

Reprint  
as at 26 November 2018



## Family Proceedings Act 1980

Public Act 1980 No 94  
Date of assent 21 January 1981  
Commencement see section 1(2), (3)

### Contents

	Page
Title	10
1 Short Title and commencement	10
2 Interpretation	10
3 Act to bind the Crown	15
<b>Part 1</b>	
<b>Administration</b>	
4 Jurisdiction of courts	15
5 Marriage or civil union guidance or counselling organisations <i>[Repealed]</i>	16
6 Maintenance officers <i>[Repealed]</i>	16
7 Functions of maintenance officers <i>[Repealed]</i>	16
<b>Part 2</b>	
<b>Dispute resolution</b>	
<i>[Repealed]</i>	
7A Definition of marriage <i>[Repealed]</i>	16
8 Duty of legal advisers to promote reconciliation and conciliation <i>[Repealed]</i>	16

---

#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Justice.**

*Counselling*

*[Repealed]*

9	Requests for counselling <i>[Repealed]</i>	17
10	Counselling where proceedings commenced <i>[Repealed]</i>	17
11	Reference to counsellor <i>[Repealed]</i>	17
12	Duty on counsellors <i>[Repealed]</i>	17
12A	Number of sessions of counselling <i>[Repealed]</i>	17
12B	Counselling fees and expenses <i>[Repealed]</i>	17

*Mediation conferences*

*[Repealed]*

13	Mediation conference <i>[Repealed]</i>	17
14	Procedure at mediation conference <i>[Repealed]</i>	18
15	Power of chairperson to make consent orders <i>[Repealed]</i>	18
16	Proceedings after mediation conference <i>[Repealed]</i>	18
17	Power to require attendance for counselling or mediation <i>[Repealed]</i>	18
18	Privilege <i>[Repealed]</i>	18
19	Duty of courts as to reconciliation and conciliation <i>[Repealed]</i>	18
19A	Circumstances where joint counselling not to be required <i>[Repealed]</i>	18

**Part 3**

**Separation**

20	Application for separation order	18
21	Power of Family Court to make separation order	19
22	Grounds for separation order	19
23	Effect of separation order	19
24	Discharge of separation order on resumption of cohabitation	19
25	Discharge of separation order by court	20
26	Effect of separation order on property rights	20

**Part 4**

**Proceedings relating to the status of marriage or civil union**

*Validity of marriage or civil union*

27	Application for declaration as to validity of marriage or civil union	21
28	Power of Family Court to make declaration as to validity of marriage or civil union	21

*Void marriages and civil unions*

29	Application for order declaring marriage or civil union void	22
30	Power of Family Court to make order declaring marriage or civil union void	22
31	Grounds on which marriage or civil union void	22

	<i>Presumption of death</i>	
32	Application for declaration of presumption of death	24
33	Power of Family Court to make declaration of presumption of death	24
34	Grounds for making declaration of presumption of death	24
35	Evidence of death	25
36	Application of other provisions	25
	<i>Dissolution of marriage or civil union</i>	
37	Application for dissolution of marriage or civil union	25
38	Power to make order for dissolution	26
39	Grounds for dissolution	27
40	Effect of resumption of cohabitation	27
41	Effect of sexual connection without resumption of cohabitation	27
42	Orders dissolving marriage or civil union	28
43	Entering new relationship after dissolution	29
	<i>Overseas orders</i>	
44	Recognition of overseas orders	29
	<b>Part 5</b>	
	<b>Children</b>	
	<i>Welfare of children</i>	
45	Arrangements for welfare of children on dissolution	31
46	Reports as to children	32
	<i>Determination of paternity</i>	
47	Applications for paternity orders	33
48	Jurisdiction to establish paternity	34
49	Time limit on applications for paternity orders	34
50	Power of Family Court to make paternity orders	35
51	Paternity orders	35
52	Evidence of mother	35
53	False statement in application for paternity order	35
	<i>Parentage tests in civil proceedings</i>	
54	Parentage tests	36
55	Contents of report	36
56	Right of examination	38
57	Refusal of parentage tests	38
58	Costs of parentage tests	38
59	Offences relating to parentage tests	38
	<b>Part 6</b>	
	<b>Maintenance of spouses and de facto partners</b>	
60	Interpretation	39

61	Application of principles	40
62	Domestic benefit irrelevant	40
	<i>Maintenance of spouses and de facto partners</i>	
63	Maintenance during marriage or civil union	40
64	Maintenance after marriage or civil union dissolved or de facto relationship ends	41
64A	Spouses, civil union partners, or de facto partners must assume responsibility for own needs within reasonable time	43
65	Assessment of maintenance payable to spouse, civil union partner, or de facto partner	45
66	Relevance of conduct to maintenance of spouses, civil union partners, or de facto partners	47
67	Application by either spouse or civil union partner for maintenance during marriage or civil union	47
68	Power of Family Court to make maintenance order in favour of either spouse or civil union partner	48
69	Maintenance order in favour of either spouse or civil union partner	48
70	Order for maintenance after marriage or civil union dissolved or de facto relationship ends	49
70A	Effect of entering into new marriage or civil union or de facto relationship	49
70B	Restriction on maintenance orders in favour of de facto partners	50
71	Time limit for applying for order against estate of deceased party	51
	<i>Maintenance of children</i>	
	<i>[Repealed]</i>	
72	Maintenance of children <i>[Repealed]</i>	51
73	Limitations on liability as father <i>[Repealed]</i>	52
74	Applications for maintenance orders in respect of children <i>[Repealed]</i>	52
75	Power of Family Court to make maintenance orders in respect of children <i>[Repealed]</i>	52
76	Maintenance orders in respect of children <i>[Repealed]</i>	52
77	Contributions by other parent <i>[Repealed]</i>	52
	<i>Other orders related to maintenance of children</i>	
78	Related orders	52
79	Application for maintenance order against natural parent	53
80	Power of Family Court to make maintenance orders against natural parent	54
81	Maintenance order against natural parent	54
	<i>Interim maintenance</i>	
82	Interim maintenance	55

*Registration of maintenance agreements*

*[Repealed]*

83	Registration of maintenance agreements <i>[Repealed]</i>	56
84	Effect of registration <i>[Repealed]</i>	56
85	Maintenance agreements to bind parties <i>[Repealed]</i>	56
86	Registered agreement to operate as bar to order <i>[Repealed]</i>	56
87	Enforcement of agreement in respect of child over 16 <i>[Repealed]</i>	56
88	Enforcement against estate of deceased person <i>[Repealed]</i>	56
89	Recovery of arrears on cessation of agreement <i>[Repealed]</i>	56
90	Setting aside and cancelling of registration <i>[Repealed]</i>	56

*Miscellaneous provisions as to maintenance*

91	Reports as to maintenance	57
92	Discretion of court as to orders	57
93	Person to whom money payable under maintenance order	57
93A	Copy of order to be sent to Commissioner of Inland Revenue	58
94	Dissolution not to affect maintenance order	58
95	Maintenance where order refused	59
96	Maintenance order in favour of mentally disordered person	59
97	Security for maintenance	59
98	Apportionment of maintenance payments	59
99	Discharge, variation, and suspension of maintenance orders	60
100	Restriction on payment of maintenance in advance	61

**Part 7**

**Enforcement of maintenance orders from 1 July 1992**

101	Orders enforceable under Child Support Act 1991	61
101A	Deductions from benefits <i>[Repealed]</i>	61
101B	Power to issue deduction notices under Social Security Act 2018	62
102	Bankruptcy <i>[Repealed]</i>	62
103	Warrant of distress <i>[Repealed]</i>	62
104	Deductions from wages for payment of maintenance <i>[Repealed]</i>	62

*Attachment orders*

*[Repealed]*

105	Attachment orders <i>[Repealed]</i>	62
106	Attachment order to be served on employer <i>[Repealed]</i>	63
107	Effect of attachment orders <i>[Repealed]</i>	63
108	Liability of employer <i>[Repealed]</i>	63
109	Variation, suspension, and discharge of attachment orders <i>[Repealed]</i>	63

*Deduction notices*

*[Repealed]*

110	Deduction notices <i>[Repealed]</i>	63
-----	-------------------------------------	----

111	Effect of deduction notices <i>[Repealed]</i>	63
111A	Power to issue deduction notices for arrears where maintenance order or agreement discharged or cancelled <i>[Repealed]</i>	63
112	Liability of employer <i>[Repealed]</i>	63
113	Protected earnings <i>[Repealed]</i>	64
114	Variation or discharge of deduction notice <i>[Repealed]</i>	64
	<i>General provisions relating to attachment orders and deduction notices</i> <i>[Repealed]</i>	
115	Transaction fee <i>[Repealed]</i>	64
116	Wrongful treatment of employee <i>[Repealed]</i>	64
117	Extent to which attachment orders and administrative notices bind the Crown <i>[Repealed]</i>	64
	<i>Charging orders</i> <i>[Repealed]</i>	
118	Charging orders <i>[Repealed]</i>	64
119	Charging orders on life insurance policies <i>[Repealed]</i>	64
120	Extent to which charging orders bind the Crown <i>[Repealed]</i>	65
	<i>Receiving orders</i> <i>[Repealed]</i>	
121	Receiving orders <i>[Repealed]</i>	65
122	Powers and duties of receiver <i>[Repealed]</i>	65
	<i>Miscellaneous provisions as to enforcement of maintenance orders</i> <i>[Repealed]</i>	
123	Order for enforcement of arrears under maintenance order <i>[Repealed]</i>	65
124	Default under maintenance order <i>[Repealed]</i>	65
125	Evidence of default <i>[Repealed]</i>	65
126	Power to summon witnesses <i>[Repealed]</i>	65
127	Execution of warrants <i>[Repealed]</i>	66
128	Conduct of examination <i>[Repealed]</i>	66
129	Orders by court <i>[Repealed]</i>	66
130	Contempt procedures <i>[Repealed]</i>	66
131	Application of Offenders Legal Aid Act 1954 <i>[Repealed]</i>	66
132	Warrant of commitment <i>[Repealed]</i>	66
133	Respondent in prison or undergoing periodic detention to be discharged on payment <i>[Repealed]</i>	66
134	Arrest of respondent <i>[Repealed]</i>	66

**Part 8**  
**Overseas maintenance**

*Enforcement in New Zealand of orders made in Commonwealth or  
designated countries*

135	Designation of countries	67
136	Registration of orders made in Commonwealth or designated countries	67
137	Setting aside of registration of order	67
138	Confirmation of provisional orders made in Commonwealth or designated countries	68
139	Confirmation of provisional orders affecting New Zealand maintenance orders	69
139A	Variation overseas of maintenance agreements registered in New Zealand	70
140	Rehearings and appeals in respect of confirmation of order	71
141	Effect of registration or confirmation of order made in Commonwealth or designated country	71

*Discharge or variation of overseas maintenance order*

142	Discharge or variation of registered or confirmed order	71
142A	Definition of child maintenance order	73
142B	Discharge, variation, etc, of child maintenance order	73
142C	Conditions relating to variation of child maintenance order	74
142D	Payment of arrears on child maintenance orders	75
142E	Provisional order discharging, etc, child maintenance order	75
142F	Copies of orders to be forwarded to Commissioner	75

*Steps to be taken if respondent not residing in New Zealand*

143	Steps to be taken by Secretary if respondent not residing in New Zealand	76
-----	---	----

*Applications from persons in Convention countries*

144	Certificate by Secretary of Foreign Affairs and Trade	76
145	Applications for maintenance by applicants residing in Convention countries	77
145A	Treatment of applications for maintenance by applicants residing in Convention countries	77

*Maintenance of children in respect of applications from persons in  
Convention countries*

145B	Interpretation	78
145C	Maintenance of children	78
145D	Limitations on liability as father	79
145E	Applications for maintenance orders in respect of children	80
145F	Power of court to make maintenance orders in respect of children	80
145G	Maintenance orders in respect of children	80

145H	Contributions by other parent	82
145I	Interim maintenance	82
	<i>Procedure on applications from persons in Convention countries</i>	
145J	Procedures relating to applications from persons in Convention countries	83
146	Provisions where service not effected	83
	<i>Applications for child maintenance in respect of persons residing overseas</i>	
146A	Application for maintenance of child in respect of person resident outside New Zealand	84
	<i>Enforcement of New Zealand orders overseas</i>	
147	Provisional orders for confirmation overseas	84
148	Effect in New Zealand of confirmation overseas of provisional order	86
	<i>Transmission of applications to Convention countries</i>	
149	Transmission of applications by New Zealand residents to Convention countries	87
	<i>Miscellaneous provisions as to overseas maintenance</i>	
150	Taking of evidence	88
151	Proof of documents	89
152	Depositions to be evidence	89
153	Conversion of currency	89
154	Certificate of Registrar	89
<b>Part 9</b>		
<b>Procedure</b>		
155	Applications by agents	90
156	Service on disabled person	90
157	Proceedings where respondent is absent from New Zealand or cannot be found	91
158	Proceedings by or against minors	92
159	Conduct of proceedings	92
160	Applications may be heard together	93
161	Intervention	94
162	Appointment of lawyer to represent child in proceedings	94
162A	Appointment of lawyer to assist court	94
162B	Fees and expenses of lawyer appointed under section 162 or 162A	94
162C	Order requiring reimbursement of costs payments	95
162D	Enforcement of orders made under section 162C	96
163	Vexatious proceedings	96
164	Evidence <i>[Repealed]</i>	97
165	Power of District Court or Family Court to call witnesses	97



166	Proof of certain matters	98
167	Standard of proof	98
168	Claim by respondent for relief	98
169	Publication of reports of proceedings	99
170	Orders by consent	99
171	Costs	99
172	Dismissal of application in District Court or Family Court no bar to further proceedings	99
173	Rehearings	100

**Part 10**

**Appeals**

174	Appeals from decisions of District Court and Family Court	100
175	Appeals from decisions of High Court	102

**Part 11**

**Miscellaneous provisions**

176	Non-molestation orders <i>[Repealed]</i>	103
177	Interim non-molestation orders <i>[Repealed]</i>	103
178	Orders in respect of matrimonial homes and tenancies <i>[Repealed]</i>	103
179	Orders in respect of matrimonial homes and tenancies where parties living apart <i>[Repealed]</i>	103
180	Recovery of money from estate of deceased party	103
181	Incidence of maintenance due by estate of deceased party	104
182	Court may make orders as to settled property, etc	105
183	Dispositions may be restrained	106
184	Dispositions may be set aside	107
185	Separation agreements by persons of unsound mind	108
186	Court fees <i>[Repealed]</i>	108
187	Regulations	108
188	Rules of procedure	109
189	Amendments to other enactments, and repeals	110
190	Related amendments to Domestic Actions Act 1975	111
191	Savings	111
192	Transitional provisions	112
193	Transitional provision for counselling or mediation arranged before commencement of Family Proceedings Amendment Act (No 2) 2013	113
194	Transitional provision for proceedings commenced before commencement of Family Proceedings Amendment Act (No 2) 2013	113

**Schedule 1**

**Enactments amended**

**Schedule 2**

**Enactments repealed**

## An Act to revise the law relating to matrimonial and domestic proceedings

### 1 Short Title and commencement

- (1) This Act may be cited as the Family Proceedings Act 1980.
- (2) Except as provided in subsection (3) and in section 190(3), this Act shall come into force on 1 October 1981.
- (3) Sections 144 to 146 and 149 shall come into force on a date to be appointed by the Governor-General by Order in Council.

Section 2: sections 144–146 and 149 brought into force, on 1 March 1986, by clause 2 of the Family Proceedings Act (United Nations Convention) Commencement Order 1986 (SR 1986/9).

### 2 Interpretation

In this Act, unless the context otherwise requires,—

**affiliation order** includes an order declaring a person to be a parent of a child (however the order is described, and whether or not it also provides for the maintenance of the child)

**blood sample** means any of the following, taken in accordance with normal medical procedures:

- (a) a fingerprick sample (that is, a sample of capillary blood taken from the tip of a finger or thumb); or
- (b) a venous sample (that is, a sample of venous blood); or
- (c) any other sample of blood

**buccal sample** means a sample of epithelial cells from inside the mouth taken by a device, or provided by other means

**certified copy**, in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy

**child of the de facto relationship** means a child of both de facto partners, and includes, in relation to any proceedings under this Part, a child (whether or not a child of either de facto partner) who was a member of the family of the de facto partners at the time when they ceased to live together or at the time immediately before the institution of proceedings, whichever first occurred

**child of the marriage**—

- (a) in relation to a marriage (other than a void marriage)—
  - (i) means a child of both spouses together; and
  - (ii) includes, in relation to any proceedings under this Act, a child (whether or not a child of either spouse) who was a member of the family of the spouses at the time when they ceased to live together or at the time immediately preceding the institution of the proceedings, whichever first occurred; and

- (b) in relation to a void marriage—
  - (i) means a child of the parties to the void marriage; and
  - (ii) includes, in relation to any proceedings under this Act, a child (whether or not a child of either party to the void marriage) who was a member of the family of the parties to the void marriage at the time when those parties ceased to live together or at the time immediately preceding the institution of the proceedings, whichever first occurred

**Commonwealth country** includes—

- (a) the Republic of Ireland; and
- (b) a territory for whose international relations the Government of a country that is a member of the Commonwealth is responsible; and
- (c) the Cook Islands; and
- (d) Niue; and
- (e) Tokelau

**Convention country**—

- (a) means a country that is a party to the United Nations Convention for the Recovery of Maintenance Abroad done at New York on 20 June 1956; but
- (b) does not include Australia

**country** includes any State, territory, province, or other part of a country

**court**, in Part 8, includes any body or person exercising judicial functions, outside New Zealand, in relation to maintenance orders

**deduction notice** means a deduction notice issued under section 110

**designated country** means a country specified as a designated country by a notice given under section 135

**DNA profile**, in relation to a person (**person A**), means information derived from an analysis of a sample of genetic material obtained from person A, being information—

- (a) that is clearly identifiable as relating to person A; and
- (b) that is able to be compared with information obtained from an analysis (using the same technique) of another sample of genetic material obtained from another person (**person B**) for the purpose of determining, with reasonable certainty, whether or not the relationship of natural parent and child exists between person A and person B

**domestic benefit** means a benefit that is—

- (a) sole parent support granted under the Social Security Act 2018; or
- (b) jobseeker support granted under the Social Security Act 2018; or

- (c) an emergency benefit granted under that Act, and that corresponds to a benefit in paragraph (a) or (b)

**Family Court** means the division of the District Court known, in accordance with section 4 of the Family Court Act 1980, as the Family Court

**Family Court Judge** means a Family Court Judge appointed under section 5 of the Family Court Act 1980; and includes the Principal Family Court Judge

**interim order**, in relation to maintenance, means an order made under section 82

**maintenance** means the provision of money, property, and services; and includes—

- (a) in respect of a child, provision for the child's education and training to the extent of the child's ability and talents; and
- (b) in respect of a deceased person, the cost of the deceased person's funeral

**maintenance agreement** means—

- (a) a written agreement made between spouses or civil union partners, and providing for the payment by either party of a periodical sum of money or lump sum of money or both towards the maintenance of the other party; or
- (b) a written agreement made between the parties to a marriage or civil union that has been dissolved, and providing for the payment by either party of a periodical sum of money or lump sum of money or both towards the maintenance of the other party; or
- (c) *[Repealed]*
- (d) a written agreement made between any persons who acknowledge themselves to be the parents of a child; and providing for the payment by either parent of a periodical sum of money or lump sum of money or both towards the maintenance of the other parent, where the parties—
- (i) are not married to, or in a civil union with, each other; and
- (ii) have never been married to, or in a civil union with, each other or (if they have been married to, or in a civil union with, each other) have had their marriage or civil union dissolved before the conception of the child—

- (e) *[Repealed]*

whether or not the document in which an agreement to which paragraph (a) or paragraph (b) or paragraph (d) applies is embodied provides also for the separation of the parties to a marriage or civil union or for the role of providing day-to-day care for a child

**maintenance order**—

- (a) means an order or interim order made under Part 6 for the payment of maintenance; and includes—

- (i) *[Repealed]*
  - (ii) in Part 8, a subsisting order (including an order in or consequent on an affiliation order) for the payment by any person of a periodical sum of money towards the maintenance of a person whom the first-mentioned person is, according to the law in force in the place where the order is made, liable to maintain; and
  - (iii) in Part 8, a subsisting order of the kind described in section 78(1)(b) or (2); and
- (b) where an order within the meaning of paragraph (a) has been varied, means the order as varied and all orders by which it has been varied

**marriage** includes a union in the nature of marriage that—

- (a) is entered into outside New Zealand; and
- (b) is at any time polygamous,—

where the law of the country in which each of the parties is domiciled at the time of the union then permits polygamy

**parentage tests** means tests carried out on blood samples or buccal samples to help to determine the parentage of a child

**paternity order** means an order made under section 51

**proceedings** means proceedings before a court

**property** includes real and personal property, and any estate or interest in any real or personal property, and any debt, and any thing in action, and any other right or interest

**report on parentage tests** means a report compiled under section 54

**responsible authority**, in relation to a country other than New Zealand, means the appropriate authority in that country for the discharge of the functions contemplated by Part 8 in relation to that authority

**Secretary** means the chief executive of the Ministry of Justice

**separation order** means a separation order made under Part 3

**social worker** means—

- (a) a social worker employed as such under Part 5 of the State Sector Act 1988 in the department for the time being responsible for the administration of the Oranga Tamariki Act 1989; or
- (b) a community officer appointed under section 4 of the Maori Community Development Act 1962; or
- (c) an honorary community officer appointed under section 5 of the Maori Community Development Act 1962.

Compare: 1963 No 71 s 2; 1968 No 62 ss 2, 3, 54, 61, 80, 94; 1971 No 59 s 9(1)

Section 2 **approved marriage or civil union guidance organisation or counselling organisation**: repealed, on 31 March 2014, by section 4(a) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 2 **attachment order**: repealed, on 31 March 2014, by section 4(b) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 2 **blood sample**: inserted, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 2 **blood tests**: repealed, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 2 **buccal sample**: inserted, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 2 **charging order**: repealed, on 31 March 2014, by section 4(c) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 2 **child of the civil union**: repealed, on 31 March 2014, by section 4(d) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 2 **child of the de facto relationship**: inserted, on 1 July 2005, by section 149 of the Care of Children Act 2004 (2004 No 90).

Section 2 **child of the marriage** paragraph (a): replaced, on 19 August 2013, by section 9 of the Marriage (Definition of Marriage) Amendment Act 2013 (2013 No 20).

Section 2 **Convention country**: replaced, on 1 July 2000, by section 37 of the Child Support Amendment Act 1999 (1999 No 81).

Section 2 **counsellor**: repealed, on 31 March 2014, by section 4(e) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 2 **DNA profile**: inserted, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 2 **domestic benefit**: replaced, on 26 November 2018, by section 459 of the Social Security Act 2018 (2018 No 32).

Section 2 **employer**: repealed, on 31 March 2014, by section 4(f) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 2 **family chattels**: repealed, on 31 March 2014, by section 4(g) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 2 **Family Court**: replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 2 **Family Court Judge**: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 2 **family home**: repealed, on 31 March 2014, by section 4(h) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 2 **maintenance agreement**: amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 2 **maintenance agreement**: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 2 **maintenance agreement**: amended, on 1 July 1992, by section 2(2) of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 2 **maintenance agreement** paragraph (a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 2 **maintenance agreement** paragraph (b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 2 **maintenance agreement** paragraph (c): repealed, on 1 July 1992, by section 2(1) of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 2 **maintenance agreement** paragraph (d)(i): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 2 **maintenance agreement** paragraph (d)(ii): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 2 **maintenance agreement** paragraph (e): repealed, on 1 July 1992, by section 2(1) of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 2 **maintenance order** paragraph (a)(i): repealed, on 1 July 1992, by section 2(3) of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 2 **matrimonial home**: repealed, on 1 February 2002, by section 3 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 2 **mediation conference**: repealed, on 31 March 2014, by section 4(i) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 2 **parentage tests**: inserted, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 2 **registered maintenance agreement**: repealed, on 1 July 1992, by section 2(4) of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 2 **report on blood tests**: repealed, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 2 **report on parentage tests**: inserted, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 2 **salary or wages**: repealed, on 31 March 2014, by section 4(j) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 2 **Secretary**: inserted, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 2 **Secretary**: amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 2 **social worker** paragraph (a): replaced, on 1 April 1990, by section 36(3) of the Social Welfare (Transitional Provisions) Act 1990 (1990 No 26).

Section 2 **social worker** paragraph (a): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 2 **social worker** paragraph (a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### **3 Act to bind the Crown**

Subject to sections 117 and 120, this Act shall bind the Crown.

Compare: 1963 No 71 s 86; 1968 No 62 s 4

## **Part 1 Administration**

### **4 Jurisdiction of courts**

Subject to sections 27, 29, 32, 37, and 48, the High Court, the District Court, and the Family Court shall have jurisdiction in proceedings under this Act, only—

- (a) where at the commencement of the proceedings, any party to the proceedings resides or is domiciled in New Zealand:
- (b) in the case of proceedings relating to a child, where at the commencement of the proceedings—
  - (i) any party to the proceedings resides or is domiciled in New Zealand; or
  - (ii) the child resides in New Zealand.

Compare: 1968 No 62 s 5

Section 4: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **5 Marriage or civil union guidance or counselling organisations**

*[Repealed]*

Section 5: repealed, on 31 March 2014, by section 5 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

## **6 Maintenance officers**

*[Repealed]*

Section 6: repealed, on 1 July 1992, by section 3 of the Family Proceedings Amendment Act 1991 (1991 No 144).

## **7 Functions of maintenance officers**

*[Repealed]*

Section 7: repealed, on 1 July 1992, by section 3 of the Family Proceedings Amendment Act 1991 (1991 No 144).

# **Part 2 Dispute resolution**

*[Repealed]*

Part 2: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

## **7A Definition of marriage**

*[Repealed]*

Section 7A: repealed, on 1 July 2005, by section 149 of the Care of Children Act 2004 (2004 No 90).

## **8 Duty of legal advisers to promote reconciliation and conciliation**

*[Repealed]*

Section 8: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).



## *Counselling*

*[Repealed]*

Heading: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

### **9 Requests for counselling**

*[Repealed]*

Section 9: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

### **10 Counselling where proceedings commenced**

*[Repealed]*

Section 10: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

### **11 Reference to counsellor**

*[Repealed]*

Section 11: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

### **12 Duty on counsellors**

*[Repealed]*

Section 12: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

### **12A Number of sessions of counselling**

*[Repealed]*

Section 12A: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

### **12B Counselling fees and expenses**

*[Repealed]*

Section 12B: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

## *Mediation conferences*

*[Repealed]*

Heading: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

### **13 Mediation conference**

*[Repealed]*

Section 13: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

**14 Procedure at mediation conference**

*[Repealed]*

Section 14: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

**15 Power of chairperson to make consent orders**

*[Repealed]*

Section 15: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

**16 Proceedings after mediation conference**

*[Repealed]*

Section 16: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

**17 Power to require attendance for counselling or mediation**

*[Repealed]*

Section 17: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

**18 Privilege**

*[Repealed]*

Section 18: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

**19 Duty of courts as to reconciliation and conciliation**

*[Repealed]*

Section 19: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

**19A Circumstances where joint counselling not to be required**

*[Repealed]*

Section 19A: repealed, on 31 March 2014, by section 6 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

### **Part 3 Separation**

**20 Application for separation order**

Either party to a marriage or civil union may apply for a separation order.

Compare: 1968 No 62 s 19(1)

Section 20: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

## **21 Power of Family Court to make separation order**

Every application for a separation order shall be heard and determined in the Family Court.

Compare: 1968 No 62 s 19(1)

Section 21: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **22 Grounds for separation order**

In proceedings for a separation order, the Family Court shall make the order if it is satisfied that there is a state of disharmony between the parties to the marriage or civil union of such a nature that it is unreasonable to require the parties to continue, or, as the case may be, to resume, cohabitation with each other.

Compare: 1968 No 62 s 19(1)(a); 1971 No 59 s 2

Section 22: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 22: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

## **23 Effect of separation order**

So long as a separation order remains in force, neither party to the marriage or civil union shall be under an obligation to cohabit with the other party, but, except as provided by this Act or any other enactment, the order shall not otherwise affect the marriage or civil union or the status, rights, and obligations of the parties to the marriage or civil union.

Compare: 1968 No 62 s 20

Section 23: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

## **24 Discharge of separation order on resumption of cohabitation**

- (1) Subject to section 40, a separation order shall cease to have any force or effect if—
  - (a) the married couple, or the civil union partners, with the free consent of both parties, have resumed cohabitation as a married couple or as civil union partners; or
  - (b) the order is discharged by the court under section 25.
- (2) Without limiting the provisions of paragraph (a) of subsection (1), either spouse, or either civil union partner, may apply to the Family Court for the discharge of the separation order on the ground that it has ceased to have effect under that paragraph, and, on proof that the order has ceased to have effect as aforesaid, the court shall discharge the order.

Compare: 1968 No 62 s 21

Section 24(1)(a): amended, on 19 August 2013, by section 9 of the Marriage (Definition of Marriage) Amendment Act 2013 (2013 No 20).

Section 24(1)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 24(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 24(2): amended, on 19 August 2013, by section 9 of the Marriage (Definition of Marriage) Amendment Act 2013 (2013 No 20).

Section 24(2): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

## **25 Discharge of separation order by court**

- (1) Subject to subsection (2), the Family Court may, on the application of either party, discharge any separation order if the court is satisfied that the circumstances have so changed since the making of the order that it is reasonable that the order should be discharged.
- (2) The court shall not discharge the order if an application for dissolution of marriage or dissolution of civil union has been filed by either party, and is pending.

Compare: 1968 No 62 s 22

Section 25(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 25(2): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

## **26 Effect of separation order on property rights**

- (1) If, while a separation order is in force, either spouse or civil union partner dies intestate as to any property, that property shall devolve as if the survivor had predeceased the intestate.
- (2) Notwithstanding subsection (1),—
  - (a) in any case to which that subsection applies the High Court, on the application of the survivor made within the time specified in the Family Protection Act 1955 in relation to applications under that Act, may, at its discretion, order that such provision as the court thinks fit shall be made for the survivor out of the estate of the deceased spouse or civil union partner; and
  - (b) the provisions of that Act, as far as they are applicable and with the necessary modifications, shall apply with respect to every application under this subsection.

Compare: 1968 No 62 s 24(2)–(3)

Section 26(1): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 26(2)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

## Part 4

### Proceedings relating to the status of marriage or civil union

Part 4 heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

#### *Validity of marriage or civil union*

Heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

#### **27 Application for declaration as to validity of marriage or civil union**

- (1) An application for a declaration whether, according to the law of New Zealand,—

- (a) a marriage or civil union is valid; or  
(b) a marriage or civil union has been validly dissolved—

may be made by any person, whether or not that person is a party to the marriage or civil union, or is domiciled or resident in New Zealand, and whether or not the marriage or civil union was solemnised in New Zealand.

- (2) An application under this section may be made whether or not any other relief is claimed under this Act.

Compare: 1963 No 71 s 17(1), (3)

Section 27 heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 27(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 27(1)(a): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 27(1)(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

#### **28 Power of Family Court to make declaration as to validity of marriage or civil union**

- (1) Subject to subsection (2), every application under section 27 shall be heard and determined in the Family Court.
- (2) The jurisdiction to make a declaration on an application under section 27 is discretionary, and the Family Court may, on any grounds which it considers sufficient, refuse to make such a declaration.
- (3) Section 4 of the Declaratory Judgments Act 1908 shall apply, with the necessary modifications, to every declaration made on an application under section 27.

Compare: 1963 No 71 s 17(1)–(2)

Section 28 heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 28(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 28(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### *Void marriages and civil unions*

Heading: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

## **29 Application for order declaring marriage or civil union void**

An application for an order declaring a marriage or civil union to be void *ab initio* (whether or not the marriage or civil union is governed by New Zealand law) may be made only—

- (a) where the applicant or the respondent is domiciled or resident in New Zealand at the time of the filing of the application; or
- (b) where the marriage or civil union was solemnised in New Zealand.

Compare: 1963 No 71 s 6

Section 29 heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 29: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 29(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

## **30 Power of Family Court to make order declaring marriage or civil union void**

Every application under section 29 shall be heard and determined in the Family Court.

Compare: 1963 No 71 s 6

Section 30 heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 30: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **31 Grounds on which marriage or civil union void**

- (1) A marriage or civil union that is governed by New Zealand law shall be void *ab initio* (whether or not an order has been made declaring the marriage or civil union to be void) only where,—
  - (a) in the case of a marriage or civil union that is governed by New Zealand law so far as it relates to capacity to marry,—
    - (i) at the time of the solemnisation of the marriage or civil union, either party was already married or in a civil union; or
    - (ia) at the time of the solemnisation of the marriage or civil union, 1 of the parties to the marriage or civil union was under the age of 16 years; or
    - (ib) at the time of the solemnisation of the marriage, 1 of the parties to the marriage was aged 16 or 17 years and the consent of a Family

- Court Judge required under section 18 of the Marriage Act 1955 had not been obtained; or
- (ic) at the time of the solemnisation of the civil union, 1 of the parties to the civil union was aged 16 or 17 years and the consent of a Family Court Judge required under section 19 of the Civil Union Act 2004 had not been obtained; or
  - (ii) by reason of duress, mistake, or insanity, or for any other reason, there was at the time of the marriage or civil union an absence of consent by either party to marriage to or civil union with the other party; or
  - (iii) the parties to the marriage are within the prohibited degrees of relationship set out in Schedule 2 of the Marriage Act 1955, and no order is in force under section 15(2) of that Act dispensing with the prohibition; or
  - (iv) the parties to the civil union are within the prohibited degrees of civil union set out in Schedule 2 of the Civil Union Act 2004, and no order is in force under section 10 of that Act dispensing with the prohibition; or
- (b) in the case of a marriage or civil union that is governed by New Zealand law so far as it relates to the formalities of marriage or civil union, the parties knowingly and wilfully married without a marriage or civil union licence, or in the absence of a marriage or civil union celebrant or Registrar of Marriages; or
  - (c) in the case of a civil union that is governed by New Zealand law so far as it relates to the formalities of civil union, the parties knowingly and wilfully entered into a civil union without a licence, or in the absence of a Registrar (as defined in section 3 of the Civil Union Act 2004) or civil union celebrant, or otherwise than in accordance with the rules and procedures of an exempt body (as also defined in section 3 of that Act).
- (2) Nothing in subsection (1) shall affect the law as to the validity in New Zealand of a marriage or civil union that is not governed by the law of New Zealand, or the jurisdiction of the Family Court to make an order declaring any such marriage or civil union to be void *ab initio*.

Compare: 1963 No 71 s 7(1)–(2)

Section 31 heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 31(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 31(1)(a): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 31(1)(a)(i): replaced, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 31(1)(a)(ia): inserted, on 14 August 2018, by section 34(1) of the Minors (Court Consent to Relationships) Legislation Act 2018 (2018 No 22).

Section 31(1)(a)(ib): inserted, on 14 August 2018, by section 34(1) of the Minors (Court Consent to Relationships) Legislation Act 2018 (2018 No 22).

Section 31(1)(a)(ic): inserted, on 14 August 2018, by section 34(1) of the Minors (Court Consent to Relationships) Legislation Act 2018 (2018 No 22).

Section 31(1)(a)(ii): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 31(1)(a)(iv): inserted, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 31(1)(b): amended, on 14 August 2018, by section 34(2) of the Minors (Court Consent to Relationships) Legislation Act 2018 (2018 No 22).

Section 31(1)(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 31(1)(b): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 31(1)(c): inserted, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 31(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 31(2): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

### *Presumption of death*

#### **32 Application for declaration of presumption of death**

Any married person, or party to a civil union, who is domiciled in New Zealand may apply for an order declaring that the other party to the marriage or civil union is presumed to be dead and that the marriage or civil union is dissolved.

Compare: 1963 No 71 s 19(1)

Section 32: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 32: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

#### **33 Power of Family Court to make declaration of presumption of death**

Every application under section 32 shall be heard and determined in the Family Court.

Compare: 1963 No 71 s 19(1)–(2)

Section 33: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### **34 Grounds for making declaration of presumption of death**

In proceedings on an application under section 32, the Family Court, on being satisfied that reasonable grounds exist for presuming that the party to the marriage or civil union in respect of whom the application has been made is dead,



may make an order declaring that that party is presumed to be dead and that the marriage or civil union is dissolved.

Compare: 1963 No 71 s 19(2)

Section 34: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 34: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

### **35 Evidence of death**

In proceedings on an application under section 32, the fact that for a period of not less than 7 years the party to the marriage or civil union in respect of whom the application has been made has been continuously absent from the applicant, and that nothing has happened within that time to give the applicant reason to believe that the other party was then living, shall be evidence that the other party is dead in the absence of proof to the contrary.

Compare: 1963 No 71 s 19(3)

Section 35: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

### **36 Application of other provisions**

The rules of law relating to an application for an order dissolving a marriage or civil union and to any order dissolving a marriage or civil union shall, as far as they are applicable and with the necessary modifications, apply respectively to an application under section 32 and to an order made under section 34.

Compare: 1963 No 71 s 19(4)

Section 36: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

#### *Dissolution of marriage or civil union*

Heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

### **37 Application for dissolution of marriage or civil union**

- (1) An application for an order dissolving a marriage or civil union may be made—
  - (a) by either party to the marriage or civil union; or
  - (b) jointly by both parties to the marriage or civil union.
- (2) An application under subsection (1) may be made only where, at the time of the filing of the application, at least one party to the marriage or civil union is domiciled in New Zealand.
- (3) For the purposes of sections 38(2), 42, and 174(3), proceedings for an order dissolving a marriage or civil union that are commenced by a joint application shall be treated as undefended proceedings.

Compare: 1963 No 71 ss 18(1), 20

Section 37 heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 37(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 37(1)(a): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 37(1)(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 37(2): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 37(3): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 37(3): amended, on 1 July 1994, by section 5 of the Family Proceedings Amendment Act 1994 (1994 No 32).

### **38 Power to make order for dissolution**

- (1) Subject to subsection (2), every application for an order dissolving a marriage or civil union shall be heard and determined by the Family Court.
- (2) A Registrar may make an order dissolving a marriage or civil union where—
  - (a) the proceedings are undefended; and
  - (b) in the case of a joint application, both applicants consent to the order being made in their absence; and
  - (c) in the case of an application other than a joint application, the applicant consents to the order being made in his or her absence and the respondent has not requested an appearance; and
  - (d) the application for the order is accompanied by an affidavit stating—
    - (i) that the ground for the order is established under section 39(2); and
    - (ii) that the provisions of section 45(1A) have been complied with.
- (3) If there is a change of circumstances between the time of the filing of the application for the order and the date on which an order made under subsection (2) takes effect as a final order, either party may seek a hearing at any time before the order takes effect as a final order notwithstanding that the person consented to the order being made in his or her absence or did not request an appearance.

Section 38 heading: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 38: replaced, on 1 July 1994, by section 6 of the Family Proceedings Amendment Act 1994 (1994 No 32).

Section 38(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 38(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 38(2): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

### **39 Grounds for dissolution**

- (1) An application for an order dissolving a marriage or civil union may be made only on the ground that the marriage or civil union has broken down irreconcilably.
- (2) The ground for the order is established in law if, and only if, the court is satisfied that the parties to the marriage or civil union are living apart, and have been living apart for the period of 2 years immediately preceding the filing of the application for an order dissolving the marriage or civil union; and no proof of any other matter shall be required to establish the ground.
- (3) A separation order or a separation agreement (whether made by deed or other writing or orally) in full force for the period of 2 years immediately preceding the filing of an application for an order dissolving a marriage or civil union may be adduced as evidence of living apart for the required period.
- (4) Where the ground for the making of the order is established under subsection (2), the court shall, subject to section 45, make an order dissolving the marriage or civil union.

Section 39: replaced, on 11 June 1985, by section 2 of the Family Proceedings Amendment Act (No 2) 1985 (1985 No 85).

Section 39 heading: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 39(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 39(2): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 39(3): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 39(4): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

### **40 Effect of resumption of cohabitation**

For the purposes of sections 24 and 39, the parties to a marriage or civil union shall not be held to have ceased to live apart or to have resumed cohabitation by reason of having resumed cohabitation on 1 or more occasions for a period or periods not exceeding in the aggregate 3 months (whether or not there have been acts of sexual connection between the parties) where the court is satisfied that reconciliation was the sole or principal motive for the resumption of cohabitation.

Compare: 1963 No 71 s 26; 1968 No 60 s 3

Section 40: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 40: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

### **41 Effect of sexual connection without resumption of cohabitation**

For the purposes of section 39, there shall be no presumption that the parties to a marriage or civil union have ceased to live apart by reason of acts of sexual

connection between them (whether or not the sole or principal motive was reconciliation) without the resumption of cohabitation.

Section 41 heading: amended, on 26 April 2005, pursuant to section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 41: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 41: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

## **42 Orders dissolving marriage or civil union**

- (1) An order dissolving a marriage or civil union,—
  - (a) if made by the Family Court in undefended proceedings, shall take effect as a final order on being made; and
  - (b) if made in defended proceedings, shall, subject to subsections (2) and (3), take effect as a final order at the expiration of 1 month from the date on which it is made; and
  - (c) if made by a Registrar in undefended proceedings, shall, subject to subsection (4), take effect as a final order at the expiration of 1 month from the date on which it is made.
- (2) Where a party to any defended proceedings for an order dissolving a marriage or civil union appeals to the High Court, within the time provided by section 174, against the making of an order dissolving that marriage or civil union, the following provisions shall apply:
  - (a) the order shall not take effect as a final order while the appeal is pending;
  - (b) if, before the expiration of 1 month from the date on which the order was made, the appeal is withdrawn, abandoned, or dismissed or the order is confirmed by the High Court, the order shall take effect as a final order at the expiration of 1 month from the date on which it was made;
  - (c) if, after the expiration of 1 month from the date on which the order was made, the appeal is withdrawn, abandoned, or dismissed or the order is confirmed by the High Court, the order shall take effect as a final order on the withdrawal, abandonment, or dismissal of the appeal or on the confirmation of the order by the High Court, as the case may be;
  - (d) if the order is set aside or quashed by the High Court, the order shall not take effect as a final order.
- (3) Where an order dissolving a marriage or civil union is made in defended proceedings and either of the parties to the marriage or civil union dies, the order shall not take effect as a final order.
- (4) Where a party to any undefended proceedings for an order dissolving a marriage or civil union seeks a hearing pursuant to section 38(3), the following provisions shall apply:

- (a) the order shall not take effect as a final order while the hearing is pending:
- (b) if the order is confirmed by the Family Court, the order shall take effect as a final order on the confirmation of the order by the Family Court:
- (c) if the order is quashed or set aside by the Family Court, the order shall not take effect as a final order.

Compare: 1963 No 71 ss 18(5), 33, 34

Section 42 heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 42(1): replaced, on 1 July 1994, by section 7(1) of the Family Proceedings Amendment Act 1994 (1994 No 32).

Section 42(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 42(2): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 42(3): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 42(4): inserted, on 1 July 1994, by section 7(2) of the Family Proceedings Amendment Act 1994 (1994 No 32).

Section 42(4): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

### **43 Entering new relationship after dissolution**

- (1) Where an order dissolving a marriage has taken effect as a final order, the parties to the marriage may marry again and may enter into a civil union.
- (2) When an order dissolving a civil union has taken effect as a final order, the parties to the civil union may enter into a civil union again and may, if otherwise eligible, enter into a marriage.

Compare: 1963 No 71 s 35

Section 43 heading: replaced, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 43(1): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 43(2): inserted, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

### *Overseas orders*

### **44 Recognition of overseas orders**

- (1) The validity of a decree or order or legislative enactment for divorce or dissolution or nullity of marriage or civil union made (whether before or after the commencement of this Act) by a court or legislature or public authority of any country outside New Zealand shall, by virtue of this section, be recognised in all the courts of New Zealand, where—

- (a) one or both of the parties were domiciled in that country at the time of the decree, order, or enactment; or
  - (b) that overseas court or legislature or public authority has exercised jurisdiction—
    - (i) in any case, on the basis of the residence of one or both of the parties to the marriage or civil union in that country, if, at the commencement of the proceedings, any such party had in fact been resident in that country for a continuous period of not less than 2 years; or
    - (ii) in any case, on the basis that one or both of the parties to the marriage or civil union are nationals or citizens of that country or of any sovereign State of which that country forms part; or
    - (iii) in any case, on the basis that the spouse or civil union partner has been deserted by his or her spouse or civil union partner, or that one spouse or civil union partner has been deported and the other spouse or partner was, immediately before the desertion or deportation, domiciled in that country; or
    - (iv) in any case, on the basis that the spouses or civil union partners were legally separated, whether by an order of a competent court or by agreement, and that one of the spouses or partners was, at the date of the order or agreement, domiciled in that country; or
    - (v) in a case of nullity of marriage or civil union on any ground existing at the time of the marriage or civil union, on the basis of the celebration of the marriage or civil union in that country; or
  - (c) the decree or order or enactment is recognised as valid in the courts of a country in which at least one of the parties to the marriage or civil union is domiciled.
- (2) Nothing in this section shall affect the validity of a decree or order or legislative enactment for divorce or dissolution or nullity of marriage or civil union, or of a dissolution of marriage or civil union otherwise than by judicial process, that would be recognised in the courts of New Zealand otherwise than by virtue of this section.

Compare: 1963 No 71 s 82; 1968 No 60 s 12

Section 44(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 44(1)(b)(i): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 44(1)(b)(ii): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 44(1)(b)(iii): replaced, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 44(1)(b)(iv): replaced, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 44(1)(b)(v): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 44(1)(c): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 44(2): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

## **Part 5**

### **Children**

#### *Welfare of children*

#### **45 Arrangements for welfare of children on dissolution**

- (1) The Family Court shall not make an order dissolving a marriage or civil union unless it is satisfied that—
  - (a) arrangements have been made for the day-to-day care, maintenance, and other aspects of the welfare of every child of the marriage or civil union who is under the age of 16 years (or, in special circumstances, of or over that age) and those arrangements are satisfactory or are the best that can be devised in the circumstances; or
  - (b) it is impracticable for the party or parties appearing before the court to make any such arrangement; or
  - (c) there are special circumstances justifying the making of an order dissolving the marriage or civil union, notwithstanding that the court is not satisfied that any such arrangements have been made.
- (1A) A Registrar shall not make an order dissolving a marriage or civil union unless he or she is satisfied that arrangements have been made for the day-to-day care, maintenance, and other aspects of the welfare of every child of the marriage or civil union who is under the age of 16 years (or, in special circumstances, of or over that age) and those arrangements are satisfactory or are the best that can be devised in the circumstances.
- (2) The Family Court shall not make an order dissolving a marriage or civil union, in reliance on any special circumstances referred to in subsection (1)(c), unless it has obtained a satisfactory undertaking from either or both of the parties to the proceedings to bring before the court within a specified time the question of the arrangements for every child of the marriage or civil union.
- (3) No order dissolving a marriage or civil union shall be invalid solely on the ground that—
  - (a) any provision of subsections (1), (1A), and (2) has not been complied with; or
  - (b) any information that is relevant for the purposes of those subsections has not been supplied to the court; or

- (c) any information that has been supplied is incomplete, incorrect, or misleading; or
- (d) any undertaking that is given under subsection (2) has not been carried out.

Compare: 1963 No 71 s 49; 1968 No 60 s 5

Section 45 heading: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 45(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 45(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 45(1)(a): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 45(1)(a): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 45(1)(c): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 45(1A): inserted, on 1 July 1994, by section 8(1) of the Family Proceedings Amendment Act 1994 (1994 No 32).

Section 45(1A): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 45(1A): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 45(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 45(2): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 45(3): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 45(3)(a): amended, on 1 July 1994, by section 8(2) of the Family Proceedings Amendment Act 1994 (1994 No 32).

#### **46 Reports as to children**

- (1) In any proceedings under this Act relating to a child the court may request a social worker to submit to the court a written report on the arrangements that are proposed by the parties to the proceedings, or either of them, for the day-to-day care, maintenance, and welfare of the child, and on any other matter that is relevant to the child in the proceedings.
- (2) The social worker shall report accordingly.
- (3) The Registrar of the court shall give a copy of the report—
  - (a) to every barrister or solicitor appearing for a party to the proceedings; and
  - (b) to any barrister or solicitor representing a child who is involved in the proceedings; and



- (c) where a party to the proceedings is not represented by a barrister or solicitor, to that party.
- (4) Any party may tender evidence on any matter referred to in the report.
- (5) At the request of the court, the social worker shall appear as a witness in respect of any matter referred to in or arising out of the report.

Compare: 1963 No 71 s 50; 1968 No 62 s 8(1), (3), (4)

Section 46(1): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

### *Determination of paternity*

#### **47 Applications for paternity orders**

- (1) An application for a paternity order in respect of a child may be made:
  - (a) in any case, by the mother of the child; or
  - (b) where the mother is under the age of 16 years, by any person having custody of, or who has the role of providing day-to-day care for, the mother; or
  - (c) with the consent in writing of the mother, by a social worker; or
  - (d) where the child has been born, and the mother is dead, or has abandoned the child, or is for any reason unable to make an application herself,—
    - (i) by a parent of the mother; or
    - (ii) by a guardian of the child; or
    - (iii) by a social worker; or
    - (iv) with the leave of the court, by any other person.
- (2) An application for a paternity order in respect of a child may be made only against a male who—
  - (a) is not married to, or in a civil union with, the mother; and
  - (b) has never been married to, or in a civil union with, the mother or (if he has been married to, or in a civil union with, the mother) whose marriage or civil union was dissolved before the conception of the child.

Compare: 1968 No 62 ss 45, 47

Section 47(1)(b): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 47(2)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 47(2)(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 47(2)(b): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

**48 Jurisdiction to establish paternity**

An application for a paternity order in respect of a child (whether it is born, unborn, living, or dead) may be made only where at the time of the filing of the application—

- (a) the mother of the child resides or is domiciled in New Zealand; or
- (b) the respondent in the proceedings resides or is domiciled in New Zealand; or
- (c) the mother is dead and the child resides in New Zealand.

Compare: 1968 No 62 ss 45, 46

**49 Time limit on applications for paternity orders**

- (1) Subject to subsection (2), no application for a paternity order in respect of a child may be made after the expiration of 6 years from the birth of the child.
- (2) An application for a paternity order in respect of a child may be made after the expiry of the period specified in subsection (1)—
  - (a) where at any time within the 2 years immediately preceding the making of the application, the respondent has—
    - (i) contributed to or made provision for the maintenance of the child; or
    - (ii) lived with the mother as if he were her husband or civil union partner; or
  - (b) where at any time before the making of the application, the respondent has admitted expressly or by implication that he is the father of the child ;
  - (c) where, at any time before 1 July 1992, the respondent has been named as a liable parent for the purposes of sections 271 to 27ZI of the Social Security Act 1964, and the bringing of an application for a paternity order is subsequently necessary as a consequence of the enactment of the Child Support Act 1991.
- (3) For the purposes of computing any period specified in this section, no account shall be taken of any period during which the respondent is absent from New Zealand.

Compare: 1968 No 62 s 48; 1971 No 59 s 8

Section 49(2)(a)(ii): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 49(2)(b): amended, on 1 July 1992, pursuant to section 6 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 49(2)(c): inserted, on 1 July 1992, by section 6 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**50 Power of Family Court to make paternity orders**

- (1) Every application for a paternity order in respect of a child shall be heard and determined in the Family Court.
- (2) Nothing in subsection (1) or in sections 47, 48, 49, 51, or 52 shall limit the jurisdiction of the High Court to determine the paternity of a child under any other enactment or rule of law.

Compare: 1968 No 62 ss 46, 47

Section 50(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**51 Paternity orders**

- (1) On hearing an application for a paternity order made under section 47 in respect of a child, the Family Court—
  - (a) must, if it is satisfied that the respondent is the father of the child, make an order declaring that the respondent is the father of the child; and
  - (b) may, if it is satisfied (either on its own initiative or on an application for the purpose by a party to the proceedings) that the respondent is not the father of the child, make an order declaring that the respondent is not the father of the child.
- (2) For the purposes of proceedings under section 74, a paternity order in respect of a child shall be conclusive evidence that the person against whom it is made is the father of the child.

Compare: 1968 No 62 ss 51, 52

Section 51(1): replaced, on 1 July 2005, by section 17 of the Status of Children Amendment Act 2004 (2004 No 91).

**52 Evidence of mother**

- (1) The evidence of the mother of a child shall not be necessary for the making of a paternity order in respect of the child.
- (2) If the mother of the child gives evidence, no corroboration of her evidence shall be necessary for the making of a paternity order in respect of the child.

Compare: 1968 No 62 s 49

Section 52(2): replaced, on 6 November 1986, by section 4 of the Family Proceedings Amendment Act 1986 (1986 No 88).

**53 False statement in application for paternity order**

Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who, in any application for a paternity order under this Act, makes any statement that, if made on oath in the proceedings, would amount to perjury as defined in section 108 of the Crimes Act 1961.

Compare: 1968 No 62 s 127

Section 53: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

*Parentage tests in civil proceedings*

Heading: amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

**54 Parentage tests**

- (1) In any civil proceedings (whether under this Act or not) in which the parentage of a child is in issue,—
  - (a) the court may, of its own motion or on the application of a party to the proceedings, recommend that parentage tests be carried out on—
    - (i) the child; and
    - (ii) any person who may be a natural parent of the child—

and that a report of the results be compiled, by a person who is qualified to compile such a report, and submitted to the court; and
  - (b) whether or not the court has made a recommendation under paragraph (a), the court may, of its own motion or on the application of a party to the proceedings, adjourn the proceedings in order to allow time for such parentage tests to be carried out and for such a report to be compiled and submitted to the court.
- (2) For the purposes of this section,—
  - (a) parentage tests may be carried out by any person or persons who are qualified to do so, whether or not any of them is the person by whom the report is compiled; and
  - (b) the consent of a minor who has attained the age of 16 years to submit to parentage tests shall have the same effect as the consent of a person of full age.

Compare: 1968 No 62 s 50(1)

Section 54 heading: amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 54(1)(a): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 54(1)(b): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 54(2)(a): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 54(2)(b): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

**55 Contents of report**

- (1) A report on parentage tests—
  - (a) shall state the qualifications of the person making the report; and
  - (b) shall include or be accompanied by a statement showing the circumstances in which a blood sample or buccal sample was taken from each person to whom the report relates, and the manner in which that person

- was separately identified from each other person to whom the tests relate; and
- (c) must state the systems used to analyse the blood sample or buccal sample, for example,—
    - (i) any of the following systems for analysing blood samples, namely, ABO, Rh, MNSs, Duffy, Kidd, Kell, Haptoglobins, Gc's, and phosphoglucomutase; or
    - (ii) a system of comparison of DNA profiles for analysing blood samples or buccal samples; and
  - (d) *[Repealed]*
  - (e) shall state the results of the parentage tests; and
  - (f) shall state, in relation to each person to whom the report relates (other than the child), whether the results of the parentage tests show that the person is not a natural parent of the child.
- (2) Where parentage tests carried out on a person do not show that the person is not a natural parent of the child, the report may contain an evaluation of the significance of the results of the parentage tests in determining whether that person is a natural parent of the child.
- (3) Where a report on parentage tests has been submitted to a court under this section the court may, of its own motion or on the application of a party, obtain from the person by whom the report was compiled a written statement explaining or amplifying any matter in the report.
- (4) A written statement so obtained shall be deemed to form part of the report.

Compare: 1968 No 62 s 50(5), (7)

Section 55(1): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 55(1)(b): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 55(1)(c): replaced, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 55(1)(d): repealed, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 55(1)(e): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 55(1)(f): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 55(2): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 55(3): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

**56 Right of examination**

Where a report on parentage tests is submitted to a court, the court may on the application of any party summon as a witness in the proceedings—

- (a) the person who has compiled the report; and
- (b) any other person who has done anything necessary for the carrying out of the parentage tests or for the preparation of the report.

Compare: 1968 No 62 s 50(6)

Section 56: amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 56(b): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

**57 Refusal of parentage tests**

- (1) In any civil proceedings in which the natural parentage of a child is in issue, whether or not the court has recommended under section 54(1) that parentage tests should be carried out on a person, evidence may be given to the court as to the refusal of that person to consent (or, where the person is under 16 years of age, as to the refusal to consent to such parentage tests of the person who is competent to do so on that person's behalf).
- (2) Subject to the right of the person who refuses to consent to the parentage tests to explain the reasons for that person's refusal, and to cross-examine witnesses and call evidence, the court may draw such inferences (if any) from the fact of refusal as appear to it to be proper in the circumstances.

Compare: 1968 No 62 s 50(2)–(4)

Section 57 heading: amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 57(1): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 57(2): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

**58 Costs of parentage tests**

Where costs are incurred in the taking and testing of blood samples or buccal samples under section 54(1), each party shall, unless the court otherwise directs, be primarily liable to meet his own costs and the costs of any witness called by him; but the costs so incurred shall be costs in the proceedings.

Section 58 heading: amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 58: amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

**59 Offences relating to parentage tests**

Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who, for the purpose of the providing of a blood sample or buccal sample for a parentage test, the results of which that person knows are

intended to be used in any civil proceedings in which the natural parentage of a child is in issue,—

- (a) personates any other person; or
- (b) with intent to deceive, proffers a child that is not the child whose natural parentage is in issue in the proceedings.

Section 59 heading: amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 59: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 59: amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

## Part 6

### Maintenance of spouses and de facto partners

Part 6 heading: replaced, on 1 February 2002, by section 6 of the Family Proceedings Amendment Act 2001 (2001 No 7).

#### 60 Interpretation

- (1) In this Part, unless the context otherwise requires, **de facto partner** and **de facto relationship** have the same meaning as in section 2 of the Property (Relationships) Act 1976.
- (2) In this Part, unless the context otherwise requires, **child of the de facto relationship**,—
  - (a) means a child of both de facto partners; and
  - (b) includes, in relation to any proceedings under this Part, a child (whether or not a child of either de facto partner) who was a member of the family of the de facto partners at the time when they ceased to live together or at the time immediately before the institution of the proceedings, whichever occurred first.
- (3) In this Part,—
  - (a) a reference to a marriage or civil union includes a reference to a void marriage or civil union; and
  - (b) a reference to the dissolution of a marriage or civil union includes a reference to an order declaring a marriage or civil union to be void *ab initio*.

Compare: 1963 No 71 s 48; 1968 No 62 s 35(3)

Section 60: replaced, on 1 February 2002, by section 7 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 60(3)(a): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 60(3)(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

**61 Application of principles**

In proceedings under this Part (other than proceedings under section 79 or section 82), the court shall apply the principles set out in sections 62 to 66, and any other rules of law that are not inconsistent with those principles.

Section 61: amended, on 1 July 1992, by section 9(1) of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 61: amended, on 1 July 1992, by section 9(2) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**62 Domestic benefit irrelevant**

Without limiting or affecting the law relating to any other benefit, the liability to maintain any person under this Act is not extinguished by reason of the fact that the person's reasonable needs are being met by a domestic benefit.

*Maintenance of spouses and de facto partners*

Heading: replaced, on 1 February 2002, by section 8 of the Family Proceedings Amendment Act 2001 (2001 No 7).

**63 Maintenance during marriage or civil union**

- (1) During a marriage or civil union, each party is liable to maintain the other party to the extent that such maintenance is necessary to meet the reasonable needs of the other party, where the other party cannot practicably meet the whole or any part of those needs because of any 1 or more of the circumstances specified in subsection (2).
- (2) The circumstances referred to in subsection (1) are as follows:
  - (a) the ability of the parties to be or to become self-supporting, having regard to—
    - (i) the effects of the division of functions within the marriage or civil union while the parties are living together or lived together:
    - (ii) the likely earning capacity of each party:
    - (iii) any other relevant circumstances:
  - (b) the responsibilities of each party for the ongoing daily care of any minor or dependent children of the marriage or civil union after the parties ceased to live together:
  - (c) the standard of living of the parties while they are living together or lived together:
  - (d) any physical or mental disability:
  - (e) any inability of a party to obtain work that—
    - (i) it is reasonable in all the circumstances for that party to do; and
    - (ii) is adequate to provide for that party:



- (f) the undertaking by a party of a reasonable period of education or training designed to increase that party's earning capacity or to reduce or eliminate that party's need for maintenance from the other party, where it would be unfair, in all the circumstances, for the reasonable needs of the party undertaking that education or training to be met immediately by that party—
- (i) because of the effects of any of the matters set out in paragraphs (a)(i) and (b) on the potential earning capacity of that party; or
  - (ii) because that party has previously maintained or contributed to the maintenance of the other party during a period of education or training.
- (3) Except as provided in this section, neither party to a marriage or civil union is liable to maintain the other party during the marriage or civil union.

Compare: 1968 No 62 ss 27, 30, 31, 32

Section 63: replaced, on 1 February 2002, by section 8 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 63 heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 63(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 63(2)(a)(i): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 63(2)(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 63(3): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

#### **64 Maintenance after marriage or civil union dissolved or de facto relationship ends**

- (1) Subject to section 64A, after the dissolution of a marriage or civil union or, in the case of a de facto relationship, after the de facto partners cease to live together, each spouse, civil union partner, or de facto partner is liable to maintain the other spouse, civil union partner, or de facto partner to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, civil union partner, or de facto partner, where the other spouse, civil union partner, or de facto partner cannot practicably meet the whole or any part of those needs because of any 1 or more of the circumstances specified in subsection (2).
- (2) The circumstances referred to in subsection (1) are as follows:
- (a) the ability of the spouses, civil union partners, or de facto partners to become self-supporting, having regard to—
    - (i) the effects of the division of functions within the marriage or civil union or de facto relationship while the spouses, civil union partners, or de facto partners lived together:

- (ii) the likely earning capacity of each spouse, civil union partner, or de facto partner:
    - (iii) any other relevant circumstances:
  - (b) the responsibilities of each spouse, civil union partner, or de facto partner for the ongoing daily care of any minor or dependent children of the marriage or civil union or (as the case requires) any minor or dependent children of the de facto relationship after the dissolution of the marriage or civil union or (as the case requires) the de facto partners ceased to live together:
  - (c) the standard of living of the spouses, civil union partners, or de facto partners while they lived together:
  - (d) the undertaking by a spouse, civil union partner, or de facto partner of a reasonable period of education or training designed to increase the earning capacity of that spouse, civil union partner, or de facto partner or to reduce or eliminate the need of that spouse, civil union partner, or de facto partner for maintenance from the other spouse, civil union partner, or de facto partner if it would be unfair, in all the circumstances, for the reasonable needs of the spouse, civil union partner, or de facto partner undertaking that education or training to be met immediately by that spouse, civil union partner, or de facto partner—
    - (i) because of the effects of any of the matters set out in paragraphs (a)(i) and (b) on the potential earning capacity of that spouse, civil union partner, or de facto partner; or
    - (ii) because that spouse, civil union partner, or de facto partner has previously maintained or contributed to the maintenance of the other spouse, civil union partner, or de facto partner during a period of education or training.
- (3) For the purposes of subsection (2)(a)(i), if the marriage or civil union was immediately preceded by a de facto relationship between the spouses or civil union partners, the effects of the division of functions within the marriage or civil union include the effects of the division of functions within that de facto relationship.
- (4) Except as provided in this section and section 64A,—
  - (a) neither party to a marriage or civil union is liable to maintain the other party after the dissolution of the marriage or civil union:
  - (b) neither party to a de facto relationship is liable to maintain the other de facto partner after the de facto partners cease to live together.

Compare: 1963 No 71 ss 43, 44

Section 64: replaced, on 1 February 2002, by section 8 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 64 heading: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 64(1): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64(2)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64(2)(a)(i): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 64(2)(a)(i): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64(2)(a)(ii): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64(2)(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 64(2)(b): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64(2)(c): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64(2)(d): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64(2)(d)(i): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64(2)(d)(ii): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64(3): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 64(3): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64(4)(a): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

**64A Spouses, civil union partners, or de facto partners must assume responsibility for own needs within reasonable time**

- (1) If a marriage or civil union is dissolved or, in the case of a de facto relationship, the de facto partners cease to live together,—
  - (a) each spouse, civil union partner, or de facto partner must assume responsibility, within a period of time that is reasonable in all the circumstances of the particular case, for meeting his or her own needs; and
  - (b) on the expiry of that period of time, neither spouse, civil union partner, or de facto partner is liable to maintain the other under section 64.
- (2) Regardless of subsection (1), if a marriage or civil union is dissolved or, in the case of a de facto relationship, the de facto partners cease to live together, one spouse, civil union partner, or de facto partner (**party A**) is liable to maintain the other spouse, civil union partner, or de facto partner (**party B**) under section 64, to the extent that such maintenance is necessary to meet the reasonable needs of party B if, having regard to the matters referred to in subsection (3),—

- (a) it is unreasonable to require party B to do without maintenance from party A; and
  - (b) it is reasonable to require party A to provide maintenance to party B.
- (3) The matters referred to in subsection (2) are as follows:
- (a) the ages of the spouses, civil union partners, or de facto partners:
  - (b) the duration of the marriage or civil union or de facto relationship:
  - (c) the ability of the spouses, civil union partners, or de facto partners to become self-supporting, having regard to—
    - (i) the effects of the division of functions within the marriage or civil union or de facto relationship while the spouses, civil union partners, or de facto partners were living together:
    - (ii) the likely earning capacity of each spouse, civil union partner, or de facto partner:
    - (iii) the responsibilities of each spouse, civil union partner, or de facto partner for the ongoing daily care of any minor or dependent children of the marriage or civil union or (as the case requires) any minor or dependent children of the de facto relationship after the dissolution of the marriage or civil union or (as the case requires) after the de facto partners ceased to live together:
    - (iv) any other relevant circumstances.
- (4) If the marriage or civil union was immediately preceded by a de facto relationship between the spouses or partners,—
- (a) for the purposes of subsection (3)(b), the de facto relationship must be treated as if it were part of the marriage or civil union; and
  - (b) for the purposes of subsection (3)(c)(i), the effects of the division of functions within the marriage or civil union include the effects of the division of functions within that de facto relationship.

Section 64A: inserted, on 1 February 2002, by section 8 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 64A heading: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64A(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 64A(1)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64A(1)(b): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64A(2): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 64A(2): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64A(3)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64A(3)(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 64A(3)(c): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64A(3)(c)(i): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 64A(3)(c)(i): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64A(2)(c)(ii): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64A(3)(c)(iii): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 64A(3)(c)(iii): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 64A(4): amended, on 19 August 2013, by section 9 of the Marriage (Definition of Marriage) Amendment Act 2013 (2013 No 20).

Section 64A(4): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 64A(4)(a): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 64A(4)(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

**65 Assessment of maintenance payable to spouse, civil union partner, or de facto partner**

- (1) This section sets out the matters that a court must have regard to in determining the amount payable,—
  - (a) in the case of a marriage or civil union, by one spouse or civil union partner for the maintenance of the other spouse or civil union partner (whether during the marriage or civil union or after its dissolution):
  - (b) in the case of a de facto relationship, by one de facto partner for the maintenance of the other de facto partner after the de facto partners cease to live together.
- (2) The matters that the court must have regard to are as follows:
  - (a) the means of each spouse, civil union partner, or de facto partner, including—
    - (i) potential earning capacity:
    - (ii) means derived from any division of property between the spouses or de facto partners under the Property (Relationships) Act 1976:
  - (b) the reasonable needs of each spouse, civil union partner, or de facto partner:

- (c) the fact that the spouse, civil union partner, or de facto partner by whom maintenance is payable is supporting any other person:
  - (d) the financial and other responsibilities of each spouse, civil union partner, or de facto partner:
  - (e) any other circumstances that make one spouse, civil union partner, or de facto partner liable to maintain the other.
- (3) In considering the potential earning capacity of each spouse, civil union partner, or de facto partner under subsection (2)(a)(i), the court must have regard to the effects of the division of functions within the marriage or civil union or the de facto relationship while the spouses, civil union partners, or de facto partners were living together.
- (4) For the purposes of subsection (3), where the marriage or civil union was immediately preceded by a de facto relationship between the spouses or civil union partners, the effects of the division of functions within the marriage or civil union include the effects of the division of functions within that de facto relationship.
- (5) In considering the reasonable needs of each spouse, civil union partner, or de facto partner under subsection (2)(b), the court may have regard to the standard of living of the spouses, civil union partners, or de facto partners while they were living together.

Compare: 1963 No 71 ss 43, 44; 1968 No 62 ss 27, 30, 31, 32

Section 65: replaced, on 1 February 2002, by section 8 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 65 heading: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 65(1)(a): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 65(1)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 65(2)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 65(2)(b): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 65(2)(c): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 65(2)(d): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 65(2)(e): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 65(3): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 65(3): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 65(4): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 65(4): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 65(5): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

## **66 Relevance of conduct to maintenance of spouses, civil union partners, or de facto partners**

- (1) The court may have regard to the matters set out in subsection (2) in considering,—
  - (a) in the case of a marriage or civil union, the liability of one spouse or civil union partner to maintain the other spouse or civil union partner, and the amount of the maintenance, whether during the marriage or civil union or after its dissolution:
  - (b) in the case of a de facto relationship, the liability of one de facto partner to maintain the other de facto partner, and the amount of the maintenance, after the de facto partners cease to live together.
- (2) The matters referred to in subsection (1) are as follows:
  - (a) conduct of the spouse, civil union partner, or de facto partner seeking to be maintained that amounts to a device to prolong his or her inability to meet his or her reasonable needs:
  - (b) misconduct of the spouse, civil union partner, or de facto partner seeking to be maintained that is of such a nature and degree that it would be repugnant to justice to require the other spouse, civil union partner, or de facto partner to pay maintenance.

Compare: 1968 No 62 s 28

Section 66: replaced, on 1 February 2002, by section 8 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 66 heading: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 66(1)(a): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 66(1)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 66(2)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 66(2)(b): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

## **67 Application by either spouse or civil union partner for maintenance during marriage or civil union**

Either party to a marriage or civil union may make an application for a maintenance order against the other party to the marriage or civil union on the ground that the respondent is liable to maintain the applicant.

Compare: 1968 No 62 ss 25(1), 31(1)

Section 67 heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 67 heading: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 67: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

## **68 Power of Family Court to make maintenance order in favour of either spouse or civil union partner**

Every application under section 67 shall be heard and determined in the Family Court.

Section 68 heading: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 68: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **69 Maintenance order in favour of either spouse or civil union partner**

- (1) On hearing an application under section 67 the Family Court may, subject to section 61, make any 1 or more of the following orders:
  - (a) an order directing the respondent to pay, for such period as the court thinks fit (but not exceeding the joint lives of the parties), such periodical sum towards the future maintenance of the applicant as the court thinks fit:
  - (b) an order directing the respondent to pay such lump sum towards the future maintenance of the applicant as the court thinks fit:
  - (c) an order directing the respondent to pay such lump sum towards the past maintenance of the applicant as the court thinks fit.
- (2) An order under paragraph (b) or paragraph (c) of subsection (1) for the payment of a lump sum may provide that the sum shall be payable—
  - (a) at a future date specified in the order; or
  - (b) by instalments specified in the order; or
  - (c) on such terms and conditions as the court specifies in the order.
- (3) Subject to any agreement by the parties to the contrary, an order made under subsection (1)(a) or (b), and every order made under section 99 varying or extending such an order, shall cease to have effect if the party in whose favour it is made marries or enters into a civil union.

Compare: 1963 No 71 s 40(2); 1968 No 62 ss 26, 31(1), (2)

Section 69 heading: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 69(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 69(3): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).



**70 Order for maintenance after marriage or civil union dissolved or de facto relationship ends**

- (1) The Family Court may make an order under subsection (2)—
  - (a) on or at any time after the making of an order dissolving a marriage or civil union:
  - (b) at any time after a de facto relationship ends.
- (2) The court may do the following under this section:
  - (a) order either party to the proceedings, or the personal representative of either party, to pay to the other party for such term as the court thinks fit (but not exceeding the life of the other party) such periodical sum towards the maintenance of the other party as the court thinks fit:
  - (b) make any other order referred to in section 69(1), either instead of or in addition to an order under paragraph (a).
- (3) Section 69(2) applies to an order under this section for the payment of a lump sum.
- (4) In this section, a reference to an order dissolving a marriage or civil union includes a reference to a decree or order or legislative enactment recognised in New Zealand by virtue of section 44, as if that decree or order or legislative enactment were an order of a court of competent jurisdiction in New Zealand.
- (5) This section is subject to sections 61, 70A, 70B, and 71.

Compare: 1963 No 71 s 40

Section 70: replaced, on 1 February 2002, by section 9 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 70 heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 70(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 70(1)(a): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 70(4): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

**70A Effect of entering into new marriage or civil union or de facto relationship**

- (1) The court may not make an order in proceedings under section 70—
  - (a) in favour of a party who is seeking maintenance from a spouse or civil union partner to whom they were married, or with whom they were in a civil union, if that party has married or entered into a civil union with someone else or has entered into a de facto relationship with someone else:
  - (b) in favour of a party who is seeking maintenance from a de facto partner with whom they were living in a de facto relationship, if that party has

entered into a de facto relationship with someone else, or has married or entered into a civil union with someone else.

- (2) The orders specified in subsection (3) cease to have effect if,—
- (a) in the case of an order made in favour of a party against a spouse or civil union partner to whom they were married, or with whom they were in a civil union, that party has married or entered into a civil union with someone else or has entered into a de facto relationship with someone else:
  - (b) in the case of an order made in favour of a party against a de facto partner with whom they were living in a de facto relationship, that party has entered into a de facto relationship with someone else, or has married or entered into a civil union with someone else.
- (3) The orders referred to in subsection (2) are as follows:
- (a) an order made under section 70, other than an order referred to in section 69(1)(c):
  - (b) any order made under section 99 varying or extending an order to which paragraph (a) applies.
- (4) Subsection (2) is subject to any agreement by the parties to the contrary.

Compare: 1963 No 71 s 40

Section 70A: inserted, on 1 February 2002, by section 9 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 70A heading: amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 70A(1)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 70A(1)(b): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 70A(2)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 70A(2)(b): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

### **70B Restriction on maintenance orders in favour of de facto partners**

- (1) This section applies to a de facto relationship that is a relationship of short duration as defined in section 2 of the Property (Relationships) Act 1976.
- (2) If this section applies to a de facto relationship, the court cannot make an order under section 70 in favour of a de facto partner to that relationship unless—
- (a) the court is satisfied—
    - (i) that there is a child of the de facto relationship; or
    - (ii) that the de facto partner seeking the order has made a substantial contribution to the de facto relationship; and

- (b) the court is satisfied that failure to make the order would result in serious injustice to that de facto partner.
- (3) In subsection (2)(a)(ii), **contribution** has the same meaning as it has in section 2 of the Property (Relationships) Act 1976.

Section 70B: inserted, on 1 February 2002, by section 9 of the Family Proceedings Amendment Act 2001 (2001 No 7).

#### **71 Time limit for applying for order against estate of deceased party**

- (1) No order under section 70 shall be sought against the personal representative of a person after the expiration of 12 months from the date of the grant in New Zealand of administration of the deceased person's estate.
- (2) Subject to subsection (3), the Family Court may extend for any further period the time limit specified in subsection (1), after hearing such of the persons affected as it thinks necessary, whether or not the time limit has already expired.
- (3) No extension shall be granted under subsection (2) unless the application for an extension is made before the final distribution of the estate.
- (4) Where the estate has been distributed before the personal representative receives notice that any application has been made to the Family Court for an extension under subsection (2) and after every notice (if any) of an intention to make an application has lapsed in accordance with section 48(1) of the Administration Act 1969—
- (a) the distribution shall not be disturbed by reason of the making of the application or any order in respect of the application; and
- (b) no action shall lie against the personal representative for having made the distribution.

Compare: 1963 No 71 s 42

Section 71(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 71(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### *Maintenance of children*

*[Repealed]*

Heading: repealed, on 1 July 1992, by section 10(1)(b) of the Family Proceedings Amendment Act 1991 (1991 No 144).

#### **72 Maintenance of children**

*[Repealed]*

Section 72: repealed, on 1 July 1992, by section 10(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**73 Limitations on liability as father**

*[Repealed]*

Section 73: repealed, on 1 July 1992, by section 10(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**74 Applications for maintenance orders in respect of children**

*[Repealed]*

Section 74: repealed, on 1 July 1992, by section 10(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**75 Power of Family Court to make maintenance orders in respect of children**

*[Repealed]*

Section 75: repealed, on 1 July 1992, by section 10(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**76 Maintenance orders in respect of children**

*[Repealed]*

Section 76: repealed, on 1 July 1992, by section 10(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**77 Contributions by other parent**

*[Repealed]*

Section 77: repealed, on 1 July 1992, by section 10(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

*Other orders related to maintenance of children*

**78 Related orders**

- (1) On or at any time after making a paternity order in respect of a child that has already been born, the Family Court may, if the child is dead, order the respondent to pay such sum as the court specifies, in such manner as the court specifies, in respect of the funeral expenses of the child.
- (2) Subject to subsection (4) the Family Court may, on or at any time after making a paternity order in respect of a child, make an order for the payment to the mother of such sum as the court specifies, in such manner as the court specifies, in respect of expenses reasonably incurred by her by reason of the pregnancy and the birth of the child and towards her support during the pregnancy and for such period after the pregnancy (not exceeding 1 month) as the court specifies.
- (3) An order may be made under subsection (2)—
  - (a) instead of or in addition to any maintenance order in respect of the child made pursuant to an application under section 74; and
  - (b) whether or not the child has already been born; and
  - (c) where the child has already been born, whether or not the child is living.

- (4) No application may be made under subsection (2) after the expiration of 12 months—
- (a) from the birth of the child; or
  - (b) where the mother has miscarried, from the date of the miscarriage.
- (5) Notwithstanding that a paternity order has not been made by the Family Court in respect of a child, an application for any order under subsection (1) or subsection (2) may be made by the mother of that child against a male person who—
- (a) is not married to, or in a civil union with, the mother; and
  - (b) has never been married to, or in a civil union with, the mother or (if he has been married to, or in a civil union with, the mother) whose marriage or civil union was dissolved before the conception of the child.
- (6) On hearing an application under subsection (5), the Family Court may, where it is satisfied that the respondent is a person to whom any of paragraphs (a), (d), (e), or (i) of section 7(1) of the Child Support Act 1991 applies, make any order specified under subsection (1) or subsection (2) of this section against the respondent.

Compare: 1968 No 62 s 53(1), (2), (3), (5)

Section 78(1): replaced, on 1 July 1992, by section 11(1) of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 78(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 78(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 78(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 78(5)(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 78(5)(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 78(5)(b): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 78(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 78(6): amended, on 1 July 1992, by section 11(2) of the Family Proceedings Amendment Act 1991 (1991 No 144).

## **79 Application for maintenance order against natural parent**

Where—

- (a) the natural parents of a child are not married to, or in a civil union with, each other; and

- (b) the natural father of the child is a person who is a parent from whom the payment of child support may be sought in respect of the child under section 6 of the Child Support Act 1991; and
- (c) either natural parent has or has had the role of providing day-to-day care for the child,—

the natural parent who has or has had the role of providing day-to-day care of the child may apply for a maintenance order in favour of that natural parent against the other natural parent.

Compare: 1968 No 62 s 53(2)(b), (4), (5); 1975 No 70 s 2

Section 79 heading: amended, on 1 February 2002, by section 10 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 79: amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 79(a): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 79(b): replaced, on 1 July 1992, by section 12 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 79(c): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

## **80 Power of Family Court to make maintenance orders against natural parent**

Every application under section 79 shall be heard and determined in the Family Court.

Compare: 1968 No 62 s 53(2)(b); 1975 No 70 s 2

Section 80 heading: amended, on 1 February 2002, by section 11 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 80: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **81 Maintenance order against natural parent**

- (1) On hearing an application under section 79, the court may, if it is satisfied that—
  - (a) it is desirable, in the interests of providing, or of reimbursing the applicant for having provided, adequate care for the child, to make a maintenance order; and
  - (b) it is reasonable to make a maintenance order, having regard to—
    - (i) the means, including the potential earning capacity, of each parent; and
    - (ii) the reasonable needs of each parent; and
    - (iii) the fact that the respondent is supporting any other person; and
    - (iv) the financial and other responsibilities of each parent—

make an order directing the respondent to pay to the applicant, for such period as the court thinks fit, such periodical or lump sum towards the future mainten-

ance of the applicant as the court thinks fit, or such lump sum towards the past maintenance of the applicant as the court thinks fit.

- (2) An order made under this section may be made subject to such other conditions as to payment as the court thinks fit.
- (3) Unless an order under this section expires earlier, the order ceases to have effect if the person in whose favour it is made subsequently marries or enters into a civil union or a de facto relationship.

Compare: 1968 No 62 s 53(2)(b), (4), (5); 1975 No 70 s 2

Section 81 heading: amended, on 1 February 2002, by section 12(2) of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 81(3): replaced, on 1 February 2002, by section 12(1) of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 81(3): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

### *Interim maintenance*

## **82 Interim maintenance**

- (1) Where an application for a maintenance order or for the variation, extension, suspension, or discharge of a maintenance order has been filed, any District Court Judge may make an order directing the respondent to pay such periodical sum as the District Court Judge thinks reasonable towards the future maintenance of the respondent's spouse, civil union partner, or de facto partner until the final determination of the proceedings or until the order sooner ceases to be in force.
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) No order made under this section shall continue in force for more than 6 months after the date on which it is made.
- (5) An order made under this section may be varied, suspended, discharged, or enforced in the same manner as if it were a final order of the Family Court.

Compare: 1968 No 62 s 77; 1976 No 87 s 2; 1978 No 91 s 2

Section 82(1): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 82(1): amended, on 1 February 2002, by section 13 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 82(1): amended, on 1 July 1992, by section 13 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 82(2): repealed, on 12 December 1983, by section 2 of the Family Proceedings Amendment Act 1983 (1983 No 73).

Section 82(3): repealed, on 12 December 1983, by section 2 of the Family Proceedings Amendment Act 1983 (1983 No 73).

Section 82(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

*Registration of maintenance agreements**[Repealed]*

Heading: repealed, on 1 July 1992, by section 14(1)(b) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**83 Registration of maintenance agreements***[Repealed]*

Section 83: repealed, on 1 July 1992, by section 14(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**84 Effect of registration***[Repealed]*

Section 84: repealed, on 1 July 1992, by section 14(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**85 Maintenance agreements to bind parties***[Repealed]*

Section 85: repealed, on 1 July 1992, by section 14(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**86 Registered agreement to operate as bar to order***[Repealed]*

Section 86: repealed, on 1 July 1992, by section 14(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**87 Enforcement of agreement in respect of child over 16***[Repealed]*

Section 87: repealed, on 1 July 1992, by section 14(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**88 Enforcement against estate of deceased person***[Repealed]*

Section 88: repealed, on 1 July 1992, by section 14(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**89 Recovery of arrears on cessation of agreement***[Repealed]*

Section 89: repealed, on 1 July 1992, by section 14(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).

**90 Setting aside and cancelling of registration***[Repealed]*

Section 90: repealed, on 1 July 1992, by section 14(1)(a) of the Family Proceedings Amendment Act 1991 (1991 No 144).



*Miscellaneous provisions as to maintenance*

**91 Reports as to maintenance**

- (1) In any proceedings under this Act relating to maintenance, the court may request any officer of the department for the time being responsible for the administration of the Social Security Act 2018 to submit to the court a report in writing on the means, earning capacity, and economic circumstances of a party to the proceedings, and on any matter relevant thereto.
- (2) The officer shall report accordingly.
- (3) The Registrar of the court shall give a copy of the report to every barrister or solicitor appearing for a party in the proceedings or, in the case of a party who is not represented by a barrister or solicitor, to the party.
- (4) Any party may tender evidence on any matter referred to in the report.
- (5) At the request of the court, the officer making the report shall appear as a witness in respect of any matter referred to in or arising out of the report.

Compare: 1968 No 62 s 8(2)–(4)

Section 91(1): amended, on 26 November 2018, by section 459 of the Social Security Act 2018 (2018 No 32).

Section 91(1): amended, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

**92 Discretion of court as to orders**

Where an application is made to a court for an order under this Part, the court may make any other order under this Part that it could have made if an application for that other order had been made at the time when the first-mentioned application was made.

Compare: 1963 No 71 s 78

**93 Person to whom money payable under maintenance order**

- (1) The money payable under a maintenance order shall, unless a direction of the court otherwise requires, be payable to the Commissioner of Inland Revenue in accordance with the Child Support Act 1991.
- (2) A court may, on or at any time after making a maintenance order, direct that the money payable under the order shall be paid—
  - (a) to or on behalf of the person for whose maintenance the order is made; or
  - (b) to any account in a trading or savings bank standing in the name of any such person; or
  - (c) to any other person.
- (3) All such money shall be payable in accordance with the tenor of the order.
- (4) The court may from time to time vary or revoke any direction given by it under this section.

- (5) A maintenance order providing for the payment of a lump sum may direct that the money be paid to Public Trust, or to any other trustee approved by the court, to be held and dealt with by Public Trust or the trustee in accordance with the order.
- (6) The receipt of the trustee, or of any person authorised by the trustee in that behalf, shall be a complete discharge to the person paying the same for any money paid to the trustee pursuant to any order under subsection (5).
- (7) Public Trust must invest all money paid to it under an order under subsection (5) in its common fund, and must apply that money and the income arising from it in accordance with the order.
- (8) Proceedings for the enforcement of a maintenance order in respect of which an order is made under subsection (5) may be taken by the person who would have been entitled to take such proceedings if the order under that subsection had not been made, and not by the trustee.
- (9) In this section **trustee** includes Public Trust.

Compare: 1968 No 62 ss 78, 79; 1971 No 59 s 13(1)

Section 93(1): replaced, on 1 July 1992, by section 15 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 93(5): replaced, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 93(7): replaced, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 93(9): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

### **93A Copy of order to be sent to Commissioner of Inland Revenue**

Where a court makes a maintenance order under this Act, the Registrar shall, within 28 days after the day on which the order is made, send a certified or sealed copy of the order to the Commissioner of Inland Revenue.

Section 93A: inserted, on 1 July 1992, by section 16 of the Family Proceedings Amendment Act 1991 (1991 No 144).

### **94 Dissolution not to affect maintenance order**

No maintenance order in favour of a husband or wife or a civil union partner shall be deemed to be discharged by reason only of the dissolution of the marriage between the married couple or the dissolution of the civil union between the civil union partners.

Compare: 1968 No 62 s 81

Section 94 heading: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 94: amended, on 19 August 2013, by section 9 of the Marriage (Definition of Marriage) Amendment Act 2013 (2013 No 20).

Section 94: amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

**95 Maintenance where order refused**

- (1) Where an application under section 37 (in this section referred to as the **principal relief**) has been dismissed after a hearing on the merits, and the court is satisfied that the proceedings for the principal relief were instituted in good faith and that there is no reasonable likelihood of cohabitation being resumed between the parties, the court may make any order under this Part.
- (2) The court shall not make an order under subsection (1), other than an order varying, extending, or discharging any such order, unless it has heard the application for the order at the same time as or immediately after the application for the principal relief.

Compare: 1963 No 71 s 77

**96 Maintenance order in favour of mentally disordered person**

Where a maintenance order is made by a court for the payment of a periodical sum in favour of a person who at the date of the making of the order is receiving care and treatment in a hospital as defined in section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, the order may provide for—

- (a) the payment of a periodical sum in respect of periods while that person is receiving care and treatment in such a hospital; and
- (b) the payment of a different periodical sum in respect of periods while that person is not receiving care and treatment in such a hospital.

Compare: 1968 No 62 s 82; 1971 No 59 s 15

Section 96: amended, on 1 November 1992, pursuant to section 137(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

**97 Security for maintenance**

- (1) On or at any time after making a maintenance order, a court may order the person by whom maintenance is payable under the order or the personal representative of that person to give such security as the court specifies for the payment of any sum that is to be paid pursuant to the maintenance order.
- (2) The court may, for the purposes of subsection (1), direct the Registrar of the court to settle and approve a proper deed or instrument, to be executed by all the necessary parties.

Compare: 1963 No 71 s 45; 1968 No 62 s 83

**98 Apportionment of maintenance payments**

Where any person by whom maintenance is payable under 2 or more maintenance orders makes any payment of part only of the total amount for the time being payable under those orders, the amount of the payment shall be deemed to have been apportioned in the proportions that the amounts payable under the several orders bear to the total amount payable under all of those orders.

Compare: 1968 No 62 s 84A; 1971 No 59 s 16

**99 Discharge, variation, and suspension of maintenance orders**

- (1) Where the Family Court or the District Court is satisfied that it ought to do so having regard to the principles of maintenance set out in sections 62 to 66 and in section 81, the court may from time to time, in respect of any maintenance order, make any of the following orders:
  - (a) an order discharging the maintenance order:
  - (b) an order varying or suspending the maintenance order:
  - (c) an order temporarily suspending the maintenance order, as to the whole or any part of the money ordered to be paid:
  - (d) an order discharging the maintenance order, and substituting in its place a new maintenance order, whether of the same kind or not:
  - (e) an order extending the term for which the maintenance order was made.
- (2) Where a maintenance order is discharged or any such order otherwise ceases to have effect, all arrears due under the order at the time when it was discharged or otherwise ceased to have effect shall, unless and to the extent that they are remitted by a court, be recoverable by the party to whom they are owing as if the order were still in force.
- (3) An order under this section varying a maintenance order by increasing the amount payable under it may, if the court thinks fit, take effect from a date that is earlier than the date of the order of variation, but is not earlier than the date on which the grounds for the variation arose.
- (4) A court may from time to time—
  - (a) remit the whole or part of any arrears due under a maintenance order; or
  - (b) suspend, on such terms and conditions (if any) as it specifies, the payment of the whole or part of any such arrears—whether or not the order has ceased to be in force.
- (5) A court may—
  - (a) from time to time vary or extend an order made by it under this Act for the giving of security for the payment of maintenance, whether as to the term of the order or the nature of any security, or by increasing or diminishing the amount of any security, or otherwise; or
  - (b) discharge an order made by it under this Act for the giving of such security.
- (6) A court may exercise the powers given by this section notwithstanding that the order that is varied, extended, suspended, or discharged was made by consent of the parties.

Section 99: replaced, on 1 July 1992, by section 17 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 99(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**100 Restriction on payment of maintenance in advance**

- (1) No money payable under a maintenance order shall be paid more than 12 months in advance of the due date for payment, except with the prior approval of the court by which the order was made.
- (2) Where any money is paid in breach of this section, unless the court otherwise decides,—
  - (a) it shall not be taken into account in any proceedings for the enforcement of the maintenance order or for the punishment of any disobedience to the order; and
  - (b) those proceedings may be taken in the same manner as if that money had not been paid.
- (3) An approval under subsection (1) or a decision under subsection (2) may be given subject to such conditions as the court thinks fit.
- (4) Money paid in breach of this section shall be recoverable as a debt owing to the person who paid it, unless it has been received by the person who is entitled to receive it under the maintenance order.
- (5) *[Repealed]*

Compare: 1968 No 62 s 86

Section 100(5): repealed, on 1 July 1992, by section 18 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**Part 7**

**Enforcement of maintenance orders from 1 July 1992**

Part 7: replaced, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**101 Orders enforceable under Child Support Act 1991**

- (1) The provisions of the Child Support Act 1991 shall apply to the manner in which orders made under Part 6 and Part 8 may be enforced on and after 1 July 1992.
- (2) If a court makes an order under Part 6 or Part 8, the Commissioner of Inland Revenue must, as soon as practicable, take any action necessary to give effect to the order for the purposes of the Child Support Act 1991.

Section 101: replaced, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 101(2): inserted, on 15 November 2000, by section 3 of the Family Proceedings Amendment Act 2000 (2000 No 66).

**101A Deductions from benefits**

*[Repealed]*

Section 101A: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**101B Power to issue deduction notices under Social Security Act 2018**

- (1) This section applies to a payment—
  - (a) under a maintenance order; and
  - (b) that is in arrear and unpaid.
- (2) The chief executive of the department for the time being responsible for the administration of the Social Security Act 2018 may issue a deduction notice under regulations made under section 444 of that Act to a person as if the payment in arrear and unpaid were a debt due to the Crown under that Act.
- (3) However, the deduction notice cannot be issued to the employer of, acting in the capacity of the employer of, the person against whom the order was made.
- (4) This section does not limit section 101 or section 110 (as saved by section 259(1) of the Child Support Act 1991).

Section 101B: replaced, on 26 November 2018, by section 459 of the Social Security Act 2018 (2018 No 32).

**102 Bankruptcy**

*[Repealed]*

Section 102: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**103 Warrant of distress**

*[Repealed]*

Section 103: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**104 Deductions from wages for payment of maintenance**

*[Repealed]*

Section 104: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

*Attachment orders*

*[Repealed]*

Heading: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**105 Attachment orders**

*[Repealed]*

Section 105: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**106 Attachment order to be served on employer**

*[Repealed]*

Section 106: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**107 Effect of attachment orders**

*[Repealed]*

Section 107: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**108 Liability of employer**

*[Repealed]*

Section 108: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**109 Variation, suspension, and discharge of attachment orders**

*[Repealed]*

Section 109: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

*Deduction notices*

*[Repealed]*

Heading: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**110 Deduction notices**

*[Repealed]*

Section 110: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**111 Effect of deduction notices**

*[Repealed]*

Section 111: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**111A Power to issue deduction notices for arrears where maintenance order or agreement discharged or cancelled**

*[Repealed]*

Section 111A: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**112 Liability of employer**

*[Repealed]*

Section 112: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**113 Protected earnings**

*[Repealed]*

Section 113: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**114 Variation or discharge of deduction notice**

*[Repealed]*

Section 114: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

*General provisions relating to attachment orders and deduction notices*

*[Repealed]*

Heading: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**115 Transaction fee**

*[Repealed]*

Section 115: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**116 Wrongful treatment of employee**

*[Repealed]*

Section 116: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**117 Extent to which attachment orders and administrative notices bind the Crown**

*[Repealed]*

Section 117: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

*Charging orders*

*[Repealed]*

Heading: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**118 Charging orders**

*[Repealed]*

Section 118: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**119 Charging orders on life insurance policies**

*[Repealed]*

Section 119: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).



## **120 Extent to which charging orders bind the Crown**

*[Repealed]*

Section 120: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

### *Receiving orders*

*[Repealed]*

Heading: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

## **121 Receiving orders**

*[Repealed]*

Section 121: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

## **122 Powers and duties of receiver**

*[Repealed]*

Section 122: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

### *Miscellaneous provisions as to enforcement of maintenance orders*

*[Repealed]*

Heading: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

## **123 Order for enforcement of arrears under maintenance order**

*[Repealed]*

Section 123: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

## **124 Default under maintenance order**

*[Repealed]*

Section 124: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

## **125 Evidence of default**

*[Repealed]*

Section 125: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

## **126 Power to summon witnesses**

*[Repealed]*

Section 126: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**127 Execution of warrants**

*[Repealed]*

Section 127: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**128 Conduct of examination**

*[Repealed]*

Section 128: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**129 Orders by court**

*[Repealed]*

Section 129: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**130 Contempt procedures**

*[Repealed]*

Section 130: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**131 Application of Offenders Legal Aid Act 1954**

*[Repealed]*

Section 131: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**132 Warrant of commitment**

*[Repealed]*

Section 132: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**133 Respondent in prison or undergoing periodic detention to be discharged on payment**

*[Repealed]*

Section 133: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**134 Arrest of respondent**

*[Repealed]*

Section 134: repealed, on 1 July 1992, by section 19 of the Family Proceedings Amendment Act 1991 (1991 No 144).

## Part 8 Overseas maintenance

### *Enforcement in New Zealand of orders made in Commonwealth or designated countries*

#### **135 Designation of countries**

- (1) The Minister of the Crown who is responsible for the Ministry of Justice may from time to time, by notice in the *Gazette*, specify as a designated country for the purposes of this Act any country that is not a Commonwealth country.
- (2) The Minister of the Crown who is responsible for the Ministry of Justice may, in any notice published under subsection (1) specifying any country as a designated country, provide that in their application to that country the provisions of this Act relating to Commonwealth and designated countries shall apply with such modifications as may be specified in the notice.

Compare: 1968 No 62 s 71

Section 135(1): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 135(1): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 135(2): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 135(2): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

#### **136 Registration of orders made in Commonwealth or designated countries**

Where—

- (a) a maintenance order has been made against any person by any court in a Commonwealth or designated country; or
- (b) a maintenance order made provisionally only against any person by any such court has been confirmed in a Commonwealth or designated country—

the order may be registered in New Zealand by filing a certified copy in the District Court in New Zealand in the prescribed manner.

Compare: 1968 No 62 s 62

Section 136: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### **137 Setting aside of registration of order**

Where an order is registered in the District Court in New Zealand under section 136,—

- (a) if in any case the court is satisfied, on the application of the person against whom the order applies, that the order is not an order to which

that section applies, the court shall set aside the registration of the order;  
or

- (b) if in the case of an order that is made in or consequent on an affiliation order the court, on the application of the person against whom the order applies, is satisfied—
  - (i) that that person did not appear in the proceedings in which the affiliation order was made; and
  - (ii) that the proceedings were not duly brought to that person's notice (either by the service of a summons on that person or by any other method permitted by the law of the country in which the affiliation order was made),—

the court may set aside the registration of the order.

Compare: 1968 No 62 s 63

Section 137: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **138 Confirmation of provisional orders made in Commonwealth or designated countries**

- (1) This section shall apply—
  - (a) to a maintenance order; and
  - (b) to an order varying a maintenance order where that maintenance order has been either registered or confirmed in New Zealand—

in any case where the maintenance order or the order varying the maintenance order, as the case may be, has been made provisionally only by a court in a Commonwealth or designated country and has no effect unless and until confirmed elsewhere.

- (2) Where a certified copy of an order to which this section applies, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the Secretary, he shall cause those documents to be sent to the District Court for the hearing of proceedings for confirmation of the order.
- (3) On receipt of those documents by the court—
  - (a) any District Court Judge or Justice or Community Magistrate or any Registrar (not being a constable) may issue a summons to the respondent:
  - (b) any District Court Judge or Registrar may issue a warrant to arrest the respondent and bring the respondent before the court in any case where the respondent's address is unknown or where a summons has been issued but cannot be served because the respondent cannot be found.
- (4) At the hearing it shall be open for the respondent to raise any defence which the respondent might have raised in the original proceedings had the respondent been present, but no other defence, and the statement from the court that

made the provisional order stating the grounds on which the making of the order might have been opposed shall be conclusive evidence that those grounds are grounds on which objection may be taken.

- (5) Notwithstanding subsection (4), where the provisional order is made in or is consequent on an affiliation order, the respondent may raise the defence—
  - (a) that he is not the father of the child; and
  - (b) that the proceedings in which the affiliation order was made were not brought to his notice (either by the service of a summons on him or by any other method permitted by the law of the country in which the affiliation order was made).
- (6) Where the respondent appears at the hearing and it appears to the court to be necessary for the purpose of any defence to remit the case to the court that made the provisional order for the taking of any further evidence, the court of hearing may so remit the case, and may adjourn the proceedings for the purpose.
- (7) Where at the hearing (whether following an adjournment or otherwise) the respondent does not appear, or on appearing fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modifications as it thinks just.
- (8) An order that has been confirmed with modifications shall for all the purposes of this Act have effect in the form in which it is confirmed.
- (9) The court confirming a maintenance order to which subsection (1)(a) applies may also, if it is satisfied that the respondent is of sufficient ability, at the same time order the respondent to pay, at such time or times and in such manner as the court thinks fit, any sum on account of the maintenance of the person or persons in whose favour the provisional order was made between the date of the making of that order and its confirmation.
- (10) An order made under subsection (9) shall be a maintenance order for the purposes of this Act.

Compare: 1968 No 62 s 64; 1975 No 70 s 3(1)

Section 138(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 138(2): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 138(3)(a): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

Section 138(3)(b): amended, on 1 July 1994, by section 9 of the Family Proceedings Amendment Act 1994 (1994 No 32).

### **139 Confirmation of provisional orders affecting New Zealand maintenance orders**

- (1) This section shall apply to any order that—

- (a) has been made provisionally only by a court in a Commonwealth or designated country; and
  - (b) has no effect unless and until confirmed in New Zealand; and
  - (c) cancels, varies, or suspends a maintenance order that is made in New Zealand and is registered or confirmed in that Commonwealth or designated country.
- (2) Where a certified copy of any order to which this section applies, together with the depositions of witnesses, has been transmitted to the Secretary, he shall cause those documents to be sent to the District Court in New Zealand for the hearing of proceedings for confirmation of the order.
  - (3) On receipt of those documents by a court, summonses shall be issued to such persons as the District Court Judge directs.
  - (4) Where any persons summoned under subsection (3) appear at the hearing and it appears to the court to be necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the court of hearing may so remit the case, and may adjourn the proceedings for the purpose.
  - (5) Subject to subsection (6), if at the hearing (whether following an adjournment or otherwise) none of the persons summoned under subsection (3) appears, or if those who do appear fail to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modifications as it thinks just.
  - (6) No maintenance order in respect of a party to a marriage or civil union shall be confirmed under subsection (5) unless the court is satisfied that an order similar to the order as confirmed could have been made in New Zealand under this Act.
  - (7) An order that has been confirmed with modifications shall for all the purposes of this Act have effect in the form in which it is confirmed.
  - (8) An order that is confirmed under subsection (5) shall have effect for all the purposes of New Zealand law as if it had been made under this Act.

Compare: 1968 No 62 s 65

Section 139(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 139(2): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 139(6): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 139(6): amended, on 1 July 1994, by section 10 of the Family Proceedings Amendment Act 1994 (1994 No 32).

### **139A Variation overseas of maintenance agreements registered in New Zealand**

- (1) This section shall apply to any order that—

- (a) has been made provisionally only by a court in a Commonwealth or designated country; and
  - (b) has no effect unless and until confirmed in New Zealand; and
  - (c) cancels, varies, or suspends a maintenance agreement that is made and registered in New Zealand (whether registered before or after the making of the provisional order) and is registered in that Commonwealth or designated country.
- (2) Subsections (2) to (8) of section 139 shall apply to any order to which this section applies.

Section 139A: inserted, on 11 June 1985, by section 4 of the Family Proceedings Amendment Act (No 2) 1985 (1985 No 85).

#### **140 Rehearings and appeals in respect of confirmation of order**

Sections 173 and 174 shall apply to the confirmation of an order or the refusal to confirm any order under section 138 or section 139 as if the confirmation or the refusal were an order made on application under this Act or the dismissal of such an application respectively.

Compare: 1968 No 62 s 66

#### **141 Effect of registration or confirmation of order made in Commonwealth or designated country**

- (1) An order that has been registered in New Zealand, and an order (including an order of variation) that has been confirmed in New Zealand (other than an order confirmed under section 139), shall remain an order of the court of the country in which the order was made.

- (2) *[Repealed]*

Compare: 1968 No 62 s 67; 1970 No 60 s 2

Section 141(2): repealed, on 1 July 1992, by section 20 of the Family Proceedings Amendment Act 1991 (1991 No 144).

#### *Discharge or variation of overseas maintenance order*

Heading: inserted, on 15 November 2000, by section 4 of the Family Proceedings Amendment Act 2000 (2000 No 66).

#### **142 Discharge or variation of registered or confirmed order**

- (1) If a maintenance order has been registered or confirmed in New Zealand, the District Court may, at any time, on the application of any person, make any of the following orders under section 99:
- (a) an order discharging a maintenance order:
  - (b) an order varying a maintenance order:
  - (c) an order suspending the operation of a maintenance order for the purposes of New Zealand law:

- (d) an order remitting or suspending arrears due under a maintenance order for the purposes of New Zealand law:
  - (e) an order varying or extending an order for the giving of security for the payment of maintenance (whether by altering the term of the order, or the nature of any security, or by increasing or diminishing the amount of any security, or otherwise):
  - (f) an order discharging an order for the giving of security for the payment of maintenance.
- (1A) If the court makes an order referred to in subsection (1)(d),—
- (a) the remittance or suspension may be in respect of all or any part of the arrears; and
  - (b) the remittance or suspension may be in respect of any maintenance order, whether or not it has ceased to be in force; and
  - (c) any suspension may be on any terms and conditions that the court specifies.
- (1B) This section does not apply to a child maintenance order (as defined in section 142A).
- (2) If it appears to the court, on an application under subsection (1), that the order it proposes to make is one that, if made provisionally, may be confirmed under the law of the country in which the maintenance order was made, the New Zealand court must, instead of making the proposed order, make a provisional order.
- (2A) *[Repealed]*
- (2B) A provisional order has no effect unless and until it is confirmed by a competent court in the country in which the maintenance order was originally made.
- (2C) Where the court makes a provisional order under subsection (2), section 147(5) to (9) apply, except that the court must, instead of sending the statement referred to in section 147(6)(c), send a statement of the grounds on which the provisional order has been made.
- (3) Where a person makes an application under subsection (1) in respect of a maintenance order registered in New Zealand, for a variation of the order under section 99, the application shall be dealt with as if the maintenance order had been made under this Act on the date when it was made outside New Zealand.
- (4) Where, on the hearing of an application under subsection (1), it appears to the court to be necessary to remit the case to the court that made the maintenance order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.
- (5) Where a maintenance order has been either registered or confirmed in New Zealand, and at any time thereafter the person in whose favour the order was made and the respondent are resident in New Zealand, the District Court may



on the application of any person make an order under section 99 substituting a new order for the registered or confirmed order.

- (6) An order under subsection (5) may be made in any case where the court considers it just, whether or not there would be jurisdiction to make an order by reason of section 99.
- (7) On an application under this section, notice of the application shall be given to such person or persons as the court directs.

Compare: 1968 No 62 s 68

Section 142(1): replaced, on 15 November 2000, by section 5 of the Family Proceedings Amendment Act 2000 (2000 No 66).

Section 142(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 142(1A): inserted, on 15 November 2000, by section 5 of the Family Proceedings Amendment Act 2000 (2000 No 66).

Section 142(1B): inserted, on 15 November 2000, by section 5 of the Family Proceedings Amendment Act 2000 (2000 No 66).

Section 142(2): replaced, on 18 May 2009, by section 21 of the Family Proceedings Amendment Act 2008 (2008 No 79).

Section 142(2): amended, on 14 November 2018, by section 138(1) of the Courts Matters Act 2018 (2018 No 50).

Section 142(2A): repealed, on 14 November 2018, by section 138(2) of the Courts Matters Act 2018 (2018 No 50).

Section 142(2B): inserted, on 18 May 2009, by section 21 of the Family Proceedings Amendment Act 2008 (2008 No 79).

Section 142(2C): inserted, on 18 May 2009, by section 21 of the Family Proceedings Amendment Act 2008 (2008 No 79).

Section 142(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### **142A Definition of child maintenance order**

In sections 142B to 142E, **child maintenance order** means a maintenance order that—

- (a) provides for the payment by any person of a periodical sum of money towards the maintenance of a child; and
- (b) has been made by a court in a Commonwealth or designated country; and
- (c) has been registered or confirmed in New Zealand.

Section 142A: inserted, on 15 November 2000, by section 6 of the Family Proceedings Amendment Act 2000 (2000 No 66).

#### **142B Discharge, variation, etc, of child maintenance order**

- (1) The District Court may, at any time, on the application of any person, make any of the following orders:
  - (a) an order discharging a child maintenance order:

- (b) an order varying a child maintenance order:
  - (c) an order suspending the operation of a child maintenance order for the purposes of New Zealand law:
  - (d) an order remitting or suspending arrears due under a child maintenance order for the purposes of New Zealand law:
  - (e) an order varying or extending an order for the giving of security for the payment of maintenance (whether by altering the term of the order, or the nature of any security, or by increasing or diminishing the amount of any security, or otherwise):
  - (f) an order discharging an order for the giving of security for the payment of maintenance.
- (2) The court may make an order under this section even if the child maintenance order to which the order relates was made by consent of the parties.
  - (3) If an application is made under this section, notice of the application must be given to any person or persons that the court directs.
  - (4) If an application is made under this section,—
    - (a) the court may, if it thinks fit, require the Commissioner of Inland Revenue to provide it with a report on the relevant financial implications of the application for the position of any person under the Child Support Act 1991; and
    - (b) the Commissioner must provide that report to the court within any period that the court directs.
  - (5) If it appears to the court to be necessary, for the purpose of taking further evidence, to remit the case to the court that made the child maintenance order, the court may remit the case and adjourn the proceedings for that purpose.
  - (6) This section is subject to section 142E.

Section 142B: inserted, on 15 November 2000, by section 6 of the Family Proceedings Amendment Act 2000 (2000 No 66).

Section 142B(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 142B(6): inserted, on 18 May 2009, by section 22 of the Family Proceedings Amendment Act 2008 (2008 No 79).

#### **142C Conditions relating to variation of child maintenance order**

- (1) An application for a variation of a child maintenance order must be dealt with as if the maintenance order had been made in New Zealand on the date when it was made outside New Zealand.
- (2) An order varying a child maintenance order by increasing the amount payable under it may, if the court thinks fit, take effect from a date that is earlier than the date of the order of variation, but must not be earlier than the date on which the grounds for the variation arose.

Section 142C: inserted, on 15 November 2000, by section 6 of the Family Proceedings Amendment Act 2000 (2000 No 66).

#### **142D Payment of arrears on child maintenance orders**

- (1) All arrears due under a child maintenance order at the time when it is discharged or otherwise ceases to have effect are recoverable by the person to whom they are owing as if the order were still in force, unless and to the extent that the arrears are remitted by the court.
- (2) If a court remits or suspends, under this section or section 142B(1)(d), any arrears due under a child maintenance order,—
  - (a) the remittance or suspension may be in respect of all or any part of the arrears; and
  - (b) the remittance or suspension may be in respect of any child maintenance order, whether or not it has ceased to be in force; and
  - (c) any suspension may be on any terms and conditions that the court specifies.

Section 142D: inserted, on 15 November 2000, by section 6 of the Family Proceedings Amendment Act 2000 (2000 No 66).

#### **142E Provisional order discharging, etc, child maintenance order**

- (1) If it appears to the court, on an application under section 142B, that the order it proposes to make is one that, if made provisionally, may be confirmed under the law of the country in which the child maintenance order was made, the New Zealand court must, instead of making the proposed order, make a provisional order.
- (1A) *[Repealed]*
- (2) A provisional order has no effect unless and until it is confirmed by a competent court in the country in which the child maintenance order was originally made.
- (3) Subsections (5) to (9) of section 147 apply, except that the court must, instead of sending the statement referred to in subsection (6)(c), send a statement of the grounds on which the provisional order has been made.

Section 142E: inserted, on 15 November 2000, by section 6 of the Family Proceedings Amendment Act 2000 (2000 No 66).

Section 142E heading: amended, on 18 May 2009, by section 23(1) of the Family Proceedings Amendment Act 2008 (2008 No 79).

Section 142E(1): amended, on 14 November 2018, by section 139(1) of the Courts Matters Act 2018 (2018 No 50).

Section 142E(1A): repealed, on 14 November 2018, by section 139(2) of the Courts Matters Act 2018 (2018 No 50).

#### **142F Copies of orders to be forwarded to Commissioner**

If a court makes an order under any of sections 142 to 142E, the Registrar or other responsible officer of the court must, within 14 days after the date on

which the order is made, send a certified or sealed copy of the order to the Commissioner of Inland Revenue.

Section 142F: inserted, on 15 November 2000, by section 6 of the Family Proceedings Amendment Act 2000 (2000 No 66).

*Steps to be taken if respondent not residing in New Zealand*

Heading: inserted, on 15 November 2000, by section 7 of the Family Proceedings Amendment Act 2000 (2000 No 66).

**143 Steps to be taken by Secretary if respondent not residing in New Zealand**

- (1) If a maintenance order made by a court in a Commonwealth or designated country has been registered or confirmed in New Zealand, and it appears to the Secretary that the respondent against whom the order is made is not residing in New Zealand, the Secretary must send the documents specified in subsection (2) to—
  - (a) the responsible authority in that Commonwealth or designated country; or
  - (b) the responsible authority in any other Commonwealth or designated country if, having regard to all the circumstances, the Secretary thinks it proper to do so.
- (2) The documents that the Secretary must send are—
  - (a) a certified copy of the maintenance order, together with a certified copy of every order varying that maintenance order; and
  - (b) a certificate of the amount of the arrears (if any) owing under the maintenance order; and
  - (c) a statement giving any information that the Secretary possesses about the whereabouts of the respondent; and
  - (d) any other documents in the possession of the Secretary that are relevant to the case.
- (3) If the documents specified in subsection (2) are sent to a responsible authority in a Commonwealth or designated country other than the one in which the maintenance order was made, the Secretary must inform the responsible authority in the country in which the order was made of where the documents have been sent.

Section 143: replaced, on 15 November 2000, by section 7 of the Family Proceedings Amendment Act 2000 (2000 No 66).

*Applications from persons in Convention countries*

**144 Certificate by Secretary of Foreign Affairs and Trade**

In any proceedings under this Part, a certificate signed by the Secretary of Foreign Affairs and Trade or by a Deputy Secretary of Foreign Affairs and Trade, stating that a country is a Convention country, or was a Convention country on

a date specified in the certificate, shall be conclusive evidence that the country is or was a Convention country.

Section 144 heading: amended, on 1 July 1993, pursuant to section 9(4) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

Section 144: amended, on 1 July 1993, pursuant to section 9(4) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

#### **145 Applications for maintenance by applicants residing in Convention countries**

Where the Secretary receives from the responsible authority in a Convention country—

- (a) an application by a person who claims to be entitled to recover maintenance from a person who is for the time being residing in New Zealand; or
- (b) an application for the variation, suspension, or discharge of an order made under this section—

the Secretary shall cause the application, together with all relevant accompanying documents, to be sent to the Registrar of the office of the District Court in New Zealand that is nearest to the place in New Zealand at which the respondent resides or is last known to have resided.

Section 145: replaced, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 145: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 145: amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

#### **145A Treatment of applications for maintenance by applicants residing in Convention countries**

Where a Registrar of the District Court receives from the Secretary an application under this section, the Registrar shall (subject to section 145J),—

- (a) in the case of an application in respect of the maintenance of any person other than a child of the respondent, or an application made pursuant to any of sections 78 to 81, deal with the application in all respects as if it were an application for a maintenance order made to the court under Part 6, and that Part shall apply accordingly:
- (b) in the case of an application in respect of the maintenance of any child of the respondent, deal with the application in accordance with sections 145B to 145I.

Section 145A: inserted, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 145A: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 145A: amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

*Maintenance of children in respect of applications from persons in Convention countries*

Heading: inserted, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**145B Interpretation**

In this Part, a reference to a parent of a child includes a reference—

- (a) to a natural or adoptive parent of the child; and
- (b) in the case of a child of the marriage or civil union, to a party to the marriage or civil union who is not a natural or adoptive parent of the child; and
- (c) for the purposes of an application under section 145E(b), to a spouse or civil union partner of a parent of the child even though the child to whom the application relates is not a child of the marriage or civil union.

Section 145B: inserted, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 145B(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 145B(c): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 145B(c): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

**145C Maintenance of children**

- (1) Each parent of a child is liable to maintain the child—
  - (a) until the child attains the age of 16 years; and
  - (b) where it appears to the court to be in the best interests of a child who has attained or will shortly attain the age of 16 years, until the child attains the age of 18 years or such earlier age as the court directs; and
  - (c) where it appears to the court that the child is or will be engaged, after attaining the age of 16 years, in a course of full-time education or training and it is expedient that the child should continue to be maintained, until the child attains the age of 20 years or such earlier age as the court directs.
- (2) In determining the amount that is payable by a parent for the maintenance of a child, the court shall have regard to all relevant circumstances affecting the welfare of the child, including—
  - (a) the reasonable needs of the child; and
  - (b) the manner in which the child is being educated or trained, and the expectations of each parent as to the child's education or training.
- (3) In determining the amount that is payable by a parent for the maintenance of a child, the court shall also have regard to the following circumstances:

- (a) the means, including the potential earning capacity, of each parent:
- (b) the reasonable needs of each parent:
- (c) the fact that either parent is supporting any other person:
- (d) the contribution (whether in the form of oversight, services, money payments, or otherwise) of either parent in respect of the care of that or any other child of the marriage or civil union:
- (e) the financial and other responsibilities of each parent:
- (f) where the person against whom the order is sought is not a natural or adoptive parent of the child—
  - (i) the extent (if at all) to which that person has assumed responsibility for the maintenance of the child, the basis on which that person has assumed that responsibility, and the length of time during which that person has discharged that responsibility; and
  - (ii) whether that person assumed or discharged any responsibility for the maintenance of the child knowing that that person was not a natural parent of the child; and
  - (iii) the liability of any other person to maintain the child:
- (g) any property and income of the child:
- (h) where the child has attained the age of 16 years, any earning capacity of the child.

Section 145C: inserted, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 145C(3)(d): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

#### **145D Limitations on liability as father**

- (1) No person who is not married to, or in a civil union with, the mother of a child, and has never been married to, or in a civil union with, the mother, or whose marriage or civil union to the mother has been dissolved before the conception of the child, shall be liable as a father to maintain the child unless—
  - (a) a court has declared him to be the father of the child; or
  - (b) a court has appointed him to be a guardian of the child, or has declared him to be a guardian of the child, by reason of being a parent of the child; or
  - (c) a court has, before or at the time of making a maintenance order against him, made a paternity order against him; or
  - (d) his name has at any time been entered pursuant to the Births, Deaths, Marriages, and Relationships Registration Act 1995 in the Register of Births as the father of the child; or

- (e) he has been declared to be the father of the child by an order made in a country outside New Zealand (being an order to which this section applies pursuant to subsection (2)); or
  - (f) he has, in any proceedings before the court, or in writing signed by him, acknowledged that he is the father of the child.
- (2) The Governor-General may from time to time, by Order in Council, declare that this section applies to orders made by a specific court or public authority in a specified country outside New Zealand.
- (3) For the purposes of this section, the Cook Islands, Niue, and Tokelau shall be deemed to be countries outside New Zealand.

Section 145D: inserted, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 145D(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 145D(1): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 145D(1)(d): amended, on 24 January 2009, by section 47 of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

#### **145E Applications for maintenance orders in respect of children**

An application for a maintenance order in respect of a child may be made only—

- (a) by a parent against another parent; or
- (b) by a person who has lawful care of the child against a parent or parents of the child.

Section 145E: inserted, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

#### **145F Power of court to make maintenance orders in respect of children**

Every application under section 145A(b) shall be heard and determined in the Family Court.

Section 145F: inserted, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 145F: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### **145G Maintenance orders in respect of children**

- (1) On hearing an application under section 145A(b), the Family Court may, subject to subsections (2) and (9), make any 1 or more of the following orders:
- (a) an order directing the respondent to pay such periodical sum towards the future maintenance of the child as the court thinks fit;
  - (b) an order directing the respondent to pay such lump sum towards the future maintenance of the child as the court thinks fit.



- (c) an order directing the respondent to pay such lump sum towards the past maintenance of the child as the court thinks fit.
- (2) The court shall not make an order under this section pursuant to an application made by a person to whom section 145E(b) applies against a spouse or civil union partner of a parent of a child, unless the court is satisfied that—
  - (a) either—
    - (i) no natural or adoptive parent of the child is alive; or
    - (ii) no natural or adoptive parent can be found who is capable of providing proper maintenance for the child; and
  - (b) the child has at some time lived with the spouse or civil union partner of the child's parent as a member of that person's family.
- (3) An order made under subsection (1)(b) or subsection (1)(c) for the payment of a lump sum may provide that the sum shall be payable—
  - (a) at a future date specified in the order; or
  - (b) by instalments specified in the order; or
  - (c) on such terms and conditions as the court thinks fit.
- (4) Where an application is made under section 145E against more than 1 parent of a child, an order under this section may be made against the parents in respect of whom the application is made or any 1 or more of them.
- (5) No order made under this section for the future maintenance of a child who is under the age of 16 years at the date when the order is made shall have effect after the child attains the age of 16 years, unless the court so directs.
- (6) No order made under this section for the future maintenance of a child who is over the age of 16 years but under the age of 18 years at the date when the order is made shall have effect after the child attains the age of 18 years, unless the court so directs.
- (7) On the application of any person who is entitled to apply under section 145E for a maintenance order in respect of a child, the court may extend a maintenance order in respect of that child where the child has not attained the age of 16 years or 18 years, as the case may require, at the date on which the application is heard, but may otherwise make a fresh order.
- (8) Whether or not the court makes a maintenance order under this section for the future maintenance of a child who has attained the age of 16 years or 18 years, the court may order the respondent to pay, in respect of the past maintenance of the child during the period commencing on the date on which the child attained that age and ending on the date of the making of the order, or such earlier date as is appropriate in the circumstances, such sum at such time or times and in such manner as the court thinks fit.
- (9) No order shall be made under this section in respect of a child who is married or in a civil union.

- (10) No order made under this section and no extension of an order shall have effect in respect of a child after the child marries or enters into a civil union.

Section 145G: inserted, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 145G(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 145G(2): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 145G(2)(b): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 145G(9): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 145G(10): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

#### **145H Contributions by other parent**

- (1) Where an application is made under section 145E(a) against a parent of a child,—
- (a) that parent may join another person as a respondent in the proceedings; or
  - (b) the court may in any case direct that another parent be joined as a respondent in the proceedings.
- (2) Where, pursuant to an application made under section 145E(a), the court has made a maintenance order against a parent of a child, and another parent was not a respondent in those proceedings,—
- (a) the parent against whom the order was made may apply to the court for an order requiring another parent to make a monetary contribution towards the maintenance of the child; and
  - (b) on hearing the application, the court may order another parent to make such monetary contribution towards the maintenance of the child as the court thinks fit.

Section 145H: inserted, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

#### **145I Interim maintenance**

- (1) Where an application for a maintenance order or for the variation, extension, suspension, or discharge of a maintenance order has been filed, any District Court Judge may make an order directing the respondent to pay such periodical sum as the District Court Judge thinks reasonable towards the future maintenance of any of the respondent's children until the final determination of the proceedings or until the order sooner ceases to be in force.
- (2) No order made under this section shall continue in force for more than 6 months after the date on which it is made.

- (3) An order made under this section may be varied, suspended, discharged, or enforced in the same manner as if it were a final order of the Family Court.

Section 145I: inserted, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 145I(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

*Procedure on applications from persons in Convention countries*

Heading: inserted, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**145J Procedures relating to applications from persons in Convention countries**

- (1) After fixing a date and time of hearing in respect of the application, the Registrar shall cause to be served on the respondent—
- (a) a copy of the application and of each relevant accompanying document together with any accompanying notice that may be required; and
  - (b) a summons to the respondent to attend the hearing on the date and at the time so fixed.
- (2) Where the respondent's address is unknown or where a summons has been issued but cannot be served because the respondent cannot be found, a District Court Judge may issue a warrant to arrest the respondent and bring the respondent before the court.
- (3) The Registrar shall inform the Secretary of the decision of the court on an application made under section 145A, and the Secretary shall transmit the information to the responsible authority in the Convention country.

Section 145J: inserted, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 145J(3): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

**146 Provisions where service not effected**

- (1) Where the Registrar of the District Court is unable to comply with the requirements as to service in section 145J(1), the Registrar shall—
- (a) send the documents received under section 145A to the Registrar at the office of the court that the Registrar has reason to believe is nearest to the place in New Zealand at which the respondent then resides; or
  - (b) send the documents received under section 145A back to the Secretary together with a statement that the present whereabouts of the respondent are unknown.
- (2) Where a Registrar receives documents under subsection (1)(a), the provisions of subsection (1) and of sections 145A and 145J shall have effect accordingly.
- (3) Where the Secretary receives the documents and statement referred to in subsection (1)(b), the Secretary shall transmit the documents to the responsible

authority in the Convention country with a statement that the present whereabouts of the respondent are unknown.

Section 146: replaced, on 1 July 1992, by section 21 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 146(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 146(1)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 146(1)(b): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 146(3): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

### *Applications for child maintenance in respect of persons residing overseas*

Heading: inserted, on 1 July 1994, by section 11 of the Family Proceedings Amendment Act 1994 (1994 No 32).

#### **146A Application for maintenance of child in respect of person resident outside New Zealand**

- (1) An application may be made to the Family Court for a provisional maintenance order in respect of a child against a person who is proved—
  - (a) to be resident in a country outside New Zealand; or
  - (b) to have left New Zealand with the intention of residing in a country outside New Zealand.
- (2) Any such application shall be dealt with in accordance with sections 145B to 145I as if those sections applied with necessary modifications, except that, in determining whether or not to make an order and its duration, the court shall also have regard to—
  - (a) whether the respondent is a person from whom child support under the Child Support Act 1991 may be sought in respect of the child; and
  - (b) whether the respondent is resident in a country with which New Zealand has entered into a reciprocal agreement for enforcement of child support.
- (3) Every application made under this section shall be treated as an application for a provisional order in accordance with section 147.
- (4) The provisions of sections 91 and 92 shall apply to any application under this section.

Section 146A: inserted, on 1 July 1994, by section 11 of the Family Proceedings Amendment Act 1994 (1994 No 32).

### *Enforcement of New Zealand orders overseas*

#### **147 Provisional orders for confirmation overseas**

- (1) On an application to the District Court in New Zealand for a maintenance order against a person who is proved—

- (a) to be resident in a country outside New Zealand; or
- (b) to have left New Zealand with the intention of residing in a country outside New Zealand—

the court may, in the absence of that person, where after hearing the evidence it is satisfied of the truth of the matters stated in the application, make a provisional order which shall have no effect unless and until confirmed by a competent court in a place outside New Zealand.

- (2) Where the District Court in New Zealand has notice that a maintenance order made in New Zealand has been registered in a country outside New Zealand and it appears that the respondent is not resident in New Zealand, the court may, in any case where it has ground to make an order varying or extending the maintenance order, make instead a provisional order which shall have no effect unless and until confirmed by a competent court in a place outside New Zealand.
- (3) No provisional order shall be made under this section unless—
  - (a) it appears to the New Zealand court that the order is one which may be confirmed under the law of the country in which the respondent resides or intends to reside; and
  - (b) in the case of a maintenance order in respect of a party to a marriage or civil union, the order could have been made as a final order if notice of an application had been duly served on the respondent and he had failed to appear at the hearing.
- (4) *[Repealed]*
- (5) The evidence of every witness who is examined on any application under this section shall be put into writing, and the deposition shall be read over to and signed by the witness.
- (6) Where an order is made under this section, the court shall send to the Secretary, for transmission to the country in which the respondent resides,—
  - (a) the depositions so taken; and
  - (b) a certified copy of the order; and
  - (c) a statement of the grounds on which the making of the order might have been opposed if the respondent had been duly served with notice of the application and had appeared at the hearing; and
  - (d) such information as the court possesses for facilitating the identification of the respondent and ascertaining the respondent's whereabouts.
- (7) Where an order under this section has been remitted by the court before which it has come for confirmation to the New Zealand court that made the order for the purpose of taking further evidence, the last-mentioned court or any other District Court may proceed to take the evidence in the same manner and sub-

ject to the same conditions as the evidence in support of the original application was taken.

- (8) Where, on the hearing of such evidence, it appears to the court that the provisional order ought not to have been made or that a different provisional order should have been made,—
- (a) the court may discharge the provisional order or, as the case may be, may discharge the provisional order and make a fresh provisional order in its stead; and
- (b) except where the court discharges the order, the depositions shall be dealt with in the same manner as the original depositions.
- (9) Section 174 shall apply to the refusal to make a provisional order under this section or the discharge of such an order under subsection (8).
- (10) Nothing in this section shall limit the jurisdiction of a New Zealand court to make an order under section 157 against a person who is absent from New Zealand.

Compare: 1968 No 62 s 73

Section 147(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 147(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 147(3)(b): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 147(3)(b): amended, on 1 July 1994, by section 12 of the Family Proceedings Amendment Act 1994 (1994 No 32).

Section 147(4): repealed, on 1 July 1992, by section 22 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 147(6): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

#### **148 Effect in New Zealand of confirmation overseas of provisional order**

- (1) On the confirmation of an order made under section 147, the order shall, in the form in which it is confirmed, for all the purposes of New Zealand law become an order of the District Court that made the provisional order as if the order had been made under this Act.
- (2) Subject to subsection (3), an order of variation made in New Zealand relating to a maintenance order so confirmed shall be provisional only and of no effect unless and until confirmed in the same manner as the original order.
- (3) Subsection (2) shall not apply—
- (a) where the respondent is residing in New Zealand at the time of the variation; or
- (b) where the order of variation is only an order remitting arrears.

- (4) Subsections (5) to (9) of section 147 shall apply to a provisional order of variation made in New Zealand.
- (5) A certified copy of an order discharging or suspending the original order or varying it, where the only variation is the remission of arrears, shall be sent by the court to the Secretary for transmission to the country in which the original order was confirmed.

Compare: 1968 No 62 s 74

Section 148(5): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

*Transmission of applications to Convention countries*

**149 Transmission of applications by New Zealand residents to Convention countries**

- (1) Where a person in New Zealand—
  - (a) claims to be entitled to recover in a Convention country maintenance from another person; or
  - (b) seeks to apply against another person for the variation, suspension, or discharge of any order or other provision in force in a Convention country for the payment of maintenance—and that other person is for the time being subject to the jurisdiction of that Convention country, the first person may apply to the Secretary, in accordance with this section, to have the first person's claim for the recovery of maintenance from that other person transmitted to that Convention country.
- (2) An application to the Secretary under subsection (1) shall be made through a Registrar of the District Court, who shall—
  - (a) assist the applicant in completing an application that will comply with the requirements of the law and practice of the Convention country; and
  - (b) send the application to the Secretary, together with such other documents (if any) as are required by that law and practice.
- (3) On receiving an application under this section from a Registrar, the Secretary shall transmit it, together with any accompanying documents, to the responsible authority in the Convention country, unless he is satisfied that—
  - (a) the application is not made in good faith; or
  - (b) the application does not comply with the requirements of the law applied by that Convention country.
- (4) The Secretary may request a Registrar of the District Court to provide such information relating to the application as may be specified in the request, and it shall be the duty of the court to furnish the Secretary with the information that he requires.

- (5) Nothing in this section shall limit the jurisdiction of the District Court to make an order under section 157 against a person who is absent from New Zealand.

Section 149(1): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 149(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 149(2): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 149(2)(b): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 149(3): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 149(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 149(4): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 149(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

*Miscellaneous provisions as to overseas maintenance*

**150 Taking of evidence**

- (1) Where in any proceedings under this Part, the evidence of any person is to be taken beyond New Zealand, that evidence may be taken in accordance with the rules of the High Court of New Zealand for the time being governing the examination of witnesses out of New Zealand (not including, in the case of any proceedings under section 145, any such rules that require any person to give an undertaking to be responsible for expenses incurred in the matter by any Government, or that require any person to give security for such expenses).
- (2) Where a request is made to the Secretary by or on behalf of a court in any country other than New Zealand, to obtain the evidence of a person residing in New Zealand in respect of any application made in connection with this Part, that evidence may be taken in accordance with the rules of the High Court of New Zealand for the time being governing the examination of witnesses in New Zealand in respect of proceedings before foreign courts or tribunals, notwithstanding that neither New Zealand nor that country is a party to any Convention relating to matters of civil procedure.
- (3) The rules of civil procedure in the High Court of New Zealand shall apply accordingly, with any necessary modifications, to the matters to which this section relates.

Compare: 1968 No 62 s 72(8)

Section 150(2): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).



### **151 Proof of documents**

- (1) For the purposes of this Part, a document purporting to be signed by a Judge, District Court Judge, or officer of a court in a Commonwealth country or designated country or Convention country shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it; and the officer of a court by whom a document purports to be signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.
- (2) Every document purporting to be signed, certified, or verified by any of the persons mentioned in subsection (1) shall be admitted in evidence in proceedings under this Part if it appears to be relevant to those proceedings.

Compare: 1968 No 62 s 69

Section 151(1): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

### **152 Depositions to be evidence**

Depositions taken for the purposes of this Part in a court in a Commonwealth country or designated country or Convention country may be received in evidence in proceedings under this Part.

Compare: 1968 No 62 s 70

### **153 Conversion of currency**

- (1) Where the sum or sums ordered to be paid under a maintenance order which is registered or confirmed in New Zealand under this Part are expressed in a currency other than the currency of New Zealand, the order shall be registered or confirmed, as the case may require, as if it were an order for payment of such sum or sums in the currency of New Zealand as, on the basis of the rate of exchange prevailing at the date of registration or, as the case may be, of confirmation of the order of the original court, is equivalent to the sum or sums so ordered to be paid.
- (2) For the purposes of this section, a written certificate purporting to be signed by an officer of any bank in New Zealand or of the Reserve Bank of New Zealand that a specified rate of exchange prevailed between currencies on a specified day and that at such rate a specified sum in one currency is equivalent to a specified sum in terms of the currency of New Zealand shall be sufficient evidence of the rate of exchange so prevailing and of the equivalent sums in terms of the respective currencies.

Compare: 1968 No 62 s 75; 1971 No 59 s 12

### **154 Certificate of Registrar**

In any proceedings under or for the purposes of this Part, a certificate purporting to be signed by the Registrar of a court or any similar officer of a country in

which a maintenance order is being enforced, stating that a specified amount has been paid into court or to that Registrar or officer under a maintenance order shall be evidence, until the contrary is proved, of the facts stated in the certificate.

Compare: 1968 No 62 s 76

## Part 9 Procedure

### 155 Applications by agents

- (1) A person who may apply for a maintenance order under this Act may do so by an agent authorised in writing by that person.
- (2) If a person is incapable of authorising an agent under subsection (1) to make an application on that person's behalf,—
  - (a) the manager of that person's estate under the Protection of Personal and Property Rights Act 1988 may make the application; or
  - (b) where there is no such manager, the next friend of the person may make the application.

Compare: 1968 No 62 ss 25, 31(1), (3); 1971 No 59 ss 3, 4

Section 155(2)(a): amended, on 1 October 1988, pursuant to section 113 of the Protection of Personal and Property Rights Act 1988 (1988 No 4).

### 156 Service on disabled person

- (1) Where a person against whom an order is sought under this Act (other than an order under Part 4) is a person whose estate is being administered by Public Trust under the Protection of Personal and Property Rights Act 1988, or in respect of whose estate there is a manager appointed under the Protection of Personal and Property Rights Act 1988, notice of the application under this Act shall be served on Public Trust or the manager, as the case may be, instead of on the respondent, and Public Trust or the manager shall then represent and act for the respondent, in all the proceedings under this Act, and the like proceedings may be taken and the like order made as if the estate of the respondent were not being administered by Public Trust, or, as the case may be, there were no manager of that person's estate and that person had been duly served with notice of the application.
- (2) All money payable under any order so made shall be paid by Public Trust or the manager, as the case may be, out of the estate of the respondent according to the tenor of the order, subject to all other debts and liabilities of the respondent so far as Public Trust or the manager, as the case may be, has notice of them.

Compare: 1968 No 62 s 118

Section 156(1): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 156(1): amended, on 1 October 1988, pursuant to section 113 of the Protection of Personal and Property Rights Act 1988 (1988 No 4).

Section 156(2): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

**157 Proceedings where respondent is absent from New Zealand or cannot be found**

- (1) Where an application is made to a court under this Act (not being an application under section 47), and it is proved to the satisfaction of the court that the respondent is absent from New Zealand or cannot be found, the court may—
  - (a) hear and determine the application in the same manner as if the respondent had been served with the appropriate notice of the proceedings; or
  - (b) order any steps to be taken to bring the proceedings to the notice of the respondent, and from time to time amend any such order.
- (2) An order referred to in subsection (1)(b) may direct that notice of the proceedings be given by advertisement in any newspaper, or by the service of a notice on any solicitor or agent of the respondent or on any other person, or in any manner whatsoever.
- (3) Where an application is made under section 47 for a paternity order, and it is proved to the satisfaction of the court that the respondent is absent from New Zealand and that his whereabouts are known, the court may order that notice of the proceedings be served on the respondent.
- (4) Where an application is made under section 47 for a paternity order and it is proved to the satisfaction of the court that the respondent cannot be found, the court (whether the respondent is believed to be in New Zealand or elsewhere) may order any steps to be taken to bring the proceedings to the notice of the respondent, and may from time to time amend any such order.
- (5) An order referred to in subsection (4) may direct that notice of the proceedings be given by advertisement in any newspaper, or by the service of a notice on any solicitor or agent of the respondent or on any other person, or in any manner whatsoever.
- (6) Where the court is satisfied that an order referred to in subsection (3) or subsection (4) has been complied with and that a reasonable time has elapsed since the steps directed by the order were taken, the court may if it thinks fit hear and determine the application in the same manner as if the respondent had been served with notice of the application.

Compare: 1968 No 62 s 119; 1971 No 59 s 23

Section 157(1): amended, on 1 October 1981, by section 2 of the Family Proceedings Amendment Act 1981 (1981 No 64).

**158 Proceedings by or against minors**

A minor may bring and continue or defend any proceedings under this Act, and an order made under this Act against a minor shall be binding on and may be enforced against the minor, as if the minor were of full age.

Compare: 1968 No 62 s 128

**159 Conduct of proceedings**

- (1) The business of courts and of Judges shall, so far as is consistent with the due despatch of business, be arranged in such manner as may be necessary for the separating of the hearing of proceedings under this Act, under the Care of Children Act 2004, and under the Property (Relationships) Act 1976 from other business.
- (2) No person shall be present during the hearing of any proceedings under this Act (other than criminal proceedings or proceedings under section 130) except—
  - (a) officers of the court:
  - (b) parties to the proceedings and their barristers and solicitors:
  - (c) witnesses:
  - (ca) accredited news media reporters:
  - (cb) persons whom the Judge permits to be present as support persons for a party on a request by that party:
  - (d) any other person whom the Judge permits to be present.
- (3) The Judge must agree to a request under subsection (2)(cb) unless the Judge considers there is a good reason why the named support persons should not be permitted to be present.
- (4) No support persons may help a party conduct his or her case.
- (5) If, during a hearing, the Judge requests a person of any of the following kinds to leave the courtroom, the person must do so:
  - (a) a witness:
  - (b) an accredited news media reporter:
  - (c) a support person whom the Judge permitted to be present under subsection (2)(cb).
- (6) Nothing in this section limits any other power of the court—
  - (a) to hear proceedings in private; or
  - (b) to permit a McKenzie friend to be present; or
  - (c) to exclude any person from the court.

Compare: 1968 No 62 s 111; 1971 No 59 s 22

Section 159(1): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 159(1): amended, on 1 February 2002, by section 14 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 159(2)(ca): inserted, on 18 May 2009, by section 24(1) of the Family Proceedings Amendment Act 2008 (2008 No 79).

Section 159(2)(cb): inserted, on 18 May 2009, by section 24(1) of the Family Proceedings Amendment Act 2008 (2008 No 79).

Section 159(3): replaced, on 18 May 2009, by section 24(2) of the Family Proceedings Amendment Act 2008 (2008 No 79).

Section 159(4): replaced, on 18 May 2009, by section 24(2) of the Family Proceedings Amendment Act 2008 (2008 No 79).

Section 159(5): replaced, on 18 May 2009, by section 24(2) of the Family Proceedings Amendment Act 2008 (2008 No 79).

Section 159(6): inserted, on 18 May 2009, by section 24(2) of the Family Proceedings Amendment Act 2008 (2008 No 79).

## **160 Applications may be heard together**

- (1) An application under this Act may be joined with an application under the Property (Relationships) Act 1976, and, subject to any rules of procedure made under this Act or under the Family Court Act 1980, it shall not be necessary to file separate applications.
- (2) A court may hear and determine any proceedings before it under this Act in conjunction with any other proceedings under this Act or under the Care of Children Act 2004 or under the Property (Relationships) Act 1976 in any case where—
  - (a) all the proceedings are between the same parties; or
  - (b) all the proceedings are in respect of members of the same family.
- (3) Subsection (2) shall apply whether or not any other person is also a party to the proceedings.

Compare: 1968 No 62 s 117; 1976 No 166 s 56

Section 160(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 160(1): amended, on 31 March 2014, by section 7 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 160(1): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

Section 160(1): amended, on 1 February 2002, by section 15 of the Family Proceedings Amendment Act 2001 (2001 No 7).

Section 160(2): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 160(2): amended, on 1 February 2002, by section 15 of the Family Proceedings Amendment Act 2001 (2001 No 7).

**161 Intervention**

In any proceedings under Part 4, the Attorney-General shall, if the court so requests, appear and argue any question of law or of fact arising in the proceedings, and may file affidavits or lead evidence relating to the proceedings.

Compare: 1963 No 71 s 71(1)

**162 Appointment of lawyer to represent child in proceedings**

- (1) In any proceedings under this Act (other than criminal proceedings), a court may appoint a lawyer to represent any child who is—
  - (a) the subject of the proceedings; or
  - (b) a party to the proceedings.
- (2) An appointment under subsection (1) may be made only if the court is satisfied that the appointment is necessary or desirable.

Section 162: replaced, on 31 March 2014, by section 8 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

**162A Appointment of lawyer to assist court**

In any proceedings under this Act (other than criminal proceedings), a court may—

- (a) appoint a lawyer to assist the court; or
- (b) direct the Registrar of the court to appoint a lawyer to assist the court.

Section 162A: inserted, on 31 March 2014, by section 8 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

**162B Fees and expenses of lawyer appointed under section 162 or 162A**

- (1) The fees and expenses of a lawyer appointed under section 162 or 162A must—
  - (a) be determined in accordance with regulations made under section 16D of the Family Court Act 1980 or, if no such regulations are made, by a Registrar of the court; and
  - (b) be paid in accordance with that determination out of public money appropriated by Parliament for the purpose.
- (2) An invoice for fees and expenses submitted for payment by a lawyer appointed under section 162 or 162A must be given to a Registrar of the court, and the Registrar processing the invoice may decide to adjust the amount of the invoice.
- (3) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the invoice may, within 14 days after the date of the decision, apply to a Family Court Judge to review the decision, and the Judge may on the application make any order varying or confirming the decision that the Judge considers fair and reasonable.

- (4) Where in any proceedings a lawyer has been appointed under section 162 or 162A and the fees and expenses relating to that appointment have been paid under subsection (1), the court must make an order under section 162C, unless the court declines to do so in accordance with that section.
- (5) However, no order under section 162C may be made—
  - (a) against the Crown, whether acting through the department for the time being responsible for the administration of this Act or otherwise; or
  - (b) in respect of an appointment under section 162A, where a lawyer has been appointed under that section to provide to the court independent legal advice on any complex legal issue.

Section 162B: inserted, on 31 March 2014, by section 8 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 162B(1)(a): amended, on 8 September 2018, by section 50(1) of the Statutes Amendment Act 2018 (2018 No 27).

Section 162B(1)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 162B(2): replaced, on 8 September 2018, by section 50(2) of the Statutes Amendment Act 2018 (2018 No 27).

### 162C Order requiring reimbursement of costs payments

- (1) An order referred to in section 162B(4) must require the parties to reimburse to the Crown the prescribed proportion of the amount paid by the Crown, under section 162B(1)(b), in respect of the fees and expenses of a lawyer appointed under section 162 or 162A.
- (2) Despite subsection (1), the court may decline to make an order against a party if satisfied that the order would cause serious hardship to the party or to a dependent child of the party.
- (3) Each party against whom an order is made under subsection (1) must pay an equal share of the prescribed proportion.
- (4) Despite subsection (3), if the court is satisfied that, in view of the circumstances of the case, including the conduct of any party, it would be inappropriate to require a party to pay the amount payable in accordance with that subsection, the court may substitute, for that party, a different amount not exceeding the prescribed proportion.
- (5) In this section,—

**dependent child**, in relation to a party, means a child whose day-to-day care is substantially the responsibility of the party

**prescribed proportion** means the same proportion that is prescribed by regulations made under section 147 of the Care of Children Act 2004 for the purposes of section 135A of that Act

**serious hardship**, in relation to a party or a dependent child of the party,—

- (a) includes significant financial difficulties that arise because of—

- (i) the party's inability to meet minimum living expenses according to normal community standards; or
  - (ii) the cost of medical treatment for an illness or injury of the party or a dependent child of the party; or
  - (iii) a serious illness suffered by the party or by a dependent child of the party; or
  - (iv) the cost of education for a dependent child of the party:
- (b) does not include significant financial difficulties that arise because—
- (i) the social activities and entertainment of the party or those of a dependent child of the party may be limited; or
  - (ii) the party is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards.

Section 162C: inserted, on 31 March 2014, by section 8 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

### **162D Enforcement of orders made under section 162C**

- (1) The amount that a party is ordered to reimburse under section 162C is a debt due to the Crown by that party and may be enforced in the District Court or the High Court, as the case may require, in the same manner as a judgment of that court.
- (2) Despite section 219 or 230 of the District Court Act 2016 or section 156 of the Senior Courts Act 2016, no court fee is payable by a person who seeks to enforce, on behalf of the Crown, an order referred to in subsection (1), but the fee that would otherwise be payable—
  - (a) is to be added to the amount sought to be enforced; and
  - (b) must be paid to the Registrar of the court out of any proceeds that result from the enforcement.
- (3) For the purposes of section 14(1)(b) of the Crown Proceedings Act 1950, the Secretary for Justice may, on behalf of the Crown, enforce a debt under this section.

Section 162D: inserted, on 31 March 2014, by section 8 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 162D(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 162D(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **163 Vexatious proceedings**

- (1) The District Court or the Family Court may dismiss any proceedings before it under this Act if it is satisfied that they are frivolous or vexatious or an abuse of the procedure of the court.



- (2) The District Court or the Family Court may, if it is satisfied that a person has persistently instituted vexatious proceedings under this Act or any former Act (whether against the same person or against different persons), after giving the first-mentioned person an opportunity of being heard, order that no proceedings under this Act, or no such proceedings of any specified kind or against any specified person, shall be commenced by the first-mentioned person without the leave of the court.

Compare: 1968 No 62 s 113

Section 163(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 163(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### **164 Evidence**

*[Repealed]*

Section 164: repealed, on 31 March 2014, by section 17A(g) of the Family Courts Act 1980 (1980 No 161).

#### **165 Power of District Court or Family Court to call witnesses**

- (1) In any proceedings before it under this Act (not being criminal proceedings) the District Court or the Family Court may of its own motion call as a witness any person whose evidence may in its opinion be of assistance to the court.
- (2) The power conferred by subsection (1) shall include power to call as a witness any party to the proceedings or the spouse or civil union partner of any party to the proceedings.
- (3) A witness called by the court under this section shall have the same privilege to refuse to answer any question as the witness would have if the witness had been called by a party to the proceedings.
- (4) A witness called by the court under this section may be—
- (a) examined and re-examined by the court, or by a lawyer appointed to assist the court; and
  - (b) cross-examined by or on behalf of any party to the proceedings.
- (5) Sections 159 and 161 to 165 of the Criminal Procedure Act 2011, so far as they are applicable and with the necessary modifications, shall apply with respect to every person called as a witness by the court under this section as if that person had been called by a party to the proceedings.
- (6) The expenses of any witness called by the court under this section, in accordance with the prescribed scale of witnesses' expenses, shall be paid in the first instance out of public money appropriated by Parliament.

Compare: 1968 No 62 s 9

Section 165(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 165(2): amended, on 26 April 2005, by section 44(2) of the Civil Union Act 2004 (2004 No 102).

Section 165(4): replaced, on 31 March 2014, by section 9 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 165(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 165(6): amended, on 1 July 1989, by section 86(1) of the Public Finance Act 1989 (1989 No 44).

### **166 Proof of certain matters**

- (1) In any proceedings under this Act, a document purporting to be the original or a certified copy of a certificate, entry, or record of a birth, death, or marriage or civil union alleged to have taken place, whether in New Zealand or in any other country, may be received without further proof as evidence of the facts stated in the document.
- (2) In any proceedings under this Act, a document purporting to be a decree or order or a certified copy or duplicate of any decree or order made by any court or public authority, whether in New Zealand or elsewhere,—
  - (a) may be received without further proof as evidence of the existence, nature, and purport of that decree or order; and
  - (b) every such decree or order shall be presumed to be valid unless the contrary is proved.

### **(3) *[Repealed]***

Compare: 1968 No 62 s 116

Section 166(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 166(3): repealed, on 1 July 1992, by section 24 of the Family Proceedings Amendment Act 1991 (1991 No 144).

### **167 Standard of proof**

Every question of fact arising in any proceedings under this Act (not being criminal proceedings or proceedings under section 130) shall be decided on a balance of probabilities.

Compare: 1968 No 62 s 115

### **168 Claim by respondent for relief**

- (1) Where an application is made under this Act, the respondent may in reply claim any relief under this Act.
- (2) Where the court is satisfied that the respondent is entitled to or ought to be granted such relief, it may grant it accordingly.

Compare: 1963 No 71 s 66

### **169 Publication of reports of proceedings**

Sections 11B to 11D of the Family Court Act 1980 apply to the publication of a report of any proceedings under this Act (other than criminal proceedings under section 130)—

- (a) in the Family Court:
- (b) in any other court, in which case references in those sections to the Family Court or court must be read as references to that other court.

Section 169: replaced, on 18 May 2009, by section 25 of the Family Proceedings Amendment Act 2008 (2008 No 79).

Section 169: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 169(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **170 Orders by consent**

In any proceedings before it under this Act (not being proceedings under Part 4), the District Court or the Family Court may make any order under this Act by the consent of all of the parties to the proceedings.

Compare: 1968 No 62 s 120

Section 170: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **171 Costs**

- (1) Subject to any other provision in this Act, the court, on the hearing of any proceedings before it under this Act, may make such order as to costs as it thinks fit.
- (2) An order made by the District Court or the Family Court under subsection (1) shall be enforceable in the same manner as money ordered to be paid by a maintenance order under this Act, and all the provisions of this Act as to recovery of such money shall apply.
- (3) This section is subject to section 162B.

Compare: 1963 No 71 s 74; 1968 No 62 s 121

Section 171(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 171(3): inserted, on 31 March 2014, by section 10 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

### **172 Dismissal of application in District Court or Family Court no bar to further proceedings**

Neither the dismissal of an application under this Act by the District Court or the Family Court nor the refusal of the District Court or the Family Court to make an order under this Act shall be a bar to the making of a further application in the same matter and against the same or any other respondent by the same or any other applicant.

Compare: 1968 No 62 s 122

Section 172: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **173 Rehearings**

- (1) Where an order has been made or refused on an application under this Act (other than an application under Part 4), the court may, on the application of the applicant or respondent, grant a rehearing of the application on such conditions as it thinks fit.
- (2) Notice of any such rehearing shall be given to such persons and in such manner as the court directs.
- (3) If the court grants an application for a rehearing, the operation of the order (not being an order for interim maintenance) shall, unless the court otherwise directs, be suspended pending the determination of the rehearing.

Compare: 1968 No 62 s 123

## **Part 10 Appeals**

### **174 Appeals from decisions of District Court and Family Court**

- (1AA) This subsection applies to a decision of the Family Court or the District Court, in proceedings under this Act, to—
- (a) make or refuse to make an order; or
  - (b) dismiss the proceedings; or
  - (c) otherwise finally determine the proceedings.
- (1) A party to proceedings in which there is made a decision to which subsection (1AA) applies, or any other person prejudicially affected by the decision, may appeal to the High Court against the decision.
- (1A) However, no appeal may be made to the High Court under subsection (1) in relation to—
- (a) criminal proceedings; or
  - (b) a decision under—
    - (i) section 162 to appoint a lawyer to represent a child; or
    - (ii) section 162A to appoint, or to direct the Registrar of the court to appoint, a lawyer to assist the court.
- (1B) The High Court Rules 2016 and sections 126 to 130 of the District Court Act 2016, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under section 124 of that Act.
- (2) On the *ex parte* application of the appellant, the District Court may order that the appellant must not be required under section 126(1) of the District Court Act 2016 to give the Registrar of the High Court security for costs.
- (2A) Subsection (2) overrides subsection (1A).

- (3) Notwithstanding subsection (1), where an order dissolving a marriage or civil union is made by the Family Court or a Registrar in undefended proceedings, no appeal shall lie to the High Court against the order.
- (3A) Subsection (3) overrides subsection (1).
- (4) The High Court shall not extend the time for appeal against an order dissolving a marriage or civil union.
- (4A) Subsection (4) overrides subsection (1A).
- (5) A party to any appeal under subsection (1) may, with the leave of the Court of Appeal, appeal to the Court of Appeal against any determination of the High Court in the appeal.
- (6) On an appeal to the Court of Appeal under this section, the Court of Appeal shall have the same power to adjudicate on the proceedings as the High Court had.
- (7) *[Repealed]*
- (8) *[Repealed]*
- (9) Except in the case of an order made under section 34 or section 39(4) or where the court making the order appealed from otherwise directs, the operation of an order made under this Act shall not be suspended by an appeal under this section, and every order made under this Act may be enforced in the same manner in all respects as if no appeal under this section were pending.

Compare: 1963 No 71 s 73; 1968 No 62 s 124

Section 174 heading: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 174(1AA): inserted, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 174(1AA): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 174(1AA): amended, on 31 March 2014, by section 11(1) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 174(1): replaced, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 174(1): amended, on 31 March 2014, by section 11(2) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 174(1A): replaced, on 31 March 2014, by section 11(3) of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 174(1B): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 174(2): replaced, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 174(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 174(2A): inserted, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 174(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 174(3): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 174(3): amended, on 1 July 1994, by section 14 of the Family Proceedings Amendment Act 1994 (1994 No 32).

Section 174(3A): inserted, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 174(4): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 174(4A): inserted, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 174(5): amended, on 1 January 2004, by section 47 of the Supreme Court Act 2003 (2003 No 53).

Section 174(7): repealed, on 1 January 2004, by section 47 of the Supreme Court Act 2003 (2003 No 53).

Section 174(8): repealed, on 1 January 2004, by section 47 of the Supreme Court Act 2003 (2003 No 53).

## **175 Appeals from decisions of High Court**

- (1) Subject to subsections (2) to (5), a party to any proceedings under this Act before the High Court (other than proceedings on an appeal under section 174) may appeal to the Court of Appeal, against any order or decision of the court or of a Judge of the court, within 28 days after the making of the order or decision.
- (2) Where an order dissolving a marriage or civil union is made in the High Court under section 34 or section 39(4) in any proceedings that have been transferred to that court under section 14 of the Family Court Act 1980, section 42 of this Act shall apply in respect of that order and shall have effect as if, for the words “High Court”, there were substituted the words “Court of Appeal”.
- (3) Notwithstanding subsection (1), where an order dissolving a marriage or civil union is made by the High Court in undefended proceedings, no appeal shall lie to the Court of Appeal against the order.
- (4) The Court of Appeal shall not extend the time for appeal against an order dissolving a marriage or civil union.
- (5) Subject to subsection (4), the Court of Appeal may extend the time for appeal on such terms and subject to such conditions as it thinks fit.
- (6) *[Repealed]*

Compare: 1963 No 71 s 73

Section 175(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 175(2): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 175(3): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 175(3): amended, on 1 October 1981, by section 3(1) of the Family Proceedings Amendment Act 1981 (1981 No 64).

Section 175(4): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 175(6): repealed, on 1 January 2004, by section 47 of the Supreme Court Act 2003 (2003 No 53).

## **Part 11**

### **Miscellaneous provisions**

#### **176 Non-molestation orders**

*[Repealed]*

Section 176: repealed, on 1 March 1983, by section 42 of the Domestic Protection Act 1982 (1982 No 120).

#### **177 Interim non-molestation orders**

*[Repealed]*

Section 177: repealed, on 1 March 1983, by section 42 of the Domestic Protection Act 1982 (1982 No 120).

#### **178 Orders in respect of matrimonial homes and tenancies**

*[Repealed]*

Section 178: repealed, on 1 March 1983, by section 42 of the Domestic Protection Act 1982 (1982 No 120).

#### **179 Orders in respect of matrimonial homes and tenancies where parties living apart**

*[Repealed]*

Section 179: repealed, on 1 March 1983, by section 42 of the Domestic Protection Act 1982 (1982 No 120).

#### **180 Recovery of money from estate of deceased party**

- (1) On the death of any person against whom an order for the payment of money has been made under this Act, any money in arrear and unpaid at the time of that person's death shall constitute a debt recoverable out of that person's estate.
- (2) Notwithstanding subsection (1), unless the order has been made to bind the personal representative of the deceased person, no such arrears in respect of a period longer than 12 months shall be so recoverable without the leave of the court, which may be given on such terms and subject to such conditions as the court specifies.
- (3) Where, by any order made under section 70, a personal representative is liable to pay any periodical sum in respect of any period after the death of the deceased, the amount so payable by the personal representative under the order, or, where there are 2 or more such orders, under all those orders, shall consti-

tute a debt recoverable out of the estate of the deceased, but all other debts payable out of the estate shall rank in priority thereto. For the purposes of this subsection, an order made under section 99 varying or extending any order under section 70 shall be deemed to be an order under section 70.

- (4) Nothing in subsection (3) shall affect any security given, pursuant to an order under this Act, for the payment of any sum or the rights of any person in respect of that security.
- (5) Where the estate of the deceased is insufficient for the payment in full of the amounts so payable under 2 or more orders to which subsection (3) applies, so much of the estate as is available for payment of those amounts shall be applied in payment rateably of the amounts so payable under the several orders.
- (6) Nothing in this section shall restrict the power of the court to make, in respect of any order to which this section applies, an order under section 99 after the death of the person liable under the first-mentioned order.

Compare: 1963 No 71 s 76; 1968 No 62 s 92; 1976 No 166 s 56

### **181 Incidence of maintenance due by estate of deceased party**

- (1) The incidence of the payments under any order to which section 180(3) applies shall fall upon the assets of the estate of the deceased as follows:
  - (a) where the will of the deceased contains directions relating specifically to the incidence of those payments, the incidence of the payments shall fall upon the assets of the estate in accordance with the directions of the will:
  - (b) subject to any such directions in the will of the deceased, the incidence of the payments shall fall upon the assets of the estate in the same manner as would the incidence of the unsecured debts of the deceased:provided that the incidence of any such payments in respect of which security has been ordered to be given under this Act shall fall primarily on the assets of the estate over which security has been ordered to be given.
- (2) Notwithstanding anything in subsection (1) or in the will of the deceased, but subject to section 180(3) to (6), the court may at any time—
  - (a) fix or vary as between the assets of the estate of the deceased, in such manner as it thinks fit, the incidence of the payments under an order to which section 180(3) applies:
  - (b) exonerate any part of the estate, in whole or in part, from the incidence of the payments under any such order:
  - (c) adjust the burden of the payments under any such order among the persons who are or may be beneficially interested in the estate of the deceased in such other manner as the court thinks fit.
- (3) The court may from time to time vary an order made under subsection (2) in such manner as the court thinks fit.



- (4) An order under subsection (2) or subsection (3), or any provision of any such order, may be made on and subject to such terms and conditions as the court thinks fit.
- (5) An application for an order under subsection (2) or subsection (3) may be made by the personal representative of the deceased or by any person who is interested in the distribution of the estate or by the person who is entitled to the benefit of the order to which section 180(3) applies.
- (6) Before making any such order, the court shall hear such of the persons who may be affected by the order as it thinks necessary, and may for that purpose direct any personal representative to represent, or appoint any person to represent, any such person.
- (7) No distribution of any part of the estate lawfully made before the personal representative receives notice that an application for such an order has been made to the court shall be disturbed by reason of the application or of any order on the application, and no action shall lie against the personal representative by reason of his having made such a distribution.

Compare: 1963 No 71 s 76A; 1968 No 60 s 10(1)

## **182 Court may make orders as to settled property, etc**

- (1) On, or within a reasonable time after, the making of an order under Part 4 of this Act or a final decree under Part 2 or Part 4 of the Matrimonial Proceedings Act 1963, the Family Court may inquire into the existence of any agreement between the parties to the marriage or civil union for the payment of maintenance or relating to the property of the parties or either of them, or any ante-nuptial or post-nuptial settlement made on the parties, and may make such orders with reference to the application of the whole or any part of any property settled or the variation of the terms of any such agreement or settlement, either for the benefit of the children of the marriage or civil union or of the parties to the marriage or civil union or either of them, as the court thinks fit.
- (2) Where an order under Part 4 of this Act, or a final decree under Part 2 or Part 4 of the Matrimonial Proceedings Act 1963, has been made and the parties have entered into an agreement for the payment of maintenance, the Family Court may at any time, on the application of either party or of the personal representative of the party liable for the payments under the agreement, cancel or vary the agreement or remit any arrears due under the agreement.
- (3) In the exercise of its discretion under this section, the court may take into account the circumstances of the parties and any change in those circumstances since the date of the agreement or settlement and any other matters which the court considers relevant.
- (4) The court may exercise the powers conferred by this section, notwithstanding that there are no children of the marriage or civil union.

- (5) An order made under this section may from time to time be reviewed by the court on the application of either party to the marriage or civil union or of either party's personal representative.
- (6) Notwithstanding subsections (1) to (5), the court shall not exercise its powers under this section so as to defeat or vary any agreement, entered into under Part 6 of the Property (Relationships) Act 1976, between the parties to the marriage or civil union unless it is of the opinion that the interests of any child of the marriage or civil union so require.

Compare: 1963 No 71 s 79; 1968 No 60 s 11; 1976 No 166 s 56

Section 182(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 182(1): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 182(1): amended, on 23 November 1982, by section 2(1) of the Family Proceedings Amendment Act 1982 (1982 No 70).

Section 182(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 182(2): amended, on 23 November 1982, by section 2(2) of the Family Proceedings Amendment Act 1982 (1982 No 70).

Section 182(4): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 182(5): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 182(6): amended, on 26 April 2005, by section 44(1) of the Civil Union Act 2004 (2004 No 102).

Section 182(6): amended, on 1 February 2002, by section 16 of the Family Proceedings Amendment Act 2001 (2001 No 7).

### **183 Dispositions may be restrained**

- (1) Where it appears to the court that a disposition of any property is about to be made, whether for value or not, by or on behalf of or by direction of or in the interests of a party to any proceedings under this Act in order to defeat the claim or rights of any person under Part 6 or under the Child Support Act 1991 or in respect of costs, the court may, on the application of that person and on such notice being given as the court may direct, by order restrain the making of the disposition or may order any proceeds of the disposition to be paid into court to be dealt with as the court directs.
- (2) A disposition made after an order of the court under subsection (1) restraining the making of the disposition has been served on or come to the notice of the person disposing of the property, or any auctioneer, agent, or solicitor acting in connection with the disposition, shall be void; and the court may consider any claim of any person interested and may make such order as it thinks just.

Compare: 1963 No 71 s 80

Section 183(1): amended, on 1 July 1992, by section 25 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**184 Dispositions may be set aside**

- (1) Where the court is satisfied that any disposition of any property has been made, whether for value or not, by or on behalf of or by direction of or in the interests of a party to proceedings under this Act in order to defeat the claim or rights of any person under Part 6 or under the Child Support Act 1991 or in respect of costs, the court may, on the application of that person, make an order under subsection (2).
- (2) In any case to which subsection (1) applies, the court may, subject to the provisions of subsection (4),—
  - (a) order that any person to whom the disposition was made and who received the property otherwise than in good faith and for valuable consideration, or that person's personal representative, shall transfer the property or any part thereof to such person as the court directs; or
  - (b) order that any person to whom the disposition was made and who received the property otherwise than in good faith and for adequate consideration, or that person's personal representative, shall pay into court, or to such person as the court directs, a sum not exceeding the difference between the value of the consideration (if any) and the value of the property; or
  - (c) order that any person who has, otherwise than in good faith and for valuable consideration, received any interest in the property from the person to whom the disposition was so made, or that person's personal representative, or any person who received that interest from any such person otherwise than in good faith and for valuable consideration, shall transfer that interest to such person as the court directs, or shall pay into court or to such person as the court directs a sum not exceeding the value of the interest.
- (3) For the purposes of giving effect to any order under subsection (2), the court may make such further order as it thinks fit.
- (4) Relief (whether under this section, or in equity, or otherwise) in any case to which subsection (1) applies shall be denied wholly or in part, if the person from whom relief is sought received the property or interest in good faith, and has so altered his position in reliance on having an indefeasible interest in the property or interest that in the opinion of the court, having regard to all possible implications in respect of other persons, it is inequitable to grant relief, or to grant relief in full, as the case may be.
- (5) The court may, on any application under this section, make such order as to costs as it thinks fit.

Compare: 1963 No 71 s 81; 1976 No 166 s 56

Section 184(1): amended, on 1 July 1992, by section 26 of the Family Proceedings Amendment Act 1991 (1991 No 144).

**185 Separation agreements by persons of unsound mind**

- (1) Notwithstanding anything in any enactment or rule of law, no agreement for separation shall be void or voidable by reason of either party to the agreement being of unsound mind, if, before the agreement is entered into by that party, it has been approved under this section on behalf of that party by a Family Court Judge.
- (2) The Family Court Judge shall not approve a separation agreement under this section unless the Family Court Judge is satisfied that the person on whose behalf it is to be approved is able to understand the nature and consequences of the agreement.
- (3) An application under this section shall be made by the person on whose behalf the agreement is to be approved.
- (4) The Family Court Judge may refer the application to a solicitor nominated by the Family Court Judge, or to Public Trust or the Maori Trustee, or to any other person, and may order the applicant to pay the reasonable costs and expenses of any person to whom the application is so referred.
- (5) A person to whom the application is so referred may—
  - (a) file a report in the District Court setting out the results of that person's consideration and examination of the application, and making in respect of it such recommendations as that person thinks proper; and
  - (b) appear and be heard at the hearing of the application—but no such person shall be under any obligation to consider or examine any such application until that person's reasonable costs and expenses have been paid or secured to that person's satisfaction.

Compare: 1963 No 71 s 85

Section 185(4): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

**186 Court fees**

*[Repealed]*

Section 186: repealed, on 18 May 2009, by section 26 of the Family Proceedings Amendment Act 2008 (2008 No 79).

**187 Regulations**

The Governor-General may from time to time, by Order in Council, make regulations—

- (a) *[Repealed]*
- (b) prescribing the matters in respect of which fees are payable under this Act:
- (c) prescribing fees and expenses for the purposes of this Act:
- (ca) *[Repealed]*

- (cb) *[Repealed]*
- (cc) *[Repealed]*
- (d) prescribing parentage tests to be carried out for the purposes of sections 54 to 57:
- (e) prescribing the manner in which such parentage tests are to be carried out:
- (f) prescribing the form of reports on parentage tests:
- (g) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

Compare: 1968 No 62 ss 16(5), 50(8), 131

Section 187(a): repealed, on 31 March 2014, by section 12 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 187(c): replaced, on 1 July 1992, by section 27 of the Family Proceedings Amendment Act 1991 (1991 No 144).

Section 187(ca): repealed, on 31 March 2014, by section 12 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 187(cb): repealed, on 31 March 2014, by section 12 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 187(cc): repealed, on 31 March 2014, by section 12 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

Section 187(d): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 187(e): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

Section 187(f): amended, on 1 July 2005, by section 150 of the Care of Children Act 2004 (2004 No 90).

## **188 Rules of procedure**

- (1) Subject to Part 9, the Governor-General may from time to time, by Order in Council, make rules regulating the practice and procedure of the District Court in proceedings under this Act.
- (1A) Subject to Part 9, rules may be made under section 16A of the Family Court Act 1980 regulating the practice and procedure of the Family Court in proceedings under this Act.
- (2) Without limiting the generality of the powers conferred by subsection (1) or section 16A of the Family Court Act 1980, rules made under either of those provisions may:
  - (a) prescribe such forms as are necessary for the purposes of this Act:
  - (b) prescribe the costs and charges to be paid by one party in the proceedings to the other party, in addition to money paid out of pocket:
  - (c) prescribe fees payable to persons giving evidence in the proceedings and the persons liable to pay those fees; and authorise the refund or remission of those fees:

- (d) require any party to the proceedings or any person required to appear in answer to a summons under section 124(1) to supply to the court particulars of both his financial means and their sources:
- (e) provide for the taking of evidence in the proceedings, whether in New Zealand or elsewhere, including—
  - (i) the prescribing of the procedure for the taking of the evidence of witnesses who are beyond New Zealand; and
  - (ii) the taking of evidence before any District Court Judge or the Registrar of any court (whether or not the proceedings were commenced in that court) and the making of such incidental provision as the Governor-General thinks fit, including provisions for requiring the attendance of witnesses, the answering of questions, and the production of documents:
- (f) facilitate communications between courts in New Zealand and courts in countries outside New Zealand for the purpose of Part 8:
- (g) provide for any other matters in respect of which rules are contemplated under this Act.

Compare: 1963 No 71 s 87; 1968 No 62 s 110

Section 188(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 188(1): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

Section 189(1A): inserted, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

Section 188(1A): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 188(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 189(2): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

## **189 Amendments to other enactments, and repeals**

- (1) The enactments specified in Schedule 1 are hereby amended in the manner indicated in that schedule.
- (2) Subject to sections 191 and 192, unless the context otherwise requires, in any other enactment, or in any regulation, rule, order, agreement, deed, instrument, application or other document in force at the commencement of this Act—
  - (a) every reference to the Matrimonial Proceedings Act 1963 or the Domestic Proceedings Act 1968 shall hereafter be read as a reference to this Act:
  - (b) every reference to a decree of dissolution of a voidable marriage or a decree of divorce made under any former Act shall hereafter be read as a reference to an order dissolving a marriage:

- (c) every reference to a decree nisi made under any former Act shall hereafter be read as a reference to an order dissolving a marriage that has not taken effect as a final order:
  - (d) every reference to a decree absolute made under any former Act shall hereafter be read as a reference to an order dissolving a marriage that has taken effect as a final order.
- (3) The enactments specified in Schedule 2 are hereby repealed.
  - (4) In this section, **former Act** means the Matrimonial Proceedings Act 1963 or any other enactment governing matrimonial causes in New Zealand before the commencement of that Act.

Compare: 1963 No 71 ss 89, 90; 1968 No 62 ss 133, 134

### **190 Related amendments to Domestic Actions Act 1975**

- (1), (2) *Amendment(s) incorporated in the Act(s).*
- (3) This section shall come into force on the day on which this Act receives the Governor-General's assent.

### **191 Savings**

- (1) Notwithstanding section 118(6), or the repeal of section 101(5) of the Domestic Proceedings Act 1968 by section 189(3), the provisions of section 246(2) of the Mining Act 1971 shall continue in force according to their tenor.
- (2) The repeal of any enactment by section 189(3) shall not affect any amendments made by the enactment repealed to any other enactment.
- (3) Notwithstanding section 189(3), every decree of separation that was in force under the Matrimonial Proceedings Act 1963 immediately before the commencement of that section shall continue in force according to its tenor and sections 11, 12, 14, 15, and 26(1) of the Matrimonial Proceedings Act 1963 shall continue to apply to it as if this Act had not been passed.
- (4) The repeal of the Domestic Proceedings Amendment Act 1971 by section 189(3) shall not affect the saving effected by section 25 of that Act and every application under subsection (2) of that section may be made and shall proceed as if—
  - (a) section 25 of that Act were still in force; and
  - (b) the application were an application for a variation under section 99.
- (5) Section 99, and any rules of practice and procedure applicable to applications under that section, shall have effect, with the necessary modifications, in relation to every application under section 25(2) of the Domestic Proceedings Amendment Act 1971.

Compare: 1963 No 71 s 90(2)

**192 Transitional provisions**

- (1) Notwithstanding section 189(3),—
  - (a) all criminal proceedings that have been commenced under the Matrimonial Proceedings Act 1963 or the Domestic Proceedings Act 1968 and are pending at the commencement of section 189 shall, subject to subsection (2) of this section, be heard and determined as if those provisions had not been repealed; and
  - (b) all proceedings that have been commenced under Part 2 or Part 4 of the Matrimonial Proceedings Act 1963 and are pending at the commencement of section 189 shall be heard and determined and shall have the same effect at law as if the Matrimonial Proceedings Act 1963 had not been repealed; and
  - (c) all other proceedings that have been commenced under any other provision of the Matrimonial Proceedings Act 1963 or the Domestic Proceedings Act 1968, and are pending at the commencement of section 189 shall, notwithstanding section 18(2) of the Family Courts Act 1980, but subject to subsection (3) of this section, be heard and determined—
    - (i) if the hearing of those proceedings has not commenced, under this Act; and
    - (ii) if the hearing of those proceedings has commenced, as if this Act had not been passed.
- (2) On the commencement of section 189(3), every prosecution that is then pending under section 107(1) of the Domestic Proceedings Act 1968 shall be deemed to have been stayed.
- (3) On the commencement of section 189(3), all proceedings that are then pending under Part 3 of the Matrimonial Proceedings Act 1963 (other than section 17 of that Act) shall lapse, except that in any such case the court may make such order as to costs and witnesses' expenses as it thinks fit.
- (4) Subject to subsections (1) to (3), this Act shall apply to every order—
  - (a) that has been made under the Matrimonial Proceedings Act 1963 or the Domestic Proceedings Act 1968 or to which either of those Acts applied; and
  - (b) is of the kind that could have been made under this Act if this Act were then in force—as if it had been made under this Act.
- (5) Notwithstanding subsection (4), no application may be made under section 99 for an order varying a maintenance order that has been made before the commencement of that section, unless a period of not less than 12 months has expired since the making of the order or since the last date before the commencement of section 99 on which the order was varied; but an application for a variation of that order may nevertheless be made before the expiration of that



period of 12 months under section 47 of the Matrimonial Proceedings Act 1963 or under section 85 of the Domestic Proceedings Act 1968, as the case may require, as if those sections had not been repealed.

- (6) This Act shall apply to every maintenance agreement registered under the Domestic Proceedings Act 1968 at the commencement of section 83; and every agreement so registered shall, on the commencement of section 83, have effect as if it were registered under that section.

Compare: 1963 No 71 s 91; 1968 No 62 s 132

Section 192(1)(c): amended, on 1 October 1981, by section 3(2) of the Family Proceedings Amendment Act 1981 (1981 No 64).

**193 Transitional provision for counselling or mediation arranged before commencement of Family Proceedings Amendment Act (No 2) 2013**

If any counselling or mediation has been arranged under Part 2 before the date of commencement of the Family Proceedings Amendment Act (No 2) 2013, but that counselling or mediation has not been commenced or completed by that date,—

- (a) the counselling or mediation may be commenced or completed on or after the date of commencement of the Family Proceedings Amendment Act (No 2) 2013 as if the Family Proceedings Amendment Act (No 2) 2013 had not come into force; but
- (b) the counselling or mediation may not be commenced or continued 4 months after the date of commencement of the Family Proceedings Amendment Act (No 2) 2013.

Section 193: inserted, on 31 March 2014, by section 13 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

**194 Transitional provision for proceedings commenced before commencement of Family Proceedings Amendment Act (No 2) 2013**

- (1) This section applies to proceedings under this Act that were commenced before the date of commencement of the Family Proceedings Amendment Act (No 2) 2013 but were not by that date completed (a **pending proceeding**).
- (2) The following provisions do not apply to a pending proceeding:
- (a) section 162A:
- (b) section 162B:
- (c) section 162C:
- (d) section 162D.
- (3) Section 162, as in force immediately before the date of commencement of the Family Proceedings Amendment Act (No 2) 2013, continues to apply to a pending proceeding with any necessary modifications as if the Family Proceedings Amendment Act (No 2) 2013 had not come into force.

Section 194: inserted, on 31 March 2014, by section 13 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

## Schedule 1 Enactments amended

s 189(1)

**Accident Compensation Act 1972 (1972 No 43) (Reprinted 1975, Vol 2, p 1409)**

*Amendment(s) incorporated in the Act(s).*

**Administration Act 1969 (1969 No 52)**

*Amendment(s) incorporated in the Act(s).*

**Coal Mines Act 1979 (1979 No 21)**

*Amendment(s) incorporated in the Act(s).*

**Crimes Act 1961 (1961 No 43) (Reprinted RS Vol 1, p 635)**

*Amendment(s) incorporated in the Act(s).*

**Department of Social Welfare Act 1971 (1971 No 60)**

*Amendment(s) incorporated in the Act(s).*

**Evidence Amendment Act 1945 (1945 No 16) (Reprinted RS Vol 2, p 369)**

*Amendment(s) incorporated in the Act(s).*

**Insolvency Act 1967 (1967 No 54)**

*Amendment(s) incorporated in the Act(s).*

**Legal Aid Act 1969 (1969 No 47) (Reprinted 1975, Vol 3, p 2111)**

*Amendment(s) incorporated in the Act(s).*

**Marriage Act 1955 (1955 No 92) (1957 Reprint, Vol 9, p 365)**

*Amendment(s) incorporated in the Act(s).*

**Matrimonial Property Act 1976 (1976 No 166)**

*Amendment(s) incorporated in the Act(s).*

**Social Security Act 1964 (1964 No 136) (Reprinted 1975, Vol 4, p 2951)**

*Amendment(s) incorporated in the Act(s).*

**Summary Proceedings Act 1957 (1957 No 87) (Reprinted 1975, Vol 4, p 3107)**

*Amendment(s) incorporated in the Act(s).*

---

**Schedule 2**  
**Enactments repealed**

s 189(3)

**Domestic Proceedings Act 1968 (1968 No 62)**

**Domestic Proceedings Amendment Act 1970 (1970 No 60)**

**Domestic Proceedings Amendment Act 1971 (1971 No 59)**

**Domestic Proceedings Amendment Act 1972 (1972 No 54)**

**Domestic Proceedings Amendment Act 1974 (1974 No 83)**

**Domestic Proceedings Amendment Act 1975 (1975 No 70)**

**Domestic Proceedings Amendment Act 1976 (1976 No 87)**

**Matrimonial Proceedings Act 1963 (1963 No 71)**

**Matrimonial Proceedings Amendment Act 1966 (1966 No 71)**

**Matrimonial Proceedings Amendment Act 1968 (1968 No 60)**

**Matrimonial Proceedings Amendment Act 1970 (1970 No 86)**

**Family Proceedings Amendment Act 2008 (2008 No 79)**

**Family Proceedings Amendment Act 2013 (2013 No 47)**

Schedule 2: amended, on 31 March 2014, by section 14 of the Family Proceedings Amendment Act (No 2) 2013 (2013 No 80).

## Child Support Act 1991

Public Act	1991 No 142
Date of assent	18 December 1991
Commencement	see section 1(3), (4)

### 1 Short Title and commencement

- (1) This Act may be cited as the Child Support Act 1991.
- (2) This Act is hereby declared to be one of the Inland Revenue Acts within the meaning of the Tax Administration Act 1994.
- (3) Except as provided in subsection (4) and section 253, this Act shall come into force on the day on which it receives the Royal assent.
- (4) Part 11 and Part 15 shall come into force on 1 July 1992.

Section 1(2): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

## Part 16 Transitional and savings provisions

### *Enforcement of maintenance liabilities payable before 1 July 1992*

#### 259 Savings in respect of outstanding maintenance liabilities

- (1) Notwithstanding the Family Proceedings Amendment Act 1991,—
  - (a) sections 2, 6, 7, and Parts 6 and 7 (except section 101) of the Family Proceedings Act 1980 (as amended by this Part) shall continue to apply; and
  - (b) section 101 and section 101A of that Act (as substituted by section 254 of this Act) and section 101B of that Act (as inserted by section 2 of the Family Proceedings Amendment Act 1997) shall continue to apply,—

in respect of the enforcement of the liability of any person to pay maintenance under that Act which is due but unpaid at the close of 30 June 1992 under a maintenance order as if those sections and those Parts had not been amended or repealed by the Family Proceedings Amendment Act 1991.

- (2) In this section, **maintenance order** has the same meaning as it had in section 2 of the Family Proceedings Act 1980 immediately before the amendment of that definition by the Family Proceedings Amendment Act 1991.

Section 259(1)(a): amended, on 17 September 1997, by section 3(a) of the Child Support Amendment Act (No 2) 1997 (1997 No 67).

Section 259(1)(b): amended, on 17 September 1997, by section 3(b) of the Child Support Amendment Act (No 2) 1997 (1997 No 67).

## Reprints notes

### 1 *General*

This is a reprint of the Family Proceedings Act 1980 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Courts Matters Act 2018 (2018 No 50): Part 4 subpart 7

Social Security Act (2018 No 32): section 459

Statutes Amendment Act 2018 (2018 No 27): section 50

Minors (Court Consent to Relationships) Legislation Act 2018 (2018 No 22): section 34

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

District Court Act 2016 (2016 No 49): section 261

Family Proceedings Amendment Act (No 2) 2013 (2013 No 80)

Marriage (Definition of Marriage) Amendment Act 2013 (2013 No 20): section 9

Criminal Procedure Act 2011 (2011 No 81): section 413

Family Proceedings Amendment Act 2008 (2008 No 79)

Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48): section 47

Civil Union Act 2004 (2004 No 102): sections 44, 45

Status of Children Amendment Act 2004 (2004 No 91): section 17

Care of Children Act 2004 (2004 No 90): sections 149–151

Supreme Court Act 2003 (2003 No 53): section 47

State Sector Amendment Act 2003 (2003 No 41): section 14(1)

District Courts Amendment Act 2002 (2002 No 63): section 4

Public Trust Act 2001 (2001 No 100): section 170(1)

Family Proceedings Amendment Act 2001 (2001 No 7)

Family Proceedings Amendment Act 2000 (2000 No 66)

Family Courts Amendment Act 2000 (2000 No 65): section 6

Department of Child, Youth and Family Services Act 1999 (1999 No 82): section 13  
Child Support Amendment Act 1999 (1999 No 81): section 37  
Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96): section 11  
District Courts Amendment Act 1998 (1998 No 76): section 7  
Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(1)  
Family Proceedings Amendment Act 1994 (1994 No 32)  
Foreign Affairs Amendment Act 1993 (1993 No 48): section 9(4)  
Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46): section 137(1)  
Family Proceedings Amendment Act 1991 (1991 No 144)  
Social Welfare (Transitional Provisions) Act 1990 (1990 No 26): section 36(3)  
Public Finance Act 1989 (1989 No 44): section 86(1)  
Protection of Personal and Property Rights Act 1988 (1988 No 4): section 113  
Family Proceedings Amendment Act 1986 (1986 No 88)  
Family Proceedings Act (United Nations Convention) Commencement Order 1986 (SR 1986/9)  
Family Proceedings Amendment Act (No 2) 1985 (1985 No 85)  
Family Proceedings Amendment Act 1983 (1983 No 73)  
Domestic Protection Act 1982 (1982 No 120): section 42  
Family Proceedings Amendment Act 1982 (1982 No 70)  
Family Proceedings Amendment Act 1981 (1981 No 64)  
Family Courts Act 1980 (1980 No 161): section 17A(g)  
District Courts Amendment Act 1979 (1979 No 125): section 18(2)