

Q+A Proposals to reform the Family Court

Family Court Reform

Why is the Government reforming the Family Court?

In response to serious concerns raised by court users including the public, judges, lawyers and counsellors, in April 2011 Cabinet directed the Ministry of Justice to undertake a review of the Family Court.

In addition to concerns about rapidly rising costs, the review found the Court lacks sufficient focus on meeting the needs of children and on achieving sustainable, durable outcomes for families. The review also found complicated court processes caused lengthy delays.

The Family Court:

- is adversarial, placing additional stress on already strained relationships
- is negative for children and is not focussed enough on their needs
- is not focussed enough on the most serious domestic violence cases
- spends too much time on simple private matters that are better resolved outside court
- is too complex to use and too slow to resolve disputes, and
- in recent years, has had huge growth in costs despite the same overall number of applications.

What is the Government doing to improve the Family Court?

In response to the Family Court Review, the Government is changing the role of the Court to ensure it is focussed on the most vulnerable people and on the most serious matters requiring judicial intervention.

Proposals for reforming the Family Court largely focus on Care of Children Act 2004 matters, such as access arrangements and school holiday care. Relationship property and maintenance issues may also be heard at Family Dispute Resolution, if it makes sense to do so.

The Court's new role will focus on the needs of children, rather than on couples with relationship problems. Proposals will encourage faster, less adversarial resolution of disputes and improve responsiveness to children and vulnerable people.

How will the Family Court change?

The purpose of the family justice system is to make sure all proceedings are understandable, simple, transparent, timely and proportional to the dispute.

Proposals for reform include:

- increasing the penalty for breaching a protection order from two years to three years imprisonment
- improving stopping violence treatment programmes for both protected people and respondents

- extending the definition of domestic violence in the Domestic Violence Act to include economic abuse
- introducing a new Family Disputes Resolution (FDR) service to help people get on with their lives more quickly – and minimise the harmful impacts of conflict on children
- aligning the Family Court with the District and High Courts by introducing three new simple Court tracks will support people to navigate parts of the court system independently
- making the Court more efficient and effective, providing better information and court forms, such as a standardised questionnaire affidavit, and
- targeting the use of court professionals to where they are most needed.

Better support for families to resolve their disputes themselves

What better support will there be to help families resolve their issues?

Families will be supported to resolve their disputes outside court by provision of better information, through mandatory participation in the successful *Parenting through Separation* course and a new Family Dispute Resolution service.

For example, parents will be able to download parenting plans, and complete the *Parenting through Separation* course online.

The Court will also provide improved information resources and easier to complete standardised forms, such as standardised questionnaire affidavits. Affidavits are often long and contain hearsay and inflammatory information, not always providing the court with the information it needs. This can exacerbate conflict.

What is Family Dispute Resolution (FDR)?

Family Dispute Resolution is a new service that introduces a structured approach to resolving disputes outside court.

Resolving disputes outside court allows people to get on with their lives faster, and to take ownership of the agreement they reach.

It will become mandatory for parties to attempt Family Dispute Resolution before applying to the Court, unless an exemption applies. Access to the court is still available if FDR is unsuccessful.

What are the benefits of FDR?

Many people undergo relationship breakups during their lives. Thankfully, the vast majority of couples will sort out matters themselves, but some may need additional support. Family Dispute Resolution is focussed on achieving a durable outcome which the parties involved can be responsible for.

Family Dispute Resolution encourages parents to be responsible for reducing the negative impact their conflict has on their child or children. This is better for both parties and better for their children – rather than going through the court system.

It is estimated that about 1,200 families (approximately 2,000 children) will no longer have to go to court as a result of family dispute resolution.

What types of issues must be heard at FDR?

Family Dispute Resolution will largely apply to Care of Children Act proceedings, such as parenting or guardianship disputes. These are the largest single category of applications to the Court – approximately 40 per cent. Relationship property and maintenance issues may also be heard at Family Dispute Resolution, if it makes sense to do so.

Common Care of Children Act disputes include:

- day-to-day care and contact arrangements
- choosing a school and extra-curricular activities, and
- school holiday care.

What types of issues are exempt from FDR?

Family Dispute Resolution is intended to resolve simple private parenting and guardianship matters without recourse to the Courts.

Some types of disputes will not be suitable for FDR. For example, where there is a history of domestic violence or child abuse, where a party's safety could be at risk, a significant power imbalance exists, or due to illness or disability.

Vulnerable people exposed to domestic violence and children needing protection continue to have immediate access to the court. There is no requirement to complete FDR in these cases.

What happens if FDR is unsuccessful or unsuitable?

The FDR provider will give the parties a report advising the outcome, and parties will then make an application to the Court. FDR discussions remain confidential, and are subject to privilege.

Who can provide FDR services?

FDR providers will be qualified and skilled professionals, approved by the Secretary of Justice. The Ministry of Justice will work with professional groups representing providers to set up the FDR service in local communities, ensure group members have the right skills and knowledge, and to develop best practice standards.

This flexible approach will enable FDR practitioners to provide a diverse range of processes, for example, culturally diverse models.

How much will FDR cost?

Parties will contribute equally to the costs of attending FDR. Low income earners may apply to have their share of the fee subsidised. The proposed cost of FDR is \$780 excl GST.

The mandatory *Parenting through Separation* course is free of charge.

How is the role of pre-court taxpayer-funded counselling changing?

The current focus on therapeutic counselling for reconciliation of private relationship issues pre-court will be replaced with a renewed focus on resolving private issues, and reducing conflict for the benefit of children.

Family Dispute Resolution will replace the current taxpayer-funded pre-court counselling. Currently this is available on request, for up to six hours.

As an interim measure (until the proposals are in place), this will reduce to one hour of free pre-court counselling, and three hours after an application to the Court has been made. The change would mean counsellors would need to take a shorter, outcome-focused approach.

Will taxpayer-funded counselling still be available?

Yes, a judge can refer parties to counselling if it would be helpful in producing a more durable outcome for the family involved.

Simplified court processes

How is the Family Court being simplified?

Unlike the District and High Courts, the Family Court currently has no prescribed processes cases must follow.

Lack of clear processes has negatively impacted on the court's efficiency and effectiveness, and contributed to significant delays. Parties do not know how long their case is likely to take, what steps it will follow, or how much it will cost.

New 'tracks' have been designed to help parents and caregivers navigate the court by themselves in care of children matters. Applications to the court are allocated to a 'track' depending on its complexity, by the court registrar.

What are the new 'tracks' through the court?

The three new court 'tracks' are:

1. Fast Track (Without Notice)

Urgent applications to the Court, for example, allegations of domestic violence and protection of children are automatically allocated to the Fast Track (Without Notice).

This ensures vulnerable people exposed to violence and children needing protection have immediate access to the court.

2. Simple Track

Applications to the court for simple or single-issue matters, for example, contact arrangements for children, are allocated to the Simple Track.

The Simple Track is designed so that the parties are able to represent themselves, without the need for a lawyer.

3. Standard Track

Applications to the court for multiple or more serious issues, for example, an application for day-to-day care or permission to take children to live overseas, are allocated to the Standard Track.

The Standard Track is designed so Parties are able to represent themselves, without the need for a lawyer, for most of the process. If matters are not resolved, the case moves on to a formal hearing where lawyers are present.

The diagram below describes the new care of children case ‘tracks’.

care of children case process



How will people be supported to use the court?

Improved information services and simplified court 'tracks' will make it easier for people to resolve their disputes. People will have ready access to the information and support services they need to be able to navigate the new system easily, for example, easy to complete forms and a questionnaire style affidavit.

What do the new 'tracks' mean for vulnerable people, such as victims of domestic violence and children under care and protection?

It is important that vulnerable people exposed to violence and children needing protection have immediate access to the courts. This will not change.

Vulnerable people exposed to violence and children needing protection are automatically allocated to the Fast Track (Without Notice) giving them immediate access to the Court.

How will the simplified Court manage complicated cases involving relationship property and family trusts?

Relationship property cases take the longest time to resolve out of all applications to the Family Court – the median time to resolve a relationship property application is 294 days.

Currently, the Family Court can transfer a relationship property case to the High Court if it is appropriate due to its complexity, although in practice this is rarely done.

Proposed changes mean that regardless of complexity, a case must be transferred if it would more appropriately be dealt with in the High Court. This would enable relationship property issues to be heard together with related trust or company issues.

A new, more comprehensive affidavit of assets and liabilities, an obligation to disclose financial information and key documents, and clear rules around disclosure obligations for family trusts are also proposed.

What new expectations are there the behaviour of parties and lawyers?

Simplified court processes must be supported by changes in the way parties and lawyers behave in resolving disputes to encourage better cooperation.

Obligations will be introduced to encourage lawyers and parties to work together to:

- have regard to the welfare and best interests of any children
- promote family relationships after resolution of the dispute, and
- encourage settlement, where appropriate.

How is 'tit-for-tat' behaviour between parents being discouraged?

Unmeritorious repeat applications are disruptive to children who need stability and certainty in their childcare arrangements.

There are a significant number of repeat applications made to the Court - in 2010/11 there were approx. 26,281 Care of Children Act applications, involving just 8,678 families.

It is proposed that repeat applications, or applications to vary care agreements, may be made only where there has been a material change in the child's circumstances.

Gaining the permission of a Judge will be required to commence new proceedings where an order has been made in the preceding two years, costs have been awarded previously against the applicant in similar proceedings, or a previous application has been dismissed.

These changes will free up the court's time to focus on the most serious and urgent cases.

Are parents still able to get legal aid?

Yes. People who are eligible for legal aid will still be able to get it. This is not changing.

What is changing is that for simple private matters lawyers are not needed, so parents can represent themselves. People will be supported with a simple guided process and access to information to help them, for example, a new standardised affidavit.

For more complex private matters, parents appearing in court can apply for legal aid for a formal hearing and for without notice applications.

What exactly will people have to pay for?

We are asking people to pay the cost of Family Dispute Resolution which can be subsidised for low income earners. The proposed subsidy is \$780 plus GST. The mandatory *Parenting through Separation* course is free of charge.

New 'tracks' will help parents and caregivers navigate the Court by themselves without the need for a lawyer in most cases.

What does targeted use of court professionals mean?

There has been a significant increase in the number of professionals and professional groups working around the Court – these include family lawyers, lawyers for children, counsellors, and specialist report writers.

The role and use of these professionals is being changed to better focus on the needs of children, encourage parental autonomy and reduce parental conflict, provide a proportionate and less adversarial response to minor disputes, and target the use of resources.

What changes are being made to lawyers representing the interests of children?

There is currently no clear definition of the role of lawyer for child, duplication of effort with counsel to assist, and no clear direction on when a lawyer for the child needs to be appointed by the Court.

The appointment of lawyer for child is being clarified to include target children who need legal representation because of a serious issue.

Serious issues are:

- domestic violence
- allegations of child abuse
- alienation of a parent
- mental health issues, and
- alcohol or drug abuse.

Improving responsiveness to domestic violence

What better support is there for victims of domestic violence?

Proposals will increase responsiveness to victims and bring a greater focus on children and vulnerable adults. This will contribute to the protection recovery and reduction in the rate of victimisation for women experiencing or at risk of domestic violence.

Proposals are to:

- increase penalties for breaching a protection order
- recognise 'economic abuse' as a form of domestic violence
- increase the flexibility of domestic violence programmes for both respondents and protected people, and
- streamline enforcement of respondent attendance at domestic violence programmes.

What will the penalty for breaching a protecting order be?

The maximum penalty for breaching a protection order will increase from two years imprisonment to three years imprisonment.

Any breach of a protection order is unacceptable, and increasing the maximum penalty sends a clear message to offenders, victims, lawyers and judges.

What is economic abuse?

Economic abuse is a common form of domestic abuse. Abusers can adopt a range of tactics including restricting access to money, extorting or spending the victim's money, or preventing a person from working outside the home.

It is proposed to extend the definition of domestic violence in the Domestic Violence Act to explicitly include economic abuse as an example of psychological abuse.

This change sends a clear signal that such abuse is unacceptable.

What improvements are being made to stopping violence programmes?

Currently, domestic violence programs are largely one-size-fits-all programmes because the format and delivery of programmes is set out in regulations.

Evidence shows a better approach is an effective individual needs assessment for participants, supported by a tailored response.

What are the benefits of an individual approach to domestic violence programmes?

Participants would have to undertake a minimum specified number of hours with an approved domestic violence programme provider, rather than a specified programme and be subject to a mandatory needs assessment.

Programme providers would design an individual plan for each respondent, make appropriate referrals to other social services, and provide a final outcomes report on completion.

Input into the domestic violence programme from whānau, where safe and appropriate (and if consented to by all parties) will also be allowed.

How will attendance at domestic violence programmes be better enforced?

Domestic violence programme providers will have more responsibility to follow up if a participant does not attend a programme. When a programme provider is satisfied a participant is not complying the Court's direction, they will provide their views to the Court.

Next steps

What is the process and timeframe for the reforms?

The Family Court Reform Bill will be introduced to the House later this year. The Bill will then be referred to select committee where anyone with an interest in the Family Court will have an opportunity to have their say on the Bill.

Background information – the Family Court Review

Who was consulted on the Family Court Review?

Officials consulted with over forty-five Family Court stakeholders to identify the issues facing the Family Court. These included family law academics, government agencies, non-government organisations, professional family justice services, and private individuals.

The issues raised were described in a public discussion paper – *Reviewing the Family Court* – that was released in September 2011 for public submissions.

209 submissions were received which have helped to develop proposals for reforming the court. A summary of the submissions is available from www.justice.govt.nz.

Views from court users were also gained from an online survey – 121 survey responses were received.

An independent External Reference Group was also established, made up of professionals who work in the Family Court. The group included:

- Antony Mahon, then Chair of the Family Law Section of the New Zealand Law Society, and Chair of the reference group
- Garry Collin, then Acting Family Law Section Deputy Chair, New Zealand Law Society
- Judge Ullrich, Family Court Judge, Wellington District Court
- Professor Fred Seymour, Professor in Clinical Psychology, University of Auckland
- Dr Suzanne Blackwell, Clinical Psychologist, Auckland
- JoAnn Vivian, National Practice Manager, Relationship Services, Wellington
- Deborah Clapshaw, Dispute Resolution Mediator, Auckland
- Jonathan Loan, Chair of the New Zealand Association of Counsellors
- Sharyn Otene, Lawyer, South Auckland

The group's report to the Minister of Justice is available from www.justice.govt.nz.

How much have the costs of running the Family Court increased?

Costs in the Family Court have grown significantly in recent years, despite the same overall number of applications to the Court. Costs of running the Court increased 70 per cent from \$84 million in 2004/05 to \$142 million in 2010/2011.

In 2010/11 there were approx. 26,281 care of children applications to the Court, involving 8,678 families.

Family legal aid costs have increased from \$27.4million in 2006/7 to \$53.1million in 2010/11.

There has been a significant increase in the number of professionals and professional groups working around the court – these include family lawyers, lawyers for children, counsellors, mediators and psychologists.

Professional services costs have increased from \$43.1 million in 2005/06 to \$62.9 million in 2010/11.