



ANALYSIS

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1995, No. 89

**An Act to amend the Guardianship Act 1968**

[15 December 1995

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Guardianship Amendment Act 1995, and shall be read together with and deemed part of the Guardianship Act 1968 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

**2. Orders in other proceedings**—(1) Section 12 of the principal Act (as substituted by section 5 of the Guardianship Amendment Act 1980) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Subject to section 24 of this Act, in any proceedings under the Domestic Violence Act 1995 for a protection order, a Family Court may make such interim order or orders with respect to the custody of or access to any child of the applicant’s family, or such interim order or orders varying any custody order or access order relating to such a child, as the Court considers necessary to protect the welfare of that child.”

(2) Section 12 (2) of the principal Act (as so substituted) is hereby amended by omitting the words “such case”, and substituting the words “any case to which subsection (1) of this section applies,”.

(3) Section 12 of the principal Act (as so substituted) is hereby amended by repealing subsection (6), and substituting the following subsection:

“(6) For the purposes of this section,—

“(a) The term ‘child of the applicant’s family’ has the meaning given to it by section 2 of the Domestic Violence Act 1995:

“(b) The term ‘child of the marriage’ has the meaning given to it by section 2 of the Family Proceedings Act 1980.”

**3. Access rights**—Section 15 of the principal Act is hereby amended by inserting, after subsection (2A) (as inserted by section 7 of the Guardianship Amendment Act 1980), the following subsection:

“(2B) Without limiting subsection (2A) of this section or section 16B of this Act, where—

“(a) The Court makes an order under subsection (1) or subsection (2) of this section with respect to access to a child by a parent; and

“(b) The Court is satisfied that the parent has used violence (as defined in section 16A of this Act) against the child or the other parent of the child,—

the Court shall consider whether or not the order should be subject to any conditions for the purpose of protecting the safety of that other parent while the right of access conferred by the order is being exercised (including while the child is being collected from, or returned to, that other parent).”

**4. New heading and sections inserted**—The principal Act is hereby amended by inserting, after section 16, the following heading and sections:

*“Special Provisions Relating to Cases Involving Violence*

**“16A. Interpretation**—In this section and sections 16B and 16C of this Act, unless the context otherwise requires,—

“‘Child of the family’, in relation to any proceedings, means—

“(a) A child of the applicant and the respondent, or of either of them; or

“(b) Any child who was a member of the family of the applicant and the respondent, or either of them, immediately before the institution of the proceedings:

“ ‘Supervised access’ means face to face contact between a parent and a child, being access that occurs—

“(a) At any place approved by the Court where access can be appropriately supervised; or

“(b) In the immediate presence of a person approved by the Court, who may be a relative, a friend of the family of the child, or such other person whom the Court considers suitable:

“ ‘Violence’ means physical abuse or sexual abuse.

**“16B. Allegations of violence made in custody or access proceedings—**(1) This section applies to any proceedings relating to an application made under this Act for an order relating to the custody of, or access to, a child, (including, without limitation, an application for the variation or discharge of any order with respect to the custody of, or access to, a child, or for the variation or discharge of any condition of any such order), whether or not the proceedings also relate to any other matter (whether arising under this Act or any other enactment).

“(2) Where, in any proceedings to which this section applies, it is alleged that a party to the proceedings has used violence against the child or a child of the family or against the other party to the proceedings, the Court shall, as soon as practicable, determine, on the basis of the evidence presented to it by or on behalf of the parties to the proceedings, whether the allegation of violence is proved.

“(3) Nothing in subsection (2) of this section requires the Court to make any inquiries of its own motion in order to make a determination on the allegation.

“(4) Where, in any proceedings to which this section applies, the Court is satisfied that a party to the proceedings (in this section referred to as the violent party) has used violence against the child or a child of the family or against the other party to the proceedings, the Court shall not—

“(a) Make any order giving the violent party custody of the child to whom the proceedings relate; or

“(b) Make any order allowing the violent party access (other than supervised access) to that child,—

unless the Court is satisfied that the child will be safe while the violent party has custody of or, as the case may be, access to the child.

“(5) In considering, for the purposes of subsection (4) of this section, whether or not a child will be safe while a violent party has custody of, or access (other than supervised access) to, the child, the Court shall, so far as is practicable, have regard to the following matters:

“(a) The nature and seriousness of the violence used:

“(b) How recently the violence occurred:

“(c) The frequency of the violence:

“(d) The likelihood of further violence occurring:

“(e) The physical or emotional harm caused to the child by the violence:

“(f) Whether the other party to the proceedings—

“(i) Considers that the child will be safe while the violent party has custody of, or access to, the child; and

“(ii) Consents to the violent party having custody of, or access (other than supervised access) to, the child:

“(g) The wishes of the child, if the child is able to express them, and having regard to the age and maturity of the child:

“(h) Any steps taken by the violent party to prevent further violence occurring:

“(i) Such other matters as the Court considers relevant.

“(6) Notwithstanding subsection (2) of this section, where, in any proceedings to which this section applies,—

“(a) The Court is unable to determine, on the basis of the evidence presented to it by or on behalf of the parties to the proceedings, whether or not the allegation of violence is proved; but

“(b) The Court is satisfied that there is a real risk to the safety of the child,—

the Court may make such order under this Act as it thinks fit in order to protect the safety of the child.

“(7) The provisions of this section shall apply notwithstanding section 23 (2) of this Act.

“16c. **Payment of costs of supervised access**—Where, pursuant to an order made under this Act, a person (in this section referred to as the relevant person) who is entitled to have supervised access to a child wishes to exercise that right, any costs incurred by any other person in making any arrangements necessary to facilitate that access on any particular occasion (including, without limitation, the costs of the provision of any person to supervise that access)—

- “(a) Shall be met by the relevant person; and
- “(b) Shall be recoverable accordingly in any court of competent jurisdiction.”

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This Act is administered in the Ministry of Justice.

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