

Family Court (Family Court Associates) Legislation Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Family Court (Family Court Associates) Legislation Bill and recommends that it be passed. We recommend all amendments unanimously.

About the bill as introduced

The purpose of the Family Court (Family Court Associates) Legislation Bill is to reduce delays in Family Court proceedings so the court process works better for participants, particularly children. It would do this by creating a new role of a Family Court Associate to take on some of the workload of a Family Court Judge.

The bill would amend the Family Court Act 1980 to establish the role of the Family Court Associate. A Family Court Associate would be a judicial officer with some of the functions and powers of Family Court Judges. As judicial officers, they would be independent of the Executive. They would have powers additional to those of a Registrar.

Family Court Associates could take on some of the work carried out by Judges, including decisions made at the early stages of proceedings. Primarily this work would relate to administrative matters but would also include some functions of a judicial nature. This would enable judges to focus on progressing and finalising more substantive matters.

The bill would also amend a number of other statutes related to family law to confer some specific functions, duties, and powers on Family Court Associates.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Amendments to the Family Court Act

Term of appointment of Family Court Associates

Clause 4, proposed new section 7B, relates to the term of appointment of Family Court Associates. New section 7B(2) provides that the Governor-General, on the advice of the Attorney-General, could remove a Family Court Associate for neglect of duty, inability, bankruptcy, or misconduct.

We understand that no other judicial role directly compares to the Family Court Associate. We were advised that the design of the role has been carefully balanced to ensure that it reflects its status as a judicial officer who is not a judge. This includes the grounds for removal. We recommend that the grounds for removal of a Family Court Associate be narrowed to inability and misbehaviour to align with the grounds for removal of judges. This recommendation would be implemented by inserting in clause 4, new section 7J(1).

We note that the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 contains a transparent process for complaints about the conduct of judges and coroners. We support the concept of a Family Court Associate being subject to this Act. We recommend inserting a new section 7J(2) via clause 4 to give effect to this. A Family Court Associate could not then be removed from office unless a Judicial Conduct Panel had reported to the Attorney-General that it was of the opinion that removal of the Family Court Associate was justified, or if the Family Court Associate had been convicted of a criminal offence punishable by at least 2 years' imprisonment. We also recommend inserting in Part 2 of the bill new subpart 5A to amend the Judicial Conduct Commissioner and Judicial Conduct Panel Act to include Family Court Associates within the scope of this Act.

Immunity for Family Court Associates

Clause 4, proposed new section 7H, specifies that a Family Court Associate would have immunity for decisions made within their jurisdiction. We understand that this immunity aligns with the roles of other judicial officers who are not judges.

We note that Family Court Judges and District Court Judges have the same immunities as a High Court Judges. We were told that this level of immunity exists to preserve the independence of the court as an institution and to enable judicial officers to exercise their powers impartially.

Given that a Family Court Associate would be exercising some of the judicial powers of a Family Court Judge, we agree that they should have the same level of immunity. Therefore, we recommend amending section 7H to expand the immunity of a Family Court Associate to align with that of a judge.

Review of the legislation

The bill as introduced does not contain a requirement to review the effectiveness of the role of the Family Court Associate. We believe that such a provision would be useful and recommend inserting this requirement in clause 4 as new section 7K.

Our proposed amendment would require the Ministry of Justice to review, no later than 5 years after the legislation commenced, whether the Family Court Associate role had helped reduce delays in the Family Court and whether any amendments to legislation were necessary or desirable. The amendments would need to relate to the appointment, functions, duties, and powers of Family Court Associates. The findings of the review should also be reported to the Minister of Justice.

Jurisdictions and powers of Family Court Associates

Clause 6, which would insert new Schedule 2 into the Act, sets out the jurisdiction and powers of Family Court Associates. Clause 1(g) of Schedule 2 would empower a Family Court Associate to appoint a lawyer to assist the court under specific provisions in eight Acts.¹ The powers would be the same as those of a Family Court Judge.

We understand that seven of the Acts also enable a Family Court Judge to direct a Registrar to appoint a lawyer to assist the court.² We believe a Family Court Associate should also have that power, and recommend inserting a provision to this effect as clause 1(ga) of Schedule 2. We consider that our proposed amendment would align with the purpose of the bill. It could also provide another opportunity to reduce the time that a Family Court Judge spent on tasks that are more administrative.

Amendments to the Care of Children Act

Settlement conferences

Section 46Q(1) of the Care of Children Act enables a Family Court Judge to direct a Registrar to convene a settlement conference at any time before the hearing of a proceeding. Clause 18 of the bill would amend section 46Q(1) to also allow a Family Court Associate to convene a settlement conference.

¹ The statutes are the Care of Children Act 2004, the Child Support Act 1991, the Civil Union Act 2004, the Family Proceedings Act 1980, the Family Violence Act 2018, the Marriage Act 1955, the Oranga Tamariki Act 1989, and the Protection of Personal and Property Rights Act 1988.

² The Family Violence Act is the exception.

We consider that a Family Court Associate should have equivalent power as a Judge both to convene a settlement conference and to direct a Registrar to convene one. We recommend amending clause 18 accordingly.

Power to restrict commencement of certain vexatious proceedings

Section 141 of the Act enables a court to order that a person could only commence proceedings under the Act with leave of the court. The court would need to be satisfied that the person had persistently instituted vexatious proceedings. They would also need to be satisfied that the person had been given a reasonable opportunity to be heard. Clause 31 would amend section 141 by replacing references to “the court” with “Family Court Associate” or “Family Court Judge” so that both Family Court Associates and Family Court Judges could make such orders.

We note that the decision to restrict a person from commencing proceedings is relatively significant and has access to justice implications. We do not consider that it is appropriate for a Family Court Associate to have this power and we recommend removing it from section 141(1). However, we recommend amending section 141(2) to provide that a Family Court Associate could give leave to commence proceedings to a person who was subject to an order made under section 141(1).

Amendment to the Status of Children Act

Making declarations about paternity

Clause 95 would amend section 10 of the Status of Children Act 1969 to specify that a Family Court Associate could make a declaration of paternity or non-paternity. This would apply to both defended and undefended applications.

We understand that this provision is similar to clause 45, which would amend section 51 of the Family Proceedings Act 1980. Clause 45 provides that a Family Court Associate could make a paternity order if the application was undefended. However, they could not exercise those powers over a defended application. Given that a defended application would be more complex, we believe that the determination of such applications should remain with a Family Court Judge. Therefore, we recommend amending clause 95 to provide that a Family Court Associate could only preside over an undefended application for a declaration as to paternity.

Introducing a family court panel

Three submitters suggested that the role of a Family Court Associate could be extended by introducing a family court panel (called Te Pae Kōti ā-Whānau) into the bill. The proposal is based on the need to involve iwi and communities in decisions about care and protection proceedings in the Family Court. The submitters consider that delays in the Family Court are damaging and solutions are needed. They maintain that the bill, as introduced, would not materially improve the timeliness of justice in the Family Court.

The submitters proposed that the panels could consist of a legally trained convenor and qualified representatives from iwi and the community. The panels could provide therapeutic justice based on tikanga Māori and be available to participants of all ethnicities. The submitters believe this proposal would be a significant step towards rebuilding community confidence in the Family Court. They maintain that it could significantly and meaningfully change the court in a way that improved outcomes for whānau and communities.

We consider that the Te Pae Kōti ā-Whānau proposal raises some very interesting points. We discussed whether the proposal is within the scope of the bill. The bill as introduced has a very narrow scope, which is to implement the role of the Family Court Associate. In order to give effect to the proposal, amendments would have to be made to the bill that would introduce a new model of decision-making to the Family Court. Because the proposal is not in scope of the bill, we have not recommended amendments to give effect to the proposal.

Appendix

Committee process

The Family Court (Family Court Associates) Legislation Bill was referred to the committee on 2 August 2022. We invited the Minister of Justice, Hon Kiritapu Allan, to provide an initial briefing on the bill. She did so on 22 September 2022.

We called for submissions on the bill with a closing date of 14 September 2022. We received and considered submissions from 31 interested groups and individuals. We heard oral evidence from 14 submitters at hearings in Wellington and by videoconference.

We received advice on the bill from the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Ginny Andersen (Chairperson)

Hon Paul Goldsmith

Dr Emily Henderson

Nicole McKee

Hon Mark Mitchell

Simon O'Connor

Willow-Jean Prime

Vanushi Walters

Arena Williams

Chris Penk also took part in the consideration of this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kiritapu Allan

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Family Court (Family Court Associates) Legislation Bill **2022**.

2 Commencement

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent:
 - (a) **section 4**, to the extent it relates to **new sections 7A, 7B, 7E, and 7F, 7I, and 7J** of the Family Court Act 1980:
 - (b) **subpart 10 of Part 2**.
- (2) The rest of this Act comes into force 4 months after the date on which it receives the Royal assent.

Part 1

Amendments to Family Court Act 1980

3 Principal Act

This Part amends the Family Court Act 1980.

4 New sections 7A to ~~7H~~ 7K inserted

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After section 7, insert:

7A Appointment of Family Court Associates

- (1) The Governor-General may, on the recommendation of the Attorney-General, appoint 1 or more Family Court Associates.
- (2) The Governor-General appoints a Family Court Associate by a signed warrant of appointment. 10
- (3) A Family Court Associate may be appointed on a part-time or full-time basis.
- (4) A person may be appointed a Family Court Associate if the person—
 - (a) has, for at least 7 years, held a New Zealand practising certificate as a barrister or as a barrister and solicitor; and 15
 - (b) is, by reason of their training, experience, and personality a suitable person to hold the office of Family Court Associate.

7B Term of appointment of Family Court Associates

- (1) A Family Court Associate is appointed for a term of not more than 7 years and may be reappointed for 1 or more further terms. 20
- (2) ~~A Family Court Associate may be removed from office by the Governor-General, on the advice of the Attorney-General, for neglect of duty, inability, bankruptcy, or misconduct, proved to the satisfaction of the Governor-General.~~
- (3) ~~A Family Court Associate may at any time resign by writing addressed to the Attorney-General.~~ 25

7C Jurisdiction and powers of Family Court Associates

A Family Court Associate has the jurisdiction and powers specified in **Schedule 2**.

7D Transfer of proceeding to Family Court Judge

- (1) A Family Court Associate may, on the application of a party to a proceeding before the Family Court Associate or on the Family Court Associate's own initiative, refer the proceeding or a matter in the proceeding to a Family Court Judge if the Family Court Associate is satisfied that because of the complexity of the proceeding or matter it is desirable to do so. 30
- (2) A Family Court Judge may, on the application of a party to a proceeding that is being, or is to be, dealt with by a Family Court Associate, order that the pro- 35

	ceeding or a matter in the proceeding be transferred to and dealt with by a Family Court Judge if the Judge making the order is satisfied that it is desirable to do so.	
(3)	A Family Court Judge to whom a proceeding or matter has been referred to under subsection (1) or (2) may—	5
(a)	dispose of the proceeding; or	
(b)	refer the proceeding or matter back to the Family Court Associate with any directions the Family Court Judge thinks fit.	
7E	Remuneration of Family Court Associates	
(1)	A Family Court Associate must be paid, out of public money and without further appropriation than this section,—	10
(a)	a salary, a fee, or an allowance at the rate determined by the Remuneration Authority; and	
(b)	any additional allowances, (including travelling allowances and expenses) in accordance with the Fees and Travelling Allowances Act 1951.	15
(2)	Expenses may be incurred, without further appropriation than this section, to meet the salaries, fees, or allowances determined under subsection (1)(a) .	
(3)	For the purposes of subsection (1)(b) , the Fees and Travelling Allowances Act 1951 applies as if a Family Court Associate were a member of a statutory Board as defined in section 2 of that Act.	20
7F	Remuneration of Family Court Associates must not be reduced	
	The remuneration payable to a Family Court Associate must not be reduced while the Family Court Associate holds office.	
7G	Restrictions on Family Court Associates	25
	A Family Court Associate must not—	
(a)	hold any office or engage in any employment or occupation that will, in the opinion of the Governor-General, impair the proper discharge of the functions of a Family Court Associate; or	
(b)	practise as a lawyer; or	30
(c)	be employed by the Ministry of Justice or the Department of Corrections.	
7H	Immunity for Family Court Associates	
	No proceeding may be commenced against a Family Court Associate for any act done unless the Family Court Associate has exceeded the jurisdiction of a Family Court Associate or has acted without jurisdiction.	35
	<u>A Family Court Associate has the same immunities as a Family Court Judge.</u>	

7I Resignation of Family Court Associates

A Family Court Associate may at any time resign by written notice to the Attorney-General.

7J Removal of Family Court Associates

(1) The Governor-General may, on the advice of the Attorney-General, remove a Family Court Associate from office for inability or misbehaviour. 5

(2) **Subsection (1)** is subject to sections 33(2) and 34 of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, which prevent removal unless—

(a) a Judicial Conduct Panel has reported to the Attorney-General that it is of the opinion that consideration of the removal of the Family Court Associate is justified; or 10

(b) the Family Court Associate has been convicted of a criminal offence punishable by imprisonment for 2 or more years and the Attorney-General takes steps independently of that Act to initiate the removal of the Family Court Associate. 15

7K Report relating to Family Court Associates

The Ministry of Justice must, no later than 5 years after the commencement of this section,—

(a) review whether the appointment of Family Court Associates has reduced delays in the Family Court; and 20

(b) consider whether any amendments to this Act or any other enactments are necessary or desirable in relation to—

(i) the appointment of Family Court Associates; and
(ii) the functions, duties, and powers of Family Court Associates; and 25

(c) report to the Minister of Justice on the outcome of—

(i) the review under **paragraph (a)**; and

(ii) the consideration under **paragraph (b)**.

5 Section 15A amended (Application of Contempt of Court Act 2019)

After section 15A(2)(b), insert: 30

(c) references to a judicial officer in sections 10, 11(2), and 25(2) include a Family Court Associate.

6 New Schedule 2 inserted

After the Schedule, insert as **Schedule 2** the schedule set out in the **Schedule** of this Act. 35

Part 2

Amendments to other legislation

Subpart 1—Amendments to Adoption Act 1955

- 7 Principal Act**
This subpart amends the Adoption Act 1955. 5
- 8 Section 7 amended (Consents to adoption)**
In section 7(8)(a), after “District Court Judge,”, insert “a Family Court Judge, a Family Court Associate,”.
- 9 Section 8 amended (Cases where consent may be dispensed with)**
- (1) In section 8(5A), after “District Court”, insert “or Family Court”. 10
- (2) After section 8(8), insert:
- (9) In subsections (1) to (5), the jurisdiction of the Family Court may be exercised by a Family Court Judge or Family Court Associate.
- 10 Section 23 amended (Inspection of adoption records)**
In section 23(3)(b), replace “the Family Court” with “a Family Court Associate, a Family Court Judge”. 15
- 11 Section 23A amended (Report on application for inspection)**
After section 23A(2), insert:
- (3) In subsection (1), the jurisdiction of the Family Court may be exercised by a Family Court Judge or Family Court Associate. 20

Subpart 2—Amendments to Care of Children Act 2004

- 12 Principal Act**
This subpart amends the Care of Children Act 2004.
- 13 Section 46E amended (Family dispute resolution mandatory before commencement of proceedings)** 25
Replace section 46E(6) with:
- (6) A Registrar who is unsure, under subsection (5), whether to refuse to accept an application for filing may refer the application and accompanying affidavit to a Family Court Associate or Family Court Judge, and the Family Court Associate or Judge must determine whether the affidavit provides sufficient evidence of either of the matters set out in subsection (4)(f). 30

14 Section 46F amended (Family dispute resolution after proceedings commenced)

- (1) In section 46F(2), before “Family Court Judge”, insert “Family Court Associate or”.
- (2) In section 46F(3), before “Judge”, insert “Family Court Associate or” in each place. 5

15 Section 46G amended (Counselling after proceedings commenced)

Replace section 46G(2), (3), and (4) with:

- (2) A Family Court Judge may direct the Registrar of the court to refer the parties to the application to counselling services, or a Family Court Associate may refer the parties to the application to counselling services, for either or both of the following purposes: 10
 - (a) to improve the relationship between the parties:
 - (b) to encourage compliance with any direction or order made by the court.
- (3) A direction or referral under **subsection (2)** may only be made if the Family Court Judge or Family Court Associate considers that the provision of counselling services is the best means of assisting the parties with their relationship or the implementation of any decision of the court, or with both of those matters. 15
- (4) A direction or referral under **subsection (2)** may be made—
 - (a) at any stage of the proceedings, including by the Family Court Judge when making a final order; but 20
 - (b) once only.

16 Section 46O replaced (Judge may direct party to undertake parenting information programme)

Replace section 46O with:

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46O Party may be directed to undertake parenting information programme

- (1) At any time after an application has been made to the court for a parenting order under section 48, a Family Court Associate or Family Court Judge may direct 1 or more parties to the application to attend a parenting information programme. 30
- (2) However, a direction may not be made under **subsection (1)** in respect of a party if that party has undertaken a parenting information programme within the preceding 2 years.

17 Section 46P amended (Purpose of settlement conferences)

In section 46P, before “Family Court Judge”, insert “Family Court Associate or”. 35

18 Section 46Q amended (Settlement conferences)

(1) Replace section 46Q(1) with:

- (1) At any time before the hearing of a proceeding,—
- (a) a Family Court Associate may convene a settlement conference; or
 - (b) a Family Court Judge or Family Court Associate may direct the Registrar of the court to convene a settlement conference.

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(2) In section 46Q(3) and (4), before “Family Court Judge”, insert “Family Court Associate or”.

19 Section 47 amended (Who may apply for parenting order)

In section 47(1)(d) and (e), replace “the court” with “a Family Court Associate or Family Court Judge”.

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20 Section 49A amended (Interim parenting order where parent does not have day-to-day care for, or contact with, child)

(1) In section 49A(3), replace “the court” with “a Family Court Associate or Family Court Judge”.

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(2) In section 49A(4), replace “the court” with “a Family Court Judge”.

21 Section 59 replaced (Court may order supervised contact)

Replace section 59 with:

59 Order for supervised contact

(1) **Subsection (2)** applies if a Family Court Judge—

- (a) is making or varying a parenting order (whether interim or final) determining the time or times when a person may have contact with a child; and
- (b) is not satisfied that the child will be safe with that person.

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(2) The Family Court Judge may make an order for supervised contact between the child and that person, and, if the Judge does so, the Judge must specify in the order whether the supervised contact is to occur—

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- (a) under the supervision of an approved provider; or
- (b) in the immediate presence of a person approved by the Judge (for example, a relative, a friend of the family of the child, or any other person whom the Judge considers suitable).

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(3) **Subsection (4)** applies if—

- (a) an interim parenting order has been made; and
- (b) the parents of the child in respect of whom the interim order is made are parties to the order; and

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- (c) under the interim parenting order one of the parents (A) has neither the role of providing day-to-day care for, nor contact with, the child; and
- (d) the other parent (B) is not satisfied that the child will be safe with A.
- (4) A Family Court Associate may vary the interim parenting order to provide that A have contact with the child under the supervision of an approved ~~pro-~~
videprovider— 5
- (a) on an application made by A and B jointly; or
- (b) on an application made by the lawyer appointed to represent the child that is undefended.
- 22 Section 77 amended (Preventing removal of child from New Zealand)** 10
Replace section 77(1) with.
- (1) In this section and sections 76 and 77A, **authority** means a High Court Judge, District Court Judge, or Family Court Judge or, if no High Court Judge, District Court Judge, or Family Court Judge is available, a Family Court Associate or any Registrar of the High Court or District Court (not being a constable). 15
- 23 Section 77A amended (Orders under section 77(3)(c) in respect of children of or over 16 years)**
In section 77A(2), replace “court” with “authority”.
- 24 Section 77B amended (Orders under section 77(3)(c) may be suspended for specified period)** 20
In section 77B(1), replace “or a Family Court Judge” with “a Family Court Judge, or a Family Court Associate”.
- 25 Section 117 amended (Preventing concealment of whereabouts of child)**
In section 117(3), before “Registrar”, insert “Family Court Associate or”.
- 26 Section 118 amended (Preventing removal of child to defeat application)** 25
In section 118(4), before “Registrar”, insert “Family Court Associate or”.
- 27 Section 132 amended (Reports from chief executive or social worker)**
In section 132(1), replace “the court” with “a Family Court Associate or Family Court Judge”.
- 28 Section 134 amended (Distribution, etc, of reports under sections 132 and 133)** 30
- (1) In section 134(2), (4), and (5), replace “the court” with “a Family Court Judge or Family Court Associate”.
- (2) In section 134(3), replace “the court is satisfied” with “a Family Court Judge or Family Court Associate is satisfied”. 35

- (3) In section 134(3), replace “the court may” with “the Judge or Family Court Associate may”.
- (4) Replace section 134(7) with:
- (7) A Judge or Family Court Associate may, if the Judge or Family Court Associate thinks fit, call as a witness the person who made or prepared the report. 5

29 Section 137 amended (Attendance at hearings generally)

- (1) In section 137(1)(h), after “Judge”, insert “or a Family Court Associate”.
- (2) In section 137(2), after “Judge”, insert “or Family Court Associate” in each place.
- (3) In section 137(4)(e), after “Judge”, insert “or a Family Court Associate”. 10

30 Section 139A amended (Leave required in certain cases to commence substantially similar proceedings)

- (1) In section 139A(1), replace “the court” with “a Family Court Associate or Family Court Judge”.
- (2) In section 139A(2), delete “of the court”. 15

31 Section 141 amended (Power to restrict commencement of proceedings if vexatious proceedings previously instituted)

- (1) In section 141(1), replace “to a court if, and only if, the court” with “if, and only if, a Family Court Associate or Family Court Judge”.
- (2) ~~In section 141(2), replace “The court may” with “The Family Court Associate or Family Court Judge may”.~~ 20

- (2) Replace section 141(2) with:

(2) A Family Court Judge may order that the person may commence either of the following only with the leave of a Family Court Judge or Family Court Associate: 25

- (a) proceedings under this Act of any kind;
- (b) proceedings under this Act of any specified kind or in respect of any specified person or matter.

Subpart 3—Amendments to Child Support Act 1991

32 Principal Act 30

This subpart amends the Child Support Act 1991.

33 Section 99 amended (Declarations in respect of step-parents)

After section 99(5), insert:

- (5A) If an application made under subsection (1) or (2) is undefended, a Family Court Associate may exercise the jurisdiction of the Family Court under this section and grant a declaration.
- 34 Section 103A amended (Appeal in relation to determination or decision under subpart 3 of Part 5A)** 5
In section 103A(2)(b), replace “the Family Court” with “a Family Court Judge or Family Court Associate”.
- 35 Section 103B amended (Appeal by respondent from determination under Part 6A)** 10
In section 103B(3)(b), replace “the Family Court” with “a Family Court Judge or Family Court Associate”.
- 36 Section 103C amended (Appeal from determination under Part 6B)**
In section 103C(2)(b), replace “the Family Court” with “a Family Court Judge or Family Court Associate”.
- 37 Section 104 amended (Application for departure from formula assessment in special circumstances)** 15
In section 104(2)(b)(iii), replace “the court is satisfied” with “a Family Court Judge or Family Court Associate is satisfied”.
- 38 Section 105 amended (Matters as to which court must be satisfied before making order)** 20
After section 105(6), insert:
- (7) The jurisdiction of the Family Court under this section may be exercised by a Family Court Judge or Family Court Associate, and for the purposes of this section a Family Court Associate has the same powers as a Family Court Judge. 25
- 39 Section 106 amended (Orders that may be made)**
In section 106(1), replace “court” with “Family Court Judge or Family Court Associate exercising the jurisdiction of the Family Court”.
- 40 Section 107 amended (Implementation of orders)** 30
In section 107(1), replace “a decision of a court making an order in determination of” with “an order determining”.
- 41 Section 117 amended (Suspension orders)**
After section 117(5), insert:
- (6) The jurisdiction of the Family Court under this section may be exercised by—
(a) a Family Court Judge; or 35

- (b) a Family Court Associate having the same powers as a Family Court Judge.

42 Section 184 amended (Charging orders)

- (1) In section 184(1), replace “the Family Court or the District Court” with “a Family Court Judge, Family Court Associate, or District Court Judge”. 5
- (2) In section 184(4), replace “the court” with “a Family Court Judge, Family Court Associate, or District Court Judge”.

43 Section 185 amended (Charging orders on life insurance policies)

In section 185, delete “on the court”.

Subpart 4—Amendments to Family Proceedings Act 1980 10

44 Principal Act

This subpart amends the Family Proceedings Act 1980.

45 Section 51 amended (Paternity orders)

After section 51(2), insert:

- (3) If an application made under section 47 is undefended, a Family Court Associate or Family Court Judge may make an order under this section. 15

46 Section 54 amended (Parentage tests)

After section 54(2), insert:

- (3) A Family Court Associate has the jurisdiction and powers of a Family Court Judge under subsection (1) in respect of an application made by a party to the proceedings. 20

47 Section 55 amended (Contents of report)

Replace section 55(3) with:

- (3) Where a report on parentage tests has been submitted to a court under this section, the person who made the report must provide a written statement explaining or amplifying any matter in the report if required to do so by— 25
 - (a) a Family Court Judge, on the Judge’s own initiative or on the application of a party to the proceedings; or
 - (b) a Family Court Associate, on the application of a party to the proceedings. 30

48 Section 56 amended (Right of examination)

In section 56, insert as subsection (2):

- (2) A Family Court Associate has the jurisdiction and powers of a Family Court Judge under subsection (1).

49 Section 57 amended (Refusal of parentage tests)

In section 57(1), replace “the court has recommended” with “a recommendation has been made”.

50 Section 91 amended (Reports as to maintenance)

After section 91(5), insert:

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- (6) A Family Court Associate has the jurisdiction and powers of a Family Court Judge under subsections (1) and (5).

51 Section 145F replaced (Power of court to make maintenance orders in respect of children)

Replace section 145F with:

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145F Power of court to make maintenance orders in respect of children

- (1) An application referred to in section 145A(b) must be heard and determined by a Family Court Judge.
- (2) However, if the respondent consents to the orders sought in the application no hearing is required and the orders sought may be made by—
- (a) a Family Court Judge; or
- (b) a Family Court Associate exercising the powers of a Family Court Judge.
- (3) Before making any orders under **subsection (2)**, the Family Court Judge or Family Court Associate must—
- (a) advise the respondent to obtain legal advice; and
- (b) afford the respondent the opportunity to obtain that advice.

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Subpart 5—Amendments to Family Violence Act 2018

52 Principal Act

This subpart amends the Family Violence Act 2018.

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53 Section 189 amended (Objection process if direction made on application without notice)

- (1) Replace section 189(3)(b) with:

- (b) the direction is suspended from the date on which the court receives the notice of objection until the objection is dealt with under section 190.

30

- (2) In section 189(4), replace “the court” with “a Judge or Family Court Associate”.

- 54 Section 190 amended (Court may confirm or discharge direction after considering objection)**
- (1) Replace the heading to section 190 with “**Direction may be confirmed, varied, or discharged**”.
- (2) In section 190(1), replace “the court” with “a Judge or Family Court Associate”.
- (3) Replace section 190(2) with:
- (2) If a Judge or Family Court Associate confirms or varies a direction and the respondent is before the court, the Judge or Family Court Associate, as the case may be, must warn the respondent that non-compliance with the direction is an offence punishable by imprisonment.
- 55 Section 193 amended (When assessments or determinations need not be undertaken or made)**
- In section 193(3), before “Judge”, insert “Family Court Associate or”.
- 56 Section 194 amended (Order of, and delaying, respondent’s attendance or engagement)**
- In section 194(3), before “Judge”, insert “Family Court Associate or”.
- 57 Section 196 amended (When assessor must refer respondent back to court)**
- In section 196(3)(b), before “Judge”, insert “Family Court Associate or”.
- 58 Section 198 amended (Court may direct respondent to engage with prescribed non-standard service)**
- (1) Replace the heading to section 198 with “**Respondent may be directed to engage with non-standard service**”.
- (2) In section 198(2)(b), (3), (4), and (5), before “Judge”, insert “Family Court Associate or” in each place.
- 59 Section 199 amended (Referral to different service provider)**
- In section 199(4), before “Judge”, insert “Family Court Associate or”.
- 60 Section 200 amended (Referral back to court if programme or service to be delayed or inappropriate)**
- In section 200(2), before “Judge”, insert “Family Court Associate or”.
- 61 Section 201 amended (Terms of attendance at or engagement with non-violence programme or prescribed service)**
- In section 201(5)(b), before “Judge”, insert “Family Court Associate or”.

- 62 Section 203 amended (Referral back to court if continued provision no longer appropriate or practicable or affected significantly by non-compliance)**
- In section 203(4)(b), before “Judge”, insert “Family Court Associate or”.
- 63 Section 204 amended (Report and notice of completion and outcome of programme or service)** 5
- Replace section 204(3) with:
- (3) A Family Court Associate or Judge may release a report under subsection (1) to either or both of the following people on any terms and conditions the Family Court Associate or Judge considers necessary or desirable to protect the safety of a protected person: 10
- (a) a respondent:
 - (b) a lawyer acting for a child who, under section 62(2), made the application for the protection order.
- 64 Section 206 amended (Powers if matter brought to attention of Judge)** 15
- (1) In the heading to section 206, before “**Judge**”, insert “**Family Court Associate or**”.
- (2) In section 206(1), before “Judge”, insert “Family Court Associate or”.
- (3) Replace section 206(2) to (4) with:
- (2) A Family Court Associate may take all or any of the following actions: 20
- (a) make a direction under section 188(3)(a) and (b) (that the respondent undertake an assessment for prescribed services, and engage with any prescribed standard service, provided by a service provider, that an assessor determines may be appropriate for and may benefit the respondent): 25
 - (b) suspend, vary, replace, or discharge the direction (to attend a non-violence programme or engage with a prescribed standard service) made under section 188(1)(b) or (3)(b):
 - (c) suspend, vary, or replace, or discharge a direction (to engage with a prescribed non-standard service) made under section 198: 30
 - (d) make a direction (to engage with a prescribed non-standard service) under section 198 in respect of the respondent:
 - (e) make, under section 199, a referral to a different service provider that is able to provide a non-violence programme or prescribed service to the respondent: 35
 - (f) settle the terms of attendance or (as the case requires) the terms of engagement with the respondent and the service provider under section 201:

- (g) make an order or direction under **section 204(3)** releasing a report under section 204(1) to either or both of the people specified in **section 204(3)(a) and (b)** on any terms and conditions the court considers necessary or desirable to protect the safety of a protected person:
- (h) refer the matter to a Judge to consider whether to take the action set out in **subsection (3)(b)**, or to make any other order or direction under **subsection (3)(c)**. 5
- (3) A Judge may—
- (a) take all or any of the actions specified in **subsection (2)**:
- (b) make, or vary or discharge terms or conditions of, a parenting order (interim or final) under the Care of Children Act 2004 relating to or affecting the respondent (in which case the provisions of that Act apply with all necessary modifications): 10
- (c) make any other order or direction the Judge thinks fit in the circumstances. 15
- 65 Section 207 amended (Notice of non-compliance with direction)**
In section 207(1), after “section 188 or”, insert “a Family Court Associate or Judge makes a direction under section”.
- 66 Section 208 amended (Registrar’s response to notice of safety concerns or non-compliance)** 20
After section 208(2)(a), insert:
- (aa) bring the matter to the attention of a Family Court Associate so that the Family Court Associate may consider whether to exercise the power conferred by **section 209** in relation to the respondent; or
- 67 Section 209 replaced (Judge may call respondent before court)** 25
Replace section 209 with:
- 209 Family Court Associate or Judge may call respondent before court**
- (1) This section applies if the Registrar brings a matter to the attention of—
- (a) a Family Court Associate under **section 208(2)(aa)**; or
- (b) a Judge under section 208(2)(b). 30
- (2) The Family Court Associate or Judge, as the case may be, may exercise the powers under section 169 to call the respondent before the court.
- (3) If the Family Court Associate or Judge exercises those powers, section 169 applies, so far as applicable and with all necessary modifications, as if the respondent were a witness in proceedings. 35
- 68 Section 210 replaced (Respondent called before court)**
Replace section 210 with:

210 Respondent called before court

- (1) If a respondent appears before the court under section 208(2)(a) or **section 209(2)**, a Family Court Associate may, after hearing from the respondent, do all or any of the following:
- (a) admonish the respondent: 5
 - (b) confirm, vary, replace, or discharge the direction (under section 188 or 198), or change the terms of attendance at or engagement with the programme or prescribed service under section 201:
 - (c) make a replacement direction (under section 188 or 198) that requires the respondent to attend or engage with a further, or different, assessment, programme, or prescribed service: 10
 - (d) refer the matter to a Judge to consider whether to—
 - (i) take the action set out in **subsection (2)(d)**; or
 - (ii) make any other order or direction under **subsection (2)(e)**.
- (2) If a respondent appears before the court under section 208(2)(a) or **section 209(2)**, a Judge may, after hearing from the respondent, do all or any of the following things: 15
- (a) admonish the respondent:
 - (b) confirm, vary, or replace, or discharge the direction (under section 188 or 198), or change the terms of attendance at or engagement with the programme or prescribed service under section 201: 20
 - (c) make a replacement direction (under section 188 or 198) that requires the respondent to attend or engage with a further, or different, assessment, programme, or prescribed service:
 - (d) make, or vary or discharge terms or conditions of, a parenting order (interim or final) under the Care of Children Act 2004 relating to or affecting the respondent (in which case the provisions of that Act apply with all necessary modifications): 25
 - (e) make any other order or direction the Judge thinks fit in the circumstances. 30
- (3) If a Family Court Associate or Judge confirms or varies a direction, the Family Court Associate or Judge must warn the respondent that non-compliance with the direction is an offence punishable by imprisonment.
- (4) Failure to give the warning required by **subsection (3)** does not affect the validity of the direction confirmed or varied. 35

Subpart 5A—Amendments to Judicial Conduct Commissioner and
Judicial Conduct Panel Act 2004

68A Principal Act

This subpart amends the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.

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68B Section 5 amended (Interpretation)

(1) In section 5, definition of **Head of Bench**, after paragraph (i), insert:

(j) in relation to a Family Court Associate, the Principal Family Court Judge

(2) In section 5, definition of **Judge**, after paragraph (a)(ix), insert:

10

(x) a Family Court Associate; and

Subpart 6—Amendment to Marriage Act 1955

69 Principal Act

This subpart amends the Marriage Act 1955.

70 Sections 26 and 27 replaced

15

Replace sections 26 and 27 with:

26 Discharge of caveat

(1) A caveat is to be treated as discharged 1 year after the date on which it was lodged unless within that time a notice of the marriage to which the caveat relates is given under section 23.

20

(2) If the Registrar receives a notice under section 23 of an intended marriage against which the Registrar is aware a caveat has been lodged, the Registrar must submit the caveat to—

(a) a Family Court Judge; or

(b) a Family Court Associate; or

25

(c) a District Court Judge, if no Family Court Judge or Family Court Associate is immediately available.

(3) On receiving the caveat, the Judge or Family Court Associate must immediately—

(a) inquire into the grounds of objection stated in the caveat; and

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(b) discharge the caveat if they are of the opinion that those grounds should not prevent the solemnisation of the marriage.

(4) If a Judge or Family Court Associate has refused to discharge a caveat, any person may apply to a Family Court Judge for the discharge of the caveat.

- (5) On receiving an application under **subsection (4)**, the Judge must discharge the caveat if the Judge is of the opinion that there is no longer any reason why the intended marriage should not be solemnised.

27 Vexatious caveat

A person who lodged a caveat is liable for damages if the Judge or Family Court Associate considers the grounds on which the caveat was lodged vexatious and unreasonable.

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Subpart 7—Amendments to Oranga Tamariki Act 1989

71 Principal Act

This subpart amends the Oranga Tamariki Act 1989.

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72 Section 39 amended (Place of safety warrants)

In section 39(1), after “available,”, insert “a Family Court Associate or”.

73 Section 40 amended (Warrant to remove child or young person)

In section 40(1), after “available,”, insert “a Family Court Associate or”.

74 Section 74 amended (Court may require parties to undergo counselling)

15

- (1) Replace the heading to section 74 with “**Parties may be directed to undergo counselling**”.

- (2) In section 74(1), replace “the court may” with “a Judge or Family Court Associate may”.

- (3) In section 74(1), replace “nature specified by the court” with “specified nature”.

20

- (4) In section 74(3), replace “court” with “Judge, Family Court Associate,”.

75 Section 169 amended (Right to make representations)

Replace section 169(2)(d) with:

- (d) with the leave of a Family Court Judge or Family Court Associate, any other person.

25

76 Section 170 amended (Calling of mediation conference)

In section 170(1), after “Judge”, insert “, a Family Court Associate,”.

77 Section 201 amended (Adjournments)

- (1) In section 201(1), replace “the court” with “a Family Court Judge or Family Court Associate”.

30

- (2) In section 201(2), replace “court shall” with “Judge or Family Court Associate must”.

- (3) In section 201(3), replace “the court” with “a Judge”.

Subpart 8—Amendments to Property (Relationships) Act 1976

78 Principal Act

This subpart amends the Property (Relationships) Act 1976.

79 Section 25 amended (When court may make orders)

After section 25(4), insert:

5

(4A) If proceedings under this Act are pending, a Family Court Associate has the jurisdiction and powers of a Family Court Judge under subsection (4) if—

- (a) the Family Court Associate considers it appropriate in the circumstances to make an interim order of the kind referred to in that subsection; and
- (b) the parties to the proceedings consent to the making of the order and the giving of directions by the Family Court Associate with respect to the proceeds.

10

80 Section 37 amended (Persons entitled to be heard)

In section 37(1), replace “the court directs shall” with “a Family Court Judge or Family Court Associate directs must”.

15

81 Section 40 replaced (Costs)

Replace section 40 with:

40 Costs

(1) In any proceedings under this Act, a Family Court Judge or Family Court Associate may make any order as to costs that they think fit.

20

(2) **Subsection (1)** is subject to any rules of procedure made for the purposes of this Act.

82 Section 42 amended (Notice of interest against title)

Replace section 42(3)(a) with:

(a) any application under section 142 of that Act in respect of any notice lodged under subsection (2) may be made to, and determined by, the Family Court, District Court, or High Court; and

25

(aa) any application that may be made to a court under section 143 of that Act in respect of any notice lodged under subsection (2), may be made to and determined by a Family Court Associate, a Family Court Judge, the District Court, or the High Court; and

30

83 Section 43 amended (Dispositions may be restrained)

After section 43(1A), insert:

(1B) A Family Court Associate has the jurisdiction and powers of a Family Court Judge under subsection (1) to make an order on the application of party B.

35

Subpart 9—Amendments to Protection of Personal and Property Rights Act 1988

84 Principal Act

This subpart amends the Protection of Personal and Property Rights Act 1988.

85 Section 15 amended (Orders by consent) 5

- (1) In section 15, replace “the court may” with “a Family Court Judge or Family Court Associate may”.
- (2) In section 15, replace “the court is satisfied” with “the Judge or Family Court Associate is satisfied”.

86 Section 48 amended (Enforcement of manager’s duty to prepare and file statements) 10

In section 48(1), after “Judge”, insert “or Family Court Associate” in each place.

87 Section 66 amended (Calling of pre-hearing conference)

In section 66(2), replace “any Family Court Judge” with “a Family Court Judge or Family Court Associate”. 15

88 Section 68 amended (Procedure at pre-hearing conference)

- (1) In section 68(1), after “Family Court Judge”, insert “or Family Court Associate (the presiding officer)”.
- (2) In section 68(3) and (4), replace “Judge” with “officer”. 20
- (3) Replace section 68(5) with:
- (5) The presiding officer may from time to time adjourn the pre-hearing conference to another time and place.

89 Section 69 amended (Identification of issues)

In section 69(1), (2), (3), and (4), replace “Judge” with “officer”. 25

90 Section 70 amended (Power of presiding Judge to make consent orders)

- (1) In the heading to section 70, replace “Judge” with “officer”.
- (2) In section 70(1) and (2), replace “Judge” with “officer” in each place.

91 Section 72 amended (Privilege)

In section 72(2), replace “Family Court Judge” with “presiding officer”. 30

Subpart 10—Amendment to Remuneration Authority Act 1977

92 Principal Act

This subpart amends the Remuneration Authority Act 1977.

93 Schedule 4 amended

In Schedule 4, insert in its appropriate alphabetical order:

The Family Court Associates

Subpart 11—Amendment to Status of Children Act 1969

94 Principal Act

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This subpart amends the Status of Children Act 1969.

95 Section 10 amended (Declaration as to paternity)

After section 10(6), insert:

(7) ~~In this section, **Family Court** means a Family Court Judge or a Family Court Associate.~~

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(7) If an application made under subsection (2) or (3) is undefended, a Family Court Associate may exercise the jurisdiction of the Family Court in respect of that application and make a declaration.

Schedule

New Schedule 2 inserted into Family Court Act 1980

s 6

Schedule 2

Jurisdiction and powers of Family Court Associates

5

s 7C

1 Jurisdiction and powers: appointment of lawyers and obtaining reports

A Family Court Associate has the jurisdiction and powers of a Family Court Judge to—

- (a) appoint, under any of the following provisions, a lawyer to represent a child who is the subject of, or who is a party to, proceedings: 10
 - (i) section 7 of the Care of Children Act 2004:
 - (ii) section 226 of the Child Support Act 1991:
 - (iii) section 162 of the Family Proceedings Act 1980:
- (b) appoint, under section 166(1)(b), (c), or (d) of the Family Violence Act 2018, a lawyer to represent a child, or a person lacking in capacity to whom section 67 of that Act applies: 15
- (c) appoint, under section 37A of the Property (Relationships) Act 1976, a lawyer to represent any minor or dependent children in proceedings under that Act: 20
- (d) appoint, under any of the following provisions, a lawyer to represent an applicant:
 - (i) section 20(1) of the Civil Union Act 2004:
 - (ii) section 19(1) of the Marriage Act 1955:
- (e) appoint, under section 124(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, a lawyer to represent a care recipient: 25
- (f) appoint, under section 95(5)(b) of the Evidence Act 2006, a lawyer to put to a witness a party's questions if the party fails or refuses to engage a lawyer and is precluded by an order made under section 95(2) of that Act from personally cross-examining a witness: 30
- (g) appoint, under any of the following provisions, a lawyer to assist the court:
 - (i) section 130(a) of the Care of Children Act 2004:
 - (ii) section 226A(a) of the Child Support Act 1991:
 - (iii) section 20(2)(a) of the Civil Union Act 2004: 35
 - (iv) section 162A(a) of the Family Proceedings Act 1980:

- (v) section 166(1)(a) of the Family Violence Act 2018:
- (vi) section 19(2)(a) of the Marriage Act 1955:
- (vii) section 160(a) of the Oranga Tamariki Act 1989:
- (viii) section 65A(a) of the Protection of Personal and Property Rights Act 1988: 5
- (ga) direct a Registrar of the court to appoint, under any of the following provisions, a lawyer to assist the court:
 - (i) section 130(b) of the Care of Children Act 2004:
 - (ii) section 226A(b) of the Child Support Act 1991:
 - (iii) section 20(2)(b) of the Civil Union Act 2004: 10
 - (iv) section 162A(b) of the Family Proceedings Act 1980:
 - (v) section 19(2)(b) of the Marriage Act 1955:
 - (vi) section 160(b) of the Oranga Tamariki Act 1989:
 - (vii) section 65A(b) of the Protection of Personal and Property Rights Act 1988: 15
- (h) review, under any of the following provisions, a decision of a Registrar relating to the invoice of a lawyer for fees and expenses:
 - (i) section 131(3) of the Care of Children Act 2004:
 - (ii) section 226B(3) of the Child Support Act 1991:
 - (iii) section 20(5) of the Civil Union Act 2004: 20
 - (iv) section 162B(3) of the Family Proceedings Act 1980:
 - (v) section 167(4) and (5) of the Family Violence Act 2018:
 - (vi) section 124(6) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:
 - (vii) section 19(5) of the Marriage Act 1955: 25
 - (viii) section 162(3) of the Oranga Tamariki Act 1989:
 - (ix) sections 65(7) and 65B(3) of the Protection of Personal and Property Rights Act 1988:
- (i) order, under any of the following provisions, the parties to reimburse the Crown an amount in respect of the fees and expenses of a lawyer appointed by the court: 30
 - (i) sections 131(4) and 135A of the Care of Children Act 2004:
 - (ii) sections 226B(4) and 226C of the Child Support Act 1991:
 - (iii) sections 162B(4) and 162C of the Family Proceedings Act 1980:
 - (iv) sections 65(8) and 65B(4) of the Protection of Personal and Property Rights Act 1988: 35
- (j) obtain any of the following reports:

	(i) a cultural, medical, psychiatric, or psychological report under section 133 of the Care of Children Act 2004:	
	(ii) a cultural report under section 20A of the Civil Union Act 2004:	
	(iii) a cultural report under section 20 of the Marriage Act 1955:	
	(iv) a medical, psychiatric, or psychological, or other report under section 76 of the Protection of Personal and Property Rights Act 1988:	5
	(k) order, under sections 135(2) and 135A of the Care of Children Act 2004, the parties to reimburse the Crown an amount in respect of the fees and expenses incurred in relation to a report prepared under section 132 or 133 of that Act.	10
2	Jurisdiction and powers: under specific enactments	
	A Family Court Associate has jurisdiction under the following enactments and, unless otherwise provided, has the powers of a Family Court Judge to exercise that jurisdiction:	15
	(a) sections 7(8)(a), 8, 23, and 23A of the Adoption Act 1955:	
	(b) sections 46E, 46F, 46G, 46O , 46Q, 47, 49A(3), 59(4) , <u>77B(1)</u> , 132, 134, 137, <u>and</u> 139A, and 141 of the Care of Children Act 2004:	
	(c) sections 99 (if an application is undefended), 103A, 103B, and 103C (in respect of the latter 3 preceding provisions, extending the time for lodging an appeal), 104, 105, 106, 117, and 184 of the Child Support Act 1991:	20
	(d) sections 51 (if an application is undefended), 54 and 55 (in respect of both provisions, only on the application of a party), 56, 91, and 145F (if the respondent consents to the orders being made) of the Family Proceedings Act 1980:	25
	(e) Part 7 of the Family Violence Act 2018 (except section 188):	
	(f) sections 26 and 27 of the Marriage Act 1955:	
	(g) sections 39 and 40 (in respect of both provisions, as if a Family Court Associate were an issuing officer), 74, 169, 170, and 201(1) and (2) of the Oranga Tamariki Act 1989:	30
	(h) sections 25 (only with the consent of the parties), 37, 40 , 42, and 43 (only on the application of a party) of the Property (Relationships) Act 1976:	
	(i) sections 15, 48, 66(2), 68, 69, and 70 of the Protection of Personal and Property Rights Act 1988:	35
	(j) <u>section 10(2) and (3) (in respect of undefended applications)</u> of the Status of Children Act 1969.	

3 Jurisdiction and powers: generally

A Family Court Associate has the powers of a Family Court Judge to deal with any matter in respect of which a Family Court Associate is conferred jurisdiction by any other enactment.

4 Powers of Registrars

- (1) A Family Court Associate has the jurisdiction and may exercise the powers conferred on a Registrar of the Family Court by or under any enactment.
- (2) A Family Court Associate has the jurisdiction and may exercise the powers conferred on a Registrar of the District Court under sections 77, ~~77B~~, 117, and 118 of the Care of Children Act 2004.

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Legislative history

5 July 2022
2 August 2022

Introduction (Bill 148–1)
First reading and referral to Justice Committee