

Family Proceedings (Paternity Orders and Parentage Tests) Amendment Bill

Member's Bill

Explanatory note

The purposes of this Bill are to enable a male who has reasonable grounds to believe he either is or is not the father of a child to make an application for a paternity order; and to empower the Family Court to order that a buccal sample be taken from a child whose parentage is at issue or any person who may be the natural parent so that a parentage test can be carried out in respect of that child.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Family Proceedings Act 1980 (the **principal Act**)

Clause 5 amends section 47 of the Act to enable either a man who has reasonable grounds to believe he is the father of a child or a man who has reasonable grounds to believe he is not the father of a child to make an application to the Family Court for a paternity order in respect of that child.

Clauses 6, 7 and 8 amend sections 48, 49 and 51 to support the amendment to section 47.

Clause 9 inserts a new paragraph and new subsections into section 54 empowering the Family Court to order the taking of a buccal sample from a child whose parentage is in issue or any person who may be the natural parent of the child, and provides that the counselling and conciliation provisions under Part 2 of the Act are available to any child or any person who has a proper interest in determining parentage. Other amendments are made to support the insertion of a new paragraph and subsections.

Clauses 10, 11, and 12 follow the recommendations of the Law Commission Report 88, *New Issues in Legal Parenthood* that there be sanctions for non-compliance with parentage-testing orders aligned with the relevant sections of the Care of Children Act 2004.

Clause 10 amends section 57 by adding a new subsection empowering the Court to issue a warrant for the enforcement of a parentage-testing order.

Clause 11 inserts new sections 57A, 57B, and 57C relating to the execution of warrants for the enforcement of parentage-testing orders. Section 57A lists the obligations for a person executing a warrant under section 57. Section 57B provides a faxed copy of a warrant may be executed if authorised by the Court. Section 57C creates an offence of resisting the execution of a warrant.

Clause 12 amends section 59 to align the penalty for offences relating to parentage tests with section 79 of the Care of Children Act 2004.

Clause 13 amends section 174 to prevent parentage orders being appealed to the High Court.

Judy Turner

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Orders and Parentage Tests)
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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Family Proceedings (Paternity Orders and Parentage Tests) Amendment Act 2007.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended**
This Act amends the Family Proceedings Act 1980.
- Part 1** 10
- 4 Purpose**
The purposes of this Act are—
- (a) to enable a male who has reasonable grounds to believe he either is or is not the father of a child to make an application for a paternity order; and 15
 - (b) to empower the Family Court to order that a buccal sample be taken from a child whose parentage is at issue so that a parentage test can be carried out in respect of that child.
- Part 2** 20
Amendments to principal Act
- 5 Applications for paternity orders**
- (1) Section 47(1) is amended by adding “; or” and by adding the following paragraphs:
 - “(e) by a male who has reasonable grounds to believe that he is the child’s father; or 25
 - “(f) by a male who has reasonable grounds to believe that he is not the child’s father.”
 - (2) Section 47(2) is amended by inserting “by or” after “made only”. 30

- 6 Jurisdiction to establish paternity**
- Section 48(b) is amended by omitting “respondent in the proceedings” and substituting “male in the proceedings who is making the application or against whom the application is being made”. 5
- 7 Time limit on applications for paternity orders**
- (1) Section 49(2)(a) is amended by omitting “respondent” and substituting “male making the application or against whom the application is being made”.
- (2) Section 49(2)(b) is amended by omitting “, the respondent has admitted expressly or by implication that he is the father of the child; or” and substituting the following paragraphs: 10
- “(i) the male against whom the application is being made has admitted expressly or by implication that he is the father of the child; or 15
 - “(ii) the mother of the child has admitted expressly or by implication that the male making the application is the father of the child; or”.
- (3) Section 49(2)(c) is amended by omitting “respondent” and substituting “male against whom the application is being made”. 20
- (4) Section 49(3) is amended by omitting “respondent” and substituting “male making the application or against whom the application is being made”.
- 8 Paternity orders** 25
- (1) Section 51(1)(a) is amended by omitting “respondent” in both places that it appears and substituting “male making the application or against whom the application is being made”.
- (2) Section 51(1)(b) is amended by omitting the word “respondent” in both places that it appears and substituting “male making the application or against whom the application is being made”. 30
- (3) Section 51(2) is amended by omitting “against” and substituting “in respect of”.

9 Parentage tests

- (1) Section 54(1)(a) is amended by omitting “and” and substituting “or”.
- (2) Section 54(1) is amended by inserting the following paragraph: 5
 “(aa) the Court may, on its own motion or on the application of a party to the proceedings order that—
 “(i) a buccal sample be taken from the child so that a parentage test can be carried out in respect of the child, and 10
 “(ii) a report of the results of the parentage test be compiled by a person who is qualified to compile such a report, and submitted to the Court.”
- (3) Section 54(1)(b) is amended by omitting “a recommendation” and substituting “an order”. 15
- (4) Section 54 is amended by adding the following subsections:
 “(3) In determining whether to make an order for parentage testing the Court must be satisfied that there is a reasonable possibility a person recognised as a parent is not the natural parent, or that a person not recognised as a parent is the natural parent, shall 20
 order a parentage test, unless there are compelling reasons why it would not be in the interests of justice.
 “(4) The provisions relating to counselling and conciliation under Part 2 of this Act, with the necessary modifications, will be available to any child or any person with a proper interest in 25
 determining parentage under the proceedings, to resolve issues arising from the test.”

10 Refusal of parentage tests

- (1) Section 57(1) is amended by omitting “recommended” and substituting “ordered”. 30
- (2) Section 57 is amended by adding the following subsection:
 “(3) The Court may issue a warrant authorising a member of the police or a Social Worker or any other person named in the warrant to take the child (using reasonable force if necessary) and to deliver the child for parentage tests to any person referred to in section 54(2)(a) of this Act.” 35

11 New sections 57A, 57B and 57C inserted

The following new sections are inserted after section 57:

“57A Execution of warrants

- “(1) For the purpose of executing a warrant issued under section 57,
a member of the police or a Social Worker or any other per- 5
son named in the warrant may enter and search any building,
aircraft, ship, vehicle, premises, or place, with or without as-
sistance, and by force if necessary.
- “(2) The member of the police, Social Worker, or other person exe- 10
cuting the warrant under section 57—
- “(a) must have that warrant with him or her; and
- “(b) must produce it on initial entry and, if requested, at any
later time; and
- “(c) must identify himself or herself to any person in or on 15
the building, aircraft, ship, vehicle, premises, or place
who questions his or her right to enter and search the
same or to take possession of the child; and
- “(d) if he or she is a member of the police who is not in uni-
form, must produce evidence that he or she is a member 20
of the police; and
- “(e) if he or she is a Social Worker, must produce evidence
that he or she is a Social Worker; and
- “(f) if he or she is a person (not being a member of the police
or a Social Worker) authorised by the warrant to take 25
possession of the child, must produce evidence that he
or she is the person so authorised.

“57B Authority to use faxed copy of warrant

- “(1) If a warrant is issued under section 57, the Court may author-
ise the use of a faxed copy of the warrant for the purpose of 30
executing the warrant, on an application made by—
- “(a) a party to the proceedings for the issue of the warrant;
or
- “(b) a person who is authorised to execute the warrant.
- “(2) However, no authorisation may be granted under **subsec-**
tion (1) in relation to a warrant unless the Court is satisfied, 35
having regard to the circumstances of the case, that any delay
in executing the warrant that may be caused if a faxed copy

is not able to be used for that purpose would or might unduly prejudice the purpose for which the warrant was issued.

- “(3) The power conferred by **subsection (1)** may be exercised either on or after issuing the warrant.
- “(4) If a Court grants an authorisation under subsection (1) in relation to a warrant, the Court must first write on the front of the warrant, and then sign, a note that states—
- “(a) the fact that a faxed copy of the warrant may be used for the purposes of executing the warrant; and
- “(b) the date and time at which the authorisation expires, which must be the close of the third day after the day on which the authorisation is granted.
- “(5) A faxed copy of a warrant in respect of which an authorisation granted under this section is in force must, for all purposes, be treated as if it were the warrant and the provisions of this Act apply accordingly with all necessary modifications.
- “(6) Without limiting any other enactment or rule of law, section 39 of the Police Act 1958 (which relates to the protection of members of the police for acts pursuant to process) applies in relation to a faxed copy of a warrant in respect of which an authorisation granted under this section is in force as if that faxed copy were the warrant.
- “(7) **Subsection (6)** is for the avoidance of doubt.

“**57C Resisting execution of warrant**

Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding \$2,500 who—

- “(a) knowingly resists or obstructs any person executing a warrant under section 57 or 57B; or
- “(b) knowingly fails or refuses to afford immediate entrance to (all or a part of) any premises to any person executing a warrant under section 57 or 57B.”

12 Offences relating to parentage tests

Section 59 is amended by omitting “a fine not exceeding \$1000” and substituting “imprisonment for a term not exceeding 3 months, or a fine not exceeding \$2,500.”

13 No right of appeal

Section 174(3) is amended by omitting “where an order dissolving a marriage” and substituting “where a parentage test is ordered by the Family Court, or an order dissolving a marriage”.

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