

Short Summary of the Select Committee's Report on Family Court Proceedings Reform Bill

WAVES Trust, 12 June 2013

The Justice and Electoral Select Committee returned its report on the Family Court Proceedings Reform Bill on Tuesday, 4 June 2013. The Committee has recommended a number of changes to the Bill, whilst Labour and the Greens have appended minority reports opposing the Bill.

The Committee recommended the commencement date for the Bill be 1 October 2014 to allow the Ministry of Justice sufficient time to design and implement system changes. They also rejected the proposal to rename the current Family Court Act to the Family Disputes Resolution Act.

The remainder of this briefing focuses on the Committee's recommendations for changes to the Care of Children Act (CoCA) and Domestic Violence Act (DVA).

Care of Children Act

Family Dispute Resolution Services (FDR)

- The Bill's intention to make parties attend out of court FDR Services before gaining access to court remains in place and is extended to include those seeking a parenting order or applying for guardianship under CoCA.
- A new clause is included to make FDR free for those eligible for legal aid.
- Adds criteria for granting, approving, suspending and disqualifying FDR providers.
- Adds new section on the FDR form requiring provider to state whether they think a settlement conference will promote conciliation.
- Sets out that FDR forms will be valid for 1 year.
- Allows judges to refer parties of CoCA applications to FDR.

Access to Lawyers

- New clause enabling access to lawyer at settlement conference if the judge decides the party needs representation.
- Allows lawyers to act in CoCA cases where there are concurrent proceedings underway.
- Requires lawyers acting on CoCA matters to promote conciliation and have a duty to promote the welfare and best interests of children.
- Half the costs of lawyer to assist the court will be paid by parties to the application.
- Lawyer for child need only inform children of appeal options if they are capable of understanding the information.

Counselling

- Judges can direct parties to counselling when making a final order to support compliance with the order.

Parenting Information Programmes (PIP)

- Judges can direct applicants to CoCA proceedings to attend a PIP.
- Details of what constitutes a PIP must be specified in the regulations.

Other

- Judges may hold a settlement conference before a hearing and may rule that parties have legal representation.
- Judges must take account of children's welfare and best interests when making interim orders.
- The court may order a short report on the day, produced by a social worker, itemising children's contact with CYF.
- Parties requesting a second opinion must pay for that service themselves.

Allegations of Violence and Domestic Violence

Children's Safety

- CoCA Ss58-62 are removed.
- New provisions in CoCA S5 which requires judges when considering applications for guardianship, parenting orders or variations, and where there is or has been a final protection order in place, to also consider whether that order is still in force, its circumstances and any written comments by its issuing Judge.
- Court can take account of parties' conduct in settling CoCA applications only to the extent that it is relevant to the wellbeing and best interests of the children.

Protection Order Programmes*

- Deletes clauses 38-50 and inserts new clause 52A to shift focus of protected persons' programmes to safety (now called safety programmes) and introduce new provisions for safety programmes and new publicly available practice guidelines.
- Inserts provisions recognising service providers' role in assessment as well as provision by allowing safety programme providers to assess respondent safety risk.
- Allow protected person to request a programme at any time.
- Improve feedback from respondent programme providers including whether the respondent has fully complied with the terms of the programme.
- Requires respondent programme providers to notify the court if safety concerns are identified after assessment or during programme. Courts to notify both judge and protected persons.
- Requires respondent programme providers to notify the court if respondent achieved programme objectives and any concerns as well whether completed the programme (Judge and protected persons to be notified).
- Replaces programme approvals panel with regulations setting out streamlined approval process.

Comments

There are a number of changes promoted by the Select Committee which are partially in line with our submission's requests. Some include:

- The clause making FDR free for those eligible for legal aid.
- Allowing protected person and respondent programme providers to provide safety information back to the court and requirement to feed this on to protected persons.
- Improving definition of FDR and PIP and setting out the requirements of these in the Act.
- Allowing judges to override provisions preventing legal representation

There are still major areas of concern, however:

- The new Bill places greater emphasis on judges' as the gate keepers to legal representation which means that access will vary from judge to judge/court to court.
- FDR remains and is strengthened but the overriding principle of diminished access to court has not been addressed
- Bill sends message that CoCA applicants must first apply for a protection order in order to gain the right to have the court assess the safety of their children when there is domestic violence.
- CoCA still does not define safety of a child.
- Final orders are still preferred over interim orders.
- No set of best practice principles for the Family Court.
- Those applying to the court for exemptions from FDR because of DV must still provide an affidavit if not under a protection order.

We'll keep you posted of further developments as they arise.

Contact:

WAVES Trust
PO Box 12-1450, Henderson 0650
7 Henderson Valley Rd, Henderson
09 838 4834
jo@waves.org.nz