



22 June 2022

Attorney-General

**Family Court (Family Court Associates) Legislation Bill (PCO21825/12.0) – Consistency with the New Zealand Bill of Rights Act 1990**

**Our Ref: ATT395/357**

1. We have considered the Family Court (Family Court Associates) Legislation Bill (“the Bill”) for consistency with the New Zealand Bill of Rights Act 1990 (“the Bill of Rights Act”). We consider the Bill is consistent with the Bill of Rights Act.

**Outline of the Bill**

2. The Bill is an omnibus bill dealing with the broad policy of improving outcomes for people participating in Family Court proceedings, by creating the new role of Family Court Associate, a judicial officer, who will undertake some of the Family Court Judges’ workload to reduce delay. As a result, the Bill amends a number of family law statutes to enable certain decisions to be made by a Family Court Associate.
3. The role of Family Court Associate is based on a recommendation made by the Independent Panel which examined the 2014 reforms to the Family Court in their report, Te Korowai Ture ā Whānau.
4. Some of the powers to be exercised by Family Court Associates raise consideration of rights under the Bill of Rights Act.

**Freedom of association and freedom of movement– ss 17 and 18 Bill of Rights Act**

5. Amendments to the Care of Children Act 2004 authorise a Family Court Associate to direct parties to attend certain programmes,<sup>1</sup> attend counselling<sup>2</sup>, or to direct that contact with a child is to be supervised.<sup>3</sup> Clause 26 amends s 118, authorising the Family Court Associate to prevent the removal of a child from

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<sup>1</sup> Clause 14 (attending family dispute resolution), clause 16 (attend a parenting programme).

<sup>2</sup> Clause 15.

<sup>3</sup> Clause 21.

New Zealand where there are reasonable grounds to believe a person is intending to defeat certain specified applications

6. Amendments to the Family Violence Act 2018 authorise a Family Court Associate to hear and decide objections to a direction to undertake an assessment for a non-violence programme or to attend such a programme or engage with a prescribed service<sup>4</sup> or a particular prescribed non-standard service.<sup>5</sup>
7. An amendment to the Oranga Tamariki Act 1989 authorises a Family Court Associate to direct persons involved in care and protection proceedings to participate in counselling.<sup>6</sup>
8. A direction to attend a programme or counselling or have supervised contact with a child may compel the person concerned to associate with people with whom they would otherwise choose not to associate and to go to places they may otherwise choose not to visit. A direction not to remove a child from New Zealand affects freedom of movement.
9. We consider the impact on a person’s freedom of association and/or freedom of movement raised by these provisions is demonstrably justified. The relevant provisions of the Family Violence Act apply following the making of a protection order and preparation of an assessor’s report about the person concerned. The provisions of the Care of Children Act and the Oranga Tamariki Act apply in specified circumstances and will be exercised by the Family Court Associate, a judicial officer, in accordance with specified criteria and in the context of the welfare and best interests of a child being the first and paramount consideration.<sup>7</sup> In addition, the Family Court Associate’s exercise of these powers will be informed by s 27(1) of the Bill of Rights Act.

#### **Freedom from unreasonable search and seizure- s 21 Bill of Rights Act**

10. Several amendments to the Care of Children Act and the Oranga Tamariki Act authorise a Family Court Associate to direct a child be uplifted.<sup>8</sup> Section 21 of the Bill of Rights Act protects against “unreasonable” seizure. We consider the seizure of the person provided for in these provisions is reasonable and therefore does not fall within the terms of s 21 of the Bill of Rights Act. This is because of the circumstances in which the power to direct uplift applies and its authorisation by a Family Court Associate who is a judicial officer.

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<sup>4</sup> Clauses 53 and 54.

<sup>5</sup> Clauses 58 and 65

<sup>6</sup> Clause 74, amendment to s 74 of the Oranga Tamariki Act

<sup>7</sup> Care of Children Act, s 4, Oranga Tamariki Act, s 4A.

<sup>8</sup> Clause 22 (s 77 Care of Children Act if he/she believes on reasonable grounds that a person is about to remove a child from NZ with intent to defeat an application or compliance with a parenting order), clause 25 (amendment to s 117 Care of Children Act: power to issue a warrant to uplift a child if an application claims a child has been abducted to NZ and there are reasonable grounds to believe a person will attempt to conceal the whereabouts of the child with intent to defeat the application); Clauses 72 – 73 (ss 39 -40 of Oranga Tamariki Act – power to issue a warrant authorising search for and uplift of child suffering ill-treatment, neglect, deprivation, abuse or harm).

### Right to justice – s 27 Bill of Rights Act

11. Clause 31 amends s 141 of the Care of Children Act to enable a Family Court Associate to order that a person who has persistently instituted vexatious proceedings may commence further proceedings only with the leave of the court. The existing inclusion of s 141 in the Care of Children Act reflects that a litigant’s right of access to the Courts is not absolute. Set against that right is “the desirability of freeing defendants from the very considerable burden of groundless litigation” and the need to protect resources of the judicial system.<sup>9</sup>
12. We consider authorising a Family Court Associate to make an order under s 141 is consistent with the Bill of Rights Act.

### Conclusion

13. We conclude that the Bill appears to be consistent with the Bill of Rights Act.
14. This advice has been peer reviewed by Peter Gunn, Crown Counsel.




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Helen Carrad  
Crown Counsel

**Noted / Approved / Not Approved**

**Encl.**

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Hon David Parker  
**Attorney-General**  
/ /2022

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<sup>9</sup> *Brogden v Attorney-General* (2001) NZAR 809 (CA) at [20]