



9 June 2023

Attorney-General

**Family Proceedings (Dissolution for Family Violence) Amendment Bill
Member's Bill 247-1
Consistency with New Zealand Bill of Rights Act 1990
Our Ref: ATT395/385**

1. We have considered whether the Family Proceedings (Dissolution for Family Violence) Amendment Bill, Member's Bill, 247-1 (**Amendment Bill**) is consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**).
2. The Amendment Bill amends the Family Proceedings Act 1980 (**the principal Act**) by providing for an application for dissolution of a marriage or civil union to be made on the ground of family violence and permitting the dissolution sought without requiring that parties live apart for two years.
3. In our opinion the Amendment Bill is not inconsistent with the rights and freedoms that are contained in the Bill of Rights Act.

The Amendment Bill

4. The key provisions in the Amendment Bill are clauses 5 and 6:
 - 4.1 Clause 5 proposes an amendment to s 38 of the principal Act to provide that an application for an order dissolving a marriage or civil union, otherwise made only on the ground that the marriage or civil union has broken down irreconcilably, will now be subject to new s 39A.
 - 4.2 Clause 6 proposes new s 39A which will provide for an application for an order dissolving a marriage or civil union to be made on the ground that a party to the marriage or civil union has been the victim of family violence inflicted by the other party. The ground for the order is established in law if a party to the marriage or civil union is a protected person under a protection order or under a registered foreign protection order, and the other party is the respondent. It will be sufficient to provide a copy of the court's decision to make or register a protection order under the Family Violence Act 2018 or an order under the Sentencing Act 2002, or a copy of the relevant order. If the ground for the order is established, the court shall make an order dissolving the

marriage or civil union subject to satisfactory arrangements being made for the welfare of children on dissolution (s 45 of the principal Act applies).

5. Other provisions of note are as follows:
 - 5.1 Clause 2 provides for the delayed commencement of the Amendment Bill to allow the courts to make any necessary changes to court administration and procedure in anticipation of the new law.
 - 5.2 Clause 4 proposes amending s 38 of the principal Act to provide for a Registrar to make an order dissolving a marriage or civil union where, in particular, the proceedings are undefended and the application is accompanied by an affidavit stating that the ground for an order is established under new s 39A.
 - 5.3 Clause 7 proposes an amendment to s 174(9) of the principal Act to provide that a decision under new s 39A will be an exception to the rule on stay of proceedings (that is, the operation of an order for dissolution made under new s 39A will be suspended in the event of an appeal to the High Court).
 - 5.4 Clause 8 proposes an amendment to s 175 of the principal Act, which concerns appeals from decisions of the High Court (where proceedings have been transferred to that Court), to include new s 39A to be included in the list of sections under which a marriage or civil union may be dissolved.

Analysis

Section 27 Bill of Rights Act

6. Section 27 of the Bill of Rights Act affirms the right to justice. This includes the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of a person's rights, obligations or interests protected or recognised by law (s 27(1)). It also includes the right to apply for judicial review of a determination where a person's rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority (s 27(2)).
7. As noted above, the Amendment Bill proposes an additional substantive ground for the dissolution of a marriage or civil union, supported by the provision of official documentation. It does not change existing provisions in the principal Act which allow a Registrar to make orders for dissolution where, in particular, the proceedings are undefended and the respondent has not requested an appearance,¹ and which deny an appeal from an undefended application.²

¹ Section 38 of the principal Act.

However, the Amendment Bill also makes no changes to existing provisions in the principal Act allowing for proceedings for an order dissolving a marriage or civil union to be defended , for parties to seek a hearing before an order takes effect if there has been a change in circumstances (even though the person consented to the order being made in their absence or did not request an appearance),³ and for parties to appeal to the senior Courts from defended proceedings.⁴ A party's right to be heard under s 27(1) is therefore preserved. Further, the Amendment Bill does not interfere with the right to seek judicial review.

8. We conclude that the Amendment Bill does not limit the right to justice that is affirmed by s 27 of the Bill of Rights Act. For these reasons, it is our opinion that the Amendment Bill is not inconsistent with the rights and freedoms which are affirmed by the Bill of Rights Act.
9. In accordance with Crown Law's policies, this advice has been peer reviewed by Helen Carrad, Crown Counsel.



 Debra Harris
 Crown Counsel

~~Noted / Approved / Not Approved~~



 Hon David Parker
 Attorney-General

14/6 /2023

Encl.

² Section 174(3) of the principal Act.

³ Section 38(3) of the principal Act.

⁴ Sections 174 and 175 of the principal Act.