

FAQs

How is the family justice system changing?

The family justice reforms provide more support for parents to reach out-of-court agreements about care arrangements for their children.

This approach will reduce stress on families by avoiding wherever possible the delays, conflict and expense that court proceedings can entail. People who need it will still have immediate access to the court

This will ensure the court – when it is needed – is focussed on vulnerable people and more serious matters.

The reforms will place more emphasis on putting the needs of children first.

Families will be supported to reach out-of-court agreements on matters like day-to-day care and contact arrangements through the new Family Dispute Resolution (FDR) service and the expanded Parenting Through Separation course.

The new Family Legal Advice Service will provide government-funded advice for those who are eligible to help them understand their rights, responsibilities and options when resolving disputes about caring for children, out of court.

Important changes are being made to better protect people from ongoing domestic violence.

The assessment stage of Family Dispute Resolution will check to ensure that people and the dispute are suitable for mediation. This includes a screening for domestic violence.

More protection has been provided for children and vulnerable people with the introduction of greater penalties for breaching a protection order.

New provisions to be introduced later in the year will make non-violence programmes safer and more effective and allow people under a protection order to request a safety programme at any time.

When people do go to the Family Court for care of children matters, they will file their papers and take part in initial meetings with the Judge without a lawyer, other than those on the without notice (urgent) track. New forms and guidelines for filling forms out have been developed.

Lawyers will still be used for in a number of situations including for urgent cases, if a case proceeds to a hearing, or if a Judge thinks they are necessary after the initial conferences

Why is the Family Court changing?

There is a growing recognition that the Family Court is not always the best place for helping families resolve parenting disputes.

The aim of the reforms is to reduce the stress on families and children by avoiding wherever possible the delays, conflict and expense that court proceedings can entail.

The reforms are based on findings of a 2011 Ministry of Justice review of the Family Court, which identified:

- current court processes are complex, uncertain, and too slow
- there is a lack of focus on children and vulnerable people
- there is insufficient support for resolving parenting matters out of court.

The cost to the taxpayer of running the Family Court was growing despite the overall number of applications to the court remaining relatively steady. The costs of running the Court increased 70 percent from \$84 million in 2004/5 to \$142 million in 2010/11 while family legal aid costs increased from \$27.4 million in 2006/7 to \$53.1 million in 2010/11.

Do the reforms cover all Family Court matters?

The reforms primarily relate to Care of Children Act (CoCA) matters, which account for about 40% of applications to the Family Court. Care of Children matters include matters such as who has day-to-day care of children and how the parent stays in contact with the child when they are not providing day-to day care.

Other matters affected by the reforms include disputes about where a child lives, goes to school, a child's name, language, culture or religion, and decisions about non-routine medical treatment for children.

Many aspects of the family justice system are unaffected by the reforms including: separation and dissolution of marriage (divorce) application adoption, powers to act on behalf of others, relationship property, paternity, mental health, and responding to Care and Protection Orders. However, if the parties and the mediator agrees, and it will help to resolve your dispute, you may discuss matters about relationship property.

People will still be able to be represented by a lawyer at a hearing, receive civil legal aid where they are eligible, and access the court in emergency or urgent situations, such as cases involving domestic violence.

How will the reforms protect those in vulnerable family situations?

The reforms will ensure more protection for children and vulnerable people by improving the Family Court's response to domestic violence.

The definition of psychological domestic violence will be widened to include financial and economic abuse, such as denying or limiting access to financial resources.

The maximum penalty for breaching a protection order was increased from two to three years imprisonment. This change came into force in September 2013.

From October 1 this year new provisions also make non-violence programmes safer and more effective. In particular there are wider powers to direct people to attend an assessment as well as a non-violence programme.

There will also be an increased onus on providers to report on the outcomes of non-violence programmes and to identify any ongoing safety concerns about those who have attended programmes.

What is family dispute resolution (FDR)?

Family dispute resolution (FDR) is a new service for resolving parenting and guardianship matters out of court.

FDR involves an independent professional helping parents and guardians to identify the matters in dispute, facilitate discussion, and assist them to reach agreement.

FDR is focussed on achieving a lasting outcome and giving people the skills to resolve future problems. FDR also encourages parents to be responsible for reducing the negative effects of conflict on children.

FDR will be mandatory for most parties prior to commencing Care of Children Act (CoCA) proceedings. In cases where FDR is inappropriate (e.g., urgent proceedings, where there are safety risks, domestic violence or where parties consent to orders), parties can go directly to court.

Who can deliver FDR?

The Secretary for Justice has approved the New Zealand Law Society, the Arbitrators' and Mediators' Institute of New Zealand (AMINZ) and the Association of Dispute Resolvers (LEADR) as the organisations that can approved FDR providers.

FDR practitioners will generally have at least five years of practice in family mediation or an associated profession to be accredited by AMINZ, the NZ Law Society or LEADR.

What types of matters will go to family dispute resolution (FDR)?

FDR will deal with trying to reach agreement on parenting or guardianship arrangements. Common areas of disputes about children can include:

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

How much will family dispute resolution (FDR) cost individuals?

FDR will be fully subsidised for the estimated 60% that will need FDR services. They may be provided with preparatory counselling to help them prepare for FDR if the mediator thinks this would help – this will be at no cost for those who are eligible for full government funding.

For those not eligible, the cost of FDR is likely to be less expensive than retaining a lawyer and proceeding to a defended court hearing. When FDR was proposed, an indicative cost was estimated to be about \$897 including GST per case.

What is Parenting through Separation?

Parenting through Separation is a free and successful information programme that helps parents understand the effects of separation on children, and provides parenting skills to reduce children's stress during separation. Under the reforms, Parenting through Separation is being expanded and become mandatory for many applicants before they proceed to the Family Court.

Will people still get in-court counselling?

Previously, fully subsidised in-court counselling was available to all couples, whether or not children were involved. It was also free to all couples, including those who could afford to pay for counselling themselves.

If a dispute about the care of children does proceed to the Family Court, judges will also have the option to order fully subsidised counselling if they believe this will help the parties.

How do the reforms affect access to the Family Court?

The reforms will support parents to reach out-of-court agreements about care arrangements for their children, where possible. This approach will allow the court to focus on the more vulnerable people and more serious matters.

Families will be supported to reach out-of-court agreements through the new Family Dispute Resolution (FDR) service and the expanded Parenting through Separation course.

Where people cannot reach agreement while participating in FDR, or their situation means FDR is unsuitable, parties can apply to the court.

There are no changes to the types of cases people can take to court, and those who need to go to court will be supported to navigate the court system independently, in simple matters.

Core features of the current system will remain, such as entitlement to civil legal aid for those who are eligible and the ability to get immediate access to the court in emergency or urgent situations.

How do the reforms affect the use of lawyers in the Family Court?

The reforms only change the role of lawyers in cases under the Care of Children Act 2004.

The emphasis of the reforms is on helping parents reach out-of-court settlements about the care arrangements for their children. Some out-of-court family legal advice will be available to eligible parents and guardians.

Where parents or guardians do need to go to court to reach agreement, they will be supported to navigate the court system independently for straightforward matters, such as consent orders or undefended proceedings. Improved information services, a simplified three-track court system, and new forms will be introduced to reduce the need for a lawyer's involvement in routine matters.

People can have a lawyer represent them at a defended hearing or for without notice (urgent) applications.

Judges will be able to allow lawyers to participate earlier in the court process (at the settlement conference, for example) if they think it is necessary.

How do the reforms affect the use of lawyer for child?

The court will be able to appoint lawyer for child in cases under the Care of Children Act 2004 if it has concerns about a child's safety or wellbeing.

There will be no change to when lawyer for child may be appointed under other Acts, such as the Children, Young Persons, and their Families Act 1989.

The role of lawyer for child has been clarified to make clear that they may represent a child's welfare and best interests, as well as their views. Currently, courts can appoint two lawyers, one to represent the child's views, another to represent the child's best interests.

What subsidised services are available to parents prior to them going to court?

The government will subsidise some out-of-court services for parents and guardians who meet the eligibility criteria. For those who meet the income threshold for civil legal aid (similar to those for a Community Services Card) access to the new Family Legal Advice Service and Family Dispute Resolution will be fully Government funded. FDR may include some preparatory counselling, where deemed necessary.

For those who do not meet the eligibility criteria, there is an option to get FDR services (assessment and mediation) for \$897 including GST, per case. This will be shared by all parties to the dispute, so an individual will pay significantly less than this amount.

How is the availability of civil legal aid affected by the reforms?

The Family Court reforms will reduce the need for civil legal aid by supporting people to settle their Care of Children Act disputes, without going to court, where possible.

When parents or guardians do go to court, simplified and streamlined court processes will mean that in many care of children cases, parties will represent themselves without the need for a lawyer or civil legal aid.

Eligible parents will be able to apply for civil legal aid for proceedings in the Family Court for Care of Children Act 2004 matters where:

- an application is made without notice
- a judge directs the application to be heard in conjunction with an application under another Act
- a judge directs the application proceed to a defended hearing
- a judge directs that parties may be represented at a settlement conference
- the application relates to international child abduction.

The Family Court reforms will not affect civil legal aid eligibility for proceedings under other Acts such as: Children, Young Persons, and Their Families Act 1989; Domestic Violence Act 1995; Family Proceedings Act 1980; and Property (Relationships) Act 1976.

Most people applying for legal aid are required to pay a \$50 fee to their lawyer. Certain application types are specifically exempt from the user charge, including applications for protection orders under the Domestic Violence Act 1995, and care and protection proceedings under the Children, Young Persons, and Their Families Act 1989.

While grants of legal aid are subject to the condition that they will be repaid, most people who receive legal aid are not required to pay it back. Approximately 75% of people who receive legal aid have their debt written off.

What are the three new ‘tracks’ through the court for Care of Children Act applications?

Track	Detail
1. “Without Notice” Track	Applications to the court that require immediate consideration can be filed as a without notice application. This ensures that people such as those exposed to violence and children needing protection have immediate access to the court. This has not changed.
2. Simple Track	The Simple Track is designed so that straight forward matters that do not require extensive judicial involvement (e.g. consent orders , which formalise agreements) can be dealt with promptly without the need for lawyers.
3. Standard Track	Applications for multiple or more serious issues (e.g. applications for day-to-day care or permission to take children to live overseas) will follow the Standard Track. The Standard Track is designed so that generally parties are able to talk directly to the judge at a settlement conference. If the matter can’t be resolved at a settlement conference and a formal hearing is required, the parties will be able

Track	Detail
	to have a lawyer to represent their views.