



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Oranga Tamariki Legislation Bill

18/04/2019

Submission on the Oranga Tamariki Legislation Bill

Introduction

1. The New Zealand Law Society welcomes the opportunity to comment on the Oranga Tamariki Legislation Bill (the Bill).
2. The Law Society's comments address three clauses in the Bill that amend provisions in the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act) concerning interim court orders.
3. The Law Society does not seek to be heard but is happy to discuss its comments with the select committee or officials if that would be of assistance.

Custody of child or young person pending determination of proceedings

4. Clause 20 of the Bill amends section 50 of the 2017 Act, which amends section 78 of the Oranga Tamariki Act 1989 (the 1989 Act). Clause 20 removes the ability for the court on its own motion, or a lawyer representing a child or young person, to make an application for an interim custody order in relation to a child or young person if satisfied that subsection (1B) applies.
5. The rationale for removing this ability to apply is unclear, and in the Law Society's view it is a retrograde step.
6. The ability for the court or a lawyer for the child/young person to make such an application is an added protection for children or young people where such an order is necessary but has not been sought by Oranga Tamariki. In the experience of family lawyers, it is not uncommon for the court on its own motion to make such an order where necessary. By way of example, similar powers are available to the court on its own motion to make protection orders and interim parenting orders in absence of an application for such an order.¹
7. The Law Society recommends the deletion of this proposed amendment.

Interim restraining orders

8. Clause 22 amends section 57 of the 2017 Act, which amends section 88 of the 1989 Act. It removes the ability for the court to make on its own motion, or a lawyer representing a child or young person to make an application for, an interim restraining order in relation to a child or young person.
9. We repeat our concerns expressed under clause 20 and recommend the deletion of this proposed amendment.

Interim guardianship orders

10. Clause 23 of the Bill amends section 65 of the 2017 Act, which inserts new section 110AA into the 1989 Act. It makes provision for an interim guardianship order to be made when an application is made by any party to the proceedings or by the court's own motion. New section 110AA(5) removes the ability for the court to make on its own motion, or a lawyer

¹ See sections 6, 59(d), and 84 of the Family Violence Act 2018.

representing a child or young person to apply for, an interim guardianship order or a discharge of that order.

11. We repeat our concerns expressed under clause 20 and recommend the deletion of this proposed amendment.

A handwritten signature in black ink, appearing to read 'Tiana Epati', written in a cursive style.

Tiana Epati
President
18 April 2019