

Update Family Law Service

Service 208 — August 2022

Legislative amendments

Evidence (Digital Video Records) Amendment Regulations 2022 (SL 2022/135)

These regulations amended reg 48 and inserted regs 48A, 48B, 48C and 48D of the Evidence Regulations 2007 on 9 June 2022.

Court Rules (Te Kāhui o Matariki Public Holiday) Amendment Rules 2022 (SL 2022/154)

These rules amended rr 1.4, 2.1 and sch 2, form 35A of the District Court Rules 2014 on 23 June 2022.

Reserve Bank of New Zealand Act 2021 (2021 No 31)

This Act amended on 1 July 2022:

- s 155 of the Child Support Act 1991
- s 111 of the Social Security Act 2018

Pae Ora (Healthy Futures) Act 2022 (2022 No 30)

This Act amended on 1 July 2022:

- s 85A of the Births, Deaths, Marriages, and Relationships Registration Act 1995
- ss 5, 14, 15 and 17 of the Children's Act 2014
- s 19 of the Family Violence Act 2018
- s 27 of the Human Assisted Reproductive Technology Act 2004
- s 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992
- s 2 of the Oranga Tamariki Act 1989
- ss 67, 72, 86, 96, 402 and sch 2 of the Social Security Act 2018

Bills

Surrogacy — reform of surrogacy law — Improving Arrangements for Surrogacy Bill

The Improving Arrangements for Surrogacy Bill is currently at the Select Committee stage. The Member's Bill will "simplify surrogacy arrangements, ensure completeness of information recorded on birth certificates, and provide a mechanism for the enforcement of surrogacy arrangements". See [6.701AA], [10.1], [10A.1] and [10A.10].

Care and Protection — Oranga Tamariki Amendment Bill

The Oranga Tamariki Amendment Bill amends the Oranga Tamariki Act 1989 by partially repealing the subsequent-child provisions, repealing a redundant information-sharing provision, and amending technical errors and ambiguities. The Bill is at the Second Reading stage. See [6.551A].

Family Court (Family Court Associates) Legislation Bill

The Family Court (Family Court Associates) Legislation Bill, which seeks to improve outcomes for people participating in Family Court proceedings by creating a new role to take on some of the Family Court Judges' workload in order to reduce delay, has been referred to Select Committee. Submissions are due by 14 September 2022.

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The index has been updated in this service to Service 207.

Updated commentary**Care and protection — discovery — privacy — expert opinion evidence**

In *Mercer v McDaniel* [2021] NZFC 3403, [2021] NZFLR 860 Ms Mercer applied for discovery against Oranga Tamariki and the Police, seeking copies of all professional interviews with a child not part of the Care of Children Act 2004 proceedings. Oranga Tamariki was not a party to the proceedings but was an interested party as a s 131A Care of Children Act 2004 report had been completed. Judge de Jong made an order for discovery under r 143 of the Family Court Rules 2002. See [6.622] and [6.626].

Day-to-day care and contact — child's views — family violence

In *Giles v Winkler* [2021] NZFC 705, [2021] NZFLR 854, Judge Montague placed considerable weight in a 13-year-old child's views after she witnessed violence by her father. Judge Montague ordered supervised virtual contact because the father resided in South Africa and it was important to maintain family relationships. See [6.105C.02].

Day-to-day care and contact — ascertaining child's views before ordering s 133 report on child

The Court of Appeal in *Newton v Family Court at Auckland* [2022] NZCA 207 reversed Courtney J's finding in *AA v Family Court at Auckland* [2018] NZHC 1638, [2018] NZFLR 543 that the children's views needed to be ascertained before making the s 133 order. The parties are seeking leave to appeal to the Supreme Court. See [6.105H].

Day-to-day care and contact — judicial review of lawyer for child report

The Court of Appeal in *Newton v Family Court at Auckland* [2022] NZCA 207 clarified that lawyer for child reports are not amenable to judicial review. See [6.123D].

Family Protection Act 1955 — Māori freehold land — Māori Land Court

Amendments consequential to Te Ture Whenua Māori (Succession, Dispute Resolution and Related Matters) Amendment Act 2020 are discussed. See [7.901.05].

Family Protection Act 1955 — costs — declined Calderbank offer

A defendant can be entitled to costs if a Calderbank offer has been previously declined that was more beneficial to the plaintiffs than what is ultimately awarded by the Court; discussion on the test for indemnity costs: *Howarth v Howarth* [2022] NZHC 602. See [7.915].

Family Protection Act 1955 — costs — indemnity costs

The onus is on the person seeking indemnity costs and any award reflects the conduct during the proceedings not prior; costs can be awarded in respect of an application for costs: *Harvey v Harvey* [2021] NZHC 3264. See [7.915].

Family violence — adjournment — s 153(2)(c) of the Family Violence Act 2018

Rudman v Way [2008] 3 NZLR 404 was followed in *Birch v Birch* [2021] NZFC 9249 where Judge Twaddle noted ss 153(2)(c) and 154(3) of the Family Violence Act 2018 used the language of “good cause” and “special reason” to justify adjournments. See [7.602.01], [7.615.02], [7.650.03].

Protection of Personal and Property Rights Act 1988 — enforcement of interlocutory orders relating to discovery — r 237 of the Family Court Rules 2002

NP v DP [2021] NZFC 7942 concerned the enforcement of interlocutory orders relating to discovery. It was accepted that r 237 of the Family Court Rules 2002, which empowers the Court to address defaults in complying with such orders, applies to “other parties” beyond those who are parties in the narrow sense. See [7.875].

Protection of Personal and Property Rights Act 1988 — Part 9A (Payment of money or damages) — United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities played a part in the Supreme Court decision in *TUV v Chief of New Zealand Defence Force* [2022] NZSC 69. The specific issue concerned the interplay of a settlement under the Employment Relations Act 2000 and Part 9A of the Protection of Personal and Property Rights Act 1988, which covers Court approval of money payments or damages by persons incapable of managing their affairs. The Court divided 3 to 2 in favour of giving the Employment Relations Act 2000 priority but this does not affect the dicta on the Convention. See [7.800.04] and [7.898].

