

**Reprint
as at 31 March 2014**



**Care of Children Amendment Act
(No 2) 2013**

Public Act 2013 No 74
Date of assent 24 September 2013
Commencement see section 2

Contents

	Page
1 Title	4
2 Commencement	5
3 Principal Act	5
4 Sections 4 and 5 replaced	5
4 Child's welfare and best interests to be paramount	5
5 Principles relating to child's welfare and best interests	6
5A Domestic violence to be taken into account	7
5 Section 7 replaced (Lawyer to act for child)	7
7 Appointment of lawyer to represent child in proceedings	7
7A Lawyers acting for parties	7
7B Duties of lawyer when giving advice	9
6 Section 8 amended (Interpretation)	9

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.

7	Section 23 amended (Appointment of eligible spouse or partner of parent as additional guardian)	10
8	Section 40 amended (Agreements between parents and guardians)	10
9	Sections 44 to 46 and cross-heading above section 44 repealed	10
10	New sections 46C to 46R and cross-headings inserted	10
	46C Certain children may seek review of parent's or guardian's decision or refusal to give consent	10
	<i>Family dispute resolution</i>	
	46D Meaning of family dispute resolution	11
	46E Family dispute resolution mandatory before commencement of proceedings	11
	46F Family dispute resolution after proceedings commenced	12
	<i>Counselling</i>	
	46G Counselling after proceedings commenced	12
	46H Approval of counselling organisation	13
	46I Suspension or cancellation of approval of counselling organisation	13
	46J Duties of approved counselling organisation	14
	46K Appointment of counsellors	14
	46L Privilege	14
	46M Number of sessions of counselling	14
	46N Counselling fees and expenses	14
	<i>Parenting information programmes</i>	
	46O Judge may direct party to undertake parenting information programme	15
	<i>Settlement conferences</i>	
	46P Purpose of settlement conferences	15
	46Q Settlement conferences	15
	<i>Guardianship disputes</i>	
	46R Disputes between guardians	16
11	New sections 47A and 47B inserted	16
	47A Mandatory statement in applications	16
	47B Mandatory statement and evidence in applications	16
12	Section 48 amended (Parenting orders)	17
13	Section 49 replaced (Applications to include statement on others' involvement)	17

	49	Interim parenting orders	17
	49A	Interim parenting order where parent does not have day-to-day care for, or contact with, child	18
	49B	Interim parenting order may become final order on specified date	18
	49C	Final parenting orders	18
14		Section 51 amended (Court must consider protective conditions in certain cases)	19
15		Section 55 amended (Content and explanation of parenting orders)	19
16		Sections 57 to 62 and cross-heading above section 58 replaced	19
	57	Variation of final parenting order by consent memorandum instead of application	19
		<i>Supervised contact</i>	
	58	Interpretation	19
	59	Court may order supervised contact	20
	60	Costs of formal supervised contact	20
17		Section 63 repealed (Purpose and overview of sections 64 to 80)	21
18		Section 64 amended (Guiding consideration and principles)	21
19		Sections 65 to 67 repealed	21
20		Section 69 amended (Court may require parties to attend for counselling or for hearing of application under section 68)	21
21		Section 78 replaced (Contravening parenting order)	21
	78	Contravening parenting or guardianship order	21
22		Section 102 amended (Child abducted from New Zealand)	22
23		Section 112 amended (Child outside New Zealand)	22
24		Section 125 amended (Jurisdiction of courts)	22
25		Section 130 replaced (Counsel to assist court)	22
	130	Appointment of lawyer to assist court	22
26		Section 131 replaced (Costs of court-appointed counsel)	22
	131	Fees and expenses of lawyer appointed under section 7 or 130	23
27		New section 131A inserted (Advice from chief executive or social worker)	24
	131A	Advice from chief executive or social worker	24
28		Section 133 replaced (Reports from other persons)	24
	133	Reports from other persons	24

29	Section 134 amended (Distribution, etc, of reports under sections 132 and 133)	28
30	Section 135 replaced (Costs of reports under section 133)	28
	135 Costs of reports requested under section 133	28
	135A Order requiring reimbursement of costs payments	29
	135B Enforcement of orders made under section 135A	30
31	Section 137 amended (Attendance at hearings generally)	30
32	Section 138 repealed (Attendance at hearings of persons involved in counselling or conciliation under Family Proceedings Act 1980)	31
33	New section 139A inserted (Leave required in certain cases to commence substantially similar proceedings)	31
	139A Leave required in certain cases to commence substantially similar proceedings	31
34	Section 141 amended (Power to restrict commencement of proceedings)	32
35	Section 142 amended (Costs)	32
36	Section 143 amended (Appeals to High Court)	32
37	Section 145 amended (Appeal to Court of Appeal)	33
38	Section 146 amended (Rules of court)	33
39	Section 147 amended (Regulations)	33
40	Section 148 amended (Other Acts not affected)	34
41	Section 152 replaced (Repeal)	34
	152 Repeals	34
42	Cross-heading above section 153 replaced	35
	<i>Saving and transitional provisions on enactment of this Act</i>	
43	New section 165 and cross-heading inserted	35
	<i>Transitional provision applying on enactment of Care of Children Amendment Act (No 2) 2013</i>	
	165 Proceedings commenced before commencement of this section but not completed	35

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Care of Children Amendment Act (No 2) 2013.

2 Commencement

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent:
 - (a) section 10, to the extent only that it inserts new sections 46H, 46I, and 46K into the principal Act;
 - (b) section 39(1) and (5).
- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council.
- (3) Any provision that has not earlier been brought into force comes into force on 1 October 2014.

Section 2(2): sections 3–9, section 10, to the extent that it inserts new sections 46C–46G, 46J, and 46L–46R, sections 11–38, section 39(2)–(4), and sections 40–43 brought into force, on 31 March 2014, by the Care of Children Amendment Act (No 2) 2013 Commencement Order 2014 (LI 2014/88).

3 Principal Act

This Act amends the Care of Children Act 2004 (the **principal Act**).

4 Sections 4 and 5 replaced

Replace sections 4 and 5 with:

“4 Child’s welfare and best interests to be paramount

- “(1) The welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration—
 - “(a) in the administration and application of this Act, for example, in proceedings under this Act; and
 - “(b) in any other proceedings involving the guardianship of, or the role of providing day-to-day care for, or contact with, a child.
- “(2) Any person considering the welfare and best interests of a child in his or her particular circumstances—
 - “(a) must take into account—
 - “(i) the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child’s sense of time; and
 - “(ii) the principles in section 5; and

- “(b) may take into account the conduct of the person who is seeking to have a role in the upbringing of the child to the extent that that conduct is relevant to the child’s welfare and best interests.
- “(3) It must not be presumed that the welfare and best interests of a child (of any age) require the child to be placed in the day-to-day care of a particular person because of that person’s gender.
- “(4) This section does not—
 - “(a) limit section 6 or 83, or subpart 4 of Part 2; or
 - “(b) prevent any person from taking into account other matters relevant to the child’s welfare and best interests.

“5 Principles relating to child’s welfare and best interests

The principles relating to a child’s welfare and best interests are that—

- “(a) a child’s safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in section 3(2) to (5) of the Domestic Violence Act 1995) from all persons, including members of the child’s family, family group, whānau, hapū, and iwi:
- “(b) a child’s care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:
- “(c) a child’s care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order:
- “(d) a child should have continuity in his or her care, development, and upbringing:
- “(e) a child should continue to have a relationship with both of his or her parents, and that a child’s relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:
- “(f) a child’s identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

“5A Domestic violence to be taken into account

“(1) This section applies if—

“(a) an application is made to the court for—

“(i) a guardianship order under section 19 or 27; or

“(ii) a direction under section 46R in relation to a guardianship dispute; or

“(iii) a parenting order under section 48; or

“(iv) a variation of a parenting order under section 56;
and

“(b) a final protection order made under section 14 of the Domestic Violence Act 1995 is, or at any time has been, in force against 1 or more parties to the application.

“(2) In taking into account the principle in section 5(a), the court must have regard in particular to the following matters:

“(a) whether the protection order is still in force:

“(b) the circumstances in which the protection order was made:

“(c) any written reasons given by the Judge who made the protection order for his or her decision.”

5 Section 7 replaced (Lawyer to act for child)

Replace section 7 with:

“7 Appointment of lawyer to represent child in proceedings

A court may appoint, or direct the Registrar of the court to appoint, a lawyer to represent a child who is the subject of, or who is a party to, proceedings (other than criminal proceedings) under this Act if the court—

“(a) has concerns for the safety or well-being of the child;
and

“(b) considers an appointment necessary.

“7A Lawyers acting for parties

“(1) A lawyer may act for a party to a proceeding under this Act that is to be heard and determined in a Family Court only as provided in subsections (2) to (6).

“(2) A lawyer may act for a party to a proceeding commenced by an application made under subpart 4 of Part 2.

- “(3) A lawyer may act for a party to a proceeding if that party is the Crown.
- “(4) A lawyer may act for a party to a proceeding that is—
- “(a) commenced by an application made without notice until such time (if at all) as a Family Court Judge directs that the application proceed on notice:
 - “(b) commenced by an application made on notice from such time (if at all) as a Family Court Judge directs that—
 - “(i) the application proceed as if it were an application made without notice; or
 - “(ii) the application be heard by the court in conjunction with an application that is filed under any other Act; or
 - “(iii) the application proceed to a hearing:
 - “(c) commenced by an application made without notice that a Family Court Judge has directed proceed on notice, from such time (if at all) as the Judge makes a direction of a kind specified in paragraph (b)(ii) or (iii).
- “(5) A lawyer may act for a child who is a party to a proceeding if the lawyer has been appointed by the court under section 7 to represent that child.
- “(6) A lawyer may act for a party at a settlement conference convened under section 46Q if a Judge directs that the parties may be represented at that conference.
- “(7) A direction referred to in subsection (6) may be made by a Judge if the Judge considers that—
- “(a) at least 1 of the parties needs legal representation at the settlement conference; and
 - “(b) the parties having legal representation at the settlement conference will be likely to facilitate settlement of the issues in dispute by agreement between the parties.
- “(8) In this section,—
- “**act**, in relation to a party, means—
 - “(a) to sign any document for the party:
 - “(b) to file any document for the party:
 - “(c) to accept service for the party:
 - “(d) to represent the party in court, or otherwise attend with the party before a Judge or Registrar

“**party to a proceeding** includes a party to a proposed proceeding.

“(9) To avoid doubt, nothing in this section prevents a lawyer from—

“(a) giving legal advice to a party:

“(b) preparing any document for a party:

“(c) conducting negotiations for a party.

“**7B Duties of lawyer when giving advice**

A lawyer providing legal advice to a person about arrangements for the guardianship or care of a child, or both, must ensure that the person is aware of—

“(a) the need for the child’s welfare and best interests to be the first and paramount consideration when settling arrangements; and

“(b) the mechanisms for assisting resolution of family disputes; and

“(c) the steps for commencing a proceeding under this Act and subsequently pursuing the proceeding through the court process to obtain a resolution; and

“(d) the types of directions and orders that the court may make if a proceeding is commenced.”

6 Section 8 amended (Interpretation)

(1) In section 8, insert in their appropriate alphabetical order:

“**approved counselling organisation** means a counselling organisation that is approved by the Secretary under section 46H

“**counselling services** means counselling services provided by a counsellor for the purposes specified in section 46G(2)

“**counsellor** means a person who is appointed as a counsellor under section 46K

“**parenting information programme** means a programme specified as a parenting information programme in regulations made under this Act”.

(2) In section 8, repeal the definition of **prescribed**.

- 7 Section 23 amended (Appointment of eligible spouse or partner of parent as additional guardian)**
In section 23(5), replace “the prescribed form” with “a form approved by the Secretary”.
- 8 Section 40 amended (Agreements between parents and guardians)**
Replace section 40(1) with:
“(1) A party to an agreement to which subsection (2) applies may seek to have the terms of the agreement embodied in an order of the court that may be enforced, as provided in subsections (3) and (4).”
- 9 Sections 44 to 46 and cross-heading above section 44 repealed**
Repeal sections 44 to 46 and the cross-heading above section 44.
- 10 New sections 46C to 46R and cross-headings inserted**
After section 46B, insert:
“46C Certain children may seek review of parent’s or guardian’s decision or refusal to give consent
“(1) A child of or over the age of 16 years who is affected by a decision or by a refusal of consent by a parent or guardian in an important matter may (unless the child is under the guardianship of the court) apply to a Family Court Judge, who may, if he or she thinks it reasonable in all the circumstances to do so, review the decision or refusal and make any order in respect of it that he or she thinks fit.
“(2) A consent given by a Family Court Judge under this section has the same effect as if it had been given by the parent or guardian.
“(3) This section does not apply where a parent or guardian refuses to give consent to a child’s marriage, civil union, or entry into a de facto relationship. In those cases, sections 18 to 20 of the Marriage Act 1955, sections 19 and 20 of the Civil Union Act 2004, and section 46A of this Act, respectively, apply instead.

“Family dispute resolution

“46D Meaning of family dispute resolution

In sections 46E and 46F, **family dispute resolution**, **family dispute resolution form**, and **FDR provider** have the meanings given to them by the Family Dispute Resolution Act 2013.

“46E Family dispute resolution mandatory before commencement of proceedings

“(1) This section applies to an application under section 46R or 48.

“(2) The application must be accompanied by a family dispute resolution form that has been signed by an FDR provider within the preceding 12 months.

“(3) Subsection (2) does not apply if subsection (4) applies.

“(4) A family dispute resolution form is not required to accompany an application that—

“(a) is in response to an application that another party to the proceedings has made for an order under section 46R or 48; or

“(b) is without notice; or

“(c) is for a consent order; or

“(d) seeks the enforcement of an existing order; or

“(e) relates to a child who is the subject of proceedings already begun under Part 2 of the Children, Young Persons, and Their Families Act 1989; or

“(f) is accompanied by an affidavit that provides evidence of either of the following matters:

“(i) that at least 1 of the parties to the family dispute is unable to participate effectively in family dispute resolution;

“(ii) that at least 1 of the parties to the family dispute, or a child of one of the parties, has been subject to domestic violence by one of the other parties to the dispute.

“(5) A Registrar may refuse to accept for filing an application that is accompanied by an affidavit of the kind referred to in subsection (4)(f) if the affidavit does not provide sufficient evidence of either of the matters set out in subparagraphs (i) and (ii) of that paragraph.

“(6) A Registrar who is unsure, under subsection (5), whether to refuse to accept an application for filing may refer that application and accompanying affidavit to a Judge, and the Judge must determine whether the affidavit provides sufficient evidence of either of the matters set out in subsection (4)(f).

“46F Family dispute resolution after proceedings commenced

“(1) This section applies after an application has been made to a Family Court for—

“(a) a direction under section 46R; or

“(b) a parenting order under section 48.

“(2) At any time before the application is finally determined, a Family Court Judge may direct the parties to attend family dispute resolution.

“(3) A direction under subsection (2) may only be made by a Judge if—

“(a) the Judge considers that there is a reasonable prospect that family dispute resolution will assist the parties in reaching an agreement on the resolution of the matters in dispute; and

“(b) the parties—

“(i) have not participated in family dispute resolution in the preceding 12 months; or

“(ii) have participated in family dispute resolution in the preceding 12 months but consent to the direction being made.

“(4) A direction under subsection (2) may be made only once.

“Counselling

“46G Counselling after proceedings commenced

“(1) This section applies after an application has been made to a Family Court for—

“(a) a direction under section 46R; or

“(b) a parenting order under section 48.

“(2) A Family Court Judge may direct the Registrar of the court to refer the parties to the application to counselling services for either or both of the following purposes:

“(a) to improve the relationship between the parties:

- “(b) to encourage compliance with any direction or order made by the court.
- “(3) A direction under subsection (2) may only be made by a Family Court Judge if the Judge considers that the provision of counselling services is the best means of assisting the parties with their relationship or the implementation of any decision of the court, or both of those matters.
- “(4) A Family Court Judge may make a direction under subsection (2)—
 - “(a) at any stage of the proceedings, including when making a final order; but
 - “(b) once only.
- “(5) On receipt of a direction under subsection (2), the Registrar must—
 - “(a) arrange for the parties to be referred to a counsellor or an approved counselling organisation; and
 - “(b) inform the parties accordingly.

“46H Approval of counselling organisation

- “(1) The Secretary may, by notice in the *Gazette*, approve any organisation (whether incorporated or unincorporated) as an approved counselling organisation.
- “(2) In deciding whether to approve an organisation under subsection (1), the Secretary must apply any criteria prescribed by regulations made under section 147(2)(aa).
- “(3) An approval under subsection (1) may be made on any terms and conditions the Secretary thinks fit.

“46I Suspension or cancellation of approval of counselling organisation

- “(1) The Secretary may, by notice in the *Gazette*, suspend or cancel the approval of an organisation as an approved counselling organisation on any ground prescribed by regulations made under section 147(2)(ab).
- “(2) If under subsection (1) the Secretary suspends the approval of an organisation, the organisation is not an approved counselling organisation during the period for which the approval is suspended.

“46J Duties of approved counselling organisation

An approved counselling organisation to which any parties are referred under section 46G(5)(a) must—

- “(a) nominate a counsellor to provide counselling services to the parties; and
- “(b) arrange for the counsellor to meet with the parties.

“46K Appointment of counsellors

“(1) The Secretary or an approved counselling organisation may appoint a person as a counsellor if the Secretary or approved counselling organisation is satisfied that the person is qualified and competent to provide counselling services.

“(2) In deciding whether a person meets the criteria in subsection (1), the Secretary or approved counselling organisation must apply the qualification and competency requirements prescribed by regulations made under section 147(2)(ac) and (ad).

“46L Privilege

“(1) This section applies to a statement a party makes to a counsellor for the purpose of enabling the counsellor to provide counselling services.

“(2) No evidence of the statement is admissible in any court or before any person acting judicially.

“(3) A counsellor commits an offence and is liable on conviction to a fine not exceeding \$500 who discloses to any other person a statement made to the counsellor for the purpose of enabling the counsellor to provide counselling services.

“46M Number of sessions of counselling

The maximum number of sessions of counselling to be carried out under section 46G must be determined in accordance with regulations made under section 147(2)(ae) or, if no such regulations are made, by the Registrar of the court.

“46N Counselling fees and expenses

Fees in respect of counselling carried out under section 46G, and reasonable expenses incurred, must—

- “(a) be determined in accordance with regulations made under section 147(2)(af) or, if no such regulations are made, by the Registrar of the court; and
- “(b) be paid in accordance with that determination out of public money appropriated by Parliament for the purpose.

“Parenting information programmes

“46O Judge may direct party to undertake parenting information programme

- “(1) At any time after an application has been made to the court for a parenting order under section 48, a Family Court Judge may direct 1 or more parties to the application to attend a parenting information programme.
- “(2) However, the Family Court Judge may not make a direction under subsection (1) in respect of a party if that party has undertaken a parenting information programme within the preceding 2 years.

“Settlement conferences

“46P Purpose of settlement conferences

The purpose of a settlement conference is to enable a Family Court Judge to—

- “(a) ascertain whether any or all of the issues in dispute between the parties can be settled; and
- “(b) settle those issues.

“46Q Settlement conferences

- “(1) A Family Court Judge may, before the hearing of a proceeding, direct the Registrar to convene a settlement conference.
- “(2) However, a settlement conference may be convened under subsection (1) on 1 occasion only, but may be adjourned at any time and to any place.
- “(3) At a settlement conference, a Family Court Judge may, with the consent of the parties, make an order settling some or all of the issues in dispute between the parties.

- “(4) Before a party consents to the making of an order, a Family Court Judge may advise that party to obtain legal advice.

“Guardianship disputes

“46R Disputes between guardians

- “(1) If 2 or more guardians of a child are unable to agree on a matter concerning the exercise of their guardianship, any of them may apply to the court for its direction.
- “(2) An application under subsection (1) must be made to a Family Court unless subsection (3) applies.
- “(3) An application under subsection (1) must be made to the High Court, and the High Court has exclusive jurisdiction to settle the dispute, where,—
- “(a) under an order of the High Court, 2 or more persons are guardians of, or have the role of providing day-to-day care for, a child, and that order has not been removed into a Family Court under section 127; or
- “(b) a child is under the guardianship of the High Court.
- “(4) On an application under subsection (1), the court may make any order relating to the matter that it thinks proper.”

11 New sections 47A and 47B inserted

After section 47, insert:

“47A Mandatory statement in applications

- “(1) This section applies to an application for a parenting order under section 48.
- “(2) The application must include a statement made by or on behalf of the applicant for the order about whether and how the order can and should provide for any other person or persons to have the role of providing day-to-day care for, or contact with, the child.

“47B Mandatory statement and evidence in applications

- “(1) This section applies to—
- “(a) an application for a parenting order under section 48;
- “(b) an application to vary a parenting order under section 56.

- “(2) The application must include a statement made by or on behalf of the applicant for the order—
- “(a) that the applicant has undertaken a parenting information programme within the preceding 2 years; or
 - “(b) that the applicant is not required to undertake a parenting information programme because—
 - “(i) the applicant is unable to participate effectively in a parenting information programme; or
 - “(ii) the applicant is making the application without notice.
- “(3) Evidence in support of a statement made under subsection (2)(a) or (b)(i) must be included in the application.
- “(4) A Registrar may refuse to accept an application if the Registrar considers that the evidence provided does not adequately support the statement.”

12 Section 48 amended (Parenting orders)

Replace section 48(4) to (6) with:

- “(4) A parenting order (whether an interim parenting order or a final parenting order) may be made subject to any terms or conditions the court considers appropriate (for example, a condition requiring a party to enter into a bond).”

13 Section 49 replaced (Applications to include statement on others’ involvement)

Replace section 49 with:

“49 Interim parenting orders

- “(1) At any time before an application for a parenting order is finally determined in a court, a Judge may make an interim parenting order that has effect until—
- “(a) a specified date; or
 - “(b) a specified event; or
 - “(c) it is replaced by—
 - “(i) another interim order; or
 - “(ii) a final order.
- “(2) However, a Judge must not make an interim order unless the Judge is satisfied that an interim order serves the welfare and best interests of the child better than a final order.

“49A Interim parenting order where parent does not have day-to-day care for, or contact with, child

- “(1) This section applies if—
- “(a) an interim parenting order is made; and
 - “(b) the parents of the child in respect of whom the interim parenting order is made are parties to the order; and
 - “(c) under the interim parenting order, one of the parents has neither the role of providing day-to-day care for nor contact with the child.
- “(2) If this section applies, the court must, as soon as practicable, assign a hearing date that is not more than 3 months after the date of the interim parenting order, and at the hearing on that date the court may replace the interim order with—
- “(a) a further interim order; or
 - “(b) a final parenting order.

“49B Interim parenting order may become final order on specified date

- “(1) When making an interim parenting order that has effect until a specified date (the **specified date**), a Family Court Judge may direct that the interim parenting order is to become a final parenting order on the specified date unless before that date a party to the proceeding or any lawyer appointed under section 7 notifies the court that he or she wishes to be heard.
- “(2) If a party to the proceeding or any lawyer appointed under section 7 does not, before the specified date, notify the court that he or she wishes to be heard, the interim parenting order becomes a final parenting order on the specified date.
- “(3) When an interim parenting order becomes a final parenting order under subsection (2), the final parenting order comes into effect immediately.

“49C Final parenting orders

- “(1) At any time during a proceeding, a Judge may make a final parenting order if the parties consent.
- “(2) When an application for a parenting order is finally determined by the court, a Judge must make a final parenting order.”

14 Section 51 amended (Court must consider protective conditions in certain cases)

Repeal section 51(3).

15 Section 55 amended (Content and explanation of parenting orders)

In section 55(1)(b), replace “the prescribed form” with “a form approved by the Secretary”.

16 Sections 57 to 62 and cross-heading above section 58 replaced

Replace sections 57 to 62 and the cross-heading above section 58 with:

“57 Variation of final parenting order by consent memorandum instead of application

“(1) This section applies if the parties to a final parenting order made under this Act agree to a variation of the order, or to a variation of any term or condition to which the order is subject (the **proposed variation**).

“(2) A party to the final parenting order may, instead of applying under section 56 for a variation of the order, file a consent memorandum seeking an order in terms of the proposed variation.

“(3) The consent memorandum must—

“(a) set out the proposed variation; and

“(b) state that all persons affected by the final parenting order (other than children) agree to the proposed variation; and

“(c) be signed by all parties.

“(4) On the filing of a consent memorandum, the Registrar may make and seal an order varying the final parenting order in terms of the proposed variation set out in the memorandum.

“Supervised contact

“58 Interpretation

In this section and sections 59 and 60,—

“**approved provider** means a supervised contact service provider who is—

“(a) approved—

“(i) by the chief executive as a community service under section 403 of the Children, Young Persons, and Their Families Act 1989; or

“(ii) by the Secretary; or

“(iii) by an officer of the court appointed under section 8(2) of the Family Courts Act 1980; and

“(b) nominated by the court or Registrar for the particular case

“**supervised contact** means direct (that is, face-to-face) contact between a party and a child, being contact that occurs—

“(a) under the supervision of an approved provider; or

“(b) in the immediate presence of a person approved by the court (for example, a relative, a friend of the family of the child, or any other person whom the court considers suitable).

“**59 Court may order supervised contact**

“(1) This section applies if the court—

“(a) is making or varying a parenting order determining the time or times when a person may have contact with a child; and

“(b) is not satisfied that the child will be safe with that person.

“(2) The court may make an order for supervised contact between the child and that person, and, if it does so, the court must specify in the order whether the supervised contact is to occur—

“(a) under the supervision of an approved provider; or

“(b) in the immediate presence of a person approved by the court (for example, a relative, a friend of the family of the child, or any other person whom the court considers suitable).

“**60 Costs of formal supervised contact**

“(1) This section applies only to supervised contact that is ordered under section 59 and supervised by an approved provider.

- “(2) The number of sessions of the contact that will be funded out of public money must be determined in accordance with regulations made under section 147(2)(a) or, in the absence of regulations of that kind, by the Registrar or the court.
- “(3) Fees in respect of the contact—
- “(a) must be determined in accordance with regulations made under section 147(2)(b) or, in the absence of regulations of that kind, by the Registrar or the court; and
- “(b) are payable out of public money appropriated by Parliament for the purpose.”

17 Section 63 repealed (Purpose and overview of sections 64 to 80)

Repeal section 63.

18 Section 64 amended (Guiding consideration and principles)

Repeal section 64(2).

19 Sections 65 to 67 repealed

Repeal sections 65 to 67.

20 Section 69 amended (Court may require parties to attend for counselling or for hearing of application under section 68)

- (1) In the heading to section 69, delete “for counselling or”.
- (2) Repeal section 69(1)(a).

21 Section 78 replaced (Contravening parenting order)

Replace section 78 with:

“78 Contravening parenting or guardianship order

- “(1) A person commits an offence who, without reasonable excuse, intentionally—
- “(a) contravenes—
- “(i) a parenting order; or
- “(ii) a guardianship order made under section 40 or 46R; or

- “(b) prevents compliance with—
 - “(i) a parenting order; or
 - “(ii) a guardianship order made under section 40 or 46R.
- “(2) A person who commits an offence under subsection (1) is liable on conviction to—
 - “(a) a term of imprisonment not exceeding 3 months; or
 - “(b) a fine not exceeding \$2,500.
- “(3) Nothing in this section limits the power of a court to punish a person for contempt of court.”

22 Section 102 amended (Child abducted from New Zealand)

Replace section 102(2) with:

- “(2) Every application under subsection (1) must be in a form approved by the Secretary.”

23 Section 112 amended (Child outside New Zealand)

Replace section 112(2) with:

- “(2) Every application under subsection (1) must be in a form approved by the Secretary.”

24 Section 125 amended (Jurisdiction of courts)

In section 125(2)(a), replace “section 44” with “section 46R”.

25 Section 130 replaced (Counsel to assist court)

Replace section 130 with:

“130 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.”

26 Section 131 replaced (Costs of court-appointed counsel)

Replace section 131 with:

“131 Fees and expenses of lawyer appointed under section 7 or 130

- “(1) The fees and expenses of a lawyer appointed under section 7 or 130 must—
- “(a) be determined in accordance with regulations made under section 16D of the Family Courts Act 1980 or, if no such regulations are made, by the 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 rendered by a lawyer appointed under section 7 or 130 for fees and expenses must be given to the Registrar of the court in which the proceedings were heard, and the Registrar 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 7 or 130 and the fees and expenses relating to that appointment have been paid under subsection (1), the court must make an order under section 135A, unless the court declines to do so in accordance with that section.
- “(5) However, no order under section 135A may be made—
- “(a) in any proceedings commenced by an application under section 105 or a request under section 111; or
 - “(b) against—
 - “(i) the Crown, whether acting through the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989 or otherwise; or
 - “(ii) a person in whose custody the child concerned has been placed pursuant to an order made under the Children, Young Persons, and Their Families Act 1989; or

“(c) in respect of an appointment under section 130, where a lawyer has been appointed under that section to provide to the court independent advice on any complex legal issue.”

27 New section 131A inserted (Advice from chief executive or social worker)

After section 131, insert:

“131A Advice from chief executive or social worker

- “(1) For the purpose of expediting an application for a guardianship order or parenting order, a Registrar, on his or her own initiative, may—
- “(a) refer the application to the chief executive; and
 - “(b) request the chief executive to provide brief written advice on the nature and extent of any involvement that the department has had with the parties.
- “(2) On receipt of a request for advice made under subsection (1), the chief executive or a social worker must provide the advice.
- “(3) The Registrar must refer advice received under subsection (2) to the Family Court Judge who is considering the application.”

28 Section 133 replaced (Reports from other persons)

Replace section 133 with:

“133 Reports from other persons

“Definitions

- “(1) In this section,—
- “**application**—
 - “(a) means—
 - “(i) an application for guardianship; or
 - “(ii) an application for a parenting order; or
 - “(iii) an application under section 105(1); but
 - “(b) does not include an application for an interim order about the role of providing day-to-day care for a child
- “**approval** means an approval under subsection (10)
- “**cultural report** means a report that is about the child who is the subject of an application and that covers an aspect or aspects of the child’s cultural background, including the child’s religious denomination and practice

“**materials** means—

- “(a) the psychological report; and
- “(b) the report writer’s notes; and
- “(c) other materials the report writer used in preparing the psychological report

“**medical report** means a medical report that is about the child who is the subject of an application

“**psychiatric report** means a psychiatric report that is about the child who is the subject of an application

“**psychological report** means a report that is about the child who is the subject of an application and that covers any or all of the following matters:

- “(a) how current arrangements for the child’s care are working for the child:
- “(b) the child’s relationship with each party, including, if appropriate, the child’s attachment to each party:
- “(c) the child’s relationship with other significant persons in the child’s life:
- “(d) the effect or likely effect on the child of each party’s parenting skills:
- “(e) the effect or likely effect on the child of the parties’ ability or otherwise to co-operate in the parenting of the child:
- “(f) the advantages and disadvantages for the child of the options for the care of the child:
- “(g) any matter that the court specifies under subsection (5)(b)(ii)

“**report writer** means—

- “(a) the person requested under subsection (2) to prepare a report:
- “(b) the psychologist requested under subsection (5) to prepare a report

“**second opinion** means—

- “(a) a critique of a psychological report; and
- “(b) a report covering the same matters as those covered by a psychological report.

*“Court’s power to obtain cultural reports, medical reports,
or psychiatric reports*

- “(2) To obtain a written cultural report, medical report, or psychiatric report, the court may—
- “(a) request a person whom the court considers qualified for the purpose to prepare one; or
 - “(b) direct the Registrar to request a person whom the Registrar considers qualified for the purpose to prepare one.
- “(3) The court may act under subsection (2) only if satisfied that—
- “(a) the information that the report will provide is essential for the proper disposition of the application; and
 - “(b) the report is the best source of the information, having regard to the quality, timeliness, and cost of other sources; and
 - “(c) the proceedings will not be unduly delayed by the time taken to prepare the report; and
 - “(d) any delay in the proceedings will not have an unacceptable effect on the child.
- “(4) If the court is entitled by subsection (3) to act under subsection (2) and if the court knows the parties’ wishes about the obtaining of a report or can speedily ascertain them, the court must have regard to the parties’ wishes before deciding whether or not to act under subsection (2).

“Court’s power to obtain psychological reports

- “(5) To obtain a written psychological report,—
- “(a) the court may—
 - “(i) request a psychologist whom the court considers qualified for the purpose to prepare one; or
 - “(ii) direct the Registrar to request a psychologist whom the Registrar considers qualified for the purpose to prepare one; and
 - “(b) the court—
 - “(i) must specify which of the matters listed in paragraphs (a) to (f) of the definition of psychological report in subsection (1) that the report is to cover; and

- “(ii) may specify any matter not listed in paragraphs (a) to (f) of the definition of psychological report in subsection (1) that the report is to cover.
- “(6) The court may act under subsection (5) only if—
- “(a) the court is satisfied that the information that the psychological report will provide is essential for the proper disposition of the application; and
 - “(b) the court is satisfied that the psychological report is the best source of the information, having regard to the quality, timeliness, and cost of other sources; and
 - “(c) the court is satisfied that the proceedings will not be unduly delayed by the time taken to prepare the psychological report; and
 - “(d) the court is satisfied that any delay in the proceedings will not have an unacceptable effect on the child; and
 - “(e) the court does not seek the psychological report solely or primarily to ascertain the child’s wishes.
- “(7) If the court is entitled by subsection (6) to act under subsection (5) and if the court knows the parties’ wishes about the obtaining of a psychological report or can speedily ascertain them, the court must have regard to the parties’ wishes before deciding whether or not to act under subsection (5).
- “*Court’s power to direct meetings*
- “(8) If the court acts under subsection (2) or (5), it may give directions at the same time on arrangements for—
- “(a) the child to meet with the report writer; or
 - “(b) 1 or more of the parties to meet with the report writer; or
 - “(c) the child and 1 or more of the parties to meet with the report writer.
- “(9) If a party or the child fails to meet with the report writer as directed by the court,—
- “(a) the report writer must notify the court; and
 - “(b) the court may make further directions.
- “*Second opinions*
- “(10) The approval of the court must be obtained before a second opinion may be prepared and presented.

- “(11) The court may give approval only if there are exceptional circumstances.
- “(12) A party who obtains the approval of the court for the preparation and presentation of a second opinion is liable for the costs of that opinion.
- “(13) If the court gives approval, it may permit disclosure of the materials to the psychologist preparing the second opinion.
- “(14) If the court declines to give approval to a party, or if a party does not seek approval, the court may permit disclosure of the materials to a psychologist who is employed by the party and who is not the report writer.
- “(15) The court may permit disclosure under subsection (14) only if the court is satisfied that the psychologist requires the materials to assist the party to prepare the party’s cross-examination.”

29 Section 134 amended (Distribution, etc, of reports under sections 132 and 133)

In section 134(3)(b), replace “section 130(1)” with “section 130”.

30 Section 135 replaced (Costs of reports under section 133)

Replace section 135 with:

“135 Costs of reports requested under section 133

- “(1) Fees for the preparation of reports requested under section 133, and reasonable expenses incurred, must—
- “(a) be determined in accordance with regulations made under section 16D of the Family Courts Act 1980 or, if no such regulations are made, by the Registrar of the court; and
- “(b) be paid in accordance with that determination out of public money appropriated by Parliament for the purpose.
- “(2) Where in any proceedings a report requested under section 133 has been prepared and the fees and expenses relating to that report have been paid under subsection (1), the court must make an order under section 135A unless the court declines to do so in accordance with that section.

“135A Order requiring reimbursement of costs payments

- “(1) An order referred to in section 131(4) or 135(2) must require the parties to reimburse to the Crown the prescribed proportion of the amount paid by the Crown,—
- “(a) under section 131(1)(b), in respect of the fees and expenses of a lawyer appointed under section 7 or 130:
 - “(b) under section 135(1)(b), in respect of a report requested under section 133.
- “(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 proportion that is prescribed by regulations made under section 147 for the purposes of this section
 - “**serious hardship**, in relation to a party or a dependent child of a 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.

“135B Enforcement of orders made under section 135A

- “(1) The amount that a party is ordered to reimburse under section 135A is a debt due to the Crown by that party and may be enforced in a District Court or the High Court, as the case may require, in the same manner as a judgment of that court.
- “(2) Despite section 113 or 123 of the District Courts Act 1947 or section 100A of the Judicature Act 1908, 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 may, on behalf of the Crown, enforce a debt under this section.”

31 Section 137 amended (Attendance at hearings generally)

- (1) Replace section 137(1)(b) with:
 - “(b) parties to the proceedings:
 - “(ba) lawyers acting for the parties (if any):”.
- (2) Replace section 137(1)(c) with:
 - “(c) lawyers appointed under section 7 or 130:”.
- (3) Repeal section 137(1)(f).
- (4) Repeal section 137(4)(c).
- (5) Repeal section 137(5).

32 Section 138 repealed (Attendance at hearings of persons involved in counselling or conciliation under Family Proceedings Act 1980)

Repeal section 138.

33 New section 139A inserted (Leave required in certain cases to commence substantially similar proceedings)

After section 139, insert:

“139A Leave required in certain cases to commence substantially similar proceedings

- “(1) A proceeding (a **new proceeding**) may not be commenced under section 46R, 48, or 56 without the leave of the court if that new proceeding—
- “(a) is substantially similar to a proceeding previously filed in a Family Court by any person (a **previous proceeding**); and
 - “(b) is to be commenced less than 2 years after the final direction or order was given in the previous proceeding.
- “(2) The leave of the court may only be given under subsection (1) if, since the final direction or order was given in the previous proceeding, there has been a material change in the circumstances of—
- “(a) any party to the previous proceeding;
 - “(b) any child who was the subject of the previous proceeding.
- “(3) In this section, a new proceeding is **substantially similar** to a previous proceeding if—
- “(a) the party commencing the new proceeding was a party to the previous proceeding; and
 - “(b) a child who is the subject of the new proceeding was the subject of the previous proceeding; and
 - “(c) the new proceeding—
 - “(i) is commenced under the same provision of this Act as the previous proceeding; or
 - “(ii) is for an order varying the order made in the previous proceeding; or
 - “(iii) is for an order discharging the order made in the previous proceeding.

“(4) This section does not apply if every party to the new proceeding consents to its commencement.”

34 Section 141 amended (Power to restrict commencement of proceedings)

In the heading to section 141, after “**proceedings**”, insert “**if vexatious proceedings previously instituted**”.

35 Section 142 amended (Costs)

After section 142(2), insert:

“(3) This section is subject to sections 131 and 135.”

36 Section 143 amended (Appeals to High Court)

(1) In section 143(2), replace “section 44 or section 46” with “section 46C or 46R”.

(2) In section 143(3), delete “(other than criminal proceedings or proceedings under section 44 or section 46)”.

(3) After section 143(3), insert:

“(3A) However, no appeal may be made to the High Court under subsection (3) in relation to—

“(a) any interlocutory or interim order made in the following kinds of proceedings:

“(i) criminal proceedings; or

“(ii) proceedings under section 46C; or

“(iii) proceedings under section 46R; or

“(b) a decision under—

“(i) section 7 to appoint, or to direct the Registrar of the court to appoint, a lawyer to represent a child; or

“(ii) section 130 to appoint, or to direct the Registrar of the court to appoint, a lawyer to assist the court; or

“(iii) section 133 to obtain a written cultural report, medical report, psychiatric report, or psychological report; or

“(c) a direction under section 7A(6) that the parties may, or may not, be represented at a settlement conference.”

- 37 Section 145 amended (Appeal to Court of Appeal)**
In section 145(1)(a), replace “section 44 or section 46” with “section 46C or 46R”.
- 38 Section 146 amended (Rules of court)**
Repeal section 146(3).
- 39 Section 147 amended (Regulations)**
(1) Before section 147(2)(a), insert:
- “(aa) prescribing for the purposes of section 46H any criteria that the Secretary must apply when deciding whether to approve an organisation as an approved counselling organisation:
 - “(ab) prescribing for the purposes of section 46I the grounds on which the Secretary may suspend or cancel the approval of an organisation as an approved counselling organisation, which may include—
 - “(i) that the approval was given on the basis of information that was false or misleading in a material respect; or
 - “(ii) that the organisation no longer satisfies any criteria for approval prescribed by regulations made under paragraph (aa); or
 - “(iii) that the organisation has requested the suspension or cancellation of the approval; or
 - “(iv) that the organisation has been wound up, dissolved, or otherwise has ceased to exist:
 - “(ac) prescribing for the purposes of section 46K the qualification and competency requirements that must be met for a person to be appointed as a counsellor, which, without limitation, may require a person—
 - “(i) to be a member of a professional body that the Secretary identifies as a professional body by notice in the *Gazette*:
 - “(ii) to have a specified qualification:
 - “(iii) to have a specified level of counselling experience:
 - “(ad) prescribing for the purposes of section 46K any matters that disqualify a person from being appointed as a coun-

sellor, which, without limitation, may include having a conviction for certain types of offences:

- “(ae) prescribing for the purposes of section 46M the maximum number of counselling sessions that may be carried out under section 46G:
- “(af) prescribing for the purposes of section 46N the amount of fees and expenses payable for counselling services provided under section 46G:
- “(ag) specifying for the purposes of sections 46O and 47B(2) 1 or more parenting information programmes that provide information about the effects of a relationship breakdown, including—
 - “(i) how a child may be affected when parents separate; and
 - “(ii) how the needs of a child may be met when parents separate.”.

- (2) In section 147(2)(a),—
 - (a) replace “section 62(2)” with “section 60(2)”; and
 - (b) replace “section 60(5)” with “section 59(2)”.
- (3) In section 147(2)(b),—
 - (a) replace “section 62(3)” with “section 60(3)”; and
 - (b) replace “section 60(5)” with “section 59(2)”; and
 - (c) replace “section 62(2)” with “section 60(2)”.
- (4) Repeal section 147(2)(c).
- (5) Replace section 147(2)(d) with:
 - “(d) prescribing, for the purposes of section 135A, the proportion of any amount paid by the Crown under—
 - “(i) section 131(1)(b):
 - “(ii) section 135(1)(b):”.

40 Section 148 amended (Other Acts not affected)

In section 148(2), delete “69 and”.

41 Section 152 replaced (Repeal)

Replace section 152 with:

“152 Repeals

The following Acts are repealed:

- “(a) Guardianship Act 1968 (1968 No 63):

- “(b) Care of Children Amendment Act 2008 (2008 No 74):
- “(c) Care of Children Amendment Act 2013 (2013 No 45).”

42 Cross-heading above section 153 replaced

Replace the cross-heading above section 153 with:

“Saving and transitional provisions on enactment of this Act”.

43 New section 165 and cross-heading inserted

After section 164, insert:

“Transitional provision applying on enactment of Care of Children Amendment Act (No 2) 2013

“165 Proceedings commenced before commencement of this section but not completed

- “(1) This section applies to proceedings under this Act that were commenced before the date of commencement of this section but were not by that date completed (a **pending proceeding**).
- “(2) The following provisions do not apply to a pending proceeding:
 - “(a) section 7A; and
 - “(b) section 135A; and
 - “(c) section 135B.
- “(3) The following provisions, as in force immediately before the date of commencement of this section, continue to apply to a pending proceeding with any necessary modifications as if the Care of Children Amendment Act (No 2) 2013 had not been enacted:
 - “(a) section 131; and
 - “(b) section 135; and
 - “(c) section 137.
- “(4) If section 57, as in force immediately before the date of commencement of this section, applied in respect of any interim order, section 57 continues to apply in respect of that order as if the Care of Children Amendment Act (No 2) 2013 had not been enacted.
- “(5) If in any pending proceeding there is in force immediately before the date of commencement of this section an order for supervised contact between a child who is the subject of the

proceeding and any party, sections 62 and 147(2)(a) and (b) continue to apply in respect of that proceeding as if the Care of Children Amendment Act (No 2) 2013 had not been enacted.

- “(6) If in any pending proceeding a referral to counselling was made either on the court’s initiative (under section 45) or on the request of a party (under section 65) and that counselling was arranged or was in progress immediately before the date of commencement of this section,—
- “(a) sections 66, 67, 69, and 138 continue to apply as if the Care of Children Amendment Act (No 2) 2013 had not been enacted; but
 - “(b) the counselling may not start or continue 4 months after the date of commencement of this section.”
-

Reprints notes

1 *General*

This is a reprint of the Care of Children Amendment Act (No 2) 2013 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*

Care of Children Amendment Act (No 2) 2013 Commencement Order 2014 (LI 2014/88)
