

SSPA Conference Talking Points

Introductions

We will be speaking on three points today: proposed reforms to the Family Justice System, the upcoming changes to family violence legislation, and the provision of legal aid services.

...ooOoo...

In 2014 there were significant reforms to the family justice system and in particular the Care of Children Act 2004. There were many major changes; today we will focus on two:

- a. Family Dispute Resolution, an informal out of court mediation, was made a pre-requisite to all Care of Children applications, with the exception of urgent applications.
- b. Restrictions were placed on when a lawyer may act for a client. To act includes the filing of documents on behalf of a client, receiving documents on behalf of a client and even when a lawyer may appear in court. The assumed right to legal representation was heavily restricted.

On August 1, Minister of Justice Andrew Little appointed an Independent Panel to examine these reforms. The panel will consider:

- the effectiveness of out-of-court processes (in particular Family Dispute Resolution);
- the effectiveness of court processes (in particular the increase in urgent applications);
- the appropriate roles of professionals (e.g. mediators/lawyers); and
- the extent to which the current system enables decisions that are consistent with protecting the welfare and best interests of children.

The focus of the reforms is to ensure that the family justice system:

- has the welfare and best interests of children as a paramount concern;
- is accessible;
- flexible;
- coherent;
- evidence based and reflective of research; and
- cost effective.

The 2014 reforms effectively removed lawyers from the initial stages of Care of Children Act proceedings, except for urgent applications. The idea of this was to limit the number of cases going to court and to encourage parties to resolve their disputes through out-of-court processes. The reforms have not had the intended effect.

Since 2014 we have seen a marked increase in urgent applications. They now make up 70% of all Care of Children Act applications. As a result, applications often face delays of a year or more. In parenting matters this has a significant impact on any children involved, especially if they are very young. It also has a flow on effect on other Family Court matters. Matters involving children

are prioritised, so if the Family Court is clogged up with parenting matters, things like relationship property disputes face major delays.

Portia believes that there will be further reform resulting in reduced restrictions on lawyer involvement early on in the Family Court process. We think this is a good thing: earlier lawyer involvement means people will have better legal representation and their interests will be better protected. We also believe this will help stem the flow of urgent applications. Fewer urgent applications should minimise the inevitable delay that comes with court proceedings.

An efficient Family Court promotes access to justice, which is our mission. Care of Children Act matters are often highly stressful for the parties involved. Portia believes that it is essential for all people to have access to legal representation, to help them navigate that journey.

Whatever happens, Portia will continue to inform the sector of any changes and their potential impacts.

...ooOoo...

The Family and Whanau Violence Bill was introduced in March 2017. Its goal is to break the cycle of family violence and reduce the harm and cost inflicted on those who suffer violence. It aims to do this by increasing access to risk and needs assessments and services, more accurately recording family violence offending in the criminal justice system, enabling the introduction of codes of practice, and new information sharing provisions.

The Justice and Electoral Committee recommended that the bill be passed, and the Bill's Second Reading was completed on 11 September. It has significant support from Parliament and will most likely pass.

The bill is an attempt to address the epidemic that is family violence in New Zealand. In 2016, Police responded to 118,000 incident of family violence. Children were present at approximately two thirds of these. This number is already astronomical, so it is even more concerning that an estimated 76% of family violence incidents go unreported. This figure is close to our own research findings, which indicated 67% of women approaching us with Care of Children Act matters had some level of unreported family violence occurring in their lives.

The Bill will significantly change the Domestic Violence Act 1995, as well as a number of other important pieces of legislation, such as the Crimes Act 1961 and the Evidence Act 2006. For the purposes of this presentation, we will focus on some of the major changes to the Domestic Violence Act:

- a. The intent of the Act will be updated, to recognise that all forms of family violence are unacceptable, to stop and prevent perpetrators from inflicting family violence, and to keep victims, including children, safe;
- b. The Act will clarify psychological abuse. In particular it will acknowledge that abuse of a person's pet amounts to psychological abuse of that person;
- c. The Act will be more specific around abuse towards vulnerable people, such as the elderly or the disabled;
- d. Applications for protection orders can be referred to the chief executive or a social worker for advice or a report;

- e. Breach of a property order (e.g. occupation order) is considered a breach of protection order, for which the offender can be arrested without the need for a warrant;
- f. Special conditions can be imposed if they are reasonably necessary to protect protected persons from FV/to address FV against particularly vulnerable protected persons; and
- g. It will allow approved organisations to routinely apply (without leave) for Protection Orders on behalf of children or persons lacking capacity. Portia does not think this is a good idea, because:
 - the Lawyers and Conveyancers Act is very clear and prescriptive about the provision of legal services – the ‘reserved areas’ of work. We think there is a possibility that allowing organisations to routinely apply for protection orders may result in those organisations breaching the Act;
 - organisations who do this work probably do not have the necessary indemnity insurance, which is very expensive and difficult to obtain;
 - clients using these organisations will have greater exposure to costs orders, as they will not be in receipt of legal aid (which provides indemnity to costs); and
 - respondents are likely to have lawyers preparing their defences. This will put them at an advantage to applicants who won’t have had a lawyer prepare their documents.

We are concerned this provision might expose social services to unnecessary risk. Portia believes there needs to be a sector-wide discussion about this before any organisations should start routinely applying for Protection Orders.

In general we believe that passing this bill will effectively update and strengthen the Domestic Violence Act – something that will be welcomed by everyone (well, except for the perpetrators!).

...ooOoo...

It is difficult finding legal aid lawyers in New Zealand. There were approximately 150,000 legal aid cases last year. Out of all the law firms, sole practitioners and barristers in the country, four percent of them delivered one third of that caseload.

Most firms struggle to make legal aid profitable so they avoid it altogether or treat it as a public service, providing services to a limited quota of clients. Legal aid operates on a fixed-fee basis. It is about 60% lower than private rates. By employing highly competent lawyers and utilising efficient systems Portia has been able to make legal aid financially sustainable. This allows us to provide access to justice to people who may otherwise fall through the cracks. Last year we were the fourth largest legal aid provider in the country and we continue to be New Zealand’s largest provider of family legal aid for the fourth year in a row.

According to the Ministry of Justice, the number of family lead providers for legal aid fell from 1,850 in June 2007 to 942 in June 2016. By the end of 2017 there were 635 providers. That means two thirds of the supply of family legal aid providers have disappeared in the past decade. You of all people will understand the huge workload this places on providers, and how this limits clients’ access to justice.

Portia is New Zealand's largest provider of family legal aid. Instead of avoiding the provision of legal aid we embrace it. Over 80% of our clients are assisted through legal aid.

Access to justice is Portia's mission. We strongly believe that every person in New Zealand should have the ability to access a lawyer without a barrier caused by geography, finance or education.

The potential reforms we have discussed today, as well as the imminent strengthening of the Domestic Violence Act, will have a big effect on New Zealand. We believe that it is important for the legal profession to be vigilant in its role as a check and balance. Portia will continue to perform this role by providing high quality legal aid services to as many clients as possible. We are proud to be a thought leader in this area.

We believe there needs to be a conversation about the accessibility of legal aid in general. Portia is happy to engage in this on a national scale with Brenda Pilott, or directly with social service organisations.

...ooOoo...

We further believe that the time is ripe for a legislative review of the law profession. The scandal at large law firms, and in our universities, this year; the growing number of consumers unable to afford legal fees; and the lack of innovation in the sector are but some of the reasons we need to be asking the question: is law fit for purpose in 21st Century New Zealand?

Portia is committed to providing access to justice and showing that we are "By Your Side". We are proud to be sponsoring the Social Services Providers Aoteroa Conference this year, and we look forward to assisting your profession any way we can both now and into the future.

Thank you for the opportunity to present today. We won't take questions now, but we'll both be available during the next two days and would love to chat. Please come and introduce yourself at our stand.