significant factor in undermining confidence in the Family Court and can contribute to deepening parent, family and whānau conflict; and
 - d) the family justice system is unable to fully understand and respond well to family violence, particularly the impact it has on children.

Provisions of the Family Court (Supporting Children in Court) Legislation Bill

- 6 In responding to these challenges, the Bill will:
- a) amend the Care of Children Act to establish a new principle that a child must have reasonable opportunities to participate in decisions affecting them.
 - b) amend the Care of Children Act to require that, in proceedings brought under the Act and where there has been previous evidence of family violence, the court must have regard to the principles set out in section 4 of the Family Violence Act 2018. This amendment promotes consistency, and further emphasises safety as a primary consideration in the assessment of an individual child's situation.
 - c) amend the Care of Children Act to provide express reference to Article 12 of the United Nations Convention on the Rights of the Child, reinforcing existing expectations about a child's right to express a view in matters affecting them;
 - d) amend the Care of Children Act to require that, when appointing a lawyer to represent a child, a lawyer's personality, cultural background, training, and experience must be taken into account (supporting the changes made on 19 June 2020 to the Practice Note regulating the recruitment, retention and appointment of Lawyer for Child);
 - e) amend the Care of Children Act to require that, so far as is reasonably practicable, a lawyer appointed to represent a child must explain the nature of the proceedings to the child in a manner that the child is most likely to understand, supporting the child's ability to express informed views;
 - f) amend the Care of Children Act to impose a new duty on lawyers. Before commencing a proceeding, a lawyer must take any steps that, in the opinion of the lawyer, assist in enabling the issues in dispute to be resolved as safely, fairly, inexpensively, simply, and speedily as is consistent with justice; and
 - g) amend the Family Dispute Resolution Act to require a family dispute resolution provider to ensure that the children who are the subject of the dispute are given any reasonable opportunities to participate in the decisions affecting them that the family dispute resolution provider considers appropriate.
- 7 The amendments will come into force on a date appointed by the Governor-General by Order in Council, or the date that is two years after the date on which this Act receives the Royal assent, whichever date is earliest. This is intended to enable resources to be developed before the legislation is operational, in order to support family justice professionals to facilitate children's participation in a safe and appropriate way.

Conclusion

- 8 The Bill sets the tone for a long-term programme of change that emphasises children's wellbeing and the importance of engaging children appropriately in processes that affect decisions about their care.
- 9 Providing children with an opportunity to express their views can help parents focus on the needs of their children rather than their own conflict, help children adjust to their parent's separation (including improved mental health outcomes) and contribute to more durable care arrangements.
- 10 At a time that the Family Court is under significant pressure, exacerbated by COVID-19, the Bill will be beneficial in its promotion of the efficient resolution of disputes. This will help to ensure capacity is available to provide timely assistance to those requiring judicial intervention.
- 11 The Bill also signals the Government's continued focus on enhancing safety and strengthening responses to children at risk of family violence.
- 12 The Bill promotes the Government's vision of a family justice system that is safe and responsive to the diverse needs of those that are using it, where all parties have a voice. It is a family justice system that continues to place child wellbeing at its heart.