

# **Family Courts (Openness of Proceedings) Amendment Bill**

Member's Bill

## **Explanatory note**

The purpose of this Bill is to require Family Courts to be transparent and open. Family Courts are required to operate in a way that avoids unnecessary formality, with an emphasis on mediation, reconciliation and counselling. That should remain. But it is also important to justice and public confidence that Family Courts, like other Courts, should operate as far as possible in an open and transparent manner.

It is proposed to include a general requirement in the Family Courts Act 1980 that sittings are to be open to the public and that reports of proceedings may be published. This will reverse the general principle under a number of enactments whereby access to sittings, and publication of reports of proceedings, of Family Courts are generally prohibited. There will continue to be a need for specific limitations in some of the statutes from which Family Courts derive their jurisdiction with respect to their exercise of conciliation, counselling, and mediation functions, and several general exceptions to the openness principle also require to be included in the new provision. One model of an openness principle with such exceptions is section 138 of the Criminal Justice Act 1985.

*Clause 4* inserts a *new section 11A* in the Family Courts Act. It provides that sittings of the Courts are to be open to the public, and that reports may be published of their proceedings. These requirements are subject to provisions in existing enactments other than provisions regulating access to the proceedings or publication of reports where, and to the extent that, the Courts are exercising adjudicative functions, as well as to orders that the Courts may make under *subsection (4)*. Those orders, which may be made whenever a

Family Court is of the opinion that the interests of justice, public morality, or the privacy of any person require, and outweigh the interests protected by openness of proceedings, relate to forbidding publication of proceedings or the names or other identifying particulars of persons connected with proceedings or, exceptionally, closing sittings to the public in the most sensitive cases. Orders may be made for such period, and subject to such exceptions or conditions, as the Courts think fit, and are subject to enforcement. *Subsection (8)* clarifies when the Courts are not exercising adjudicative functions. *Subsection (9)* preserves the right of persons under provisions in existing enactments regulating publication of reports of proceedings of Family Courts, to publish reports, particulars or other information concerning proceedings in accordance with those provisions.

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**The Parliament of New Zealand enacts as follows:**

### **1 Title**

(1) This Act is the Family Courts (Openness of Proceedings) Amendment Act **2004**.

(2) In this Act, the Family Courts Act 1980<sup>1</sup> is called “the principal Act”.

<sup>1</sup> 1980 No 61

### **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

### **3 Purpose**

The purpose of this Act is to make amendments to the principal Act to provide for a general requirement for transparency and openness in the proceedings of the Family Court. 10

### **4 New section 11A inserted**

The principal Act is amended by inserting, after section 11, the following section: 15

#### **“11A Proceedings to be open to public**

“(1) Sittings of a Family Court must be open to the public.

“(2) Any person may publish a report of proceedings of a Family Court.

- “(3) **Subsections (1) and (2)** are subject to **subsection (4)** and to the provisions of any other enactment, but are not subject to such provisions where those provisions—
- “(a) restrict access to the proceedings of a Family Court; or
- “(b) restrict the publication of reports of proceedings of a Family Court—
- in any case where, and to the extent to which, the Family Court is exercising the function of adjudicating on the proceedings. 5
- “(4) Where a Family Court is of the opinion that the interests of justice, or of public morality, or of the privacy of any person require, and outweigh the interests protected by the openness of its proceedings, it may make any of the following orders: 10
- “(a) an order forbidding publication of any report or account of the whole or any part of the proceedings, including any evidence adduced or submissions made: 15
- “(b) an order forbidding the publication of the name of any person connected, whether as a witness or otherwise, with the proceedings or of any name or other particulars likely to lead to the identification of any such person: 20
- “(c) in exceptional cases, an order that the sitting not be open to the public.
- “(5) An order made under **subsection (4)**—
- “(a) may be made for a limited period or permanently; and
- “(b) if it is made for a limited period, may be renewed for a further period or periods by a Family Court; and 25
- “(c) if it is made permanently, may be reviewed by a Family Court at any time; and
- “(d) may be subject to such exceptions or conditions as a Family Court, in its discretion, decides. 30
- “(6) Every person who contravenes an order made under **subsection (4)(a) or (b)** commits an offence against this Act and is liable on summary conviction,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$2,000: 35
- “(b) in the case of a body corporate, to a fine not exceeding \$10,000.

- “(7) The breach of any order made under **subsection (4)(c)**, or any evasion or attempted evasion of any such order, may be dealt with as contempt of court.
- “(8) For the purpose of **subsection (3)**, it is declared, for the avoidance of doubt, that the Family Court is not exercising the function of adjudicating on the proceedings when, and to the extent to which, it is exercising a function by way of conciliation, counselling, or mediation in a particular case. 5
- “(9) Nothing in **subsections (3) and (4)** limits the right of any person, under the provisions of any other enactment relating to restrictions of publication of reports of proceedings, to publish reports or particulars of, or other information concerning, proceedings in accordance with such provisions.” 10