



Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014.
- 2 Commencement**
- (1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in subsections (2) and (3).
- (2) Sections 4, 7 to 27, 29(3), and 30 to 43 come into force on a date or dates to be appointed by the Governor-General by

Order in Council, and 1 or more Orders in Council may be made appointing different dates for different provisions.

- (3) Any provision not brought into force earlier comes into force 2 years after the date on which this Act receives the Royal assent.

3 **Principal Act**

This Act amends the Children, Young Persons, and Their Families Act 1989 (the **principal Act**).

4 **Section 2 amended (Interpretation)**

In section 2(1), insert in their appropriate alphabetical order:

“**permanent caregiver**, in relation to a child or young person, means—

“(a) a special guardian; or

“(b) a person—

“(i) appointed as a guardian of the child or young person under section 27 of the Care of Children Act 2004, where that appointment was made in substitution for an order under section 78, 101, or 110 of this Act, or for an agreement under section 140 of this Act; and

“(ii) who has the day-to-day care of the child or young person pursuant to a parenting order made under section 48 of the Care of Children Act 2004 or because there is no other guardian who has the day-to-day care of the child or young person

“**special guardian** means a guardian of a child or young person appointed under section 110 who is appointed as a special guardian under section 113A

“**subsequent child** means a child, born or unborn, who has a parent who is a person described in section 18B”.

Principles

5 **Section 5 amended (Principles to be applied in exercise of powers conferred by this Act)**

After section 5(f), insert:

- “(g) the principle that decisions affecting a child or young person should be made by adopting a holistic approach that takes into consideration, without limitation, the child’s or young person’s age, identity, cultural connections, education, and health.”

6 Section 13 amended (Principles)

- (1) Below the heading to section 13, insert as subsection (1):
- “(1) Every court or person exercising powers conferred by or under this Part, Part 3 or 3A, or sections 341 to 350, must adopt, as the first and paramount consideration, the welfare and interests of the relevant child or young person (as required by section 6).”
- (2) In section 13, replace “Subject to sections 5 and 6, any court which, or person who, exercises any powers conferred by or under this Part or Part 3 or Part 3A or sections 341 to 350 shall be guided by the following principles:” with “In determining the welfare and interests of a child or young person, the court or person must be guided by the principle that children and young people must be protected from harm and have their rights upheld, and also the principles in section 5 as well as the following principles:”.
- (3) Repeal section 13(a).

Subsequent children

7 Section 14 amended (Definition of child or young person in need of care or protection)

After section 14(1)(b), insert:

- “(ba) the child is a subsequent child of a parent to whom section 18A applies, and the parent has not demonstrated to the satisfaction of a social worker (under section 18A) or the court (under section 18C) that he or she meets the requirements of section 18A(3); or”.

8 Section 18 amended (Referral of care or protection cases to care and protection co-ordinator or youth justice co-ordinator by social workers or constables)

In section 18(1), replace “specified in section 14(1)(e)” with “specified in section 14(1)(ba) or (e)”.

9 New sections 18A to 18D inserted

After section 18, insert:

“18A Assessment of parent of subsequent child

- “(1) This section applies to a person who—
- “(a) is a person described in section 18B; and
 - “(b) is the parent of a subsequent child; and
 - “(c) has, or is likely to have, the care or custody of the subsequent child; and
 - “(d) is not a person to whom subsection (7) applies.
- “(2) If a social worker believes on reasonable grounds that a person is a person to whom this section applies, the social worker must, after informing the person (where practicable) that he or she is to be assessed under this section, assess whether the person meets the requirements of subsection (3) in respect of the subsequent child.
- “(3) A person meets the requirements of this subsection if,—
- “(a) in a case where the parent’s own act or omission led to him or her being a person described in section 18B, the parent is unlikely to inflict on the subsequent child the kind of harm that led to the parent being so described; or
 - “(b) in any other case, the parent is unlikely to allow the kind of harm that led to the parent being a person described in section 18B to be inflicted on the subsequent child.
- “(4) Following the assessment,—
- “(a) if subsection (5) applies, the social worker must apply for a declaration under section 67 that the subsequent child is in need of care or protection on the ground in section 14(1)(ba); or
 - “(b) in any other case, the social worker must decide not to apply as described in paragraph (a), and must instead apply under section 18C for confirmation of the decision not to apply under section 67.

- “(5) The social worker must apply as described in subsection (4)(a) if the social worker is not satisfied that the person, following assessment under this section, has demonstrated that he or she meets the requirements of subsection (3).
- “(6) No family group conference need be held before any application referred to in subsection (4) is made to the court, and nothing in section 70 applies.
- “(7) This subsection applies to the parent of a subsequent child if, since he or she last became a person described in section 18B,—
- “(a) the parent has been assessed under this section by a social worker in relation to a subsequent child and, following that assessment,—
 - “(i) the court has confirmed, under section 18C, a decision made under subsection (4)(b); or
 - “(ii) the social worker applied for a declaration under section 67 that the child was in need of care or protection on the ground in section 14(1)(ba), but the application was refused on the ground that the court was satisfied that the parent had demonstrated that he or she met the requirements of subsection (3); or
 - “(b) the parent was, before this section came into force, subject to an investigation carried out by a social worker under section 17 in relation to a child who would, at that time, have fallen within the definition of a subsequent child, and the social worker did not at that time form the belief that the child was in need of care or protection on a ground in section 14(1)(a) or (b).

“18B Person described in this section

- “(1) A person described in this section is a person—
- “(a) who has been convicted under the Crimes Act 1961 of the murder, manslaughter, or infanticide of a child or young person who was in his or her care or custody at the time of the child’s or young person’s death; or
 - “(b) who has had the care of a child or young person removed from him or her on the basis described in subsection (2)(a) and (b) and, in accordance with subsec-

tion (2)(c), there is no realistic prospect that the child or young person will be returned to the person's care.

- “(2) Subsection (1)(b) applies, in relation to a child or young person removed from the care of a person, if—
- “(a) the court has declared under section 67, or a family group conference has agreed, that the child or young person is in need of care or protection on a ground in section 14(1)(a) or (b); and
 - “(b) the court has made an order under section 101 (not being an order to which section 102 applies) or 110 of this Act, or under section 48 of the Care of Children Act 2004; and
 - “(c) the court has determined (whether at the time of the order referred to in paragraph (b) or subsequently), or, as the case requires, the family group conference has agreed, that there is no realistic prospect that the child or young person will be returned to the person's care.
- “(3) If a person is a person described in this section on more than 1 of the grounds listed in subsection (1), the references in section 18A(3) to the kind of harm that led a person to being a person described in this section is taken to be a reference to any or all of those kinds of harm.

“18C Confirmation of decision not to apply for declaration under section 67

- “(1) An application under this section for confirmation of a decision under section 18A(4)(b) relating to the parent of a subsequent child must include—
- “(a) information showing that the person is a person to whom section 18A applies; and
 - “(b) an affidavit, signed by the social worker, setting out the circumstances of the application and the reasons for the social worker's belief that the parent meets the requirements of section 18A(3).
- “(2) The application must be served in accordance with section 152(1) as if it were an application for a declaration under section 67.
- “(3) When considering the application, the court may (but need not) give any person an opportunity to be heard on the application

and, if it does, may appoint a barrister or solicitor (under section 159) to represent the subsequent child.

- “(4) After considering the application, the court may,—
- “(a) if subsection (5) applies, confirm the social worker’s decision under section 18A(4)(b) not to apply for a declaration under section 67; or
 - “(b) decline to confirm the social worker’s decision under section 18A(4)(b), in which case section 18D applies; or
 - “(c) dismiss the application on the ground that it does not relate to a person to whom section 18A applies; or
 - “(d) adjourn the hearing and require the social worker to—
 - “(i) provide such information as the court specifies, within the period specified by the court; or
 - “(ii) reconsider all or any aspect of the assessment and report to the court within a period specified by the court.
- “(5) The court may confirm the decision of a social worker under section 18A(4)(b) only if it is satisfied, on the basis of the written material before it (and, if the court has heard any person under subsection (3), any other material heard), that the parent in respect of whom the application is made has demonstrated that he or she meets the requirements of section 18A(3).
- “(6) Except as provided in this section, nothing in Part 3 applies in respect of an application for, or a decision of a court on, confirmation of a decision made under section 18A(4)(b).

“18D Court declining to confirm decision

If, under section 18C(4)(b), the court declines to confirm a social worker’s decision under section 18A(4)(b), the court must give written reasons for its decision, and the application for confirmation—

- “(a) must be treated as an application for a declaration under section 67 made by the chief executive on the ground in section 14(1)(ba), as if leave of the court had been granted under section 68(c); and
- “(b) must be served and heard in accordance with Part 3 and the rules of court, except that, although section 70 does not apply, if a family group conference is convened pur-

suant to section 72(3), the chief executive (or his or her representative) is entitled to attend the conference as if he or she were entitled to do so under section 22(1)(a) to (h).”

10 Section 19 amended (Referral of care or protection cases to care and protection co-ordinator by other persons or by court)

In section 19(1), after “section 14(1)”, insert “(other than on the ground specified in section 14(1)(ba))”.

Family group conferences

11 Section 22 amended (Persons entitled to attend family group conference)

After section 22(2), insert:

- “(3) If a family group conference is reconvened to review a decision, recommendation, or plan, every person who, at the time of the reconvened conference, is a person to whom subsection (1) applies is entitled to attend the conference.”

12 Section 23 amended (Care and protection co-ordinator to ensure that relevant information and advice made available to family group conference)

In section 23(1),—

- (a) after “advice”, insert “that the co-ordinator considers are”; and
(b) after “functions”, insert “(including information and advice relating to the health and education needs of every child or young person in respect of whom the conference is convened)”.

13 New section 29A inserted (Content of plan)

After section 29, insert:

“29A Content of plan

- “(1) Every plan of which a written record is prepared under section 29(3) must, without limitation,—
“(a) specify, contain, or state all the matters listed in section 130(1) (except as provided in section 130(2)); and

- “(b) specify a date by which the plan must be reviewed.
- “(2) The review date referred to in subsection (1)(b) must be,—
- “(a) if the plan relates to a child under the age of 7 years, within 6 months after the date on which the plan comes into effect in accordance with section 30; or
- “(b) in any other case, within 12 months after that date.”

14 Section 34 amended (Chief executive to give effect to decisions, recommendations, and plans of family group conference)

In section 34(1), replace “it is clearly impracticable” with “the chief executive considers that it is impracticable, unreasonable,”.

15 Section 35 amended (Police to comply with decisions, recommendations, and plans of family group conference)

In section 35, replace “it is clearly impracticable” with “the Police consider that it is impracticable, unreasonable,”.

16 Section 36 amended (Family group conference may reconvene to review its decisions, recommendations, and plans)

- (1) In the heading to section 36, replace “**may**” with “**to**”.
- (2) Replace section 36(1) with:
- “(1) For the purpose of reviewing a decision, recommendation, or plan made or formulated by a family group conference, the care and protection co-ordinator who convened the conference—
- “(a) must (subject to subsection (1A)) reconvene the conference on or before the review date (if any) specified in the plan; and
- “(b) must reconvene the conference if required to do so, in accordance with subsection (1B), by a social worker; and
- “(c) must reconvene the conference if required to do so, in accordance with subsection (1B), by an iwi social service, a cultural social service, or a child and family support service, but only if that service—

- “(i) was the body or organisation that referred the relevant child or young person to a care and protection co-ordinator under section 19; or
 - “(ii) is a body or organisation directly involved in the implementation of the decision, recommendation, or plan to be considered; and
 - “(d) may reconvene the conference, at any time, at the co-ordinator’s own motion or at the request of at least 2 members of the conference that made or formulated the decision, recommendation, or plan under review.
- “(1A) Subsection (1)(a) does not apply if—
- “(a) the care and protection co-ordinator, after consulting the social worker, is of the view that no further action under the plan is required; or
 - “(b) before the review date, a court makes any of the following orders in respect of the child or young person to whom the plan relates:
 - “(i) a services order under section 86:
 - “(ii) a support order under section 91:
 - “(iii) a custody order (other than an interim order) under section 101:
 - “(iv) a guardianship order under section 110 that appoints any person as the sole guardian of the child or young person:
 - “(v) a special guardianship order under section 113A.
- “(1B) A social worker, or a service referred to in subsection (1)(c), may require a care and protection co-ordinator to reconvene a family group conference under subsection (1)(b) or (c) only if the social worker or service is satisfied that there has been a change of circumstances such that the decision, recommendation, or plan no longer adequately addresses the needs of the child or young person to whom it relates.”

Subsequent children

17 Section 67 amended (Grounds for declaration that child or young person is in need of care or protection)

In section 67, insert as subsection (2):

- “(2) However, on an application under section 18A(4)(a) or 18D in relation to a person to whom section 18A applies, if the court is satisfied that the subsequent child is in need of care or protection on the ground in section 14(1)(ba), it must make the declaration unless it is satisfied that the parent has demonstrated that he or she meets the requirements of section 18A(3).”

Permanent caregivers

18 New section 86B inserted (No services orders in respect of permanent caregivers)

After section 86A, insert:

“86B No services orders in respect of permanent caregivers

- “(1) Despite sections 86 and 86A, a court must not make a services order or an interim services order under either of those sections in respect of—
- “(a) a person who is, or is to be made, a permanent caregiver of a child or young person; or
 - “(b) a child or young person who is, or is to be, in the care of a permanent caregiver.
- “(2) If a services order or an interim services order in respect of a permanent caregiver, or in respect of a child or young person in the care of a permanent caregiver, is in force on the date on which this section comes into force,—
- “(a) on and from that date, sections 134 to 137 have no effect so far as they relate to the order; and
 - “(b) the order ceases to have effect on the date on which it is next due for review.”

19 New section 92A inserted (Restriction on support orders where there is permanent caregiver)

After section 92, insert:

“92A Restriction on support orders where there is permanent caregiver

- “(1) A court must not make a support order or an interim support order under section 91 or 92 of a kind referred to in subsection (2) in respect of a child or young person who is, or who is to be, in the care of a permanent caregiver.

- “(2) The kind of order that must not be made is an order directing the chief executive or any other person or organisation to provide financial or other assistance that could be provided by the chief executive under section 388 or 388A, whether or not that assistance is actually provided.”

Special guardians

20 Section 107 amended (Person in whose custody child or young person is placed may determine access rights in absence of court order)

In section 107(b), after “an order under”, insert “section 113B(1)(b) or”.

21 Section 110 replaced (Guardianship orders)

Replace section 110 with:

“110 Guardianship orders

- “(1) Where the court makes a declaration under section 67 in relation to any child or young person, or on an application referred to in section 110A, it may make an order appointing any of the following persons to be a guardian of the child or young person:
- “(a) the chief executive:
 - “(b) an iwi social service:
 - “(c) a cultural social service:
 - “(d) the director of a child and family support service:
 - “(e) any other person.
- “(2) A guardian appointed under subsection (1) must be appointed as—
- “(a) the sole guardian of the child or young person; or
 - “(b) a guardian of the child or young person in addition to any other guardian.
- “(3) The director of a child and family support service may not be appointed as the sole guardian of a child or young person.
- “(4) If a person who is appointed as a sole or additional guardian of a child or young person under this section is a natural person, the court may also make an order under section 113A appointing the person as a special guardian of the child or young

person (including when the order under this section is made at a hearing under section 127).

“110A Application for change of guardianship order

- “(1) If a person is, in relation to a child or young person, a permanent caregiver who is not a special guardian, the person may, with the leave of the court, make a combined application for a guardianship order under section 110 and a special guardianship order under section 113A.
- “(2) Leave of the court may be given only if the court is satisfied that—
- “(a) the application is made with the intention of replacing a guardianship order made under section 27 of the Care of Children Act 2004 and all associated parenting orders under section 48 of that Act with the guardianship orders referred to in subsection (1); and
 - “(b) the person has exercised all mechanisms available under the Care of Children Act 2004 to resolve disputes with any parent or other guardian of the child or young person that relate to the circumstances referred to in subsection (4)(a).
- “(3) An application under this section must be treated as if it were an application under section 125 for the variation or discharge of an order made under Part 2, and, for that purpose, must be served and heard in accordance with Part 3 (with any necessary modifications).
- “(4) On an application under this section, the court may make the orders applied for only if—
- “(a) the court is satisfied that—
 - “(i) the person has been unable to effectively exercise his or her guardianship responsibilities or responsibilities to provide day-to-day care to the child or young person under the orders made under the Care of Children Act 2004; and
 - “(ii) that inability is due to the conduct of the parents or other guardians of the child or young person, and that conduct forms a pattern of behaviour; and

- “(iii) the child’s or young person’s welfare is being threatened or seriously disturbed as a result; and
- “(b) following an application under section 29A of the Care of Children Act 2004, the court will at the same time revoke both the person’s appointment as a guardian under that Act and any associated parenting orders under section 48 of that Act.”

22 New sections 113A and 113B inserted

After section 113, insert:

“113A Special guardianship orders

- “(1) The court may make an order under this section appointing a person referred to in section 110(4) as a special guardian of a child or young person only if—
 - “(a) the appointment is made for the purpose of providing the child or young person with a long-term, safe, nurturing, stable, and secure environment that enhances his or her interests; and
 - “(b) either—
 - “(i) the child or young person has no other guardian; or
 - “(ii) the special guardian either replaces, or is additional to, an existing guardian of the child or young person.
- “(2) For the purposes of this section and section 113B, **existing guardian** means any person (other than a special guardian) who is a guardian of the child or young person, or who would be a guardian of the child or young person if the court had not made a guardianship order under section 110.

“113B Effect of special guardianship order

- “(1) Where a special guardianship order is made in respect of a child or young person, then, whether the special guardian is a sole or additional guardian and despite anything in this section,—
 - “(a) the special guardian has custody of the child or young person, and—
 - “(i) no order under section 101 may be made in respect of the child or young person; but

- “(ii) section 114(2)(b) and (c) applies as if the special guardian were a sole guardian; and
 - “(b) the order must specify the access and other rights (not being custody or guardianship rights), including any terms and conditions that apply to those rights, of each existing guardian in relation to the child or young person.
- “(2) Where a special guardianship order specifies the access and other rights of any existing guardian,—
- “(a) no existing guardian may apply for an order under section 121(2)(c) or (d) concerning his or her access or other rights in relation to the child or young person, but any other parent or person may apply for orders under that section in relation to the child or young person, as if the special guardian were a sole guardian; and
 - “(b) section 122 applies to any access rights specified in the order as if those access rights had been granted by an order made under section 121.
- “(3) If a person who is appointed as the sole guardian of a child or young person is also appointed as a special guardian, the provisions of this Act relating to sole guardians apply, except that—
- “(a) sections 134 and 135 (about reviewing plans) do not apply to the court plan that was prepared for the purposes of section 128; and
 - “(b) despite section 117(1)(a), the order ceases to have effect when the child or young person attains the age of 18 years or sooner marries or enters into a civil union.
- “(4) If a person who is appointed as an additional guardian of a child or young person is also appointed as a special guardian,—
- “(a) the order must set out which guardianship rights (which may include those set out in section 16(2) of the Care of Children Act 2004) are to be held exclusively by the special guardian and which are to be shared between the existing guardian and the special guardian; and
 - “(b) the order must require that the existing guardian is informed of any decisions made by the special guardian in

- the exercise of any guardianship rights held exclusively by the special guardian; and
- “(c) the provisions of this Act relating to additional guardians apply, except as follows:
- “(i) no existing guardian may apply under section 115 in respect of any guardianship rights held exclusively by the special guardian; and
- “(ii) sections 134 and 135 (about reviewing plans) do not apply to the court plan that was prepared for the purposes of section 128; and
- “(iii) despite section 117(1)(a), the order ceases to have effect when the child or young person attains the age of 18 years or sooner marries or enters into a civil union.
- “(5) Every special guardianship order must require that, if the child or young person to whom the order applies begins to live with anyone other than the special guardian on more than a temporary basis, the special guardian must,—
- “(a) if the child or young person, immediately before the guardianship order was made, was in the custody of the chief executive or a natural person, advise a social worker; or
- “(b) if the child or young person, immediately before the guardianship order was made, was in the custody of an iwi social service, cultural social service, or the director of a child and family support service, advise that service or director, as appropriate.
- “(6) The obligation on the chief executive imposed by section 7(2)(e) does not apply in respect of a child or young person in respect of whom a special guardianship order is made.
- “(7) If a child or young person has more than 1 existing guardian, or more than 1 special guardian, this section and any other applicable sections must be applied with all necessary modifications to each existing guardian and each special guardian.”

23 Section 125 amended (Application for variation or discharge of orders made under this Part)

- (1) After section 125(1)(g), insert:

“(ga) any special guardianship order made under section 113A (but only with leave, as required by subsection (1A)).”

(2) After section 125(1), insert:

“(1A) Leave of the court must be obtained before an application is made for the variation or discharge of a special guardianship order made under section 113A, unless—

“(a) the application is made by the chief executive, a social worker, an iwi social service, a cultural social service, or the director of a child and family support service; or

“(b) all parties to the proposed application agree to the making of the application.

“(1B) Leave may be given for the purpose of subsection (1A) only if—

“(a) in the case of an application for discharge, there has been a significant change in the circumstances of the child or young person to whom the order relates; and

“(b) in the case of an application for variation, there has been a significant change in the circumstances of the child or young person to whom the order relates, or in the circumstances of his or her parents or any guardian.”

24 Section 128 amended (Court to obtain and consider plan for child or young person before making certain orders)

After section 128(2)(d), insert:

“(e) a special guardianship order under section 113A.”

Plans and agreements

25 Section 130 amended (Content of plans)

(1) Replace section 130(d) and (e) with:

“(d) state the responsibilities and personal objectives of the child or young person:

“(e) state the responsibilities and personal objectives of any parent, guardian, or other person who, under the plan, will have the care of the child or young person:

“(ea) set out the following:

“(i) the responsibilities and personal objectives of any parent, guardian, or other person who, under

the plan, will not have the care of the child or young person, but who had the care of the child or young person previously and wishes to have the child or young person returned to his or her care:

- “(ii) the steps that each such parent, guardian, or other person must take, or the behavioural changes each must make, before the child or young person can be returned to his or her care:
- “(iii) the time frames within which those steps or changes must be taken or made:
- “(iv) the time within which a decision will be made about whether to return the child or young person to the care of any parent, guardian, or other person:”.

(2) In section 130, insert as subsections (2) and (3):

“(2) A plan need not contain the matters set out in subsection (1)(ea) if the plan is prepared on the basis that there is no realistic possibility that the child or young person will be returned to the care of a parent, guardian, or other person referred to in subsection (1)(ea)(i), or if the plan relates only to a services order under section 86 or a support order under section 91.

“(3) If a plan does not contain the matters set out in subsection (1)(ea), it must, instead, set out the child’s or young person’s long-term needs and proposals for how those needs will be met (unless the plan relates only to a services order or a support order).”

26 Section 135 amended (Review of plan)

Replace section 135(4) with:

- “(4) On the request of a person who is required to review a plan, for the purpose of reviewing the plan a care and protection co-ordinator—
- “(a) must convene a family group conference, unless the plan relates only to a services order under section 86; and
 - “(b) may convene a family group conference if the plan relates only to a services order.”

27 Section 140 amended (Agreements for extended care of children and young persons by chief executive, iwi social service, etc)

- (1) In section 140(1)(c), after “days”, insert “; or”.
- (2) After section 140(1)(c), insert:

“(d) with the agreement of any person referred to in paragraphs (a) to (c) or any other person approved by the chief executive for the purpose of this paragraph, place a young person aged 15 years or more in the care of that person for the purpose of assisting the young person to achieve independence.”
- (3) In section 140(2), replace “subsection (1)” with “subsection (1)(a) to (c)”.
- (4) After section 140(2), insert:

“(3) An agreement made under subsection (1)(d) may be entered into for any period of up to 12 months and may, if approved by a family group conference convened for the purpose, be extended by any further periods of up to 12 months.”

28 Section 141 amended (Agreements for extended care of severely disabled children and young persons)

- (1) In section 141(3), replace “2 years” with “1 year” in each place.
- (2) After section 141(3), insert:

“(3A) On and after the date on which section 28 of the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 comes into force, the time periods referred to in subsection (3) apply only to an agreement, or an extension to an agreement, that is entered into or agreed to on or after that date.”

29 Section 145 amended (Agreement not to be made without approval of family group conference)

- (1) Replace section 145(1)(b) and (c) with:

“(b) in the case of a proposed agreement under section 141 or 142, the family group conference has thoroughly explored what services and supports, such as those provided or funded by the Ministry of Health, are available

- to, or in respect of, the child or young person in his or her home environment; and
- “(c) the family group conference approves the making of the agreement; and
- “(d) a care and protection co-ordinator issues a certificate to the effect,—
- “(i) in all cases, that the requirements of paragraphs (a) and (c) have been complied with; and
- “(ii) in the case of a proposed agreement under section 141 or 142, that the family group conference has thoroughly explored the matters referred to in paragraph (b); and
- “(iii) in all cases, that the co-ordinator is satisfied that, having regard to the objects, considerations, and principles in sections 4, 5, 6, and 13, the agreement is an appropriate care option for the child or young person.”
- (2) In section 145(2), replace “may” with “must”.
- (3) After section 145(2)(b), insert:
- “(c) whether an agreement entered into under section 140(1)(d) for the purpose of assisting a young person to achieve independence should be extended or terminated.”

30 Section 147 amended (Further restrictions on making agreements)

- (1) In section 147(1), replace “section 140” with “section 140(1)(a) to (c)”.
- (2) In section 147(2), replace “section 140” with “section 140(1)(a) to (c)”.

Reports by social workers

31 Section 186 amended (Report by social worker)

Replace section 186(1) and (2) with:

- “(1) Where the court makes a declaration under section 67, the court—
- “(a) must obtain and consider a report from a social worker before making—

- “(i) a custody order under section 101 (other than an interim custody order) placing the child or young person in the custody of any person listed in section 101(1); or
 - “(ii) a guardianship order under section 110 that appoints the chief executive, an iwi social service, a cultural social service, or any other person as the sole guardian of the child or young person to whom the declaration relates; or
 - “(iii) a special guardianship order under section 113A; and
 - “(b) may obtain and consider a report from a social worker before making any other order referred to in section 83(1) or 84(1).
- “(2) In the course of preparing a report for the purposes of subsection (1)(a), the social worker must consider whether there is a realistic possibility that the child or young person to whom the report relates will be returned to the care of the parent, guardian, or other person who had the care of the child or young person before the declaration under section 67 was made.
- “(2A) Every report provided to the court pursuant to subsection (1)(a) must (without limiting subsection (3)) make a recommendation, with reasons, on whether there is a realistic possibility that the child or young person to whom the report relates can be returned to the care of the parent, guardian, or other person who had the care of the child or young person before the declaration under section 67 was made, and—
- “(a) if there is such a realistic possibility, must—
 - “(i) set out the steps that the parent, guardian, or other person must take, or the behavioural changes that he or she must make, before the child or young person can be returned to his or her care; and
 - “(ii) recommend a time when, or a period within which, the option of returning the child or young person to the care of the parent, guardian, or other person will be pursued, having particular regard to the age of the child or young person; or
 - “(b) if there is no such realistic possibility, set out—

- “(i) the child’s or young person’s likely long-term needs, and proposals for how those needs will be met; and
- “(ii) if a special guardianship order under section 113A is contemplated, a recommendation about which guardianship rights, if any, should be shared between the special guardian and the existing guardian (as defined in that section).”

Related amendments to youth justice provisions

- 32 Section 261 amended (Family group conference may make decisions, recommendations, and plans relating to care or protection of child or young person)**
In section 261(2), replace “sections 30 to 38” with “sections 29A to 38”.
- 33 Section 267 amended (Enforcement agencies to comply with decisions, recommendations, and plans of family group conference)**
In section 267, replace “it is clearly impracticable” with “the enforcement agency considers that it is impracticable, unreasonable.”.
- 34 Section 268 amended (Chief executive to give effect to decisions, recommendations, and plans of family group conference)**
- (1) In section 268(1), replace “it is clearly impracticable” with “the chief executive considers that it is impracticable, unreasonable.”.
 - (2) In section 268(2), replace “it is clearly impracticable” with “it is impracticable, unreasonable.”.
- 35 Section 270 amended (Family group conference may reconvene to review its decisions, recommendations, and plans)**
After section 270(1), insert:
“(1A) However, for the purpose of reviewing a decision, recommendation, or plan made or formulated by a family group con-

ference under section 261, the youth justice co-ordinator who convened the conference—

“(a) must reconvene the conference if required to do so by a social worker, an iwi social service, a cultural social service, or the director of a child and family support service; and

“(b) may reconvene the conference at any time, at the co-ordinator’s own motion or at the request of at least 2 members of that conference.

“(1B) A social worker may require a youth justice co-ordinator to reconvene a family group conference under subsection (1A)(a) only if the chief executive is required under section 34 to give effect to the decision, recommendation, or plan to be reviewed.

“(1C) An iwi social service, a cultural social service, or the director of a child and family support service may require a youth justice co-ordinator to reconvene a family group conference under subsection (1A)(a) only if the service is directly involved in the implementation of the decision, recommendation, or plan to be reviewed and has agreed to it under section 30.”

Achieving independence

36 New section 386A and cross-heading inserted

After section 386, insert:

“Transition from care to independence

“386A Advice and assistance for people moving from care to independence

“(1) This section applies to a person who—

“(a) is of or over the age of 15 years but under 20 years; and

“(b) has at any time been in the care or custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service—

“(i) pursuant to any agreement or order specified in section 361(a), (c), or (d); and

“(ii) for a continuous period of at least 3 months after the date that is 3 months before the person’s 15th birthday.

- “(2) If a person to whom this section applies is in the care or custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service, the person or organisation who has the care or custody of the person must—
- “(a) consider what advice and assistance the person will need to become and remain independent after he or she leaves care or custody; and
 - “(b) provide, or arrange for the provision of, that advice and assistance to the person, to the extent that it reasonably relates to the period before the person leaves care or custody.
- “(3) If a person to whom this section applies requests advice or assistance after he or she leaves the care or custody of an iwi social service, a cultural social service, or the director of a child and family support service, the agency that receives the request must refer the request to the chief executive.
- “(4) If a person to whom this section applies has left the care or custody referred to in subsection (1), the chief executive—
- “(a) must provide, or arrange the provision of, such advice and non-financial assistance as the chief executive in his or her discretion considers necessary to enable the person to achieve independence; and
 - “(b) may provide, or arrange the provision of, such financial assistance as the chief executive in his or her discretion considers necessary to enable the person to achieve independence, but only if the chief executive has first considered what other financial assistance is available to the person.
- “(5) Without limiting subsection (4), the assistance provided may include any of the following:
- “(a) giving information:
 - “(b) assisting the person to obtain accommodation, enrol in education or training, or obtain employment:
 - “(c) legal advice:
 - “(d) counselling:
 - “(e) contributing to the expenses incurred by the person in living near the place where he or she is or will be—
 - “(i) employed or seeking employment; or

- “(ii) receiving education or training:
- “(f) making a grant to assist the person to meet expenses connected with his or her education or training.
- “(6) Financial assistance provided to a person under subsection (4)(b) must be paid directly to the person unless the chief executive considers it appropriate to pay all or any of it to the person who is caring for the person in respect of whom the financial assistance is provided.
- “(7) If the chief executive is providing financial assistance to a person that includes making a contribution or grant with respect to a course of education or training, the chief executive may—
 - “(a) continue to do so even though the person reaches the age of 20 years before completing the course; and
 - “(b) disregard any interruption in the person’s attendance at the course if the person resumes it as soon as practicable.”

Permanent caregivers

37 New section 388A inserted (Financial and other assistance to permanent caregivers)

After section 388 insert:

“388A Financial and other assistance to permanent caregivers

- “(1) The chief executive may from time to time provide financial and other assistance to a permanent caregiver of a child or young person for the purpose of assisting the permanent caregiver to care for the child or young person.
- “(2) The chief executive must provide financial and other assistance under this section to a permanent caregiver of a child or young person if—
 - “(a) the need for assistance arises from the care and protection needs or the extraordinary health, education, or developmental needs of the child or young person; and
 - “(b) those needs are greater than it is reasonable to expect the permanent caregiver to meet; and
 - “(c) those needs cannot be met by existing sources of support under this Act or any other enactment, and are unlikely to be provided otherwise; and

- “(d) it is reasonable in the circumstances for the chief executive to provide the assistance; and
 - “(e) the provision of assistance is consistent with any general or special directions (not inconsistent with this section) given to the chief executive in writing by the Minister.
- “(3) A direction given for the purpose of subsection (2)(e) (other than a direction of that kind that relates exclusively to an individual) must be published in the *Gazette*.
- “(4) A direction referred to in subsection (3) is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.”

38 Section 389 amended (Financial and other assistance in other cases)

In the heading to section 389, delete “**and other**”.

39 New sections 389A and 389B inserted

After section 389, insert:

“389A Review of decisions about financial or other assistance to permanent caregivers

- “(1) A permanent caregiver who is dissatisfied with any decision of the chief executive regarding the provision of financial or other assistance under section 388A(2) may apply for an internal review of that decision.
- “(2) The internal review must be conducted in accordance with a process established from time to time by the chief executive for that purpose, and must confirm, modify, or reverse the original decision.
- “(3) A confirmed or modified decision is for all purposes to be treated as the decision of the chief executive under section 388A(2).

“389B Appeal against decisions about financial or other assistance to permanent caregivers

- “(1) A permanent caregiver who has applied for a review of a decision under section 388A(2) may appeal to the Family Court against the decision if he or she—
- “(a) has not received notification of the outcome of the review within 3 months after the application was lodged; or
 - “(b) is dissatisfied with the outcome of the review.
- “(2) An appeal under this section may be made only on the ground that the decision is wrong or unreasonable, or both.
- “(3) The appeal must be made by filing a written notice of appeal in the Family Court, and the notice of appeal must—
- “(a) set out the particulars supporting the grounds of appeal and the relief sought; and
 - “(b) be served on the chief executive in accordance with rules of court.
- “(4) After being served with a notice of appeal, the department must, as soon as practicable, file in the Family Court a report that contains the decision appealed against, the considerations to which regard was had in making that decision, and a copy of all information that the chief executive had when making it.
- “(5) The Family Court may (on an application for the purpose, or its own initiative), but is not obliged to, appoint a lawyer for the child or young person to whom the appeal relates, in which case sections 159(2) and (3), 161, and 162 apply accordingly with any necessary modifications.
- “(6) An appeal under this section is by way of rehearing, and is to be heard and determined in accordance with this section and rules of court.
- “(7) The Family Court’s determination of the appeal may confirm, modify, or reverse the decision appealed against, and the chief executive must give effect to that determination.
- “(8) A Family Court’s determination of an appeal under this section is final.”

*Appointments outside State Sector Act 1988***40 Section 423 amended (Appointment of care and protection co-ordinators)**

(1) Replace section 423(1) with:

“(1) The chief executive must appoint a sufficient number of care and protection co-ordinators.

“(1A) Care and protection co-ordinators may—

“(a) be appointed under the State Sector Act 1988; or

“(b) be employees of an **approved service**, which in this section and sections 425 and 427 means any of the following:

“(i) an iwi social service:

“(ii) a cultural social service:

“(iii) a child and family support service:

“(iv) a community service.”

(2) After section 423(2), insert:

“(3) An employee of an approved service—

“(a) may be appointed as a care and protection co-ordinator for a term of not more than 3 years, but the term may be renewed by the chief executive from time to time; and

“(b) may have his or her appointment as a care and protection co-ordinator cancelled (without compensation) by the chief executive on any ground that the chief executive considers justifies removal from the office; but the removal may only take place after consultation with the person’s employer and after a process that accords with the principles of natural justice has been completed; and

“(c) ceases to be appointed as a care and protection co-ordinator (and no compensation is payable with respect to that loss of office) if he or she ceases to be an employee of the relevant approved service under which he or she was originally appointed; and

“(d) must perform his or her duties as a care and protection co-ordinator independently of his or her employer; and

“(e) in performing those duties, must have regard to any guidance for care and protection co-ordinators that is issued by the chief executive.”

41 Section 425 amended (Appointment of youth justice co-ordinators)

(1) Replace section 425(1) with:

“(1) The chief executive must appoint a sufficient number of youth justice co-ordinators.

“(1A) Youth justice co-ordinators may—

“(a) be appointed under the State Sector Act 1988; or

“(b) be employees of an approved service (as defined in section 423(1A)(b)).”

(2) After section 425(2), insert:

“(3) An employee of an approved service—

“(a) may be appointed as a youth justice co-ordinator for a term of no more than 3 years, but the term may be renewed by the chief executive from time to time; and

“(b) may have his or her appointment as a youth justice co-ordinator cancelled (without compensation) by the chief executive on any grounds that the chief executive considers justifies removal from the office; but the removal may only take place after consultation with the person’s employer and after a process that accords with the principles of natural justice has been completed; and

“(c) ceases to be appointed as a youth justice co-ordinator (and no compensation is payable with respect to that loss of office) if he or she ceases to be an employee of the relevant approved service under which he or she was originally appointed; and

“(d) must perform his or her duties as a youth justice co-ordinator independently of his or her employer; and

“(e) in performing those duties, must have regard to any guidance for youth justice co-ordinators that is issued by the chief executive.”

42 Section 427 amended (Delegation of functions of care and protection co-ordinator or youth justice co-ordinator to social worker)

After section 427(1), insert:

“(1A) Subsection (1) does not apply to a care and protection co-ordinator, or to a youth justice co-ordinator, who is an employee of an approved service (as defined in section 423(1A)(b)).”

*Related amendment to Care of Children Act
2004*

43 Amendment to Care of Children Act 2004

(1) This section amends the Care of Children Act 2004.

(2) After section 29, insert:

29A Revocation of appointment as guardian

“(1) The court may, on application, revoke the appointment under section 27 of a person as a guardian of a child or young person if—

“(a) the person is a permanent caregiver (as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989) who is not a special guardian (as defined in that Act); and

“(b) the application is made at the same time as an application referred to in section 110A of that Act; and

“(c) a guardianship order under section 110 of that Act, and a special guardianship order under section 113A of that Act, are made.

“(2) If the court revokes an appointment under this section, it must discharge, under section 56, the associated parenting order under section 48 that confers on the person the role of providing day-to-day care for the child and any associated parenting order that provides for any specified person to have contact with the child.”

Legislative history

17 June 2014	Divided from Vulnerable Children Bill (Bill 150–2) as Bill 150–3A
19 June 2014	Third reading
30 June 2014	Royal assent

This Act is administered by the Ministry of Social Development.
