

# Update

## Family Law Service

### Service 221 — September 2025

#### Legislative amendments

##### **District Courts Fees Amendment Regulations 2025 (SL 2025/99)**

These regulations amended sch 1 of the District Courts Fees Regulations 2009 on 1 July 2025.

##### **Family Courts Fees Amendment Regulations 2025 (SL 2025/102)**

These regulations amended schs 1, 2 and 3 of the Family Courts Fees Regulations 2009 on 1 July 2025.

##### **Oversight of Oranga Tamariki System Legislation Amendment Act 2025 (2025 No 34)**

This Act amended on 1 August 2025:

- ss 1 (renaming of the Children and Young People's Commission Act 2022 as the Children's Commissioner Act 2022), 3, 4, 5, 6, 7, 11 to 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and sch 1 of the Children and Young People's Commission Act 2022,
- ss 5 and 6D of the Children's Act 2014;
- s 34 of the Human Assisted Reproductive Technology Act 2004;
- s 58 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003;
- ss 2, 66M and 447 of the Oranga Tamariki Act 1989;
- s 63 of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017;
- regs 10, 29, 31 and 37 of the Oranga Tamariki (Residential Care) Regulations 1996;
- rule 9 of the Oranga Tamariki Rules 1989.

##### **Social Security Amendment Act 2025 (2025 No 25)**

On 26 May 2025 this Act amended ss 5, 119, 126, 136, 162, 165, 168, 181, 183, 183A–183D, 230, 232, 233A, 234, 235, 236, 237, 238, 239, 242, 244A–248, 252, 252A, 254, 256, 261, 261A, 261B, 262, 263, 265, 270A, 272, 275, 276, 277, 278, 280A, 282, 283, 285A, 287, 287A, 298, 320, 321, 322, 338, 339, 340, 340A, 340B, 341, 342, 344, 345, 346, 363A and 418 of the Social Security Act 2018.

On 1 July 2025 this Act amended ss 21, 325, 332, 334, 363A, 441 and sch 2 of the Social Security Act 2018.

#### **Annotated legislation**

**Care of Children Act 2004, s 46R — disputes between guardians — relocation — appeal to the Court of Appeal**

In *Drake v Drake* [2025] NZCA 353, the Court of Appeal ultimately refused the father’s application to relocate his 10-year-old son (“Jethro”) from Taranaki, where he was in his mother’s care, to the Bay of Plenty. See [COCA46R.03(d)(i)], [COCA46R.03(d)(ii)], [COCA46R.03(d)(iii)], [COCA46R.03(d)(vi)] and [COCA46R.03(d)(vii)].

### **Care of Children Act 2004, s 49 — interim parenting orders**

In *PAR v SJF* [2025] NZHC 2148, Becroft J wrote a letter to “Claude”, a 14-year-old boy. The appeal was resolved by agreement between the parents: Claude would remain in Auckland with his mother until the case was resolved, but travel overseas in school holidays to spend time with his father and siblings, with his mother paying the airfare. Becroft J stressed the urgency of a final decision later in the year. See [COCA49.02(b)].

### **Care of Children Act 2004, s 49 — interim parenting orders — appeal**

In *Barnes v Amery* [2025] NZHC 1529, McHerron J allowed a father’s appeal against an interim Family Court order requiring his eight-year-old son “Amias” to relocate from the Tararua District to live with his mother in Hamilton. McHerron J found it was best that Amias continue with his current care arrangements. The matter was remitted to the Family Court. See [COCA49.02(e)].

### **Care of Children Act 2004, s 142 — costs — appeal**

In *White v Henderson* [2025] NZHC 2274, Grice J allowed an appeal by a father against a \$20,000 costs order following contact proceedings concerning his son. The appeal was allowed to a limited extent, with the issue of quantum remitted to the Family Court for rehearing, with both parties able to provide further evidence and submissions. See [COCA142.10(a)].

### **Care of Children Act 2004, s 145 — appeal to Court of Appeal**

Section 145(1)(a) provides that no appeal lies to the Court of Appeal from an order or decision of the High Court under that Act if the order or decision is under s 46C or 46R, which both relate to guardianship decisions. The test has subsequently been framed as follows: “a decision made under s 46R can be appealed to this Court where it is closely intertwined with a decision under other provisions of the Act such that the two decisions cannot be dealt with in isolation”: *Drake v Drake* [2025] NZCA 353 at [21], n 13 citing *Hopkins v Jackson* [2022] NZCA 653 at [19]. See [COCA46R.03(b)(vii)] and [COCA142.10(a)].

### **Family Proceedings Act 1980, s 182 — nuptial settlement**

A small award under s 182 of the Family Proceedings Act 1980 was made in *Smith v Smith* [2025] NZHC 515 at [95]. Whata J considered a distribution of 15 per cent out of the trust assets to be fair and appropriate. See [FPA182.04] and [PRA43.02(b)].

### **Oranga Tamariki Act 1989, s 276A — transfer of proceeding back to Youth Court**

Section 276A was considered by the *Supreme Court in H (SC 1/ 2024) v R* [2025] NZSC 62 at [31]. The Supreme Court found that a miscarriage of justice occurred because the consequence of a non-transfer back to the Youth Court was a conviction which would not otherwise have been entered. See [OTA276A.01].

### **Property (Relationships) Act 1976, s 2D(2)(c) — meaning of de facto relationship — “whether or not a sexual relationship exists”**

In *AB v BG* [2025] NZHC 780, the parties had sexual relations but no common

residence. They had relationships with others. The woman made various documented promises relating to finances and property. Powell J concluded that there was no de facto relationship (at [61]). See [PRA2D.04(c)].

**Property (Relationships) Act 1976, s 2E — meaning of relationship of short duration — on-again/off-again relationship**

In *Vukoja v Winiata* [2025] NZFC 782, Judge Coyle held that the parties had three short de facto relationships, none of which lasted three years. However, in the alternative, if there had been one relationship only, he stated that he would have considered it to be one of short duration under s 2E(1)(b)(ii). See [PRA2D.06] and [PRA2E.01].

**Property (Relationships) Act 1976, s 2G — date at which value of property to be determined — s 18C — post- separation dissipation**

In *Nygaard v Nygaard* [2024] NZFC 6499, [2024] NZFLR 737 Judge Muir granted \$586,874 in compensation under s 18C, without altering the valuation date. On appeal, the decision was upheld (*Nygaard v Nygaard* [2025] NZHC 690). Lang J stated that, if the Family Court Judge had not used s 18C, he would have been justified in valuing the company at an earlier date under s 2G, likely to be the date of separation. See [PRA2G.01(a)], [PRA2G.02(f)] and [PRA18C.01].

**Property (Relationships) Act 1976, s 4 — jurisdiction in relation to trusts**

In *Carr v Whitfield* [2025] NZHC 743, the plaintiff sought repayment of what she regarded as loans to a trust that owned the family home. The defendant appeared under protest and argued that the case fell under the Property (Relationships) Act 1976 and s 4 applied. Associate Judge Taylor held that the High Court had jurisdiction, especially as there was a significant body of evidence to support the plaintiff's position (at [36]). The argument that the true nature of the plaintiff's application was one dealing with relationship property was rejected. See [PRA4.04].

**Property (Relationships) Act 1976, s 14(2)(c) — marriages of short duration — contribution of one spouse disproportionately greater**

In *Trafford v Gorman* [2025] NZFC 3017, Judge McKenzie held that the husband had made a disproportionately greater contribution based on his financial contribution. Despite this, the division was only 55/45 in the husband's favour. The Judge was "particularly swayed" by the husband's poor treatment of his wife during the marriage and his conduct prior to and after separation. See [PRA14.04(a)] and [PRA14.04(b)].

**Property (Relationships) Act 1976, s 18B — compensation for contributions made after separation**

*Pressley v Pressley* [2025] NZFC 5637 was an example of a complex calculation with elements going both ways. However, of special interest is the interplay between the mother's care of the six children and the father's ruses to avoid paying child support. See [PRA18B.01].

**Property (Relationships) Act 1976, s 18C — compensation for dissipation of relationship property after separation**

In *Nygaard v Nygaard* [2024] NZFC 6499, [2024] NZFLR 737 Judge Muir granted \$586,874 in compensation under s 18C. He held that the husband's actions in relation to the business "were deliberate, arguably vengeful, and the diminution of the value of [the

company] was clearly also deliberate” (at [117]). The decision was upheld on appeal: *Nygaard v Nygaard* [2025] NZHC 690. See [PRA2G.01(a)], [PRA2G.02(f)] and [PRA18C.01].

### **Property (Relationships) Act 1976, s 18C — compensation for dissipation of relationship property after separation**

*Everly v Slade* [2025] NZFC 3435 was a case of deliberate inaction, leading to an award under s 18C. The man had occupied the home without paying outgoings and had delayed sale of the home, leading to a lower sale figure with \$200,000 lost. He purposefully made things difficult and showed a lack of co-operation. The level of compensation exceeded the amount of money held in the solicitor’s trust account, but the woman was willing to accept this amount and forgo the rest. See [PRA18C.01].

### **Property (Relationships) Act 1976, s 24 — time limits for making applications — extension of time to appeal**

The principles in *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 were followed in *Lobb v Ryan* [2025] NZCA 405, a case where an extension of time for leave to appeal was granted. See [PRA24.04(b)].

### **Property (Relationships) Act 1976, s 24 — time limits for making applications — extension of time to appeal**

In *Loe v Hala* [2025] NZHC 1439 jurisdiction to extend time under s 24 was not found, following *Vincent v Vallis* [2023] NZHC 2758, [2023] NZFLR 428, however jurisdiction was instead found in s 124 of the District Court Act 2016. Wilkinson-Smith J upheld an extension of time, in doing so citing *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38]. See [PRA24.04(a)], [PRA24.04(d)] and [PRA39.04].

### **Property (Relationships) Act 1976, s 25 — when Court may make orders — interim distribution**

The Family Court declined an interim distribution in *Boyd v Powell* [2025] NZHC 2166, upheld on appeal. The property in question was subject to competing claims and was in trust. The Family Court Judge had been right to have regard to the number of applications that the applicant had made previously and the costs awards. Further, any argument about delay disappeared as a date for the substantive hearing was just a few weeks away. See [PRA25.04(c)].

### **Property (Relationships) Act 1976, s 25(4) — when Court may make orders — interim sale orders**

Sale orders were upheld on appeal in *Evans v Page* [2025] NZHC 1053. Grau J subsequently declined leave to appeal and refused to grant a stay: *Evans v Page* [2025] NZHC 1810. See [PRA25.05].

### **Property (Relationships) Act 1976, s 25(4) — when Court may make orders — interim sale orders**

In *Matthew v Harding* [2025] NZHC 1459, the Family Court Judge had ordered a sale to enable the husband to avoid defaulting on a separate property bank loan. A rider was that the proceeds were to be paid directly to the bank. By the time of the appeal, the husband was able to service the loan. Blanchard J also took into account the woman’s emotional connection to the property (though not enough on its own) and thus set the sale orders aside. See [PRA25.05].

**Property (Relationships) Act 1976, s 39 — right of appeal to the High Court — strike out application — interim distribution**

*Barker v Barker* [2025] NZHC 1817 was an application to strike out an appeal in relation to an interim distribution under s 25(3). The former wife argued that the power in s 25(3) was an exercise in discretion, supporting her position that the appeal was clearly untenable. Harvey J did not have to decide the point, as it was enough to say that it was reasonably arguable that the s 25 power is not an exercise of discretion (at [10]). The appeal was allowed to proceed, although one of the grounds was struck out. See [PRA39.02].

**Property (Relationships) Act 1976, s 39(3) — right of appeal to the High Court — further evidence**

In *O'Connor v Gnap* [2025] NZHC 1412, referring to s 39(3), s 39B(3) and r 20.16 of the High Court Rules 2016, Becroft J admitted fresh valuation evidence, as agreed by the parties. He cited *B v A* [2020] NZHC 580 at [25], inter alia, in considering the legal principles. See [PRA39.03].

**Property (Relationships) Act 1976, s 39 — right of appeal to the High Court — against interlocutory decisions**

In *Vincent v Vallis* [2023] NZHC 2758, [2023] NZFLR 428 Ellis J held that there was no right of appeal under s 39 which involved an application for an extension of time under s 24. This was because granting an extension was not an “order” under s 39(1)(a). This decision was followed in *Loe v Hala* [2025] NZHC 1439. However, jurisdiction was instead, without qualms, found in s 124 of the District Court Act 2016. Wilkinson-Smith J upheld an extension of time. See [PRA24.04(a)], [PRA24.04(d)] and [PRA39.04].

**Property (Relationships) Act 1976, s 39 — right of appeal to the High Court — against interlocutory decisions — adduce further evidence**

Becroft J also followed *Smith v Jones* [2023] NZHC 3277, [2024] NZFLR 457 in *Lu v Li* [2025] NZHC 1422 at [18]. Counsel for the respondent in the appeal accepted that an appeal could be brought against the interlocutory decision in that case not to allow further evidence. The appeal failed however, because the interlocutory application contained evidence from a judicial settlement conference, which was privileged. The defective application and affidavit were to be removed from the file and returned to the appellant’s counsel. See [PRA39.04].

**Property (Relationships) Act 1976, s 43(1) — dispositions may be restrained — “in order to defeat the claim or rights of any other person”**

In *Smith v Smith* [2025] NZHC 515 especially at [102]–[103], Whata J held the necessary element of intention was not present. The case involved paper transactions to minimise tax liability, which had the effect of benefiting both parties. Failure to do so would have been detrimental to them both. See [PRA43.02(b)] and [FPA182.04].

**Property (Relationships) Act 1976, s 44 — dispositions may be set aside — disposition to a trust — party acting as nominee of trustees**

*Graves v Dillon* [2024] NZFC 9009 was a s 44 case where the party was held to be acting as the nominee of the trustees and not acting in a personal capacity. No disposition had occurred. The judgment was upheld on appeal: *Graves v Dillon* [2025] NZHC 1278. See [PRA43.02(h)], [PRA44.02] and [PRA44C.01(a)].

## **Property (Relationships) Act 1976, s 44C — compensation for property disposed of to trust**

In *Graves v Dillon* [2024] NZFC 9009, the parties did not live in either of two properties before those properties were transferred to a trust. This meant that neither was the family home (and therefore relationship property) prior to the transfer. Section 44C could not apply. Osborne J upheld the decision on appeal: *Graves v Dillon* [2025] NZHC 1278. See [PRA43.02(h)], [PRA44.02] and [PRA44C.01(a)]

## **Property (Relationships) Act 1976, s 61 — surviving spouse or partner may choose option — contracting out agreement — intestacy**

In *Rimmer v Wilton* [2025] NZCA 374, de facto partners had entered into a Part 6 contracting out agreement. The man later died intestate. The de facto widow chose option B (choice of will or intestacy) under s 61 and was appointed administrator. She made various payments to herself, challenged by the man's adult children. The Court of Appeal held that, unless the agreement was being challenged under s 87, option B was the correct option. See [PRAPart6.01(l)], [PRA61.01], [PRA75.01(b)], [PRA76.0 1] and [PRA95.01].

## **Commentary**

### **Adoption — Adoption Act 1955, s 11(b) — welfare and interests of the child — wishes of the child**

In *Pierce v Waterman* [2025] NZFC 8345 Judge Grimes traversed authorities relevant to whether adoption is in a child's welfare and best interests. Her Honour made a final adoption order, noting that consideration of a child's wishes are fettered by the child's age and understanding. See [6.710B] and [6.710C].

### **Child Support — Child Support Act 1991, s 105(2)(c) — departure order**

In *Taylor v Taylor* [2025] NZHC 535 the liable parent had failed to file tax returns and was thus assessed on earnings for an earlier year, giving a figure of \$169,960. He became redundant and he claimed his earnings dropped to \$21,000. He did not object under the objection provisions of the Act. Muir J rejected his claim for a departure order. See [5.240].

### **Family Protection — testator's intentions**

The deceased's wishes carry no weight when there has been a deliberate wrongful failure to make proper testamentary provision (*O'Dea v Johnson* [2024] NZHC 2917). See [7.901].

### **Family Protection — scope of tikanga in family protection claims**

An extensive analysis of the relevance and scope of tikanga in family protection claims against Māori freehold land was undertaken by the Māori Land Court (*Julian v Ioasa* (2024) 309 MB 197). See [7.901].

### **Family Protection — moral duty**

The meaning and scope of “financial need” in a family protection claim (*Bradshaw v Barry* [2024] NZHC 3287; *Monckton v Donald* [2025] NZHC 7); judicial discussion on the significance and ramifications of estrangement when making an award (*O'Dea v Johnson* [2024] NZHC 2917; *Monckton v Donald* [2025] NZHC 785); financial gifts that have been received during the lifetime are relevant in assessing the deceased's moral duty



(*O'Dea v Johnson* [2024] NZHC 2917); incorrect factual assumptions can be considered when assessing whether there had been a breach of moral duty and when fixing any award; with small estates the strength of competing moral claims becomes important (*Monckton v Donald* [2025] NZHC 785). See [7.903].

### **Family Protection — percentages**

The needed proper support for a claimant should be determined with reference to a sum rather than a percentage (*Bradshaw v Barry* [2024] NZHC 3287); there is no ten per cent limit when a claim is based not only “recognition” but on abuse and neglect – a little under a third of the estate was awarded to the claimant daughter (*O'Dea v Johnson* [2024] NZHC 2917). See [7.904].

### **Family Protection — life interest for widow**

The widow of the second marriage was to receive a life interest, with the capital passing to the children of the first marriage upon her death (*Bradshaw v Barry* [2024] NZHC 3287). See [7.905].

### **Family Protection — claim where distribution of assets has taken place**

Where a claim has been made within the applicable time limits but the estate has been distributed then both equity and the Administration Act 1969 permit the claimant to trace assets (*O'Dea v Johnson* [2024] NZHC 2917). See [7.908].

### **Family Protection — evidence — cross-examination**

Judicial comment in the High Court that allowing cross-examination in family protection proceedings would include the risks of exacerbating family rifts and of lengthening the time and costs of the hearing (*O'Dea v Johnson* [2024] NZHC 2917). See [7.913].

### **Family Violence — Family Violence Act 2018, s 11 — psychological abuse — misuse of a protection order — mutual protection orders**

In *D v L* [2025] NZHC 2192 the man in this case had earlier obtained a protection order in his favour against his ex-partner. Among other things, he reported the woman on multiple occasions to the police when there had been no breach. She then applied herself for a protection order, which was granted and upheld on appeal. The misuse of the first protection order was a key element in the conclusion that the man was engaging in psychological abuse. This “weaponisation” was also relevant in determining the “necessity” for the order. It was agreed that this case was an appropriate one for mutual orders. See [7.608.01], [7.615.04] and [7.617].

### **Family Violence — Family Violence Act 2018, s 63 — protection order — representative of a child —views of child on whose behalf application made**

In *Nichols v Conway* [2024] NZFC 16194 the parents of a 16 year old girl obtained, as representatives, applied for a protection order against an older ex-boyfriend who had sexually and emotionally abused the girl from the age of 14. Judge Doyle considered that, in these circumstances where the application was by representatives, a child’s views should be obtained even if not mandatory under the Act. See [7.604], [7.611], [7.621] and [7.649].

### **Family violence — role of lawyer for child in family violence proceedings**

In *Kirchner v Howes* [2025] NZFC 1609, Judge Parsons concluded at [46] “the Court may well be assisted in determining the need for a protection order from a child’s

perspective if their s 7 COCA lawyer armed with information and knowledge from COCA proceedings is able to advocate and cross-examine the parties on behalf of the child in the FVA proceedings.” See [7.649].

**Family Violence — protection order — police procedure — improper and unlawful retention of affidavit**

In *Adkins v Hogarth* [2025] NZFC 4238 the police were given a service pack for the purposes of service including the applicant’s affidavit. Contrary to its own internal instructions, the police kept a copy of the affidavit and used it in laying charges following the protected person’s suicide. Judge Black held that the affidavit had been improperly and unlawfully retained, behaviour that the Court “should not countenance”. He ordered that the affidavit and any other material be removed and not be used in any criminal proceeding. See [7.650].

**Family Violence — procedure — costs**

In *Hong v Smith* [2025] NZHC 770 the Family Court granted the wife a protection order but declined an application for an occupation order. The Judge left costs to fall where they lay because each party had won on a major point. On appeal, Becroft J upheld the decision to award no costs. In particular, he agreed with the Family Court Judge that the result was neutral. The refusal of the occupation order was crucial in deciding the neutral point. See [7.650.01].

**Protection of Personal and Property Rights — Protection of Personal and Property Rights Act 1988, s 10(1)(f) — capacity to decline medical treatment**

In *Te Whatu Ora v P* [2025] NZHC 969, a 26 year old woman was not terminally ill but suffering from a condition called factitious disorder, treatable by psychotherapy. She and her parents did not accept the diagnosis and wanted palliative care only, believing she was terminally ill. Their position was based on an erroneous belief. The health professionals, through Te Whatu Ora - Health New Zealand, sought orders to maintain adequate nutrition and to safeguard her care and welfare. Lang J declined the order on the basis that P had capacity and thus there was no jurisdiction. See [7.813] and [7.818] for full discussion.