

New Zealand Law Society

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Frances Blyth
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WELLINGTON

Dear Frances

Care of Children Act 2004 - Changes to Agency Steps

Thank you for your letter of 22.2.05. The Family Law Section and Legal Services Committee appreciates the opportunity to comment on the draft steps relating to the Care of Children Act. They understand and support the changes made to the current steps, unless otherwise noted.

Actual Hearing Time

The Agency is asked to consider amending the design of the Steps document that sets out “Day-to-Day Care & Contact, Step 2: Pre-hearing matters” and for the same reason “Family Proceedings, Guardianship & Relocation, Step 2: Pre-hearing matters”.

In both cases the column headed Maximum Guideline Rate is divided into four boxes. The fourth box has in it the words “Plus actual hearing time” and it is divided from the third box by a dotted line. There is a solid line between the other boxes. The third box refers to preparation for each interlocutory application. The concern is that the current layout could be interpreted to mean that a claim for actual hearing time applies only for interlocutory hearings, whereas actual hearing time can also be claimed for mediation and settlement conferences. One way to make this clear would be to add a dotted line and the words “Plus actual hearing time” to the first box as well.

The suggested amendment will ensure that applicants are aware of what they are permitted to apply for under Step 2. The current layout is confusing.

It is noted that in “Day-to-Day Care & Contact” the attendance at mediation hearings (but not settlement conferences), is referred to in the first column (Action by Listed Provider & Process Overview), and in the Granting Notes. Attendance at mediation hearing (but not settlement conferences) is also mentioned in the same column for “Family Proceedings, Guardianship & Relocation”. There are no Granting Notes in this latter case. There should be, so that the information in the “Maximum Guideline Rate” column corresponds exactly with the information in the “Action by Listed Provider” column and with the Granting Notes in both cases.

Relocation

The Section and the committee think that cases involving relocation have an additional element of difficulty than those found in family proceeding and guardianship cases without that element. The hours suggested will, in members’ experience, not be sufficient for cases with relocation involved and will inevitably produce an application for an extension. The use of relocation in the heading of this step implies that this additional element is encompassed within this step. Relocation is not a separate application but is an element of some family proceedings and guardianship cases.

It would be better if relocation was removed from the heading or, if it were not, then there should be extra allowance made in the steps when it is involved.

Review of Family Steps

These amendments to the family steps occasioned by the Care of Children Act are an increased reason why the family steps should be reviewed. That review was, the Section and Committee understood, due 12 months after the steps were implemented in December 2003. The Section and Committee believe that once the Care of Children Act amendments to the steps have been in effect for about 6 months then a review should be held to ensure that those provisions which have applied since 2003 and those that have been now altered are appropriate. The Section and Committee would suggest that the review should commence in February 2006 and would of course be willing to assist with this.

Please contact me if any of the above needs further discussion.

Yours sincerely

Dick Edwards
Director of Legal Affairs