

**Reprint  
as at 29 November 2010**



## **Care of Children Act 2004**

Public Act      2004 No 90  
Date of assent      21 November 2004  
Commencement      see section 2

### **Contents**

	Page
1      Title	7
2      Commencement	7

### **Part 1**

#### **Preliminary provisions**

3      Purpose of this Act	7
4      Child's welfare and best interests to be paramount	8
5      Principles relevant to child's welfare and best interests	9
6      Child's views	9
7      Lawyer to act for child	10
8      Interpretation	10
9      De facto partner defined [ <i>Repealed</i> ]	12
10      De facto relationship defined [ <i>Repealed</i> ]	12
11      Application	12
12      Act binds the Crown	12
13      Act a code	13
14      Administration of children's property	13

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#### **Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

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

**Part 2**  
**Guardianship and care of children**

Subpart 1—Guardianship: Responsibility for children, and  
decisions about children

*Guardianship*

15	Guardianship defined	13
16	Exercise of guardianship	14
<i>Guardianship based on parental status</i>		
17	Child’s father and mother usually joint guardians	15
18	Father identified on birth certificate is guardian	16
19	Father who was not mother’s spouse, civil union partner, or de facto partner may apply to be appointed as guardian	16
20	Declaration that father is guardian because of section 17	16
<i>Appointment of eligible spouse or partner of a parent as additional guardian</i>		
21	Who may appoint additional guardian under section 23	17
22	Restrictions on making appointments under section 23	17
23	Appointment of eligible spouse or partner of parent as additional guardian	18
24	Declarations required by section 23(5)(a)	20
25	Appointments under section 23 take effect on approval	20
<i>Testamentary guardians and court-appointed guardians</i>		
26	Testamentary guardians	21
27	Court-appointed guardians	21
<i>Termination of guardianship</i>		
28	Time at which guardianship ends	21
29	Court may remove guardians	22
<i>Guardianship of court</i>		
30	Concurrent jurisdiction under section 31	23
31	Application to court	23
32	Notice to be given to chief executive in certain cases before Family Court	24
33	Orders of court	25
34	Powers of court	25
35	Further provisions relating to powers of court	26
<i>Consent to medical procedures</i>		
36	Consent to procedures generally	26
37	Immunity of health practitioners administering certain blood transfusions without consent	27
38	Consent to abortion	28

Subpart 2—Care of children: Making arrangements and resolving disputes		
<i>Making arrangements</i>		
39	Purpose of sections 40 to 43	29
40	Agreements between parents and guardians	29
41	Agreements between parents and donors	29
42	Definitions for section 41	30
43	Agreements may be entered into by minors	31
<i>Resolving disputes</i>		
44	Disputes between guardians	31
45	Family Proceedings Act 1980 dispute resolution provisions apply to certain proceedings	31
46	Certain children may seek review of parent's or guardian's decision or refusal to give consent	32
<i>Consent to certain decisions</i>		
46A	Consent for de facto relationship	32
46B	Consent where child has no guardian	33
<i>Parenting orders</i>		
47	Who may apply for parenting order	33
48	Parenting orders	34
49	Applications to include statement on others' involvement	34
50	Parenting orders in respect of children of or over 16 years	35
51	Court must consider protective conditions in certain cases	35
52	Court must consider contact arrangements in certain cases	35
53	Orders in proceedings under Family Proceedings Act 1980	35
54	Orders in proceedings under Domestic Violence Act 1995	36
55	Content and explanation of parenting orders	36
56	Variation or discharge of parenting and other orders	37
57	Procedure if child's parents are parties to interim order	38
<i>Cases involving violence</i>		
58	Interpretation	39
59	Allegations of violence made in proceedings relating to parenting orders	39
60	Procedure for dealing with proceedings in section 59(1)	40
61	Matters relevant to question in section 60(4)	41
62	Costs of formal supervised contact	41
<i>Making parenting orders work</i>		
63	Purpose and overview of sections 64 to 80	42
64	Guiding consideration and principles	42
65	Request for counselling	43
66	Procedure for request under section 65(1) or (2)	43

67	Registrar may decline requests for counselling and recommend instead applications under section 68	44
68	Court may make certain orders or respond in other ways to contravention of parenting orders	44
69	Court may require parties to attend for counselling or for hearing of application under section 68	45
70	Ordering party to enter into bond	45
71	Costs of contravention	46
72	Warrant to enforce role of providing day-to-day care for child	46
73	Warrant to enforce order for contact with child	47
74	Further provisions about warrants	47
75	Execution of warrants	48
76	Authority to use faxed copy of warrant	48
77	Preventing removal of child from New Zealand	49
<i>Offences</i>		
78	Contravening parenting order	50
79	Resisting execution of warrant	51
80	Taking child from New Zealand	51
Subpart 3—Enforcing orders internationally		
<i>Enforcing overseas parenting orders in New Zealand</i>		
81	Registration of overseas parenting orders	51
82	Effect of registration	52
83	Exercise of jurisdiction in respect of child subject to registered overseas parenting order	52
84	Variation or discharge of registered overseas parenting order	53
85	Registered overseas parenting orders not to be enforced in certain circumstances	54
86	Evidence of orders made in overseas countries	54
87	Costs of returning child: order for payment when warrant issued under section 72	54
88	Evidence	55
89	Proof of documents	55
90	Depositions to be evidence	55
91	Prescribed overseas countries	55
<i>Enforcing New Zealand orders overseas</i>		
92	Enforcement of New Zealand orders overseas	56
93	Restrictions on right to make request under section 92	57
Subpart 4—International child abduction		
<i>Preliminary provisions</i>		
94	Purpose of this subpart	58
95	Interpretation	58
96	Application of this subpart	59

97	Rights of custody defined	59
98	Contracting States	60
99	Certificates as to Contracting States	60
100	Central Authority for New Zealand	60
101	Courts having jurisdiction to entertain applications under Convention	60

*Application for return of child*

102	Child abducted from New Zealand	61
103	Child abducted to New Zealand	61
104	Authority may request further information	62
105	Application to court for return of child abducted to New Zealand	63
106	Grounds for refusal of order for return of child	63
107	Applications to be dealt with speedily	64
108	Interim powers	65
109	No order or decision about role of providing day-to-day care for child to be made until application determined	65
110	Contact with, and role of providing day-to-day care for, child, if application dismissed	65
111	Request for declaration that child wrongfully removed	66

*Application for access to child*

112	Child outside New Zealand	66
113	Child in New Zealand	66

*Miscellaneous provisions*

114	Translation to accompany application	66
115	Evidentiary provisions	67
116	Lawyer to act for applicant	67
117	Preventing concealment of whereabouts of child	67
118	Preventing removal of child to defeat application	68
119	Enforcing order for return of child	69
120	Security for costs, etc	69
121	Costs of returning child: order for payment or refund when order under section 105(2) applied for or made	70
122	Order under section 121 may be lodged in High Court	70
123	Unfounded applications	71
124	Other provisions not affected	71

**Part 3**

**Jurisdictional, procedural, miscellaneous, and saving and transitional provisions**

*Jurisdictional provisions*

125	Jurisdiction of courts	72
126	Personal jurisdiction	73
127	Removal of High Court orders to Family Court	73

<i>Procedural provisions</i>		
128	Evidence	74
129	Court's power to call witnesses	74
130	Counsel to assist court	75
131	Costs of court-appointed counsel	75
132	Reports from chief executive or social worker	75
133	Reports from other persons	76
134	Distribution, etc, of reports under sections 132 and 133	76
135	Costs of reports under section 133	77
136	Court may hear person on child's cultural background	77
137	Attendance at hearings generally	78
138	Attendance at hearings of persons involved in counselling or conciliation under Family Proceedings Act 1980	79
139	Publication of reports of proceedings	79
140	Power to dismiss proceedings	80
141	Power to restrict commencement of proceedings	80
142	Costs	80
143	Appeals to High Court	80
144	Effect of High Court's order or decision	81
145	Appeal to Court of Appeal	81
<i>Miscellaneous provisions</i>		
146	Rules of court	82
147	Regulations	82
148	Other Acts not affected	83
<i>Amendments to Family Proceedings Act 1980 (extending counselling and conciliation provisions to same-sex de facto partners)</i>		
149	Amendments in Schedule 2	83
<i>Amendments to Family Proceedings Act 1980 (parentage tests in civil proceedings)</i>		
150	Amendments in Schedule 3	83
<i>Other amendments and repeal</i>		
151	Other amendments in Schedule 4	84
152	Repeal	84
<i>Saving and transitional provisions</i>		
153	Orders under 1968 Act appointing person as guardian	84
154	Declarations under section 6A of 1968 Act as to guardianship of fathers	84
155	Appointments of testamentary guardians under section 7(2) of 1968 Act	84
156	Orders under 1968 Act about guardianship of court	84

157	Orders under 1968 Act about custody	85
158	Orders under 1968 Act about access	85
159	Other references to custody and access under 1968 Act	85
160	Existing proceedings under 1968 Act	85
161	Appointments under section 30 of 1968 Act	86
162	Applications under 1991 Amendment Act	86
163	Appointments under section 23 of 1991 Amendment Act	86
164	Orders saved by section 31(2) of 1991 Amendment Act	86
	<b>Schedule 1</b>	87
	<b>Convention on the Civil Aspects of International Child Abduction</b>	
	<b>Schedule 2</b>	98
	<b>Amendments to Family Proceedings Act 1980 (extending counselling and conciliation provisions to same-sex de facto partners)</b>	
	<b>Schedule 3</b>	99
	<b>Amendments to Family Proceedings Act 1980 (parentage tests in civil proceedings)</b>	
	<b>Schedule 4</b>	100
	<b>Other amendments</b>	

**1 Title**

This Act is the Care of Children Act 2004.

**2 Commencement**

This Act comes into force on 1 July 2005.

**Part 1  
Preliminary provisions**

**3 Purpose of this Act**

- (1) The purpose of this Act is to—
  - (a) promote children’s welfare and best interests, and facilitate their development, by helping to ensure that appropriate arrangements are in place for their guardianship and care; and
  - (b) recognise certain rights of children.
- (2) To that end, this Act—
  - (a) defines and regulates—

- (i) parents' duties, powers, rights, and responsibilities as guardians of their children:
- (ii) parents' powers to appoint guardians:
- (iii) courts' powers in relation to the guardianship and care of children:
- (b) acknowledges the role that other family members may have in the care of children:
- (c) respects children's views and, in certain cases, recognises their consents (or refusals to consent) to medical procedures:
- (d) encourages agreed arrangements for, and provides for the resolution of disputes about, the care of children:
- (e) makes provision for enforcing orders internationally:
- (f) implements in New Zealand law the Hague Convention on the Civil Aspects of International Child Abduction:
- (g) reforms and replaces the Guardianship Act 1968 (including the Guardianship Amendment Act 1991).

#### **4 Child's welfare and best interests to be paramount**

- (1) The welfare and best interests of the child 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) The welfare and best interests of the particular child in his or her particular circumstances must be considered.
- (3) A parent's conduct may be considered only to the extent (if any) that it is relevant to the child's welfare and best interests.
- (4) For the purposes of this section, and regardless of a child's age, it must not be presumed that placing the child in the day-to-day care of a particular person will, because of that person's sex, best serve the welfare and best interests of the child.
- (5) In determining what best serves the child's welfare and best interests, a court or a person must take into account—
  - (a) 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
  - (b) any of the principles specified in section 5 that are relevant to the welfare and best interests of the particular child in his or her particular circumstances.



- (6) Subsection (5) does not limit section 6 (child's views) or prevent the court or person from taking into account other matters relevant to the child's welfare and best interests.
- (7) This section does not limit section 83 or subpart 4 of Part 2.  
Compare: 1968 No 63 s 23(1), (1A), (3); 1989 No 24 s 6

## **5 Principles relevant to child's welfare and best interests**

The principles referred to in section 4(5)(b) are as follows:

- (a) the child's parents and guardians should have the primary responsibility, and should be encouraged to agree to their own arrangements, for the child's care, development, and upbringing:
- (b) there should be continuity in arrangements for the child's care, development, and upbringing, and the child's relationships with his or her family, family group, whānau, hapu, or iwi, should be stable and ongoing (in particular, the child should have continuing relationships with both of his or her parents):
- (c) the child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation among and between the child's parents and guardians and all persons exercising the role of providing day-to-day care for, or entitled to have contact with, the child:
- (d) relationships between the child and members of his or her family, family group, whānau, hapu, or iwi should be preserved and strengthened, and those members should be encouraged to participate in the child's care, development, and upbringing:
- (e) the child's safety must be protected and, in particular, he or she must be protected from all forms of violence (whether by members of his or her family, family group, whānau, hapu, or iwi, or by other persons):
- (f) the child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

Compare: 1989 No 24 ss 5, 13, 208; 2003 No 116 s 12

## **6 Child's views**

- (1) This subsection applies to proceedings involving—
- (a) the guardianship of, or the role of providing day-to-day care for, or contact with, a child; or
- (b) the administration of property belonging to, or held in trust for, a child; or
- (c) the application of the income of property of that kind.
- (2) In proceedings to which subsection (1) applies,—

- (a) a child must be given reasonable opportunities to express views on matters affecting the child; and
- (b) any views the child expresses (either directly or through a representative) must be taken into account.

Compare: 1968 No 63 s 23(1), (2)

## 7 Lawyer to act for child

- (1) A court may appoint, or direct the Registrar of the court to appoint, a lawyer to act for a child who is the subject of, or who is a party to, proceedings (other than criminal proceedings) under this Act.
- (2) However, unless it is satisfied the appointment would serve no useful purpose, the court must make an appointment or a direction under subsection (1) if the proceedings—
  - (a) involve the role of providing day-to-day care for the child, or contact with the child; and
  - (b) appear likely to proceed to a hearing.
- (3) To facilitate performance of the lawyer's duties and compliance with section 6 (child's views), the lawyer must, unless he or she considers it inappropriate to do so because of exceptional circumstances, meet with the child.
- (4) The lawyer may call any person as a witness in the proceedings, and may cross-examine witnesses called by a party to the proceedings or by the court.

Compare: 1968 No 63 s 30(1)(b), (2), (3)

Section 7(1): amended, on 18 May 2009, by section 4(1) of the Care of Children Amendment Act 2008 (2008 No 74).

Section 7(2): amended, on 18 May 2009, by section 4(2) of the Care of Children Amendment Act 2008 (2008 No 74).

## 8 Interpretation

In this Act, unless the context otherwise requires,—

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

**chief executive** means the chief executive of the department

**child** means a person under the age of 18 years

**contact**, in relation to a child, includes all forms of direct and indirect interaction with the child

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

**court** means a court having jurisdiction in the proceedings, under section 125

**day-to-day care** includes care that is provided only for 1 or more specified days or parts of days

**department** means the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989

**faxed copy**, in relation to a warrant issued under this Act, means a copy of the warrant that is produced by a fax machine, computer, or other electronic device when the warrant is sent by facsimile transmission

**guardian** and **guardianship** have the meanings given to them by section 15

**High Court** includes a Judge of that court

**lawyer** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

**litigation guardian**—

- (a) has the same meaning as the expression guardian *ad litem*; and
- (b) in section 31(2)(e), includes a next friend

**overseas parenting order**—

- (a) means an order made by a court in a prescribed overseas country, being—
  - (i) an order relating to the role of providing day-to-day care for, or contact with, a child; or
  - (ii) an order that varies or discharges or is made in substitution for an order in subparagraph (i); but
- (b) does not include—
  - (i) an interim order or an order made without notice; or
  - (ii) an order made by a court in a prescribed overseas country and that varies or discharges or is made in substitution for an order, made in New Zealand, that is registered or is otherwise enforceable in the prescribed overseas country

**parenting order** means an order under section 48(1)

**prescribed** means prescribed by rules of court, regulations, or Order in Council

**prescribed overseas country** means—

- (a) Australia; or
- (b) any State or Territory of Australia; or
- (c) any other country outside New Zealand that is declared by Order in Council to be a prescribed overseas country for the purposes of this Act; and, for the purposes of this paragraph, the Cook Islands, Niue, and Tokelau must each be treated as a country outside New Zealand

**Registrar-General** has the meaning given to it by section 2 of the Births, Deaths, Marriages, and Relationships Registration Act 1995

**role of providing day-to-day care for a child**—

- (a) means the role, under this Act, an order under this Act, or an order made by a court in a prescribed overseas country, of providing day-to-day care for the child; and

- (b) includes, while exercising that role, exclusive responsibility for the child's day-to-day living arrangements

**Secretary** means the Secretary for Justice

**social worker** means a person employed under Part 5 of the State Sector Act 1988 in the department as a social worker

**spouse or partner of a parent** means, in relation to a child, a person who is not the child's parent but—

- (a) who is or has been married to, or in a civil union or de facto relationship with, a parent of the child; and
- (b) who shares responsibility for the child's day-to-day care with the parent.

Compare: 1968 No 63 s 2

Section 8 **de facto partner**: repealed (without coming into force), on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

Section 8 **de facto relationship**: repealed (without coming into force), on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

Section 8 **lawyer**: substituted, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 8 **partner of a parent**: repealed (without coming into force), on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

Section 8 **Registrar-General**: amended, on 24 January 2009, by section 47 of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

Section 8 **spouse or partner of a parent**: added, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

## 9 De facto partner defined

*[Repealed]*

Section 9: repealed (without coming into force), on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

## 10 De facto relationship defined

*[Repealed]*

Section 10: repealed (without coming into force), on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

## 11 Application

This Act applies to—

- (a) children living at the commencement of this Act (*see* section 2); and
- (b) children born after that time.

Compare: 1968 No 63 s 37

## 12 Act binds the Crown

This Act binds the Crown.

### **13 Act a code**

- (1) Except as otherwise expressly provided in this Act, this Act has effect in place of the rules of the common law and of equity as to the guardianship and custody of children.
- (2) In matters not provided for by this Act, the High Court continues to have all the powers in respect of the persons of children that the High Court had immediately before the commencement, on 1 January 1970, of the Guardianship Act 1968.

Compare: 1968 No 63 s 33(1), (3)

### **14 Administration of children's property**

- (1) The welfare and best interests of the child must be the first and paramount consideration in proceedings relating to the administration of, or to the allocation of income from, property belonging to, or held in trust for, a child.
- (2) No person may be appointed as, or have any powers as, guardian of the property of a child, except under an order of the kind referred to in section 33(1) appointing as the agent of the court a named person or a person whom the court thinks fit.
- (3) However, nothing in this Act limits any powers of the High Court in relation to, or in relation to the administration of, any property held on trust (for example, the powers of the High Court under sections 64 and 64A of the Trustee Act 1956).
- (4) Nothing in this section limits section 6 (child's views).

Compare: 1968 No 63 ss 23(1), (3), 33(2)

## **Part 2**

### **Guardianship and care of children**

#### **Subpart 1—Guardianship: Responsibility for children, and decisions about children**

##### *Guardianship*

### **15 Guardianship defined**

For the purposes of this Act, **guardianship** of a child means having (and therefore a **guardian** of the child has), in relation to the child,—

- (a) all duties, powers, rights, and responsibilities that a parent of the child has in relation to the upbringing of the child:
- (b) every duty, power, right, and responsibility that is vested in the guardian of a child by any enactment:

- (c) every duty, power, right, and responsibility that, immediately before the commencement, on 1 January 1970, of the Guardianship Act 1968, was vested in a sole guardian of a child by an enactment or rule of law.

Compare: 1968 No 63 s 3; Family Law Act 1975 s 61B (Aust)

## **16 Exercise of guardianship**

- (1) The duties, powers, rights, and responsibilities of a guardian of a child include (without limitation) the guardian's—
  - (a) having the role of providing day-to-day care for the child (however, under section 26(5), no testamentary guardian of a child has that role just because of an appointment under section 26); and
  - (b) contributing to the child's intellectual, emotional, physical, social, cultural, and other personal development; and
  - (c) determining for or with the child, or helping the child to determine, questions about important matters affecting the child.
- (2) **Important matters affecting the child** include (without limitation)—
  - (a) the child's name (and any changes to it); and
  - (b) changes to the child's place of residence (including, without limitation, changes of that kind arising from travel by the child) that may affect the child's relationship with his or her parents and guardians; and
  - (c) medical treatment for the child (if that medical treatment is not routine in nature); and
  - (d) where, and how, the child is to be educated; and
  - (e) the child's culture, language, and religious denomination and practice.
- (3) A guardian of a child may exercise (or continue to exercise) the duties, powers, rights, and responsibilities of a guardian in relation to the child, whether or not the child lives with the guardian, unless a court order provides otherwise.
- (4) **Court order** means a court order made under any enactment; and includes, without limitation, a court order that is made under this Act and embodies some or all of the terms of an agreement to which section 40(2) or section 41(2) applies.
- (5) However, in exercising (or continuing to exercise) the duties, powers, rights, and responsibilities of a guardian in relation to a child, a guardian of the child must act jointly (in particular, by consulting wherever practicable with the aim of securing agreement) with any other guardians of the child.
- (6) Subsection (5) does not apply to the exclusive responsibility for the child's day-to-day living arrangements of a guardian exercising the role of providing day-to-day care.

Compare: 1968 No 63 s 3; Family Law Act 1975 s 61C (Aust)

*Guardianship based on parental status*

**17 Child's father and mother usually joint guardians**

- (1) The father and the mother of a child are guardians jointly of the child unless the child's mother is the sole guardian of the child because of subsection (2) or subsection (3).
- (2) If a child is conceived on or after the commencement of this Act, the child's mother is the sole guardian of the child if the mother was neither—
  - (a) married to, or in a civil union with, the father of the child at any time during the period beginning with the conception of the child and ending with the birth of the child; nor
  - (b) living with the father of the child as a de facto partner at any time during that period.
- (3) If a child is conceived before the commencement of this Act, the child's mother is the sole guardian of the child if the mother was neither—
  - (a) married to, or in a civil union with, the father of the child at any time during the period beginning with the conception of the child and ending with the birth of the child; nor
  - (b) living with the father of the child as a de facto partner at the time the child was born.
- (3A) For the purposes of subsections (2) and (3), the mother and father of a child may be in a de facto relationship even if—
  - (a) either parent is under 16; or
  - (b) either parent is aged 16 or 17 and consent for the relationship (as referred to in section 29A(2) of the Interpretation Act 1999) has not been given.
- (4) On the death of the father or the mother, the surviving parent, if he or she was then a guardian of the child, is the sole guardian of the child.
- (5) This section is subject to sections 18 to 34, and therefore does not limit or affect the appointment of 1 or more additional guardians (for example, an additional testamentary guardian of the child appointed by the deceased parent under section 26(2)) or an order (relating to guardianship of the court) under section 33(1).

Compare: 1968 No 63 s 6(1), (2), (4)

Section 17(2)(a): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

Section 17(3)(a): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

Section 17(3A): inserted, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

**18 Father identified on birth certificate is guardian**

- (1) A child's father who is not a guardian of the child just because of section 17(2) or (3) becomes a guardian of the child if his particulars are registered after the commencement of this section as part of the child's birth information because he and the child's mother both notified the birth as required by section 9 of the Births, Deaths, Marriages, and Relationships Registration Act 1995.
- (2) Subsection (1) does not change the guardianship status of a father who became a guardian before the commencement of this section.

Section 18: substituted, on 24 January 2009, by section 47 of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

**19 Father who was not mother's spouse, civil union partner, or de facto partner may apply to be appointed as guardian**

- (1) If, because of section 17(2) or (3), a child's mother is (or was at the time of her death) the sole guardian of the child, the child's father may apply to the court to be appointed as a guardian of the child.
- (2) The father may apply to be appointed—
  - (a) as a guardian of the child as well as the mother or a testamentary guardian appointed under section 26; or
  - (b) as a guardian of the child instead of the mother or a testamentary guardian appointed under section 26.
- (3) An application under subsection (2)(b) must include an application under section 29 for an order depriving the mother of the guardianship of her child or (as the case requires) removing the testamentary guardian from office.
- (4) In response to an application under subsection (2), the court—
  - (a) must appoint the father as a guardian of the child, unless to do so would be contrary to the child's welfare and best interests; and
  - (b) must determine any included application under section 29 in accordance with that section.

Compare: 1968 No 63 s 6(3)

Section 19 heading: amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

**20 Declaration that father is guardian because of section 17**

- (1) A man who alleges that he is a guardian of a child because of section 17 (other than because of an order under section 19) may apply to the court for an order declaring that the man is a guardian of the child because of section 17.
- (2) The court may make the order if satisfied that the man—
  - (a) is a guardian of a child because of section 17; and
  - (b) has not been deprived of his guardianship by an order under section 29.



- (3) The Declaratory Judgments Act 1908 applies, with all necessary modifications, to applications under subsection (1).

Compare: 1968 No 63 s 6A

*Appointment of eligible spouse or partner of a parent as additional guardian*

Heading: substituted, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

**21 Who may appoint additional guardian under section 23**

- (1) In this section, **appointment** means an appointment of an eligible spouse or partner of a parent as an additional guardian of a child under section 23.
- (2) If both parents of the child are guardians of the child, the appointment must be made by both of them.
- (3) If the mother of the child is the sole guardian of the child just because of section 17(2) or (3), the appointment must be made by the mother and the father of the child.
- (4) If a parent of the child is the sole guardian of the child because the other parent of the child is dead, or because of the application of Part 2 of the Status of Children Act 1969, the appointment must be made by the parent.
- (5) If, before dying, a parent of the child appointed a testamentary guardian of the child under section 26(1), and the other parent of the child is alive and is a guardian of the child jointly with the testamentary guardian, the appointment must be made by the surviving parent and the testamentary guardian.

Section 21(1): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

**22 Restrictions on making appointments under section 23**

- (1) No appointment of an additional guardian of a child may be made under section 23 if the child—
- (a) has a testamentary guardian appointed by the court under section 26(3); or
  - (b) has a court-appointed guardian because of an appointment under section 27; or
  - (c) is or has been involved in proceedings under Part 2 of the Children, Young Persons, and Their Families Act 1989; or
  - (d) is or has been an applicant for, or the subject of, a protection order under the Domestic Violence Act 1995.
- (2) No appointment of an additional guardian of a child may be made under section 23 if a parent authorised by section 21 to make the appointment—
- (a) has already appointed an additional guardian for the child under section 23; or

- (b) has been deprived of his or her guardianship by an order under section 29; or
  - (c) is or has been involved in proceedings concerning a child under this Act, a former Act corresponding to this Act, or Part 2 of the Children, Young Persons, and Their Families Act 1989; or
  - (d) is or has been a respondent or associated respondent in proceedings under the Domestic Violence Act 1995.
- (3) No appointment of an additional guardian of a child may be made under section 23 unless the child, or a parent of the child, is either a New Zealand citizen or a person who is ordinarily resident in New Zealand.
- (4) No appointment of an additional guardian of a child may be made under section 23 if any of the statutory declarations required by section 23(5) cannot be made in the affirmative.
- (5) An appointment of an additional guardian under section 23 is void if the proposed additional guardian is disqualified under section 23(2)(d), even though the relevant statutory declarations under section 24(d)(i) were all made in the affirmative.

### **23 Appointment of eligible spouse or partner of parent as additional guardian**

- (1) An eligible spouse or partner of a parent may be appointed as an additional guardian of a child under this section by the following person or persons, but only if that person is, or those persons are, authorised by section 21 to make the appointment:
- (a) both parents of the child:
  - (b) a parent of the child:
  - (c) a parent of the child and a guardian of the child.
- (2) A spouse or partner of a parent is an **eligible spouse or partner of a parent** in relation to a parent of a child and an appointment under this section only if the parent is making the appointment (either alone, or with the other parent, or a guardian, of the child) and the spouse or partner—
- (a) shares responsibility for the child's day-to-day care, and has done so for not less than 1 year; and
  - (b) is not, and has never been, involved in proceedings concerning a child under this Act, a former Act corresponding to this Act, or Part 2 of the Children, Young Persons, and Their Families Act 1989; and
  - (c) is not, and has never been, either a respondent or an associated respondent in proceedings under the Domestic Violence Act 1995; and
  - (d) has never been convicted of an offence involving harm to a child, including (without limitation),—

- (i) an offence involving violence (that is, physical abuse or sexual abuse), ill-treatment, abuse, neglect, or deprivation in relation to a child; or
  - (ii) an offence against the Films, Videos, and Publications Classification Act 1993 involving a child pornography publication.
- (3) **Child pornography publication** means a publication that is objectionable (as those terms are defined in section 2 of the Films, Videos, and Publications Classification Act 1993)—
  - (a) because it promotes or supports, or tends to promote or support, the exploitation of children, or young persons, or both, for sexual purposes; or
  - (b) because of the extent and degree to which, and the manner in which, it—
    - (i) describes, depicts, or otherwise deals with sexual conduct with or by children, or young persons, or both; or
    - (ii) exploits the nudity of children, or young persons, or both.
- (4) The appointment may be made only if each person making the appointment and the proposed additional guardian—
  - (a) has taken all reasonable steps to ascertain and consider any views on the appointment expressed by the child; and
  - (b) agrees to the appointment in writing.
- (5) The appointment must be in the prescribed form (which must include the agreements in writing referred to in subsection (4)(b)), and must be accompanied by—
  - (a) the declarations specified in section 24; and
  - (b) the proposed additional guardian's criminal record.
- (6) **Criminal record** means a document giving all details recorded in law enforcement information held by or on behalf of the Ministry of Justice of every criminal conviction (if any) of the proposed additional guardian (whether a conviction in New Zealand or overseas).
- (7) If the proposed additional guardian is an eligible individual (as defined in section 4 of the Criminal Records (Clean Slate) Act 2004), then for the purposes of section 19(3)(e) of that Act (exceptions to general effect of clean slate scheme) the appointment is an application the proposed additional guardian has made to act in a role predominantly involving the care and protection of, but not predominantly involving the delivery of education to, the child.

Section 23 heading: amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

Section 23(1): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

Section 23(2): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

**24 Declarations required by section 23(5)(a)**

The declarations required by section 23(5)(a) are statutory declarations by every person making the appointment and by the proposed additional guardian declaring—

- (a) whether, in his or her opinion, the appointment is conducive to the welfare and best interests of the child; and
- (b) whether, in his or her opinion, he or she has taken all reasonable steps to ascertain and consider any views expressed on it by the child; and
- (c) (for a person making the appointment only) that he or she has seen the criminal record referred to in section 23(5)(b); and
- (d) that, to the best of his or her knowledge,—
  - (i) the proposed additional guardian has never been convicted of an offence of the kind referred to in section 23(2)(d), and
  - (ii) there is no other reason why the proposed additional guardian is not an eligible spouse or partner of a parent (as defined in section 23(2)) in relation to the child.

Section 24(d)(ii): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

**25 Appointments under section 23 take effect on approval**

- (1) An appointment under section 23 takes effect only on the Registrar of a Family Court approving the form and declarations referred to in section 23(5).
- (2) The Registrar must not approve those documents unless, having made all reasonable inquiries, he or she is satisfied—
  - (a) that the form and declarations are accompanied by the proposed additional guardian's criminal record (as required by section 23(5)), and have been properly completed and appear to be in order; and
  - (b) in particular, that the Family Court case-management system appears to hold no information that, in the light of section 22 or section 23, would prevent the appointment.
- (3) Nothing in this section requires the Registrar to inquire into details of a conviction in the proposed additional guardian's criminal record.
- (4) **Family Court case-management system** means the system for the time being used by the Ministry of Justice to manage, maintain, and access Family Court case records.

*Testamentary guardians and court-appointed guardians*

**26 Testamentary guardians**

- (1) The parent of a child may by deed or will (executed before or after the child's birth) appoint a person to be a testamentary guardian of the child after the parent's death.
- (2) If, at the time of his or her death, the parent appointing a guardian under subsection (1) is a guardian of the child, the testamentary guardian is from that time, if he or she is 20 years of age or older, either sole guardian or a guardian in addition to any other guardian, as the case may be.
- (3) If, at the time of his or her death, the parent appointing a guardian under subsection (1) is not a guardian of the child, the testamentary guardian may apply to the court, and the court may, if it thinks fit, appoint him or her as a guardian accordingly.
- (4) Despite any enactment or rule of law, a person under the age of 18 years may make an appointment under subsection (1).
- (5) Despite section 16(1), no testamentary guardian of a child has, just because of an appointment under this section, the role of providing day-to-day care for the child.

Compare: 1968 No 63 ss 3, 7

**27 Court-appointed guardians**

- (1) The court may appoint a person as a guardian of a child, either in addition to any other guardian or as sole guardian, either—
  - (a) on an application for the purpose by any person; or
  - (b) on its own initiative, on making an order removing a guardian under section 29.
- (2) The court may appoint the person as a guardian of the child—
  - (a) either for a specific purpose or generally; and
  - (b) either for a specified period or not.
- (3) However, only the High Court may appoint or remove a litigation guardian for proceedings before the High Court or a court higher than that court, but the High Court may also appoint or remove a litigation guardian for proceedings that are not before the High Court or a court higher than that court.

Compare: 1968 No 63 s 8

*Termination of guardianship*

**28 Time at which guardianship ends**

- (1) The duties, powers, rights, and responsibilities of a guardian of a child end when the first of the following events occurs:

- (a) the child turns 18 years:
  - (b) the child marries or enters into a civil union:
  - (c) the child lives with another person as a de facto partner:
  - (d) the guardian is removed by an order under section 29:
  - (e) if the guardian was appointed under section 27(2) for a specific period or a specific purpose, the period expires or the purpose is achieved.
- (2) However, nothing in this section affects the appointment of, or the High Court's powers in respect of, a litigation guardian.

Compare: 1968 No 63 ss 8(1), 21

Section 28(1)(b): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

## 29 Court may remove guardians

- (1) On an application for the purpose by an eligible person, the court may make—
- (a) an order depriving a parent of the guardianship of his or her child; or
  - (b) an order removing from office a testamentary guardian or court-appointed guardian; or
  - (c) an order revoking an appointment of an additional guardian made under section 23.
- (2) In this section, **eligible person**, in relation to a child, means any of the following persons:
- (a) a parent of the child:
  - (b) a guardian of the child:
  - (c) a grandparent or an aunt or an uncle of the child:
  - (d) a sibling (including a half-sibling) of the child:
  - (e) a spouse or partner of a parent of the child:
  - (f) any other person granted leave to apply by the court.
- (3) An order under subsection (1)(a) (that is, an order depriving a parent of the guardianship of his or her child) must not be made unless the court is satisfied—
- (a) that the parent is unwilling to perform or exercise the duties, powers, rights, and responsibilities of a guardian, or that the parent is for some grave reason unfit to be a guardian of the child; and
  - (b) that the order will serve the welfare and best interests of the child.
- (4) An order under subsection (1)(b) or (c) must not be made unless the court is satisfied that the order will serve the welfare and best interests of the child.
- (5) On making an order under subsection (1), the court may also make on its own initiative an order under section 27.

Compare: 1968 No 63 s 10

Section 29(2)(e): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

### *Guardianship of court*

#### **30 Concurrent jurisdiction under section 31**

- (1) The following courts have jurisdiction under section 31:
  - (a) the High Court;
  - (b) each Family Court.
- (2) A Family Court does not have jurisdiction under section 31 if—
  - (a) the application is filed in the Family Court; and
  - (b) at the date of filing, proceedings relating to the same matter have commenced in the High Court.
- (3) The High Court may order proceedings to be removed to a Family Court if—
  - (a) an application is made under section 31 to the High Court; and
  - (b) the High Court is satisfied that the proceedings would be more appropriately dealt with in a Family Court.
- (4) The High Court must order proceedings to be removed to the High Court if—
  - (a) an application is made under section 31 to a Family Court; and
  - (b) a party to the proceedings applies to the High Court to have the proceedings removed to the High Court; and
  - (c) the High Court is satisfied that the proceedings would be more appropriately dealt with in the High Court.
- (5) Proceedings removed to the High Court continue in that court as if they had been properly commenced there.

Compare: 1968 No 63 s 10A

#### **31 Application to court**

- (1) An eligible person may make an application to a court with jurisdiction under this section for—
  - (a) an order placing under the guardianship of the court a child who is not married, in a civil union, or in a de facto relationship;
  - (b) an order appointing a named person to be the agent of the court either generally or for any particular purpose.
- (2) In this section, **eligible person**, in relation to a child, means any of the following persons:
  - (a) a parent or guardian of the child;
  - (b) a grandparent or an aunt or an uncle of the child;
  - (c) a sibling (including a half-sibling) of the child;

- (d) a spouse or partner of a parent of the child;
- (e) the child himself or herself (who may apply without any litigation guardian);
- (f) the chief executive;
- (g) any other person granted leave to apply by the court.

Compare: 1968 No 63 s 10B

Section 31(1)(a): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

Section 31(2)(d): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

### **32 Notice to be given to chief executive in certain cases before Family Court**

- (1) This section applies when—
  - (a) an application is—
    - (i) made under section 31 to a Family Court; or
    - (ii) removed under section 30(3) to a Family Court; and
  - (b) neither section 30(2) nor section 30(4) applies to the application; and
  - (c) any of the following applies:
    - (i) the application seeks an order appointing the chief executive to be the agent of the court, either generally or for a particular purpose, in respect of the child who is the subject of the application; or
    - (ii) the application does not seek an order of the kind described in subparagraph (i), but the court considers, at any stage of the proceedings, that it is likely to make such an order; or
    - (iii) the child who is the subject of the application is in the custody or under the guardianship or in the care of the chief executive or any other person under the Children, Young Persons, and Their Families Act 1989; or
    - (iv) a warrant in respect of the child who is the subject of the application has been issued under any of sections 39, 40, 122, 157(2), 205(2)(b), and 386 of that Act.
- (2) When this section applies,—
  - (a) the court must give notice of the application to the chief executive; and
  - (b) on receipt of the notice, the chief executive is entitled to appear and be heard on the application.
- (3) Subsection (2) does not apply if the court considers that the delay that would be caused by giving notice would or might entail serious injury or undue hardship to the child.
- (4) If this section applies and the court makes an interim order without giving notice to the chief executive,—



- (a) the court must give notice of the application and the interim order to the chief executive; and
- (b) on receipt of the notice, the chief executive is entitled to appear and be heard on the matters of the application and the interim order.

Compare: 1968 No 63 s 10C

### **33 Orders of court**

- (1) A court to which an application is made under section 31 may—
  - (a) make an order described in section 31(1)(a); or
  - (b) make orders described in section 31(1)(a) and (b); or
  - (c) make—
    - (i) an order described in section 31(1)(a); and
    - (ii) an order appointing any person whom the court thinks fit to be the agent of the court either generally or for any particular purpose.
- (2) An order under subsection (1) in respect of a child ceases to have effect when the first of the following events occurs:
  - (a) the court orders that the order ceases to have effect; or
  - (b) the child turns 18 years; or
  - (c) the child marries or enters into a civil union; or
  - (d) the child lives with another person as a de facto partner.

Compare: 1968 No 63 s 10D

Section 33(2)(c): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

### **34 Powers of court**

- (1) A court to which an application is made under section 31 has the rights and powers specified in subsection (2)—
  - (a) between the making of the application for an order and its disposal; and
  - (b) while an order is in force.
- (2) The court has the same rights and powers in respect of the person and property of the child as the High Court had in relation to wards of court immediately before the commencement, on 1 January 1970, of the Guardianship Act 1968, except that the court may not—
  - (a) direct any child who is of or over the age of 16 years to live with any person unless the circumstances are exceptional; or
  - (b) commit for contempt of court a child or the child's spouse for marrying without the court's consent while the child is under the guardianship of the court.
- (3) The High Court has all the powers of a Family Court in relation to who has the role of providing day-to-day care for, or contact with, a child who is the subject

of an application under section 31 or an order under section 33. An order of the High Court about providing day-to-day care for, or contact with, any child of that kind may be enforced under this Act as if it were an order of a Family Court.

Compare: 1968 No 63 s 10E

### **35 Further provisions relating to powers of court**

- (1) This section applies to a court if it is a Family Court or the High Court hearing or otherwise dealing with proceedings under section 31.
- (2) The court may, before or by or after the principal order, make any interim or final order it thinks fit about the role of providing day-to-day care for, or about contact with, or about the upbringing of, a child who is the subject of the proceedings.
- (3) Section 50 applies with all necessary modifications to an order under subsection (2), and an order of that kind may be subject to any terms or conditions the court thinks fit.
- (4) The court may, if in all the circumstances it thinks it appropriate to do so, make an order vesting the sole guardianship of the child in 1 of the parents, or make any other order with respect to the guardianship of the child that it thinks fit. However, if the court makes no order with respect to the guardianship of the child, every person who was a guardian of the child continues to be a guardian of the child.
- (5) An order may be made under this section, and an order made under this section may be varied or discharged, even though the court has refused to make the principal order or to give any other relief sought.

Compare: 1968 No 63 s 12(1), (2)–(5)

### *Consent to medical procedures*

### **36 Consent to procedures generally**

- (1) A consent, or refusal to consent, to any of the following, if given by a child of or over the age of 16 years, has effect as if the child were of full age:
  - (a) any donation of blood by the child;
  - (b) any medical, surgical, or dental treatment or procedure (including a blood transfusion, which, in this section, has the meaning given to it by section 37(1)) to be carried out on the child for the child's benefit by a person professionally qualified to carry it out.
- (2) A child's consent, or refusal to consent, to any donation of blood, or to any medical, surgical, or dental treatment or procedure (including a blood transfusion), whether to be carried out on the child or on any other person, has the same effect as if the child were of full age if the child is or has been—
  - (a) married or in a civil union; or

- (b) living with another person as a de facto partner.
- (3) If the consent of any other person to any medical, surgical, or dental treatment or procedure (including a blood transfusion) to be carried out on a child is necessary or sufficient, consent may be given—
  - (a) by a guardian of the child; or
  - (b) if there is no guardian in New Zealand or no guardian of that kind can be found with reasonable diligence or is capable of giving consent, by a person in New Zealand who has been acting in the place of a parent; or
  - (c) if there is no person in New Zealand who has been so acting, or if no person of that kind can be found with reasonable diligence or is capable of giving consent, by a District Court Judge or the chief executive.
- (4) If a child has been lawfully placed for the purpose of adoption in the home of any person, then, for the purposes of subsection (3), that person must be treated as a guardian of the child.
- (5) Nothing in this section affects an enactment or rule of law by or under which, in any circumstances,—
  - (a) no consent or no express consent is necessary; or
  - (b) the consent of the child in addition to that of any other person is necessary; or
  - (c) subject to subsection (2), the consent of any other person instead of the consent of the child is sufficient.
- (6) Except to the extent that this section enables a blood transfusion to be administered to a child without the consent of any other person, nothing in this section affects section 37.
- (7) Subsection (1) is subject to subsection (6).

Compare: 1968 No 63 s 25

Section 36(2)(a): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

### **37 Immunity of health practitioners administering certain blood transfusions without consent**

- (1) In this section and section 36,—
  - blood transfusion**, or **transfusion**, means the injection of whole human blood, or any constituent part or parts of it, into the bloodstream of a person
  - health practitioner** has the meaning given to it by section 5(1) of the Health Practitioners Competence Assurance Act 2003.
- (2) Except by leave of a Judge of the High Court, no civil, criminal, or disciplinary proceedings may be brought against a person in respect of the administration by a health practitioner of any blood transfusion to a person under the age of 18

years (in this section called the **patient**) by reason of the lack of consent of a person whose consent is required by law.

- (3) The Judge must not grant leave if the Judge is satisfied—
  - (a) that the transfusion was, in the opinion of the health practitioner who administered it, necessary to save the life of the patient or to prevent permanent injury to the patient's physical or mental health, or to save the patient from prolonged and avoidable pain and suffering, and that the opinion of the health practitioner was reasonable; and
  - (b) that—
    - (i) reasonable attempts were made to obtain the consent of the person appearing to be legally entitled to consent to the transfusion; or
    - (ii) the circumstances were such that it was necessary to administer the transfusion promptly and it was impracticable, in the time available, to attempt to obtain the consent of the person appearing to be legally entitled to consent; and
  - (c) that in all the circumstances it was reasonable to administer the transfusion.
- (4) In considering the reasonableness of the opinion of the health practitioner referred to in subsection (3)(a), the Judge must take into account the following:
  - (a) the condition of the patient before the transfusion:
  - (b) the circumstances in which it was administered:
  - (c) whether, in the circumstances, it was reasonably practicable for the health practitioner to consult any other health practitioner before administering the transfusion:
  - (d) any opinion given by any health practitioner who was so consulted:
  - (e) all other circumstances the Judge considers relevant.
- (5) Nothing in this section affects any enactment or rule of law relating, in respect of the performance of any operation,—
  - (a) to the protection of any person from any civil, criminal, or disciplinary liability; or
  - (b) to any matter of justification or excuse.

Compare: 1956 No 65 s 126B

### **38 Consent to abortion**

- (1) If given by a female child (of whatever age), the following have the same effect as if she were of full age:
  - (a) a consent to the carrying out on her of any medical or surgical procedure for the purpose of terminating her pregnancy by a person professionally qualified to carry it out; and

- (b) a refusal to consent to the carrying out on her of any procedure of that kind.
- (2) This section overrides section 36.  
Compare: 1968 No 63 s 25A

## Subpart 2—Care of children: Making arrangements and resolving disputes

### *Making arrangements*

#### **39 Purpose of sections 40 to 43**

The purpose of sections 40 to 43 is to encourage parents, guardians, and donors to agree to their own arrangements for the child's care, development, and upbringing.

#### **40 Agreements between parents and guardians**

- (1) A party to an agreement to which subsection (2) applies—
  - (a) may request counselling in respect of a dispute relating to the agreement, under section 65(1); and
  - (b) may seek to have terms of the agreement embodied in an order of the court that may be enforced, as provided in subsections (3) and (4).
- (2) This subsection applies to an agreement between parents or guardians of a child so far as it relates to when 1 or more specified persons have the role of providing day-to-day care for the child or have contact with the child, or to the upbringing of the child, or to any combination of those matters.
- (3) An agreement to which subsection (2) applies cannot be enforced under this Act, but some or all of the terms of the agreement may be embodied in an order of the court if, under 1 or more provisions of this Act other than this section (for example, under section 48(1)),—
  - (a) some or all of the parties to the agreement may apply for the order; and
  - (b) the order may be made by the court.
- (4) The order may be enforced under this Act in the same way as an order that does not embody terms of an agreement to which subsection (2) applies.

Compare: 1968 No 63 s 18

#### **41 Agreements between parents and donors**

- (1) A party to an agreement to which subsection (2) applies—
  - (a) may seek to have terms of the agreement embodied in an order of the court that may be enforced, as provided in subsections (3) and (4); and
  - (b) may apply to the court for its direction on certain matters that cannot be agreed with other parties to the agreement, as provided in subsections (5) and (6).

- (2) This subsection applies to an agreement between the parents of a child and a donor or donors so far as it relates to contact between the donor or donors and the child, or to the role of the donor or donors in the upbringing of the child, or to both.
- (3) An agreement to which subsection (2) applies cannot be enforced under this Act, but, on an application for the purpose by a party to it, the court may, with the consent of all parties to it, make an order of the court that embodies some or all of the terms of the agreement.
- (4) An order under subsection (3) may, so far as it relates to contact with the child, be enforced under this Act as if it were a parenting order relating to contact.
- (5) Any of the parties to an agreement to which subsection (2) applies may apply to the court for its direction if those parties are unable to agree on a matter—
  - (a) concerning the role of the donor or donors in the upbringing of the child; and
  - (b) that is the subject of terms of the agreement embodied in an order under subsection (3).
- (6) On an application under subsection (5), the court may make any order relating to the matter that it thinks proper.

Compare: 1968 No 63 s 18; 1980 No 94 s 15

#### 42 **Definitions for section 41**

In this section and section 41,—

**AHR procedure** has the same meaning as in section 14(1) of the Status of Children Act 1969

**child** means a child conceived, or proposed to be conceived, as a result of an AHR procedure

**donor**,—

- (a) in relation to a child conceived as a result of an AHR procedure, means a donor of semen, or of an ovum, or of an ovum from which was derived an embryo, that was used in the procedure; and
- (b) in relation to a child proposed to be conceived as a result of an AHR procedure,—
  - (i) means a donor of semen, or of an ovum, or of an ovum from which was derived an embryo, that is to be used in the procedure; and
  - (ii) includes a person who intends to be a donor of that kind; but
- (c) does not include a person who has adopted, or intends to adopt, the child (whenever the adoption or intention to adopt occurs)

**parents**,—

- (a) in relation to a child conceived as a result of an AHR procedure, means every person who is a parent of the child when the child is conceived as a result of the procedure; and
- (b) in relation to a child proposed to be conceived as a result of an AHR procedure, means every person who will be a parent of the child if and when the child is conceived as a result of the procedure; but
- (c) does not include a person who has adopted, or intends to adopt, the child (whenever the adoption or intention to adopt occurs).

Section 42: amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

#### **43 Agreements may be entered into by minors**

Sections 40(2) and 41(2) apply to an agreement even though some or all of the parties to it are minors.

Compare: 1976 No 166 s 21I(1)

### *Resolving disputes*

#### **44 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—
  - (a) request counselling in respect of their dispute under section 65(2); or
  - (b) apply to the court for its direction.
- (2) Subsection (1)(a) does not limit section 45 (which relates to counselling between certain spouses, civil union partners, or de facto partners).
- (3) On an application under subsection (1)(b), the court may make any order relating to the matter that it thinks proper.
- (4) If, 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, the High Court has exclusive jurisdiction to settle disputes, unless the order has been removed into a Family Court under section 127.

Compare: 1968 No 63 s 13(1), (3)

Section 44(2): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

#### **45 Family Proceedings Act 1980 dispute resolution provisions apply to certain proceedings**

- (1) This subsection applies to proceedings resulting from a spouse, civil union partner, or de facto partner applying for an order under this Act relating to the role of providing day-to-day care for a child of the marriage, civil union, or de facto relationship, or contact with a child of that kind, or both of those matters.

- (2) The following sections of the Family Proceedings Act 1980 apply to proceedings to which subsection (1) applies:
- (a) section 10(4) and (5) (under which a Family Court Judge may refer the matter to a counsellor, in which case a Family Court hearing generally does not proceed unless either spouse, civil union partner, or de facto partner, not less than 28 days after the date of the reference, requests that the hearing should proceed); and
  - (b) section 19(1) (which, among other things, requires the court to consider the possibility of a reconciliation between the spouses, civil union partners, or de facto partners, or of conciliation between them on any matter in issue).

Section 45(1): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

Section 45(2)(a): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

Section 45(2)(b): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

#### **46 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.

Compare: 1968 No 63 s 14

Section 46(3): substituted, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

#### *Consent to certain decisions*

Heading: inserted, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

#### **46A Consent for de facto relationship**

- (1) A child aged 16 or 17 who wishes to obtain consent for his or her de facto relationship must obtain the express written consent of each of his or her guardians to living together as a couple with the other party to the relationship.



- (2) If the consent of a guardian cannot be obtained (whether because the guardian refuses to give consent, or cannot be found, or is unable to give consent as a result of incapacity), the child may apply to the court for consent.
- (3) A Family Court Judge may make an order giving consent for the de facto relationship of a child aged 16 or 17.
- (4) A consent given by a Family Court Judge under this section has the same effect as if it had been given by all of the child's guardians.

Section 46A: inserted, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

#### **46B Consent where child has no guardian**

- (1) This section applies to a child who does not have a guardian because guardianship of the child has ended under section 28(1).
- (2) If an enactment requires that the child obtains the consent of 1 or more guardians for a particular purpose, the child may—
  - (a) seek the consent from his or her former guardians; or
  - (b) apply to the court for the consent.
- (3) When an application is made under subsection (2)(b), a Family Court Judge may, if he or she considers that giving the consent is reasonable in all the circumstances, give the consent required.
- (4) A consent given to a child for a purpose referred to in subsection (2), either by the child's former guardians or by a Family Court Judge under subsection (3), has the same effect as if it had been given by all the people whose consent was required for that purpose.

Section 46B: inserted, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

### *Parenting orders*

#### **47 Who may apply for parenting order**

- (1) In section 48(1), **eligible person**, in relation to a child, means any of the following persons:
  - (a) a parent of the child;
  - (b) a guardian of the child;
  - (c) a spouse or partner of a parent of the child;
  - (d) any other person who is a member of the child's family, whānau, or other culturally recognised family group, and who is granted leave to apply by the court;
  - (e) any other person granted leave to apply by the court.
- (2) However, if a parent of a child has died or has been refused contact with the child by a court, or if a parent entitled to have contact with a child is making no

attempt to have that contact, then each of the following persons is, for the purposes of an application for an order under section 48(1) determining who may have contact with the child, also an **eligible person** in relation to the child:

- (a) the parents of that parent of the child; and
- (b) a sibling of that parent of the child; and
- (c) a sibling of the child.

Compare: 1968 No 63 ss 11(1), 15(1), 16(1)

Section 47(1)(c): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

#### **48 Parenting orders**

- (1) On an application made to it for the purpose by an eligible person, the court may make a parenting order determining the time or times when specified persons have the role of providing day-to-day care for, or may have contact with, the child.
- (2) A parenting order determining that a person has the role of providing day-to-day care for the child may specify that the person has that role—
  - (a) at all times or at specified times; and
  - (b) either alone or jointly with 1 or more other persons.
- (3) A parenting order determining that a person may have contact with the child may specify any of the following:
  - (a) the nature of that contact (for example, whether it is direct (that is, face to face) contact or some form of indirect contact (for example, contact by way of letters, telephone calls, or email));
  - (b) the duration and timing of that contact;
  - (c) any arrangements that are necessary or desirable to facilitate that contact.
- (4) A parenting order may be a final order or it may be an interim order that has effect until a specified date or event or until the court orders otherwise.
- (5) A parenting order may also be subject to any other terms or conditions (including, without limitation, a condition requiring a party to enter into a bond) the court determines.
- (6) This section is subject to sections 50 to 52 and 60.

Compare: 1968 No 63 ss 11, 15, 16

#### **49 Applications to include statement on others' involvement**

An application for a parenting order 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.

**50 Parenting orders in respect of children of or over 16 years**

- (1) A parenting order determining the person or persons who have the role of providing day-to-day care for a child of or over the age of 16 years must not be made unless there are special circumstances.
- (2) An order in respect of a child under the age of 16 years expires, so far as it relates to providing day-to-day care for the child, when the child attains that age unless the court in special circumstances orders otherwise on or after making the order.
- (3) Nothing in this section applies in respect of children who are under the guardianship of the court, or affects the power of the court to make orders in respect of the upbringing of a child, or to appoint or remove guardians.

Compare: 1968 No 63 s 24

**51 Court must consider protective conditions in certain cases**

- (1) This section applies to a parenting order when—
  - (a) the order provides for a person (**person A**) to have contact with a child; and
  - (b) the court is satisfied that person A has used violence (as defined in section 58) against the child or a person (**person B**) who has the role of providing day-to-day care for the child.
- (2) The court must consider whether the order should be subject to conditions imposed for the purpose of protecting the safety of person B while person A's contact with the child takes place (including while the child is being collected from, or returned to, person B).
- (3) This section does not limit section 48(4) or (5) or section 60.

Compare: 1968 No 63 s 15(2B)

**52 Court must consider contact arrangements in certain cases**

If a court proposes to make a parenting order that does not give a parent the role of providing day-to-day care for a child, the court must consider whether and how the order can and should provide for that parent to have contact with the child.

**53 Orders in proceedings under Family Proceedings Act 1980**

- (1) This section applies to a court if it is a Family Court hearing or otherwise dealing with proceedings under the Family Proceedings Act 1980 for a separation order, an order declaring a marriage or civil union to be void *ab initio*, or an order dissolving a marriage or civil union.
- (2) The court may, before or by or after the principal order, make any interim or final order it thinks fit about the role of providing day-to-day care for, or about contact with, or about the upbringing of, a child of the marriage or a child of the civil union (as defined in section 2 of the Family Proceedings Act 1980).

- (3) Section 50 applies with all necessary modifications to an order under subsection (2), and an order of that kind may be subject to any terms or conditions the court thinks fit.
- (4) The court may, if in all the circumstances it thinks it appropriate to do so, make an order vesting the sole guardianship of the child in 1 of the parents, or make any other order with respect to the guardianship of the child that it thinks fit. However, if the court makes no order with respect to the guardianship of the child, every person who was a guardian of the child continues to be a guardian of the child.
- (5) Despite subsection (4), an order depriving a parent of the guardianship of his or her child may be made under that subsection only if the court is satisfied of the matters stated in section 29(3)(a) and (b).
- (6) An order may be made under this section, and an order made under this section may be varied or discharged, even though the court has refused to make the principal order or to give any other relief sought.

Compare: 1968 No 63 s 12(1), (2)–(5), (6)(b)

Section 53(1): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

Section 53(2): amended, on 1 July 2005, by section 3 Care of Children Amendment Act 2005 (2005 No 5).

#### **54 Orders in proceedings under Domestic Violence Act 1995**

- (1) A Family Court hearing or otherwise dealing with proceedings under the Domestic Violence Act 1995 for a protection order may make any 1 or more of the following orders if it considers the order or orders necessary to protect the welfare and best interests of the child concerned:
  - (a) any interim order or orders about the role of providing day-to-day care for, or about contact with, a child of the applicant's family (as defined in section 2 of the Domestic Violence Act 1995):
  - (b) any interim order or orders varying any order of the kind referred to in paragraph (a).

- (2) Section 50 applies with all necessary modifications to an order under subsection (1).

Compare: 1968 No 63 s 12(1A), (6)(a)

#### **55 Content and explanation of parenting orders**

- (1) An order under section 48(1)—
  - (a) must contain an explanation, based on the precise terms of the particular order, of—
    - (i) the effect of the order (for example, of the obligations the order creates); and

- (ii) any processes for the monitoring and review of the order, and the means by which the order can be varied or discharged; and
    - (iii) the consequences that may follow if the order is not complied with; and
  - (b) without limiting paragraph (a), must be accompanied by general information, in the prescribed form, about the matters stated in paragraph (a)(i) to (iii).
- (2) A lawyer acting for, or other person representing, a party to an order under section 48(1) must explain to the party the effect of the order.
  - (3) Explanations required by subsections (1)(a) and (2) must be given in a manner and in language that the recipients of those explanations understand.
  - (4) A lawyer acting for, or other person representing, a child, must take all reasonable steps to ensure that the effect of an order under section 48(1) is explained to the child, to an extent and in a manner and in language that the child understands.
  - (5) A failure to comply with a requirement imposed by this section does not affect the validity of the order concerned.

Compare: 1989 No 24 s 10; 1995 No 86 s 87

## **56 Variation or discharge of parenting and other orders**

- (1) On an application for the purpose by an eligible person, the court may vary or discharge any of the following:
  - (a) a parenting order (whether the order is about the person or persons who have the role of providing day-to-day care for a child, or about contact with the child, or about both of those matters):
  - (b) any other order about the role of providing day-to-day care for, or about contact with, a child:
  - (c) an order about the upbringing of a child.
- (2) On an application for the purpose by an eligible person, the court may vary or discharge an order vesting the guardianship of a child in 1 parent or in any other person or persons. If the order is discharged, and no other order with respect to the guardianship of the child is made, guardianship vests in the person or persons (if any) who would be the guardian or guardians if the order discharged had not been made.
- (3) In this section, **eligible person**, in relation to an order relating to a child, means any of the following persons:
  - (a) a person affected by the order:
  - (b) a person acting on behalf of the child.

- (4) Subsections (1) and (2) apply to orders of the kind referred to in those subsections whether or not the orders were made after the commencement of this Act, but nothing in those subsections applies to—
- (a) any order under the Children, Young Persons, and Their Families Act 1989; or
  - (b) any interim order or adoption order under the Adoption Act 1955.
- (5) Subsection (2) does not limit section 29.
- Compare: 1968 No 63 s 17

### **57 Procedure if child's parents are parties to interim order**

- (1) If the parents of a child are parties to an interim order and, under the order, each of them has either the role of providing day-to-day care for, or contact with, the child,—
- (a) the order ceases to have effect (if it has not ceased to have effect sooner) on the following date:
    - (i) the date that is 1 year after the day on which the order is made (the **specified date**); or
    - (ii) a later date the court appoints, before or after the specified date, on an application for the purpose under this subsection before the specified date; and
  - (b) the parents must take all reasonable steps to obtain a final order as soon as practicable.
- (2) In making an order as to costs, the court may have regard to a failure to comply with subsection (1)(b); but nothing in this subsection limits the court's powers under section 142.
- (3) The court must, as soon as practicable, assign a date that is within the next 3 months as the date for a hearing on whether a final order should be substituted for the interim order if—
- (a) an interim order is made on an application with notice or an application without notice; and
  - (b) the parents of a child are parties to the order and, under it, one of them (**parent A**) has neither the role of providing day-to-day care for, nor contact with, the child.
- (4) However, if the interim order referred to in subsection (3)(a) was made on an application without notice, parent A may notify the court that he or she wishes to be heard on whether a final order should be substituted for that interim order and, if he or she does so, the Registrar of the court must, as soon as practicable, assign a hearing date that is—
- (a) as soon as practicable; and

- (b) unless there are special circumstances, within 42 days after parent A's notice is received by the court.
  - (5) In this section, **interim order** means—
    - (a) an interim parenting order under section 48(1); or
    - (b) an interim order under section 53(2) or section 54(1).
- Compare: 1995 No 86 s 76(1), (3)

### *Cases involving violence*

## **58 Interpretation**

In this section and sections 59 to 62, unless the context otherwise requires,—

**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

**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 commencement of the proceedings

**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)

**violence** means physical abuse or sexual abuse.

Compare: 1968 No 63 s 16A

Section 58 **approved provider**: substituted, on 18 May 2009, by section 9 of the Care of Children Amendment Act 2008 (2008 No 74).

## **59 Allegations of violence made in proceedings relating to parenting orders**

- (1) Section 60 applies to proceedings—
  - (a) relating to an application under this Act for any of the following:

- (i) an order about the person or persons who have the role of providing day-to-day care for a child;
    - (ii) an order about contact with a child;
    - (iii) the variation or discharge of, or of any condition of, an order in subparagraph (i) or subparagraph (ii); and
  - (b) in which an allegation is made that a party to the proceedings has used violence—
    - (i) against the child or a child of the family; or
    - (ii) against the other party to the proceedings.
- (2) Section 60 applies to proceedings specified in subsection (1) whether or not those proceedings also relate to any other matter (whether arising under this Act or any other enactment).
- Compare: 1968 No 63 s 16B(1), (2)

#### **60 Procedure for dealing with proceedings in section 59(1)**

- (1) In proceedings to which this section applies in accordance with section 59 (the **proceedings**), the court must, as soon as practicable,—
- (a) consider whether to appoint a lawyer to act for the child under section 7(1); and
  - (b) 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.
- (2) Nothing in subsection (1) requires the court to make any inquiries on its own initiative in order to make a determination on the allegation.
- (3) If the court is satisfied that a party to the proceedings (the **violent party**) has used violence against the child or a child of the family, or against the other party to the proceedings, then, unless subsection (4) applies, the court must not make—
- (a) an order giving the violent party the role of providing day-to-day care for the child to whom the proceedings relate; or
  - (b) any order allowing the violent party contact (other than supervised contact) with that child.
- (4) In the situation in subsection (3), the court may make an order in subsection (3)(a) or (b) if, after complying with section 61, the court is satisfied that the child will be safe while the violent party—
- (a) provides day-to-day care for the child; or (as the case may be)
  - (b) has contact with the child.
- (5) If, in the situation in subsection (3), the court is not satisfied as provided in subsection (4), it may make an order for supervised contact between the child



and the violent party, 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).
- (6) Despite subsection (1), the court may make any order under this Act that it thinks fit in order to protect the safety of the child if the court—
- (a) is unable to 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; but
  - (b) is satisfied there is a real risk to the child's safety.

Compare: 1968 No 63 s 16B(2)–(6)

#### **61 Matters relevant to question in section 60(4)**

In considering, for the purposes of section 60(4), whether a child will be safe if a violent party provides day-to-day care for, or has contact (other than supervised contact) with, the child, the court must, 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 provides day-to-day care for, or has contact with, the child; and
  - (ii) consents to the violent party providing day-to-day care for, or having contact (other than supervised contact) with, the child:
- (g) any views the child expresses on the matter (as required by section 6):
- (h) any steps taken by the violent party to prevent further violence occurring:
- (i) all other matters the court considers relevant.

Compare: 1968 No 63 s 16B(5)

#### **62 Costs of formal supervised contact**

- (1) This section applies only to supervised contact that is ordered under section 60(5) 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.

Compare: 1980 No 94 ss 12A, 12B

### *Making parenting orders work*

#### **63 Purpose and overview of sections 64 to 80**

- (1) The purpose of sections 64 to 80 is to provide to the court, and to parties to a parenting order, a range of options for making the order work.
- (2) To that end, sections 64 to 80—
  - (a) provide for the parties to request counselling to resolve a dispute over observing and carrying out the order:
  - (b) provide for the court to make orders of various kinds, or to respond in various other ways, if a dispute over contravention of a parenting order is not resolved by the parties themselves:
  - (c) make it an offence for a party to the parenting order to intentionally—
    - (i) contravene the order; or
    - (ii) prevent compliance with the order:
  - (d) make it an offence to knowingly resist or obstruct the execution of—
    - (i) a warrant to enforce the role of providing day-to-day care for, or an order for contact with, a child; or
    - (ii) a warrant relating to preventing removal of a child from New Zealand:
  - (e) make it an offence to knowingly fail or refuse to afford immediate entrance to (all or a part of) any premises to a person executing a warrant of that kind:
  - (f) make it an offence in certain circumstances to take or attempt to take a child out of New Zealand.

#### **64 Guiding consideration and principles**

- (1) In determining whether to make an order or to issue a warrant or to respond in another way under any of sections 68 to 77, the court must (as required by section 4) consider whether the order or other response would serve the welfare

and best interests of the child who is the subject of the parenting order concerned.

- (2) The court must, unless the circumstances are exceptional, make orders or issue warrants under any of sections 70 to 77 only as a matter of last resort.
- (3) The court may not make orders or issue warrants under any of sections 72 to 77 contrary to the views of a child of or over the age of 16 years, unless the circumstances are exceptional.

Compare: 1968 No 63 s 23(1), (1A)

### **65 Request for counselling**

- (1) A party to a parenting order (or to an agreement of the kind described in section 40(2)) may ask a Registrar of a Family Court to arrange counselling in respect of a dispute arising from another party to the order (or to the agreement) contravening or appearing to contravene the order (or the agreement).
- (2) 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 ask a Registrar of a Family Court to arrange counselling in respect of their dispute.

### **66 Procedure for request under section 65(1) or (2)**

The following sections of the Family Proceedings Act 1980 apply, with the following and all other necessary modifications, to a request under section 65(1) or (2) as if the request were one under section 9(1) of that Act by a party to a marriage, civil union, or de facto relationship for counselling in respect of the marriage, civil union, or de facto relationship:

- (a) section 9(2) (which requires the Registrar to whom the request is made, on the person making the request completing the prescribed form, to arrange for the matter to be referred to a counsellor):
- (b) section 11 (which relates to the procedure the counsellor must follow on being referred the matter), except that the reference in subsection (2)(a) to whether or not the parties wish to resume or continue the marriage, civil union, or de facto relationship must be read as a reference to whether or not the parties to the parenting order (or the agreement), or the 2 or more guardians, have resolved the dispute:
- (c) section 12 (which relates to the counsellor's duties in relation to reconciliation or conciliation):
- (d) section 12A (which relates to the number of sessions of counselling):
- (e) section 12B (which relates to counselling fees and expenses).

Section 66: amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

Section 66(b): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

**67 Registrar may decline requests for counselling and recommend instead applications under section 68**

- (1) The Registrar may decline a request under section 65(1) that relates to a parenting order if he or she considers that arranging for the matter to be referred to a counsellor is unlikely to help the parties to resolve the dispute.
- (2) Without limiting the discretion in subsection (1), in exercising that discretion the Registrar must have regard to whether a party to the order has used violence (as defined in section 3(2) of the Domestic Violence Act 1995) against—
  - (a) another party to the order; or
  - (b) a child in the care of another party to the order; or
  - (c) both.
- (3) In declining a request under subsection (1), the Registrar may recommend that any or all of the parties to the order make an application under section 68.
- (4) This section overrides sections 65 and 66.

**68 Court may make certain orders or respond in other ways to contravention of parenting orders**

- (1) On an application for the purpose by a party to a parenting order, the court may, if satisfied that another party to the order has contravened the order, do any of the following:
  - (a) admonish the party who has contravened the order;
  - (b) vary or discharge the parenting order under section 56 (for example, by reducing the time during which the child is in the care of, or has contact with, the party who has contravened the order).
- (2) The court may (as well as, or instead of, exercising its powers under subsection (1)) consider making an order or issuing a warrant under any of sections 70 to 77 if—
  - (a) the contravention that is the subject of the application under this section is of a serious nature; or
  - (b) the party who has contravened the parenting order has previously contravened that order or another order under this Act.
- (3) Nothing in this section limits other powers of the court to deal with a contravention of a parenting order.
- (4) On receiving an application under this section, the Registrar—
  - (a) must appoint a date and time for the hearing of the application and, by notice in writing to the parties to the application, inform them of that date and time;
  - (b) may, if the court directs, request them to attend.

**69 Court may require parties to attend for counselling or for hearing of application under section 68**

- (1) On an application for the purpose or on its own initiative, the court may issue a summons requiring a person to attend at a time and place to be specified in the summons if the person fails to comply with—
  - (a) a request under section 11(1)(b) of the Family Proceedings Act 1980 (as modified and applied by section 66(b) of this Act) that the person attend before a counsellor; or
  - (b) a request under section 68(4)(b) to attend the hearing of an application under section 68.
- (2) Section 20(1) to (3) and (5) of the Summary Proceedings Act 1957 applies to a summons under this section as if it were a witness summons issued under that section.

Compare: 1980 No 94 s 17

**70 Ordering party to enter into bond**

- (1) On an application for the purpose or on its own initiative, the court may order a party who has contravened a parenting order to enter into a bond as an assurance that the party will not contravene the parenting order again.
- (2) Before making an order under subsection (1), the court must consider the extent (if any) to which the party has sufficient means to deposit an amount of money in the court.
- (3) The bond must specify—
  - (a) the amount of money to be deposited in the court; and
  - (b) the conditions the breach of which may lead to some or all of that money being forfeited to the Crown; and
  - (c) that, if that money is forfeited by a direction under subsection (4), the court may, by an order under section 71(1) made at the same time as that direction, require costs incurred by another party to the parenting order to be satisfied from that money; and
  - (d) a date after which the bond will no longer be required (if the bond does not cease to be required earlier, because the parenting order ceases to have effect earlier).
- (4) If, after entering into the bond, the party contravenes the parenting order again, the court may, at its discretion and on an application for the purpose, direct that some or all of the bond is forfeited to the Crown, but the court must exercise its discretion by taking into account—
  - (a) the reason the bond was imposed; and
  - (b) the extent to which the conditions of the bond have been met or breached; and

- (c) any explanation given for the breach of the bond conditions; and
  - (d) all other matters the court considers relevant.
- (5) Following the earlier of the following dates, the bond is no longer required, and the court must make all reasonable efforts to refund to the party any money not forfeited by a direction of the court under subsection (4):
- (a) the date on which the parenting order ceases to have effect;
  - (b) the date specified under subsection (3)(d).
- (6) Nothing in this section prevents the court, on an application for the purpose or on its own initiative, from revoking the order and directing that any money not forfeited by a direction of the court under subsection (4) be refunded to the party.

#### **71 Costs of contravention**

- (1) On an application for the purpose or on its own initiative, the court may order a party to a parenting order (**party B**) to reimburse another party to the order (**party A**), either wholly or in part, for costs party A incurred, if the court is satisfied—
- (a) that party B contravened the order and had no reasonable excuse for doing so; and
  - (b) that the contravention caused party A to incur the costs; and
  - (c) that the costs party A incurred were reasonable in the circumstances.
- (2) An order under subsection (1) (the **costs order**) may require costs (being costs party A incurred and is, under the order, entitled to be reimbursed for by party B) to be satisfied from money—
- (a) deposited in the court by party B as a bond required by an order under section 70(1); and
  - (b) forfeited by a direction under section 70(4) made at the same time as the costs order is made.
- (3) Nothing in this section limits section 121 or section 142.

#### **72 Warrant to enforce role of providing day-to-day care for child**

- (1) In this section, **eligible person**, in relation to a child, means a person who, at the time of the application, has the role of providing day-to-day care for the child—
- (a) through being a guardian (other than a testamentary guardian) whose role of providing day-to-day care for the child has not been removed by a court order; or
  - (b) under a parenting order, some other order of a New Zealand court, or an overseas parenting order registered under section 81.

- (2) On an application for the purpose by an eligible person, a Family Court or a District Court may issue a warrant authorising a constable or a social worker or any other person named in the warrant to take the child (using reasonable force if necessary) and to deliver the child—
  - (a) to the eligible person; or
  - (b) to some other person or authority (including a person in or from a prescribed overseas country) named in the warrant on behalf of the eligible person.
- (3) However, if 2 or more persons have the role of providing day-to-day care for a child, no warrant under this section may authorise—
  - (a) the removal of the child from the care of one of those persons; and
  - (b) the delivery of the child to the care of another of them.

Compare: 1968 No 63 s 19(1), (5)

Section 72(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **73 Warrant to enforce order for contact with child**

- (1) In this section, **eligible person**, in relation to a child, means a person who, at the time of the application, is entitled to have direct contact with the child under a parenting order, an order for supervised contact, or an overseas parenting order registered under section 81.
- (2) On an application for the purpose by an eligible person, a Family Court or a District Court may issue a warrant authorising a constable or a social worker or any other person named in the warrant to take the child (using reasonable force if necessary) and to deliver the child—
  - (a) to the eligible person; or
  - (b) to some other person or authority (for example, a person in or from a prescribed overseas country) named in the warrant on behalf of the eligible person.

Compare: 1968 No 63 s 19(2)

Section 73(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **74 Further provisions about warrants**

- (1) The court may issue a warrant under section 72 or section 73 either on or after making a parenting order or an order for supervised contact.
- (2) Neither section 72 nor section 73 affects any other power—
  - (a) to enforce the role of providing day-to-day care for, or an order for contact with, a child; and
  - (b) that was exercisable by a court immediately before the commencement, on 1 January 1970, of the Guardianship Act 1968.

- (3) If a Family Court declines under section 72 or section 73 or in the exercise of a power to which subsection (2) relates to enforce the role of providing day-to-day care for, or an order for contact with, a child, it may, on its own initiative but subject to section 83(2) and (3), vary or discharge any existing order relating to that role or contact accordingly.

Compare: 1968 No 63 ss 19(3), (6), 19A

## **75 Execution of warrants**

- (1) For the purpose of executing a warrant issued under section 72 or section 73, a constable or a social worker or any other person named in the warrant may enter and search any building, aircraft, ship, vehicle, premises, or place, with or without assistance, and by force if necessary.
- (2) The constable, social worker, or other person executing the warrant under section 72 or section 73—
- (a) must have that warrant with him or her; and
  - (b) must produce it on initial entry and, if requested, at any later time; and
  - (c) must identify himself or herself to any person in or on the building, aircraft, ship, vehicle, premises, or place who questions his or her right to enter and search the same or to take possession of the child; and
  - (d) if he or she is a constable who is not in uniform, must produce evidence that he or she is a constable; and
  - (e) if he or she is a social worker, must produce evidence that he or she is a social worker; and
  - (f) if he or she is a person (not being a constable or a social worker) authorised by the warrant to take possession of the child, must produce evidence that he or she is the person so authorised.

Compare: 1968 No 63 s 19B(1), (2)

Section 75(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 75(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 75(2)(d): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 75(2)(f): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

## **76 Authority to use faxed copy of warrant**

- (1) An authority (as defined in section 77(1)) may authorise the use, for the purpose of executing the warrant, of a faxed copy of a warrant issued under section 72 or 73 or 77.
- (2) However, no authorisation may be granted under subsection (1) in relation to a warrant unless the authority is satisfied, having regard to the circumstances of the case, that any delay in executing the warrant that may be caused if a faxed



copy is not able to be used for that purpose would or might unduly prejudice the purpose for which the warrant was issued.

- (3) An authority may exercise the power conferred by subsection (1) either on or after issuing the warrant, and either on its own initiative or on an application for the purpose made to it by—
  - (a) a party to the proceedings for the issue of the warrant; or
  - (b) a person who is authorised to execute the warrant.
- (4) If an authority grants an authorisation under subsection (1) in relation to a warrant, the authority must first write on the front of the warrant, and then sign, a note that states—
  - (a) the fact that a faxed copy of the warrant may be used for the purposes of executing the warrant; and
  - (b) the date and time at which the authorisation expires, which must be the close of the third day after the day on which the authorisation is granted.
- (5) A faxed copy of a warrant in respect of which an authorisation granted under this section is in force must, for all purposes, be treated as if it were the warrant, and the provisions of this Act (for example, sections 75 and 79) apply accordingly with all necessary modifications.
- (6) Without limiting any other enactment or rule of law, section 44 of the Policing Act 2008 (which relates to protection of Police employees for acts pursuant to process) applies in relation to a faxed copy of a warrant in respect of which an authorisation granted under this section is in force as if that faxed copy were the warrant.
- (7) Subsection (6) is for the avoidance of doubt.

Compare: 1968 No 63 s 19C

Section 76(1): substituted, on 20 September 2007, by section 4(1) of the Care of Children Amendment Act 2007 (2007 No 44).

Section 76(3): substituted, on 20 September 2007, by section 4(2) of the Care of Children Amendment Act 2007 (2007 No 44).

Section 76(6): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

## 77 Preventing removal of child from New Zealand

- (1) In this section and section 76, **authority** means a High Court Judge or District Court Judge or Family Court Judge or, if no High Court Judge or District Court Judge or Family Court Judge is available, any Registrar of the High Court or of a District Court (not being a constable).
- (2) An authority may, on an application for the purpose by any person, exercise the powers stated in subsection (3) if the authority believes on reasonable grounds that a person is about to take a child out of New Zealand with intent to, or in circumstances where the taking of the child out of New Zealand would be likely to,—

- (a) defeat the claim of a person who has applied for, or is about to apply for, the role of providing day-to-day care for, or an order for contact with, the child; or
  - (b) prevent any order of any court (including an order registered under section 81) about the role of providing day-to-day care for, or about contact with, the child from being complied with.
- (3) In the situation stated in subsection (2), the authority—
- (a) may issue a warrant directing a constable or a social worker to take the child (using reasonable force if necessary) and place the child in the care of some suitable person pending the order or further order of the court having jurisdiction in the case; and
  - (b) may, in addition, order that any tickets or travel documents (including the passport) of the child, or of the person believed to be about to take the child out of New Zealand, or of both, be surrendered to the authority for a period and on any conditions the authority thinks fit; and
  - (c) may, whether or not a warrant has been issued under paragraph (a) (either with or without an additional order under paragraph (b)), order that the child not be removed from New Zealand for a specified period, or until a further order of an authority.
- (4) Sections 75 and 79 apply, with all necessary modifications, to every warrant under subsection (3)(a) as if every warrant of that kind were a warrant under section 72 or section 73.
- (5) A person against whom an order under subsection (3)(b) or (c) is in force may apply to the authority for the discharge of the order, and the authority may, if it thinks fit, discharge the order accordingly.
- (6) No proceedings for contempt of court may be taken against a person in respect of an act authorised or required by this section or by an order or warrant made or issued under this section.

Compare: 1968 No 63 s 20(1)–(2), (4)

Section 77(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 77(3)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### *Offences*

#### **78 Contravening parenting order**

- (1) Every person commits an offence and is liable on summary conviction to the penalty stated in subsection (2) who, without reasonable excuse and with intent to prevent a parenting order from being complied with, contravenes, or prevents compliance with, the parenting order.

- (2) The penalty is imprisonment for a term not exceeding 3 months, or 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.

Compare: 1968 No 63 s 20A

#### **79 Resisting execution of warrant**

Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding \$2,500 who—

- (a) knowingly resists or obstructs any person executing a warrant under section 72 or section 73 or section 77; or
- (b) knowingly fails or refuses to afford immediate entrance to (all or a part of) any premises to any person executing a warrant under section 72 or section 73 or section 77.

Compare: 1968 No 63 s 19B(3)

#### **80 Taking child from New Zealand**

Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,500, or to imprisonment for a term not exceeding 3 months, or to both, who, without the leave of the court, takes or attempts to take any child out of New Zealand—

- (a) knowing that proceedings are pending or are about to be commenced under this Act in respect of the child; or
- (b) knowing that there is in force an order of a court (including an order registered under section 81) giving any other person the role of providing day-to-day care for, or contact with, the child; or
- (c) with intent to prevent an order of a court (including an order registered under section 81) about the role of providing day-to-day care for, or about contact with, the child, from being complied with.

Compare: 1968 No 63 s 20(3)

### Subpart 3—Enforcing orders internationally

#### *Enforcing overseas parenting orders in New Zealand*

#### **81 Registration of overseas parenting orders**

- (1) If the following documents are transmitted to the Secretary, he or she must send them to the Registrar of a District Court:
  - (a) a certified copy of an overseas parenting order; and
  - (b) a certificate that—

- (i) is signed by an officer of a court in the overseas country in which the order was made; and
- (ii) contains a statement that the order is, at the date of the certificate, enforceable in the overseas country; and
- (c) written information tending to show that any of the following persons is present in New Zealand or is proceeding to, or is about to proceed to, New Zealand:
  - (i) the child who is the subject of the order; or
  - (ii) a parent of that child; or
  - (iii) a person who, under the overseas parenting order, has the role of providing day-to-day care for, or may have contact with, that child.
- (2) The Registrar of the District Court must register the order by filing a certified copy of the order in the court.
- (3) A Registrar of a District Court who receives the documents referred to in subsection (1) other than from the Secretary may register the order concerned if the Registrar is satisfied that the nature of the documents is such that, if they had been transmitted to the Secretary, the Secretary would have sent them to the Registrar.

Compare: 1968 No 63 s 22A

## **82 Effect of registration**

- (1) If an overseas parenting order is registered in a court under section 81, then, so long as the registration is not cancelled, the order may be enforced, varied, or discharged as if it were an order made by that court under this Act.
- (2) This section is subject to sections 83 and 85(1).

Compare: 1968 No 63 s 22B

## **83 Exercise of jurisdiction in respect of child subject to registered overseas parenting order**

- (1) If an overseas parenting order is registered in New Zealand under section 81 and that order relates to the role of providing day-to-day care for a child, or to having contact with a child, or to both of those matters, no court in New Zealand (other than in proceedings under any of sections 72 to 76) may, in respect of any matter determined by the overseas parenting order, exercise jurisdiction in relation to the child who is the subject of the order unless—
  - (a) every person having the role of providing day-to-day care for, or who may have contact with, the child, under the overseas parenting order consents to the exercise of jurisdiction by the court in the proceedings; or

- (b) the court is satisfied that there are substantial grounds for believing that the welfare and best interests of the child will be adversely affected if the court does not exercise jurisdiction in the proceedings.
- (2) If a court in New Zealand exercises jurisdiction in proceedings relating to the role of providing day-to-day care for, or relating to having contact with, a child who is the subject of an overseas parenting order that is registered in New Zealand under section 81, the court must not make an order about the role of providing day-to-day care for, or about contact with, the child unless the person who commenced the proceedings satisfies the court—
  - (a) that the child's welfare and best interests are likely to be adversely affected if the order is not made; or
  - (b) that there has been such a change in the child's circumstances that the order ought to be made.
- (3) If a court in New Zealand exercises jurisdiction in proceedings relating to the role of providing day-to-day care for, or relating to having contact with, a child, and does so without notice of the existence of an overseas parenting order relating to that child and that is registered in New Zealand under section 81, any order made by the court on or after the date of the registration of the overseas parenting order and that is in respect of any matter determined by the overseas parenting order is of no effect.

Compare: 1968 No 63 s 22C

#### **84 Variation or discharge of registered overseas parenting order**

- (1) If a court exercising jurisdiction under sections 56 and 82 makes an order varying or discharging an overseas parenting order, the Registrar of the court exercising that jurisdiction—
  - (a) must forward to the court, or to the appropriate authority, in the prescribed overseas country—
    - (i) 3 certified copies of the order varying or discharging the overseas parenting order and the reasons for the variation or discharge; and
    - (ii) any further material the court directs; and
  - (b) unless he or she is the Registrar of the court in which the overseas custody order is registered, must forward to the Registrar of that court a copy of the order varying or discharging the overseas parenting order.
- (2) The Registrar of the court in which the overseas custody order is registered must, on receiving notice of the discharge or variation of that order, note the court's records accordingly, and, if the overseas parenting order is discharged, must cancel the registration of that order.

Compare: 1968 No 63 s 22D

**85 Registered overseas parenting orders not to be enforced in certain circumstances**

- (1) A court must not enforce an overseas parenting order under section 72 or section 73, and must not exercise jurisdiction in respect of the order under sections 56 and 82, if the court is satisfied that the order—
  - (a) was not, at the time of its registration in New Zealand, enforceable in the country in which it was made; or
  - (b) has, since its registration in New Zealand, ceased to be enforceable in the country in which it was made.
- (2) The Registrar of a court in which an overseas parenting order is registered must cancel the registration of the order and inform the court in the prescribed overseas country of the cancellation if he or she is satisfied that the order is not enforceable in the prescribed overseas country in which it was made, and is satisfied of those matters by—
  - (a) documentary evidence the Registrar has received; or
  - (b) the refusal of a New Zealand court, on the grounds stated in subsection (1), to enforce the order under section 72 or section 73, or to exercise jurisdiction under sections 56 and 82 in respect of the order.
- (3) For the purposes of subsection (1), an overseas parenting order is not unenforceable in the country in which it was made just because the child to whom the order relates or any other person affected by the order is no longer in that country.

Compare: 1968 No 63 s 22E

**86 Evidence of orders made in overseas countries**

Nothing in section 81 prevents a court from receiving evidence of an order made in an overseas country (whether or not that country is a prescribed overseas country) and relating to the role of providing day-to-day care for, or relating to contact with, a child.

Compare: 1968 No 63 s 22F

**87 Costs of returning child: order for payment when warrant issued under section 72**

- (1) This section applies to a court if, for the purpose of enforcing the role, conferred by an overseas parenting order that is registered in New Zealand, of providing day-to-day care for a child, the court issues, or has issued, in relation to any child, a warrant under section 72.
- (2) The court may, if it thinks just, make, against any person who has knowingly abducted the child, or who is deliberately holding the child, in contravention of the overseas parenting order, an order for the payment of some or all of the costs of returning the child to the person who, under the overseas parenting order, has the role of providing day-to-day care for the child.

- (3) The costs referred to in subsection (2) may include the costs and travelling expenses of any necessary escort.

Compare: 1968 No 63 s 22G

## **88 Evidence**

If an application under either sections 56 and 81 or section 87 is heard in a District Court,—

- (a) the evidence of a person beyond New Zealand may be taken in accordance with the rules of the High Court covering the examination of witnesses beyond New Zealand; and
- (b) the High Court Rules, as far as they are applicable and with all necessary modifications, apply accordingly.

Compare: 1968 No 63 s 22H

## **89 Proof of documents**

- (1) For the purposes of sections 72 to 76 and sections 81 to 88,—
- (a) a document purporting to be signed by a Judge, District Court Judge, or officer of a court in a prescribed overseas country must, unless the contrary is proved, be treated as having been so signed without proof of the signature, or judicial or official character, of the person appearing to have signed it; and
- (b) the officer of a court by whom a document purports to be signed must, unless the contrary is proved, be treated as having been the proper officer of the court to sign the document.
- (2) A document purporting to be signed, certified, or verified by a person in subsection (1) must be admitted in evidence in proceedings for the purposes of sections 72 to 76 or sections 81 to 88 if it appears to be relevant to those proceedings.

Compare: 1968 No 63 s 22I

## **90 Depositions to be evidence**

Depositions taken for the purposes of any of sections 72 to 76 or sections 81 to 87 in a court in any prescribed overseas country may be received in evidence in proceedings for the purposes of any of sections 72 to 76 or sections 81 to 87.

Compare: 1968 No 63 s 22J

## **91 Prescribed overseas countries**

- (1) The Governor-General may, by Order in Council, declare a country outside New Zealand to be a prescribed overseas country for the purposes of this Act.
- (2) An order under subsection (1)—

- (a) may specify the courts of the overseas country in relation to which the order is to have effect or otherwise modify the application of that order to that country; and
- (b) may be varied or amended, revoked, or revoked and replaced by a later order of that kind.

Compare: 1968 No 63 s 22K

### *Enforcing New Zealand orders overseas*

## **92 Enforcement of New Zealand orders overseas**

- (1) Subsection (2) applies to an order (not being an interim order or an order made without notice)—
  - (a) made by a court in New Zealand and about the role of providing day-to-day care for, or about contact with, a child; and
  - (b) that may be enforced in a particular prescribed overseas country under provisions corresponding to sections 81 and 82.
- (2) The Registrar of the court in which the order was made, or last varied, or filed in accordance with section 127, must send to the Secretary for transmission to an appropriate court or authority in that particular prescribed overseas country the information specified in subsection (3) if—
  - (a) that Registrar is requested to do so in accordance with section 93; and
  - (b) the request is made in writing by, or on behalf of, a person who, under the order, has the role of providing day-to-day care for, or may have contact with, the child.
- (3) The information referred to in subsection (2) is—
  - (a) 3 certified copies of the order; and
  - (b) the information and material (if any) that the Registrar possesses for ascertaining the identity and whereabouts of the child and any other person who is subject to the order; and
  - (c) a statement that the order is enforceable in New Zealand; and
  - (d) a request in writing that the order be made enforceable in that prescribed overseas country; and
  - (e) any other documents and information that the Registrar believes are necessary for securing the enforcement of the order in that prescribed overseas country.
- (4) If a court in a prescribed overseas country has made an order in proceedings about the role of providing day-to-day care for, or about having contact with, a child, being proceedings to which a provision corresponding to section 83(1) and (2) applies, a court in New Zealand—
  - (a) may treat the order as if it were an overseas parenting order registered in New Zealand; and



- (b) may exercise jurisdiction accordingly in respect of the order.
- (5) If a court exercises jurisdiction under subsection (4), the Registrar of the court must promptly forward to the court in the prescribed overseas country—
  - (a) 3 certified copies of the further order of the court and the reasons for the order; and
  - (b) any further material the court directs.
- (6) If a person has the role of providing day-to-day care for, or may have contact with, a child, under an order made by a court in New Zealand, nothing in this section prevents that person from—
  - (a) obtaining certified copies of the order; or
  - (b) applying to a court or other appropriate authority in an overseas country (whether or not it is a prescribed overseas country) for enforcement, or registration and enforcement, of the order in that country.
- (7) Registration in an overseas country of an order made in New Zealand about the role of providing day-to-day care for, or about contact with, a child, does not prevent the expiry of the order or its variation or discharge under this Act.

Compare: 1968 No 63 s 22L

### **93 Restrictions on right to make request under section 92**

- (1) A request may not be made to the Registrar under section 92 in respect of an order about the role of providing day-to-day care for, or about contact with, a child unless,—
  - (a) in the case of a request made by, or on behalf of, a person who, under the order, has the role of providing day-to-day care for the child, the person by whom or on whose behalf the request is made—
    - (i) believes, on reasonable grounds, that another person will apply, in a prescribed overseas country, for the role of providing day-to-day care for the child; or
    - (ii) is unable to have the order enforced in New Zealand because the child was removed from New Zealand, without the consent of that person, during the course of the proceedings in which the order was made:
  - (b) in the case of a request made by, or on behalf of, a person who, under the order, may have contact with the child, the person by whom or on whose behalf the request is made believes, on reasonable grounds, that it is necessary to register the order in a prescribed overseas country in order to ensure that the order may be enforced in that country.
- (2) If a request is made to the Registrar under section 92,—
  - (a) the Registrar may require the person by whom or on whose behalf the request is made to supply to the Registrar any evidence in support of that request that may be necessary to enable the Registrar to determine

whether or not the requirements of this section, as they relate to the making of that request, are met; and

- (b) the Registrar may refuse to take any further action on that request until that evidence is so supplied.

Compare: 1968 No 63 s 22LA

## Subpart 4—International child abduction

### *Preliminary provisions*

#### **94 Purpose of this subpart**

The purpose of this subpart is to—

- (a) implement in New Zealand law the Hague Convention on the Civil Aspects of International Child Abduction; and
- (b) provide for related matters; and
- (c) replace the Guardianship Amendment Act 1991.

#### **95 Interpretation**

In this subpart, unless the context otherwise requires,—

**applicant** means a person by whom or on whose behalf an application has been made under section 102 or, as the case requires, section 103 or section 105 or section 112 or section 113

**Authority** means the Central Authority for New Zealand designated by section 100(1)

**Central Authority** has the meaning it has in the Convention

**child** means a person under the age of 16 years

**Contracting State** means a country that, under section 98, is a Contracting State

**Convention** means the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980, a copy of which is set out in Schedule 1

**habitual residence**, in relation to a Contracting State that in matters relating to the custody of children has 2 or more systems of law applicable in different territorial units, means habitual residence in a territorial unit of that State

**law** means,—

- (a) in relation to a Contracting State that in matters relating to the custody of children has 2 or more systems of law applicable in different territorial units, the law of the territorial unit of that State in which the relevant child habitually resides:

- (b) in relation to a Contracting State that in matters relating to the custody of children has 2 or more systems of law applicable to different categories of persons, the legal system specified by the law of that State

**person** includes any institution or other body having rights of custody in respect of a child

**removal**, in relation to a child, means the wrongful removal or retention of the child within the meaning of Article 3 of the Convention

**rights of access** include—

- (a) the right to visit a child (for example, under an order for contact made under this Act); and
- (b) the right to take a child for a limited period of time to a place other than the child's habitual residence (for example, under an order for contact made under this Act)

**rights of custody** has the meaning given to it by section 97

**United Nations International Covenants on Human Rights** means the following, adopted by the General Assembly of the United Nations on 16 December 1966:

- (a) the International Covenant on Civil and Political Rights;
- (b) the International Covenant on Economic, Social, and Cultural Rights.

Compare: 1991 No 19 s 2

## 96 Application of this subpart

This subpart, in so far as it applies to the removal of children, applies only to removals occurring after the commencement, on 1 August 1991, of the Guardianship Amendment Act 1991.

Compare: 1991 No 19 s 3

## 97 Rights of custody defined

For the purposes of this subpart, **rights of custody**, in relation to a child, include the following rights attributed to a person, institution, or other body, either jointly or alone, under the law of the Contracting State in which the child was habitually resident immediately before the child's removal or retention:

- (a) rights relating to the care of the person of the child (for example, the role of providing day-to-day care for the child); and
- (b) in particular, the right to determine the child's place of residence.

Compare: 1991 No 19 s 4

**98 Contracting States**

Subject to Articles 39 and 40 of the Convention, for the purposes of this subpart, the Contracting States (other than New Zealand) are those countries in respect of which the Convention is for the time being in force for New Zealand.

Compare: 1991 No 19 s 5

**99 Certificates as to Contracting States**

- (1) This section applies to a certificate signed by the Secretary of Foreign Affairs and Trade and stating—
  - (a) that a specified country is or is not a country in respect of which the Convention is in force as between that country and New Zealand; and
  - (b) where applicable, that there is in effect, in respect of any specified provision of the Convention, a reservation made by any Contracting State under Article 42 of the Convention.
- (2) The certificate must, for all purposes, be treated as conclusive evidence of the matters stated in it unless the contrary is proved by the production of another certificate issued—
  - (a) for the purposes of this section; but
  - (b) after the certificate was issued.

Compare: 1991 No 19 s 6

**100 Central Authority for New Zealand**

- (1) The Secretary is the Central Authority for New Zealand, and for that purpose the Secretary has all the duties, may exercise all the powers, and must perform all the functions, that a Central Authority has under the Convention.
- (2) The Secretary must not be made subject to any order to pay costs in relation to the exercise or performance, by the Secretary, of any of the Secretary's duties, powers, or functions as the Authority.

Compare: 1991 No 19 s 7

**101 Courts having jurisdiction to entertain applications under Convention**

- (1) The duties, powers, and functions that, under the Convention, are conferred or imposed on the judicial authorities of a Contracting State must, in New Zealand, be exercised or performed by a Family Court or a District Court.
- (2) Every Family Court and every District Court has the jurisdiction, and has and may exercise the powers, that is or are reasonably necessary or expedient to enable the court to carry out its functions and duties under the Convention.
- (3) Subsection (2) is subject to this subpart and to any rules made under section 146(4).

Compare: 1991 No 19 s 8

*Application for return of child*

**102 Child abducted from New Zealand**

- (1) A person may apply in writing to the Authority to have his or her claim transmitted to a Contracting State other than New Zealand if the person claims—
  - (a) that a child has been removed from New Zealand to that other Contracting State; and
  - (b) that the child was removed from New Zealand to that other Contracting State in breach of that person's rights of custody in respect of the child; and
  - (c) that at the time of the removal those rights of custody were actually being exercised by that person, or would have been so exercised but for the removal; and
  - (d) that the child was habitually resident in New Zealand immediately before the removal.
- (2) Every application under subsection (1) must be in the form prescribed by rules made under, or referred to in, section 146.
- (3) If the Authority is satisfied that an application made under subsection (1) is in accordance with the requirements of the Convention, the Authority must take on behalf of the applicant any action required to be taken by the Authority under the Convention.

Compare: 1991 No 19 s 9

**103 Child abducted to New Zealand**

- (1) The Authority must take action under the Convention to secure the prompt return of the child to a Contracting State other than New Zealand if the Authority receives, in respect of a child, an application claiming—
  - (a) that the child is present in New Zealand; and
  - (b) that the child was removed from that other Contracting State in breach of the applicant's rights of custody in respect of the child; and
  - (c) that at the time of the removal those rights of custody were actually being exercised by the applicant, or would have been so exercised but for the removal; and
  - (d) that the child was habitually resident in that other Contracting State immediately before the removal.
- (2) Subsection (1) is subject to sections 104 and 123.
- (3) In particular, the Authority must take or cause to be taken all appropriate measures—
  - (a) to discover where the child is; and

- (b) to ensure the safety of the child and prevent prejudice to any interested party; and
- (c) to secure the voluntary return of the child to that other Contracting State, or to bring about an amicable resolution of the issues; and
- (d) to facilitate the making of an application under section 105 by, or on behalf of, the applicant.

Compare: 1991 No 19 s 10

#### **104 Authority may request further information**

- (1) The Authority may return the application concerned to the applicant or the Central Authority by which it was transmitted, and may request that the information or documents concerned be made available, if—
  - (a) an application to which section 103(1) applies is received by the Authority; and
  - (b) the application—
    - (i) does not contain the information specified in subsection (2); or
    - (ii) is not accompanied or supplemented by the documents referred to in subsection (3); and
  - (c) the Authority considers that the fact that the application does not contain that information or is not accompanied or supplemented by those documents is likely to seriously impair the ability of the Authority to carry out its duties in respect of the application.
- (2) The information referred to in subsection (1)(b)(i) is—
  - (a) information concerning the identity of the applicant, the child, and the person alleged to have removed the child;
  - (b) the date of birth of the child;
  - (c) the grounds on which the applicant's claim for the return of the child is based;
  - (d) information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.
- (3) The documents referred to in subsection (1)(b)(ii) are—
  - (a) an authenticated copy of any decision, agreement, or other document, if it is relevant to the application;
  - (b) a certificate or affidavit concerning the relevant law of the Contracting State of the child's habitual residence, being a certificate or affidavit from the Central Authority of that State, or from any other competent authority of that State, or from any qualified person.

Compare: 1991 No 19 s 11

**105 Application to court for return of child abducted to New Zealand**

- (1) An application for an order for the return of a child may be made to a court having jurisdiction under this subpart by, or on behalf of, a person who claims—
  - (a) that the child is present in New Zealand; and
  - (b) that the child was removed from another Contracting State in breach of that person's rights of custody in respect of the child; and
  - (c) that at the time of that removal those rights of custody were actually being exercised by that person, or would have been so exercised but for the removal; and
  - (d) that the child was habitually resident in that other Contracting State immediately before the removal.
- (2) Subject to section 106, a court must make an order that the child in respect of whom the application is made be returned promptly to the person or country specified in the order if—
  - (a) an application under subsection (1) is made to the court; and
  - (b) the court is satisfied that the grounds of the application are made out.
- (3) A court hearing an application made under subsection (1) in relation to the removal of a child from a Contracting State to New Zealand may request the applicant to obtain an order from a court of that State, or a decision of a competent authority of that State, declaring that the removal was wrongful within the meaning of Article 3 of the Convention as it applies in that State, and may adjourn the proceedings for that purpose.
- (4) A court may dismiss an application made to it under subsection (1) in respect of a child or adjourn the proceedings if the court—
  - (a) is not satisfied that the child is in New Zealand; or
  - (b) is satisfied that the child has been taken out of New Zealand to another country.

Compare: 1991 No 19 s 12

**106 Grounds for refusal of order for return of child**

- (1) If an application under section 105(1) is made to a court in relation to the removal of a child from a Contracting State to New Zealand, the court may refuse to make an order under section 105(2) for the return of the child if any person who opposes the making of the order establishes to the satisfaction of the court—
  - (a) that the application was made more than 1 year after the removal of the child, and the child is now settled in his or her new environment; or
  - (b) that the person by whom or on whose behalf the application is made—

- (i) was not actually exercising custody rights in respect of the child at the time of the removal, unless that person establishes to the satisfaction of the court that those custody rights would have been exercised if the child had not been removed; or
    - (ii) consented to, or later acquiesced in, the removal; or
  - (c) that there is a grave risk that the child's return—
    - (i) would expose the child to physical or psychological harm; or
    - (ii) would otherwise place the child in an intolerable situation; or
  - (d) that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate, in addition to taking them into account in accordance with section 6(2)(b), also to give weight to the child's views; or
  - (e) that the return of the child is not permitted by the fundamental principles of New Zealand law relating to the protection of human rights and fundamental freedoms.
- (2) In determining whether subsection (1)(e) applies in respect of an application made under section 105(1) in respect of a child, the court may consider, among other things,—
- (a) whether the return of the child would be inconsistent with any rights that the child, or any other person, has under the law of New Zealand relating to refugees or protected persons:
  - (b) whether the return of the child would be likely to result in discrimination against the child or any other person on any of the grounds on which discrimination is not permitted by the United Nations International Covenants on Human Rights.
- (3) On hearing an application made under section 105(1) in respect of a child, a court must not refuse to make an order under section 105(2) in respect of the child just because there is in force or enforceable in New Zealand an order about the role of providing day-to-day care for that child, but the court may have regard to the reasons for the making of that order.

Compare: 1991 No 19 s 13

Section 106(1): amended, on 20 September 2007, by section 5(1) of the Care of Children Amendment Act 2007 (2007 No 44).

Section 106(1)(d): amended, on 20 September 2007, by section 5(2) of the Care of Children Amendment Act 2007 (2007 No 44).

Section 106(2)(a): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

### **107 Applications to be dealt with speedily**

- (1) A court to which an application under section 105(1) is made must, so far as practicable, give priority to the proceedings in order to ensure that they are dealt with speedily.



- (2) Subsection (3) applies to an application made to a court under section 105(1) in respect of a child if the application is not determined within the period of 6 weeks commencing on the date on which the application is made.
- (3) The Authority may, and must if requested by the applicant or the Central Authority of the Contracting State from which the child was removed, request the Registrar of the court to supply a statement of the reasons why the application has not been determined within that period, and the Registrar must, as soon as practicable, supply the statement to the Authority.
- (4) The Authority must send a copy of the statement to the applicant or, as the case may require, the Central Authority of the relevant Contracting State.

Compare: 1991 No 19 s 14

### **108 Interim powers**

A court to which an application under section 105(1) is made may, at any time before the application is determined, give any interim directions it thinks fit for the purpose of securing the welfare and best interests of the child concerned or of preventing changes in the circumstances relevant to the determination of the application.

Compare: 1991 No 19 s 15

### **109 No order or decision about role of providing day-to-day care for child to be made until application determined**

- (1) A court to which an application under section 105(1) is made in respect of a child—
  - (a) must not, while those proceedings are pending, make any order or decision about the role of providing day-to-day care for that child in any other proceedings that are before that court (whether those proceedings were commenced before, after, or at the same time as, the application was made); and
  - (b) may adjourn those other proceedings pending the determination of the application.
- (2) Subsection (1)(a) does not limit or affect the court's power under section 108 to give interim directions.

Compare: 1991 No 19 s 16

### **110 Contact with, and role of providing day-to-day care for, child, if application dismissed**

If a court to which an application under section 105(1) is made in respect of a child refuses to make an order under section 105(2) for the return of the child, the court may, on an application for the purpose by a party to the proceedings or on its own initiative, make any interim or final parenting order that it thinks fit with respect to the child.

Compare: 1991 No 19 s 17

**111 Request for declaration that child wrongfully removed**

A court that has jurisdiction under this subpart may, if requested by the Central Authority of another Contracting State, make an order declaring that the removal of a child from New Zealand to that Contracting State was wrongful within the meaning of Article 3 of the Convention.

Compare: 1991 No 19 s 18

*Application for access to child***112 Child outside New Zealand**

- (1) A person may apply in writing to the Authority to have his or her claim transmitted to a Contracting State other than New Zealand if the person claims—
  - (a) to have rights of access in respect of a child; and
  - (b) that the child is habitually resident in a Contracting State; and
  - (c) that the child is present in the Contracting State other than New Zealand.
- (2) Every application under subsection (1) must be in the form prescribed by rules made under, or referred to in, section 146.
- (3) If the Authority is satisfied that an application made under subsection (1) is in accordance with the requirements of the Convention, the Authority must take on behalf of the applicant any action required to be taken by the Authority under the Convention.

Compare: 1991 No 19 s 19

**113 Child in New Zealand**

The Authority must make any arrangements that may be appropriate to organise or secure the effective exercise of the applicant's rights of access if the Authority receives, in respect of a child, an application in which the applicant claims—

- (a) to have rights of access in respect of a child; and
- (b) that the child is habitually resident in New Zealand; and
- (c) that the child is present in New Zealand.

Compare: 1991 No 19 s 20

*Miscellaneous provisions***114 Translation to accompany application**

Every application under section 102 or section 112 in respect of a child must be accompanied by a translation of the application, being a translation—

- (a) into the official language, or one of the official languages, of the Contracting State to which the application is intended to be sent; or

- (b) if that Contracting State has made a reservation under Article 42 of the Convention objecting to the use of English, into French.

Compare: 1991 No 19 s 21

### **115 Evidentiary provisions**

- (1) In determining whether, under the law of a Contracting State, an applicant has rights of custody in respect of a child, a court may, despite anything in sections 37 to 41 of the Evidence Act 1908, take direct notice of—
  - (a) the law of that Contracting State;
  - (b) any decision or determination of a judicial or administrative authority of that Contracting State, whether or not formally recognised in that State;
  - (c) any agreement having legal effect under the law of that Contracting State.
- (2) For the purposes of subsection (1), a decision or determination of a judicial or administrative authority outside New Zealand may be proved by a duly authenticated copy of the decision or determination; and any document purporting to be such a copy must be treated as a true copy unless the contrary is shown.
- (3) For the purposes of subsection (2), a copy is duly authenticated if it purports to bear the seal, or purports to be signed by a Judge or officer, of the authority in question.

Compare: 1991 No 19 s 22

### **116 Lawyer to act for applicant**

- (1) This section applies to an applicant who—
  - (a) makes an application under section 102 or section 103 or section 105 or section 112 or section 113; but
  - (b) has not appointed a lawyer to act for the applicant for the purposes of the application.
- (2) The Authority must, if the circumstances so require, appoint a lawyer to act for the applicant for the purposes of the application, including (in the case of an application under section 103 or section 105) any proceedings under section 105.
- (3) Sections 7(4), 131, 137(1)(c), and 147(2)(c) apply, so far as applicable and with all necessary modifications, to a lawyer appointed under subsection (2) as if the lawyer were appointed under section 7(1).

Compare: 1991 No 19 s 23

### **117 Preventing concealment of whereabouts of child**

- (1) A District Court Judge or Family Court Judge may issue a warrant of the kind referred to in subsection (2) if—

- (a) an application under section 103 in respect of a child is made to, and received by, the Authority; and
  - (b) a person applies in writing and on oath to the Judge for a warrant of the kind referred to in subsection (2); and
  - (c) the Judge is satisfied that there are reasonable grounds for believing that a person will attempt to conceal the whereabouts of the child with intent to, or in circumstances where the concealment would be likely to, defeat the claim of the applicant.
- (2) The warrant referred to in subsection (1) is a warrant that authorises a constable or social worker, either by name or generally, to take possession of the child, and to place the child in the care of some suitable person pending the order or further order of the court having jurisdiction in the case.
- (3) A Registrar of a District Court (not being a constable) may exercise the power given to a District Court Judge or Family Court Judge by this section (which applies with all necessary modifications), but only if no District Court Judge or Family Court Judge is available.
- (4) Sections 75, 76, and 79 apply, so far as applicable and with all necessary modifications, to every warrant issued under subsection (1) as if every warrant of that kind were a warrant issued under section 72.

Compare: 1991 No 19 ss 24, 26A

Section 117(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 117(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **118 Preventing removal of child to defeat application**

- (1) This section applies to a High Court Judge or District Court Judge or Family Court Judge who is satisfied that there are reasonable grounds for believing that a person is about to take a child out of New Zealand with intent to, or in circumstances where the taking of the child out of New Zealand would be likely to,—
  - (a) defeat the claim of a person who has made, or is about to make, an application under section 103 or section 105 or section 113; or
  - (b) prevent an order under section 105(2) from being complied with.
- (2) A Judge to whom this section applies—
  - (a) may exercise, in respect of that child, the power referred to in section 77(3)(a); and
  - (b) may exercise, in respect of that child, or the person believed to be about to take the child out of New Zealand, or both, the power referred to in section 77(3)(b); and

- (c) may, whether or not the power referred to in paragraph (a) has been exercised (with or without the exercise of the power referred to in paragraph (b)), make an order of the kind referred to in section 77(3)(c) in respect of that child.
- (3) If a power referred to in subsection (2)(a) or (b) or (c) is exercised, section 77(4) and (5), so far as applicable and with all necessary modifications, applies accordingly.
- (4) A Registrar of the High Court or of a District Court (not being a constable) may exercise the power given by this section (which applies with all necessary modifications), but only if no High Court Judge or District Court Judge or Family Court Judge is available.

Compare: 1991 No 19 s 25

Section 118(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **119 Enforcing order for return of child**

- (1) If, in proceedings under section 105, a court makes an order under section 105(2) for the return of a child, a Family Court or a District Court may, at any time, issue a warrant of the kind referred to in subsection (2), either on its own initiative or on an application for the purpose by a party to the proceedings.
- (2) The warrant referred to in subsection (1) is a warrant that authorises any constable or any social worker or any other person named in the warrant to take possession of the child and to deliver the child to a person or authority named in the warrant for the purpose of returning the child in accordance with the order.
- (3) The powers conferred on a court by subsection (1) may, if the court thinks fit, be exercised on the making of an order under section 105(2) for the return of a child.
- (4) Sections 75, 76, and 79 apply, so far as applicable and with all necessary modifications, to every warrant issued under subsection (1) as if every warrant of that kind were a warrant issued under section 72.

Compare: 1991 No 19 ss 26, 26A

Section 119(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **120 Security for costs, etc**

- (1) A person who makes an application under section 102 or section 103 or section 105 or section 112 or section 113 must not be required to provide any security, bond, or deposit for the purpose of guaranteeing the payment of, or to make any payment towards, the costs or expenses of (or incidental to) any proceedings relating to that application.
- (2) Subsection (1) is subject to section 131(4) (as applied by section 116(3)).

Compare: 1991 No 19 s 27

**121 Costs of returning child: order for payment or refund when order under section 105(2) applied for or made**

- (1) A court that makes an order under section 105(2) for the return of a child may, if it thinks just, make an order directing that the whole or part of any costs of (or incidental to) returning the child in accordance with the order (for example, the cost and travelling expenses of any necessary escort) must be paid by the person who removed the child to New Zealand.
- (2) If a court makes an order under section 105(2) for the return of a child, and the whole or part of any costs of (or incidental to) returning the child in accordance with the order (for example, the cost and travelling expenses of any necessary escort) are paid by the Crown,—
  - (a) the court may, on an application by the Authority, order the person who removed the child to New Zealand to refund to the Crown any amount the court specifies in respect of the costs so paid by the Crown; and
  - (b) the amount ordered to be refunded is a debt due to the Crown by that person, and is recoverable accordingly in a court of competent jurisdiction.
- (3) Subsection (4) applies to a District Court if—
  - (a) an application is made under section 103 in respect of a child; and
  - (b) the child is returned voluntarily; and
  - (c) that return is due, in whole or in part, to the intervention of the Authority; and
  - (d) any costs of (or incidental to) returning the child (for example, the cost and travelling expenses of any necessary escort) are paid by the Crown or by any other person (other than the person who removed the child to New Zealand).
- (4) In the situation specified in subsection (3),—
  - (a) the District Court may, on an application by the Authority (in a case where a refund of the costs is sought on behalf of the Crown), or (in any other case) by that other person, order the person who removed the child to New Zealand to refund to the Crown or, as the case may be, to that other person any amount the court specifies in respect of the costs so paid by the Crown or that other person; and
  - (b) the amount ordered to be refunded is a debt due to the Crown or, as the case may be, that other person, by the person who removed the child to New Zealand, and is recoverable accordingly in a court of competent jurisdiction.

Compare: 1991 No 19 s 28(1)–(3)

**122 Order under section 121 may be lodged in High Court**

- (1) A copy of an order made under section 121 may be lodged in the High Court.

- (2) On being so lodged, the order must be treated, from the date on which it is lodged, as an order of the High Court.
- (3) In particular, the order is of the same force and effect for the purposes of execution, and carries interest on the amount payable under it in the same way, and is subject to the same control over its execution by the High Court, as if it were an order originally made in the High Court and entered on the date on which it is so lodged.
- (4) If, on an application for the purpose, it thinks fit to do so, the High Court may, at any time, set aside the lodging of an order under this section on any terms it thinks just.

Compare: 1991 No 19 s 28(4), (5)

### **123 Unfounded applications**

- (1) Nothing in this subpart requires the Authority to take any action in respect of an application if it is manifest—
  - (a) that the requirements of the provisions of this subpart that are applicable to the application have not been fulfilled or complied with; or
  - (b) that the application is otherwise not well founded.
- (2) If, under this section, the Authority refuses to take any action in respect of an application, the Authority must promptly inform the applicant or, as the case may require, the Central Authority through which the application was transmitted of the grounds for the refusal.
- (3) If, under this section, the Authority refuses to take any action in respect of an application, a person aggrieved by that refusal may appeal to a District Court or a Family Court against that refusal.
- (4) On an appeal under subsection (3), the court may—
  - (a) make any order the court considers just; or
  - (b) refer the matter back to the Authority with directions to reconsider the whole or a specified part of the matter.
- (5) The court's decision on the appeal is final.

Compare: 1991 No 19 s 29

### **124 Other provisions not affected**

Nothing in this subpart prevents a court, at any time, from making an order for the return of a child to a Contracting State otherwise than under the provisions of this subpart.

Compare: 1991 No 19 s 30

**Part 3**  
**Jurisdictional, procedural, miscellaneous, and saving and  
transitional provisions**

*Jurisdictional provisions*

**125 Jurisdiction of courts**

- (1) Proceedings under this Act must be heard and determined in a Family Court unless—
  - (a) the proceedings are criminal proceedings, in which case no Family Court has jurisdiction in respect of them; or
  - (b) under any of the following provisions, the proceedings may or must be heard and determined in a court other than a Family Court:
    - (i) subsection (2) or subsection (4):
    - (ii) sections 27, 30, 35, 72, 73, 76, and 77:
    - (iii) subpart 4 of Part 2.
- (2) A Family Court must not entertain an application in respect of a child (except an application specified in subsection (3))—
  - (a) if an order of the High Court about the guardianship of, or about the role of providing day-to-day care for, or about contact with, the child (other than an order under section 44) is in force, and has not been removed into a Family Court under section 127; or
  - (b) if the child is under the guardianship of the High Court.
- (3) Despite subsection (2), a Family Court may entertain—
  - (a) an application for an interim order about the role of providing day-to-day care for, or about contact with, the child; or
  - (b) an application under section 72 or section 73 or section 105
- (4) If a Family Court Judge (or, in proceedings under subpart 4 of Part 2 before a District Court, a District Court Judge) is of the opinion that proceedings under this Act, or a question in proceedings under this Act, would be more appropriately or speedily dealt with in the High Court, the Family Court Judge (or District Court Judge) may, on an application by a party to the proceedings or without any application of that kind, in the prescribed manner refer the proceedings or the question to the High Court.
- (5) On a reference of that kind, the High Court has the same power to adjudicate on the proceedings or question as the Family Court (or, as the case may require, the District Court) had.
- (6) Nothing in this section limits the power of a Family Court to punish a person for contempt of court.

Compare: 1968 No 63 s 4



## 126 Personal jurisdiction

- (1) The court has jurisdiction under this Act in any of the following cases:
  - (a) if a question of guardianship of a child, or of the role of providing day-to-day care for a child, or of contact with a child, arises as an ancillary matter in any proceedings in which the court has jurisdiction; or
  - (b) if the child who is the subject of the application or order is, when the application is made, present in New Zealand; or
  - (c) if the child, a person against whom an order is sought, or the applicant, is, when the application is made, domiciled or resident in New Zealand.
- (2) Despite subsection (1), the court may decline to make an order under this Act if—
  - (a) neither the person against whom it is sought nor the child is resident in New Zealand; and
  - (b) the court is of the opinion that no useful purpose would be served by making an order or that in the circumstances the making of an order would be undesirable.
- (3) Nothing in this section applies to an appointment (of an eligible spouse or partner of a parent as an additional guardian) under section 23.

Compare: 1968 No 63 s 5

Section 126(3): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

## 127 Removal of High Court orders to Family Court

- (1) A party to proceedings in the High Court in which an order has been made about the guardianship of a child, or about the role of providing day-to-day care for a child, or about contact with a child, whether that order was made before or after the commencement of this Act, may apply to the Registrar of the High Court at the place where the order was made to have a copy of the order filed in a Family Court.
- (2) The party must forward with the application—
  - (a) a copy of the order and of any order varying or otherwise affecting it; and
  - (b) the fees prescribed for sealing copies of orders.
- (3) On receiving the application, the Registrar must—
  - (a) transmit to the Registrar of the Family Court specified in the application a copy under the seal of the High Court of the order and of every order varying or otherwise affecting it, and
  - (b) record on the original order a note to the effect that the copy has been so transmitted.

- (4) On receiving the copy of an order transmitted under subsection (3), the Registrar of the Family Court must file it.
- (5) If an order is removed to a Family Court under this section, the Registrar of the High Court who transmitted a copy of the order must forward to the Registrar of the Family Court a copy under the seal of the court of every order of the High Court varying or otherwise affecting the order removed.

Compare: 1968 No 63 s 26

### *Procedural provisions*

#### **128 Evidence**

In all proceedings under this Act (other than criminal proceedings, but including appeals or any other proceedings), the court may receive any evidence that it thinks fit, whether or not it is otherwise admissible in a court of law.

Compare: 1968 No 63 s 28

#### **129 Court's power to call witnesses**

- (1) In proceedings before it under this Act (other than criminal proceedings), a court may, on its own initiative, call as a witness a person whose evidence may in its opinion assist the court.
- (2) The power given by subsection (1) includes power to call as a witness a party to the proceedings or a spouse or civil union partner of a party to the proceedings.
- (3) A witness called by the court under this section has 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—
  - (a) may be examined and re-examined by the court, or by any counsel assisting the court; and
  - (b) may be cross-examined by, or on behalf of, a party to the proceedings or by a lawyer appointed to act for a child who is the subject of the proceedings.
- (5) Sections 20, 38, and 39 of the Summary Proceedings Act 1957, so far as applicable and with all necessary modifications, apply with respect to every person called as a witness by the court under this section as if the witness had been called by a party to the proceedings.
- (6) The expenses of a witness called by the court under this section, in accordance with the prescribed scale of witnesses' expenses, are in the first instance payable out of public money appropriated by Parliament for the purpose.

Compare: 1968 No 63 s 28A

Section 129(2): amended, on 1 July 2005, by section 3 of the Care of Children Amendment Act 2005 (2005 No 5).

**130 Counsel to assist court**

- (1) In proceedings before it under this Act (other than criminal proceedings), a court may appoint, or direct the Registrar of the court to appoint, a lawyer to assist the court.
- (2) The lawyer may call a person as a witness in the proceedings, and may cross-examine witnesses called by a party to the proceedings or by the court.

Compare: 1968 No 63 s 30(1)(a), (3)

Section 130(1): amended, on 18 May 2009, by section 14 of the Care of Children Amendment Act 2008 (2008 No 74).

**131 Costs of court-appointed counsel**

- (1) Fees for professional services provided by lawyers appointed under section 7(1) or section 130(1), and reasonable expenses incurred,—
  - (a) may be determined in accordance with regulations made under section 147(2)(c); and
  - (b) are payable out of public money appropriated by Parliament for the purpose.
- (2) The bill of costs rendered by a lawyer appointed under section 7(1) or section 130(1) must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may tax the bill of costs.
- (3) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the bill may, within 14 days after the date of the decision, apply to a Judge of the court to review the decision; and the Judge may on the application make any order varying or confirming the decision the Judge considers fair and reasonable.
- (4) Despite subsection (1), the court may, if it thinks proper, order a party to the proceedings to refund to the Crown an amount the court specifies in respect of any fees and expenses paid under subsection (1), and the amount ordered to be refunded is a debt due to the Crown by that party and, in default of payment of the amount, payment of it may be enforced, by order of a District Court or the High Court as the case may require, in the same manner as a judgment of that court.

Compare: 1968 No 63 s 30(4)–(7)

**132 Reports from chief executive or social worker**

- (1) A copy of an application for guardianship or a parenting order (other than an interim parenting order) must be supplied to the chief executive if the court so directs.
- (2) The chief executive or a social worker must report on the application, and may appear on the application personally or by a lawyer.

Compare: 1968 No 63 s 29(1), (2)

**133 Reports from other persons**

- (1) This section applies to the following applications:
  - (a) an application for guardianship;
  - (b) an application for a parenting order (other than an application for an interim order about the role of providing day-to-day care for a child);
  - (c) an application under section 105(1).
- (2) If satisfied that it is necessary for the proper disposition of an application, the court may—
  - (a) request a person whom the court considers qualified for the purpose to prepare a written cultural, medical, psychiatric, or psychological report on the child who is the subject of the application; or
  - (b) direct the Registrar of the court to request a person whom the Registrar considers qualified for the purpose to prepare a written cultural, medical, psychiatric, or psychological report on the child who is the subject of the application.
- (3) A cultural report on the child who is the subject of the application may address any aspect or aspects of that child's cultural background (for example, that child's religious denomination and practice).
- (4) In deciding whether to request a report or to direct the Registrar of the court to request a report, the court must, if the wishes of the parties are known to the court or can be speedily ascertained, have regard to those wishes.

Compare: 1968 No 63 s 29A(1), (2)

Section 133(2): substituted, on 18 May 2009, by section 15(1) of the Care of Children Amendment Act 2008 (2008 No 74).

Section 133(4): amended, on 18 May 2009, by section 15(2) of the Care of Children Amendment Act 2008 (2008 No 74).

**134 Distribution, etc, of reports under sections 132 and 133**

- (1) The Registrar of the court must copy a report under section 132 or section 133 (the **report**)—
  - (a) to the lawyer acting for each party to the proceedings or, subject to subsection (3), if a party has no lawyer acting for that party, to that party; and
  - (b) to a lawyer appointed to act for a child who is the subject of the proceedings.
- (2) If the court orders a lawyer referred to in subsection (1)(a) not to give or show the report to the person for whom the lawyer is acting, the lawyer must comply with the order.
- (3) If a party has no lawyer acting for that party and the court is satisfied that information in the report would, if provided directly to that party, place the child

concerned or another person at risk of physical abuse, sexual abuse, or psychological abuse, the court may—

- (a) order that the report not be copied to that party under subsection (1)(a); and
  - (b) appoint counsel to assist the court under section 130(1) for the purpose of explaining the contents of the report to that party.
- (4) Before the report is copied to a lawyer under subsection (1)(b), the court must consider whether the report may be given or shown to the child for whom the lawyer is acting.
  - (5) A lawyer referred to in subsection (1)(b) may give or show the report to the child for whom the lawyer is acting only if the court so orders, but in every case the lawyer must explain to the child the purpose and contents of the report, unless the lawyer considers that to do so would be contrary to the welfare and best interests of the child.
  - (6) A party to the proceedings, or a lawyer appointed to act for a child who is the subject of the proceedings, may present evidence on any matter referred to in the report.
  - (7) The court may, if it thinks fit, call as a witness the person who made or prepared the report.

Compare: 1968 No 63 ss 29(3)–(7), 29A(3)–(5), (7), (8)

### **135 Costs of reports under section 133**

- (1) Fees for reports prepared under a request under section 133(2), and reasonable expenses incurred,—
  - (a) may be determined in accordance with regulations made under section 147(2)(d); and
  - (b) are payable by any party or parties to the proceedings the court orders or, if the court so decides, are payable out of public money appropriated by Parliament for the purpose.
- (2) An amount of any fees and expenses ordered to be paid by a party under subsection (1)(b) is, if paid by the Crown, a debt due to the Crown by that party and, in default of payment of the amount, payment of the amount may be enforced, by order of a District Court or the High Court as the case may require, in the same manner as a judgment of that court.

Compare: 1968 No 63 s 29A(6), (6A)

### **136 Court may hear person on child’s cultural background**

- (1) A party to proceedings under this Act that appear likely to proceed to a hearing may, before a date is set for a hearing of the proceedings, ask the court to hear a person to speak on—
  - (a) the child’s cultural background; and

- (b) any aspects of the particular child's cultural background that may be relevant to a matter in issue in the proceedings.
- (2) Without limiting any other powers of the court to adjourn, the court may adjourn the proceedings to enable arrangements to be made to hear a person or persons under this section.
- (3) Despite subsection (1), if no party makes a request under this section, the court may, at any time during the proceedings, suggest to a party to the proceedings that it may be of assistance to the court to hear a person or persons called by the party on any of the matters specified in subsection (1).

Compare: 2002 No 9 s 27(1), (4), (5)

### **137 Attendance at hearings generally**

- (1) Only the following persons may attend a hearing of proceedings (other than criminal proceedings) under this Act:
  - (a) officers of the court:
  - (b) parties to the proceedings and their lawyers:
  - (c) lawyers appointed under section 7(1) or section 130(1):
  - (d) witnesses:
  - (e) persons the court agrees to hear under section 136:
  - (f) persons who may attend under section 138(2)(b):
  - (g) accredited news media reporters:
  - (h) persons whom the Judge permits to be present as support persons for a party on a request by that party:
  - (i) any other persons whom the Judge permits to be present.
- (2) The Judge must agree to a request under subsection (1)(h) unless the Judge considers there is a good reason why the named support persons should not be permitted to be present.
- (3) No support persons for a party for whom no lawyer is acting may help the party conduct his or her case.
- (4) 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) a person the court agrees to hear under section 136:
  - (c) a person who may attend under section 138(2)(b):
  - (d) an accredited news media reporter:
  - (e) a support person whom the Judge permits to be present under subsection (1)(h).

- (5) However, in considering, at or before a hearing, whether to exclude from the courtroom a person who may attend under section 138(2)(b), the Judge must take into account all relevant objections under section 138(3)(b).
- (6) Nothing in this section limits any other power of the court—
  - (a) to hear proceedings in private; or
  - (ab) to permit a McKenzie friend to be present; or
  - (b) to exclude any person from the court.

Compare: 1968 No 63 s 27

Section 137(6)(ab): inserted, on 18 May 2009, by section 16 of the Care of Children Amendment Act 2008 (2008 No 74).

### **138 Attendance at hearings of persons involved in counselling or conciliation under Family Proceedings Act 1980**

- (1) This subsection applies to a person (other than a party to the proceedings, the counsellor, or the Family Court Judge who presided over the mediation conference) who attended one of the following kinds of event involving a matter under this Act that is to proceed to a hearing:
  - (a) 1 or more sessions of counselling carried out under section 9 or section 10 or section 19 of the Family Proceedings Act 1980;
  - (b) a mediation conference held under section 13 of that Act.
- (2) A person to whom subsection (1) applies—
  - (a) must be given reasonable prior notice in writing of the date and time of the hearing and of the period within which he or she must advise the court whether he or she intends to attend the hearing; and
  - (b) may attend the hearing if he or she has, within the period specified in that notice, advised the court that he or she intends to do so.
- (3) Each party to the proceedings must, before the hearing, be given—
  - (a) details of all persons (if any) who have advised under subsection (2) that they intend to attend the hearing; and
  - (b) a reasonable opportunity to object to those persons attending.

### **139 Publication of reports of proceedings**

Sections 11B to 11D of the Family Courts Act 1980 apply to the publication of a report of any proceedings under this Act (other than criminal proceedings)—

- (a) in a 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 139: substituted, on 18 May 2009, by section 17 of the Care of Children Amendment Act 2008 (2008 No 74).

**140 Power to dismiss proceedings**

The court may dismiss proceedings before it under this Act if it is satisfied—

- (a) that the proceedings relate to a specified child, and that the continuation of the proceedings is, in the particular circumstances, clearly contrary to the welfare and best interests of the child; or
- (b) that the proceedings are frivolous or vexatious or an abuse of the procedure of the court.

Compare: 1980 No 94 s 163; 1989 No 24 s 207

**141 Power to restrict commencement of proceedings**

- (1) This section applies to a court if, and only if, the court—
  - (a) is satisfied that a person has persistently instituted vexatious proceedings under this Act or under any former Act (whether those proceedings were in respect of the same person or matter or different persons or matters); and
  - (b) has given the person a reasonable opportunity to be heard.
- (2) The court may order that the person may commence either of the following only with the leave of the court:
  - (a) proceedings under this Act of any kind; or
  - (b) proceedings under this Act of any specified kind or in respect of any specified person or matter.
- (3) Nothing in this section limits section 88B of the Judicature Act 1908 (which empowers the High Court to make orders restricting the institution or continuation of vexatious proceedings).

Compare: 1980 No 94 s 163; 1989 No 24 s 207

Section 141(3): amended, on 15 December 2005, by section 5(2) of the Judicature Amendment Act (No 2) 2005 (2005 No 107).

**142 Costs**

- (1) In any proceedings under this Act, the court may make any order as to costs it thinks fit.
- (2) An order under this section may be made either in addition to, or instead of, an order under section 71 or section 87 or section 121.

Compare: 1968 No 63 s 27B

**143 Appeals to High Court**

- (1) This subsection applies to a decision of a Family Court or District Court, in proceedings under this Act (other than criminal proceedings), to—
  - (a) make or refuse to make an order (other than an interlocutory or interim order); or
  - (b) dismiss the proceedings; or



- (c) otherwise finally determine the proceedings.
- (2) A party to proceedings in which there is made a decision to which subsection (1) applies, or a child to whom those proceedings relate, may appeal to the High Court against the decision. However, if the proceedings are under section 44 or section 46, the party or child may appeal only with the leave of the High Court.
- (3) A party to proceedings under this Act in a Family Court or District Court (other than criminal proceedings or proceedings under section 44 or section 46) in which an interlocutory or interim order is made, or a child to whom those proceedings relate, may, with the leave of the Family Court or District Court (as the case requires), appeal to the High Court against the order.
- (4) The High Court Rules and sections 73 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under this section as if it were an appeal under section 72 of that Act.
- (5) On the *ex parte* application of the appellant, the Family Court or District Court (as the case may be) may order that the appellant must not be required under section 74(1) of the District Courts Act 1947 to give the Registrar of the High Court security for costs.
- (6) Subsection (5) overrides subsection (4).

Compare: 1968 No 63 s 31

#### **144 Effect of High Court's order or decision**

Except as provided in section 145(1)(b), an order or decision of the High Court on an appeal under section 143 is final.

Compare: 1968 No 63 s 31A

#### **145 Appeal to Court of Appeal**

- (1) An appeal lies to the Court of Appeal from an order or decision of the High Court under this Act, but—
  - (a) no appeal lies from an order or decision under section 44 or section 46;
  - (b) if the order or decision was made on appeal from a Family Court or a District Court, an appeal lies only with the leave of the Court of Appeal.
- (2) The Court of Appeal may, in its discretion, if it thinks that the interests of justice so require,—
  - (a) rehear the whole or any part of the evidence; or
  - (b) receive further evidence.

Compare: 1968 No 63 s 31B

*Miscellaneous provisions***146 Rules of court**

- (1) Rules may be made in the manner prescribed by the Judicature Act 1908 relating to the procedure of the High Court under this Act and to appeals to the Court of Appeal under this Act.
- (2) Rules may be made under section 16A of the Family Courts Act 1980 regulating the practice and procedure of Family Courts in proceedings under this Act.
- (3) An application or other document required to be made in a form prescribed by rules made under this Act must instead, if it relates to proceedings in a Family Court, be made in a form prescribed by rules made under the Family Courts Act 1980.
- (4) In addition to the powers conferred by section 122 of the District Courts Act 1947, the Governor-General may, by Order in Council, make rules—
  - (a) regulating the practice and procedure of District Courts in proceedings under this Act; and
  - (b) providing for any matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Compare: 1968 No 63 s 32(1)–(1B), (4)

**147 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations under section 100A of the Judicature Act 1908 (that is, in general terms, regulations prescribing fees for the purposes of proceedings before the High Court or the Court of Appeal) for the purposes of this Act.
- (2) The Governor-General may, by Order in Council, make regulations—
  - (a) providing for the determination, for the purposes of section 62(2), of the number of sessions of supervised contact (ordered under section 60(5), and supervised by an approved provider) that will be funded out of public money;
  - (b) providing for the determination, for the purposes of section 62(3), of the amount of fees and expenses, including minimum and maximum amounts, payable to approved providers in respect of supervised contact carried out under an order under section 60(5), which fees and expenses may differ—
    - (i) according to the number of sessions of supervised contact determined to be carried out under section 62(2); and
    - (ii) according to whether supervision services are to be provided in a specified number of proceedings during a specified period;
  - (c) providing for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of profes-

sional services provided by lawyers appointed under section 7(1) or section 130(1), which fees and expenses may differ—

- (i) according to the complexity of the proceedings and the time spent; and
  - (ii) according to whether professional services are to be provided in a specified number of proceedings during a specified period:
- (d) providing for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of the preparation of reports requested under section 133, which fees and expenses may differ—
- (i) according to the type of report and time spent; and
  - (ii) according to whether professional services are to be provided in a specified number of proceedings during a specified period:
- (e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Compare: 1968 No 63 s 32(2), (3); 1980 No 94 s 187(ca), (cc)

#### **148 Other Acts not affected**

- (1) Nothing in this Act affects the following Acts:
- (a) Children, Young Persons, and Their Families Act 1989;
  - (b) Family Proceedings Act 1980.
- (2) This section is subject to sections 66 and 69 and 149 to 151 and Schedules 2 to 4.

Compare: 1968 No 63 s 34

*Amendments to Family Proceedings Act 1980 (extending counselling and conciliation provisions to same-sex de facto partners)*

#### **149 Amendments in Schedule 2**

The Family Proceedings Act 1980 is amended in the manner specified in Schedule 2.

*Amendments to Family Proceedings Act 1980 (parentage tests in civil proceedings)*

#### **150 Amendments in Schedule 3**

The Family Proceedings Act 1980 is amended in the manner specified in Schedule 3.

*Other amendments and repeal***151 Other amendments in Schedule 4**

The Acts listed in Schedule 4 are amended in the manner specified in that schedule.

**152 Repeal**

The Guardianship Act 1968 (1968 No 63) is repealed.

*Saving and transitional provisions***153 Orders under 1968 Act appointing person as guardian**

- (1) Orders made under provisions of the Guardianship Act 1968 listed in column 2 of the following table and that are in force immediately before the date on which this Act comes into force may be enforced, varied, discharged, or otherwise dealt with under this Act as if they were made under the corresponding provisions of this Act listed in column 3 of that table.

<b>Kind of guardian</b>	<b>Provision of 1968 Act</b>	<b>Provision of this Act</b>
father	section 6(3)	section 19(4)
testamentary	section 7(3)	section 26(3)
court-appointed	section 8	section 27

- (2) The guardianship of a person appointed as guardian by an order referred to in subsection (1) terminates in accordance with section 28 of this Act and, in particular, if the order is expressed to continue in force until the child concerned turns 20 years or attains full age, it has effect as if the reference to the child attaining that age were a reference to the child turning 18 years.

**154 Declarations under section 6A of 1968 Act as to guardianship of fathers**

Declarations made under section 6A of the Guardianship Act 1968 and that are in force immediately before the commencement of this Act must be treated as if they were made under section 20 of this Act.

**155 Appointments of testamentary guardians under section 7(2) of 1968 Act**

- (1) Appointments of testamentary guardians under section 7(2) of the Guardianship Act 1968 and that are in force immediately before the commencement of this Act must be treated as if they were appointments made under section 26(2) of this Act.
- (2) The guardianship of a testamentary guardian appointed under section 7(2) of the Guardianship Act 1968 terminates in accordance with section 28 of this Act.

**156 Orders under 1968 Act about guardianship of court**

An order that is made under section 10B(1)(a) or (as the case requires) section 10B(1)(b) or section 10D(1)(c)(ii) of the Guardianship Act 1968 and that is in

force immediately before the date on which this Act comes into force must be treated as if it were an order described in section 31(1)(a) or (as the case requires) section 31(1)(b) or section 33(1)(c)(ii) of this Act and, in particular, an order of that kind ceases to have effect in accordance with section 33(2) of this Act.

**157 Orders under 1968 Act about custody**

Orders about custody of a child that are made under the Guardianship Act 1968 and that are in force immediately before the date on which this Act comes into force may be enforced, varied, discharged, or otherwise dealt with under this Act as if they were parenting orders made under this Act about the role of providing day-to-day care for the child.

**158 Orders under 1968 Act about access**

Orders about access to a child that are made under the Guardianship Act 1968 and that are in force immediately before the date on which this Act comes into force may be enforced, varied, discharged, or otherwise dealt with under this Act as if they were orders made under this Act about contact with the child.

**159 Other references to custody and access under 1968 Act**

Unless the context otherwise requires, every reference in any document whatsoever (other than in this Act or in an enactment specified in Schedule 4)—

- (a) to “custody of” a child under the Guardianship Act 1968 is, after this Act comes into force, to be read as a reference to “the role of providing day-to-day care for” the child under this Act; and
- (b) to “access to” a child under an order under the Guardianship Act 1968 is, after this Act comes into force, to be read as a reference to “contact with” the child under an order under this Act.

**160 Existing proceedings under 1968 Act**

- (1) This section applies to proceedings under the Guardianship Act 1968 (for example, to proceedings under section 12 of the Guardianship Amendment Act 1991)—
  - (a) that were commenced before the date on which this Act comes into force; and
  - (b) that are not withdrawn or finally determined by the date on which this Act comes into force.
- (2) Proceedings to which this section applies continue under this Act (whether the hearing of those proceedings commenced before or after the date on which this Act comes into force) as if those proceedings were commenced under this Act.

**161 Appointments under section 30 of 1968 Act**

- (1) Appointments of a barrister or solicitor under section 30(1)(a) of the Guardianship Act 1968 and that are in force immediately before this Act comes into force must be treated as if they were made under section 130(1) of this Act.
- (2) Appointments of a barrister and solicitor under section 30(1)(b) of the Guardianship Act 1968 and that are in force immediately before this Act comes into force must be treated as if they were made under section 7(1) of this Act.

**162 Applications under 1991 Amendment Act**

- (1) This section applies to applications under the Guardianship Amendment Act 1991 to the New Zealand Central Authority designated by section 7(1) of that Act—
  - (a) that were made before the date on which this Act comes into force; and
  - (b) that are not withdrawn or finally determined by the date on which this Act comes into force.
- (2) Applications to which this section applies continue under this Act as if they were made under this Act to the Central Authority for New Zealand designated by section 100(1).

**163 Appointments under section 23 of 1991 Amendment Act**

Appointments of a barrister or solicitor under section 23 of the Guardianship Amendment Act 1991 and that are in force immediately before this Act comes into force must be treated as if they were made under section 116 of this Act.

**164 Orders saved by section 31(2) of 1991 Amendment Act**

The repeal of the Guardianship Amendment Act 1991 by section 152 of this Act does not affect an order saved by section 31(2) of that Act, and this Act applies to an order of that kind—

- (a) as if the United Kingdom of Great Britain and Northern Ireland were a prescribed country under this Act; and
- (b) if the order was registered under section 22A of the Guardianship Act 1968, as if the order were registered under section 81 of this Act; and
- (c) if the order was not registered under section 22A of the Guardianship Act 1968, as if section 31(2) of the Guardianship Amendment Act 1991 continued in force and permitted the order to be registered under section 81 of this Act.

## Schedule 1

### Convention on the Civil Aspects of International Child Abduction

s 95

The States signatory to the present Convention,  
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,  
Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,  
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions—

#### Chapter I

#### Scope of the Convention

##### Article 1

The objects of the present Convention are—

- a* to secure the prompt return of children, wrongfully removed to or retained in any Contracting State; and
- b* to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

##### Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

##### Article 3

The removal or the retention of a child is to be considered wrongful where—

- a* it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b* at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

#### Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

#### Article 5

For the purposes of this Convention—

- a* 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- b* 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

### Chapter II Central Authorities

#### Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

#### Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures—

- a* to discover the whereabouts of a child who has been wrongfully removed or retained;
- b* to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- c* to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- d* to exchange, where desirable, information relating to the social background of the child;



- e* to provide information of a general character as to the law of their State in connection with the application of the Convention;
- f* to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;
- g* where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- h* to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- i* to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

### **Chapter III**

#### **Return of children**

#### Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain—

- a* information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- b* where available, the date of birth of the child;
- c* the grounds on which the applicant's claim for return of the child is based;
- d* all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by—

- e* an authenticated copy of any relevant decision or agreement;
- f* a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- g* any other relevant document.

#### Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

### Article 10

The Central Authority of the State where the child is shall take or cause to be taken appropriate measures in order to obtain the voluntary return of the child.

### Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

### Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

### Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that—

- a* the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- b* there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence

#### Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

#### Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

#### Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

#### Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

#### Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

#### Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

## Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

## **Chapter IV**

### **Rights of access**

## Article 21

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

## **Chapter V**

### **General provisions**

## Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

## Article 23

No legalization or similar formality may be required in the context of this Convention.

## Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

### Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

### Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

### Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

### Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

### Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

### Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

### Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units—

- a* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State:
- b* any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

### Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

### Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

### Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

### Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

### Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

## **Chapter VI** **Final clauses**

### Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session. It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

### Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands: this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

### Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

### Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

### Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

### Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

### Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force—



- 1 for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
- 2 for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

#### Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it. If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

#### Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following—

- 1 the signatures and ratifications, acceptances and approvals referred to in Article 37;
- 2 the accessions referred to in Article 38;
- 3 the date on which the Convention enters into force in accordance with Article 43;
- 4 the extensions referred to in Article 39;
- 5 the declarations referred to in Article 38 and 40;
- 6 the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
- 7 the denunciations referred to in Article 44.

**Schedule 2**  
**Amendments to Family Proceedings Act 1980 (extending counselling  
and conciliation provisions to same-sex de facto partners)**

s 149

Schedule 2: substituted, on 26 April 2005, by section 45 of the Civil Union Act 2004 (2004 No 102).

*Amendment(s) incorporated in the Act(s).*

**Schedule 3**  
**Amendments to Family Proceedings Act 1980 (parentage tests in  
civil proceedings)**

s 150

*Amendment(s) incorporated in the Act(s).*

## Schedule 4

### Other amendments

s 151

**Administration Act 1969 (1969 No 52)***Amendment(s) incorporated in the Act(s).***Adoption Act 1955 (1955 No 93)***Amendment(s) incorporated in the Act(s).***Births, Deaths, and Marriages Registration Act 1995 (1995 No 16)***Amendment(s) incorporated in the Act(s).***Children, Young Persons, and Their Families Act 1989 (1989 No 24)***Amendment(s) incorporated in the Act(s).***Civil Union Act 2004 (2004 No 102)***Amendment(s) incorporated in the Act(s).***Defence Act 1990 (1990 No 28)***Amendment(s) incorporated in the Act(s).***Department of Child, Youth and Family Services Act 1999 (1999 No 82)***Amendment(s) incorporated in the Act(s).***Domestic Violence Act 1995 (1995 No 86)***Amendment(s) incorporated in the Act(s).***Evidence Amendment Act 1994 (1994 No 31)***Amendment(s) incorporated in the Act(s).***Family Courts Act 1980 (1980 No 161)***Amendment(s) incorporated in the Act(s).***Family Proceedings Act 1980 (1980 No 94)***Amendment(s) incorporated in the Act(s).***Fencing Act 1978 (1978 No 50)***Amendment(s) incorporated in the Act(s).***Habeas Corpus Act 2001 (2001 No 31)***Amendment(s) incorporated in the Act(s).*

**Health Act 1956 (1956 No 65)**

*Amendment(s) incorporated in the Act(s).*

**Income Tax Act 1994 (1994 No 164)**

*Amendment(s) incorporated in the Act(s).*

**Income Tax Act 2004 (2004 No 35)**

*Amendment(s) incorporated in the Act(s).*

**Judicature Act 1908 (1908 No 89)**

*Amendment(s) incorporated in the Act(s).*

**Legal Services Act 2000 (2000 No 42)**

*Amendment(s) incorporated in the Act(s).*

**Marriage Act 1955 (1955 No 92)**

*Amendment(s) incorporated in the Act(s).*

**Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46)**

*Amendment(s) incorporated in the Act(s).*

**Minors' Contracts Act 1969 (1969 No 41)**

*Amendment(s) incorporated in the Act(s).*

**Protection of Personal and Property Rights Act 1988 (1988 No 4)**

*Amendment(s) incorporated in the Act(s).*

**Sale of Liquor Act 1989 (1989 No 63)**

*Amendment(s) incorporated in the Act(s).*

**Social Security Act 1964 (1964 No 136)**

*Amendment(s) incorporated in the Act(s).*

**Victims' Rights Act 2002 (2002 No 39)**

*Amendment(s) incorporated in the Act(s).*

Schedule 2 **Civil Union Act 2004**: inserted, on 26 April 2005, by section 46 of the Civil Union Act 2004 (2004 No 102).

**Contents**

- 1 General
- 2 Status of reprints
- 3 How reprints are prepared
- 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
- 5 List of amendments incorporated in this reprint (most recent first)

**Notes****1 General**

This is a reprint of the Care of Children Act 2004. The reprint incorporates all the amendments to the Act as at 29 November 2010, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

**2 Status of reprints**

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 How reprints are prepared**

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

**4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted

enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)

- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5** *List of amendments incorporated in this reprint  
(most recent first)*

Immigration Act 2009 (2009 No 51): section 406(1)

Care of Children Amendment Act 2008 (2008 No 74)

Policing Act 2008 (2008 No 72): sections 116(a)(ii), 130(1)

Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48): section 47

Care of Children Amendment Act 2007 (2007 No 44)

Lawyers and Conveyancers Act 2006 (2006 No 1): section 348

Judicature Amendment Act (No 2) 2005 (2005 No 107): section 5(2)

Care of Children Amendment Act 2005 (2005 No 5)

Civil Union Act 2004 (2004 No 102): sections 45, 46