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## "Say please"—The Walking Access Act 2008



Phil Page  
Partner

Many of our farming clients made contact with us about a Government proposal in 2004 to legislate for compulsory walking access across private property. The Government floated the idea of creating compulsory marginal public strips across privately owned land. The idea was that the public believed that the "Queen's chain" provided unrestricted access to rivers and the coast, but that the belief did not reflect the legal reality. This was a proposal that lent truth to the principle that if you say something loud enough for long enough, it eventually comes true. It is time for an update.

In response to the 2004 proposal, farm owners raised concerns relating to disruption of stock, biosecurity, dogs, privacy, damage to private property near the walkways and public safety. These are all good practical issues, but our concern was the idea that the Crown might introduce yet another ground on which it could take away a fundamental private property right- the right to decide who can come on to your land.

In answer to these concerns a Walking Access Consultation Panel was established that received almost 1400 submissions in response to its consultation document. The Panel made various recommendations that have now been enshrined in the new Act. On 25 September 2008 the Walking Access Bill was passed in Parliament.

Compulsory access is not an option anymore. The Walking Access Act 2008 establishes the New Zealand Walking Access Commission to enhance and extend walking access. The Commission will form national strategy and provide national leadership to co-ordinate access among key stakeholders. The Commission will also provide advice and information on walking access routes, determine the nature of the access (i.e. walking, bicycles, access with motor vehicles, dogs and use by hunters) negotiate new walking access across private land and facilitate the handling of any disputes. Access agreements will be by negotiation with each landowner. The Act sets out the process that must be followed to declare a walkway over public land and to negotiate a walkway over private land.

The Commission will also develop, promote and maintain a code of responsible conduct for users of walkways. Section 54 of the Act sets out a number of strict liability offences that may be incurred while using walkways. Strict liability offences include: discharging a firearm; setting a net, trap or snare; placing poison or explosives; lighting a fire, taking plants; using a vehicle, or taking a horse or dog on a walkway without authority. Section 56 sets out offences that require knowledge, intent or recklessness, such as interfering or disturbing livestock or wildlife, damaging or destroying structures and attempting to intimidate persons using a walkway.

The Act provides for the appointment of enforcement officers, for a term not exceeding 3 years, who have powers to prevent or stop offenders. A fine not exceeding \$5,000 may be imposed for offences under section 54 of the Act and a fine not exceeding \$10,000 for offences under section 56 of the Act.

You can find out more about the commission at its website, [www.walkingaccess.org.nz](http://www.walkingaccess.org.nz).

If someone wants to come on to your land, or if the Commission wants access for the public, then they must ask for your permission. That is more than just good old fashioned manners. It is fundamental to our property law.

—Phil Page

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## The Family Court Matters Bill



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The Family Court of New Zealand has a varied and extensive workload.

The Family Court's jurisdiction stems from 19 different statutes, including the Care of Children Act 2004, the Family Protection Act 1955, the Property (Relationships) Act 1976 and the more obscure such as the Alcoholism and Drug Addiction Act 1966.

In the year to last July, 65,985 new applications were made to the Court. One third of those applications concerned guardianship disputes affecting children. Applications concerning children in

need of care and protection, for dissolution of a marriage and in response to domestic violence, occurred the next most frequently.

In an effort to improve efficacy and reduce procedural delay, Parliament passed the Family Court Matters Bill ("the Bill") on Friday 5 September 2008.

The Bill refers to the following:

- Counselling for children and other family members,
- Provision of non-judge led mediation,
- Allowance of wider reporting of Family Court proceedings,
- Enables Family Court Judges to wear judicial gowns; and
- Creation of a new position of Senior Family Court Registrar.

### **Counselling**

To date counselling has been available only to parents who are involved in Family Court proceedings. The Bill allows other family members who are involved in the care arrangements for children to request counselling to resolve disputes related to those care arrangements.

Children will be able to attend counselling in two circumstances; firstly when they are going to attend a Family Court Mediation and secondly if they are the subject of a guardianship or parenting dispute and are in "exceptional need of assistance in accepting the terms of the order or in adjusting to any changes resulting from the terms of the order."

These changes will benefit Family Court users by increasing the range of tools to resolve a dispute, increasing the opportunities for children's views and wishes to be heard, and by assisting children to deal with the outcome of proceedings.

### **Mediation**

Following on from a successful pilot programme held in various Family Courts, there is now provision for mediation in certain kinds of disputes to be led by either a Judge or a trained mediator. Mediators will be professionally trained, approved by the Family Court and paid by the Family Court, just as Family Court counsellors are now.

This reinforces the view that mediation is a good way of resolving disputes as the process allows the parties to determine the outcome more quickly than waiting for a hearing. Children will be able to attend mediation conferences with the agreement of the mediator.

Research within New Zealand and from Australia supports the view that while children often have a view they want taken into account, they do not want the responsibility of deciding the dispute. They may benefit from attending meetings where care arrangements are discussed and where they can be part of the decision making process.

### **Senior Registrars**

The new Family Court role of Senior Registrar is a clear move to keep Family Court Judges as free as possible to be in court, deciding disputes. The Senior Registrar will have authority to decide a range of applications that are non-contentious, such as approving Orders being made by consent.

### **Judicial Gowns**

Prior to the Bill, legislation prescribed that Judges were not to wear judicial gowns in Court. The Bill means that Judges may wear a gown if they choose to. This move is aimed at reinforcing the formality of the Family Court.

### Reporting of Family Court cases

The Family Court has historically been criticised for its lack of openness, by virtue of the fact that proceedings are held in private and could not be reported in the media. In fact, provisions within the Care of Children Act 2004 changed that by enabling reporting of cases before the Family Court, providing that details of the proceedings that might have identified the parties remained confidential. Our experience has been that the media have not taken advantage of that opportunity. Nevertheless, the Bill widens the ability of the media to report on proceedings, as it will apply to all Family Court proceedings.

Identifying information may be published in the media, other than where the proceedings;

- Concern a person under the age of 18 years old who is either the subject of the proceedings, a party to the proceedings or is referred to in the proceedings, or;
- Concern a vulnerable person who is the subject of the proceedings or a party to the proceedings.

A party involved in proceedings about relationship property can ask the Court to hear the proceedings in private, and the Court must comply with that request. However, that right to privacy would not cover the Court's written decision following a hearing, and in a case where the parties did not fit the criteria set out above, the media would be able to print identifying information, just as happened as an example, in the Mills-McCartney case in the United Kingdom.

### Conclusion

Currently, the Ministry of Justice is undertaking the detailed planning necessary to implement these changes, which are anticipated to come into effect early in 2009.

If you would like to know how these changes might affect your case before the Family Court, then please contact any member of our Family Law Team to discuss.

—Jo Hambleton

## Flexible Working Requests—rights and responsibilities



Nicky Hay  
Partner

On 1 July 2008, the Employment Relations Act was amended by the introduction of a new Part 6AA entitled “Flexible working”. This legislation grants certain employees the right to request a variation in their working arrangements and prescribes when an employer must respond as well as the grounds for any refusal.

An employee has a statutory right to request a variation in their hours, days and/or place of work if the employee has worked for the employer for at least six months, hasn't made a previous request in the last twelve months and has the care of any person (not necessarily a child). The employee's request must be specific not only about the variation sought, but the request must also explain how the variation will enable the employee to provide better care for the person concerned and what changes, if any, the employee considers that the employer may need to make to accommodate the request.

The employer is required to deal with a request as soon as possible, but no later than three months after receiving it. The employer can only decline a request on the grounds specified in the Act and the employer must not only specify the particular ground relied upon but also provide an associated explanation to the employee.

If an employee is unhappy with the employer's response, they may challenge it on the grounds specified in the Act. In some circumstances, an employee can refer the matter to the Department of Labour and ultimately the Employment Relations Authority who has the ability to impose a penalty in certain cases.

This legislation is scheduled for review in July 2010, when a report is to be prepared on its operation and effects. Interestingly, the report is to include a recommendation in relation to whether the provisions should extend to all employees i.e. not only those with responsibility for the care of any person.

Remember, this legislation is not the only way for employers and employees to address flexible working arrangements. Changes to working arrangements can be agreed at any time between employers and employees, usually by a variation to existing terms and conditions of employment.

If you have any queries about employees' requests for flexible working arrangements and the new legislation please do not hesitate to contact Nicky Hay, an employment law specialist based in our commercial team.

—Nicky Hay

