

Family Court Proceedings Reform Bill

Government Bill

Explanatory note

General policy statement

This Bill is introduced under Standing Order 260(a), which provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

The Family Court Proceedings Reform Bill implements the Government's decisions resulting from a review of the Family Court conducted by the Ministry of Justice. The purpose of the reforms is to ensure a modern, accessible family justice system that is responsive to children and vulnerable people, and is efficient and effective.

The Bill encourages faster, less adversarial resolution of family disputes through requiring parties to disputes about children to participate in an out-of-court family dispute resolution process, and a parenting information programme, before applying to the Family Court. The Bill focuses the Family Court on those disputes that need a judicial decision. It includes changes to make the operation of the court more efficient and effective, to mitigate the adversarial nature of court proceedings, and to improve the court's response to victims of domestic violence.

Changes included in the Bill allow for better targeting of resources in the family justice system. These changes are aimed at ensuring

that the system remains affordable in the future, and that the court is able to support those children and vulnerable people who most need its protection.

The Bill amends the following Acts:

- Care of Children Act 2004:
- Child Support Act 1991:
- Children, Young Persons, and Their Families Act 1989:
- Domestic Violence Act 1995:
- Family Courts Act 1980:
- Family Proceedings Act 1980:
- Legal Services Act 2011:
- Property (Relationships) Act 1976:
- Protection of Personal and Property Rights Act 1988.

The changes in the Bill will be supported by amendments to the Family Courts Rules 2002, and to other regulations and rules that support family law statutes.

Supporting people to resolve their disputes

The Bill establishes mechanisms to shift the family justice system's focus towards supporting people to resolve their disputes, where appropriate, out of court. The main mechanism to achieve this in the Bill is the creation of a process called family dispute resolution.

The Bill requires a person to complete a parenting information programme and to attempt family dispute resolution before applying to the court for a parenting or guardianship order, unless an exemption applies, for example, if there has been violence.

The Bill requires that a person attend family dispute resolution for certain disputes about the care of children before applying to the court to resolve the dispute. However, a person may also decide to attempt family dispute resolution for other family disputes, such as disputes about relationship property. Legislation is not required to enable people to attend family dispute resolution on a voluntary basis.

Out-of-court dispute resolution provides a distinct and effective opportunity for people to resolve disputes sooner and less acrimoniously than by court proceedings. Effective pre-court processes can reduce the number of cases coming to the court by encouraging

people to focus on the needs of their children and on taking ownership of the agreement reached. This can improve outcomes for children by reducing the likelihood of heightened conflict that often results from litigation.

Family dispute resolution will be incorporated into the Family Courts Act 1980, which is being renamed the **Family Disputes (Resolution Methods) Act 1980** to make it clear that Family Court proceedings are only 1 method of resolving family disputes and that family dispute resolution comes first.

Refocusing of Family Court

The Bill focuses the Family Court on resolving disputes that need a judicial decision in a manner that is understandable, simple, transparent, timely, and proportionate to the dispute. It empowers Judges to focus on the most serious cases, and targets the court's resources towards those children and vulnerable people who most need its protection. The means to achieve these changes in the Bill include—

- clarifying the principles relevant to a child's welfare and best interests, including ensuring a child's safety:
- enabling a more flexible and proportionate response to allegations of violence in proceedings under the Care of Children Act 2004:
- focusing the court on its adjudicative function, but enabling Judges to direct parties to attend relationship counselling during proceedings in certain circumstances:
- replacing provisions relating to counselling and Judge-led mediation with out-of-court processes such as family dispute resolution and parenting information programmes:
- targeting the use of professionals (lawyers for parties, lawyers for children, specialist report writers) in care-of-children matters:
- requiring parties to contribute to the cost of specialist report writers unless doing so would cause financial hardship:
- requiring parties to obtain the court's leave to commence proceedings if it is less than 2 years since a judgment on similar proceedings:
- easing the transfer of relationship property disputes from the Family Court to the High Court.

Improving the court's response to domestic violence

The Bill better supports vulnerable people, including through improving responsiveness to domestic violence. It does this through—

- expanding the definition of psychological abuse in the Domestic Violence Act 1995 to include financial and economic abuse;
- increasing the maximum sentence for breaching a protection order from 2 years to 3 years;
- providing for greater flexibility in the development and delivery of mandatory non-violence programmes.

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement in August 2012 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.justice.govt.nz/policy/regulatory-impact-statements>
- <http://www.treasury.govt.nz/publications/information-releases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

It is intended that the Bill will be divided into the following 9 separate Bills at committee of the whole House stage:

- Care of Children Amendment Bill:
- Child Support Amendment Bill:
- Children, Young Persons, and Their Families Amendment Bill:
- Domestic Violence Amendment Bill:
- Family Courts Amendment Bill:
- Family Proceedings Amendment Bill:
- Legal Services Amendment Bill:
- Property (Relationships) Amendment Bill:
- Protection of Personal and Property Rights Amendment Bill.

Clause 2 is the commencement clause. Most of the provisions of the Bill will come into force on **1 October 2013**. On this date,

amendments to various regulations and rules, in particular the Family Courts Rules 2002, will also come into force. The provisions having a later commencement date are those in *Part 2* relating to the provision of domestic violence support programmes and non-violence support programmes. These provisions are to come into force by Order in Council to allow sufficient time to make regulations and implement changes. If no Order in Council has been made by **1 October 2014**, the provisions will come into force on that date.

Part 1

Amendments to Care of Children Act 2004

Clause 3 provides that *Part 1* amends the Care of Children Act 2004 (the **Act**).

Clause 4 replaces sections 4 and 5.

New section 4, which provides for the paramountcy of a child's welfare and best interests, makes it clear that, in respect of a person who is seeking to have a role in the upbringing of a child, account may be taken of that person's conduct to the extent that it unnecessarily delays decisions, is obstructive, or is otherwise relevant.

New section 5 simplifies and reorders the principles relating to a child's welfare and best interests in existing section 5 of the Act. Listed as the first principle is that a child must be protected from all forms of violence.

Clause 5 replaces section 7 with *new sections 7 and 7A*.

New section 7 provides for the appointment of a lawyer to represent a child in proceedings. An appointment may be made in any case where the court has concerns for the safety or well-being of the child and considers that an appointment is necessary.

This differs from existing section 7, which requires the court to appoint a lawyer to represent a child in every parenting dispute that appears likely to proceed to a hearing unless it is satisfied that the appointment would serve no useful purpose.

Existing section 7(3) and (4), which are about what a lawyer appointed to represent a child may do, are dealt with in *new section 9A* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clause 61*).

New section 7A provides that a lawyer may act for a party to proceedings under the Act only in certain circumstances. These circumstances are where—

- a proceeding has been commenced without notice;
- a proceeding has been commenced under subpart 4 of Part 2 of the Act (international child abduction);
- the party is the Crown;
- a defended proceeding is to proceed to a hearing;
- a child is a party to a proceeding and a lawyer has been appointed to represent the child.

New section 7A(6) defines act.

New section 7A(7) clarifies that *new section 7A* does not prevent a lawyer from giving legal advice to a party or preparing a document for a party.

Clause 6 amends section 8, which is the interpretation provision, to insert definitions of—

- approved counselling organisation, counselling, and counsellor for the purposes of *new sections 46E to 46H* (inserted by *clause 9*); and
- parenting information programme for the purpose of *new section 47A* (inserted by *clause 10*).

Clause 7 replaces section 40(1). *New section 40(1)* no longer enables a party to an agreement about the care or upbringing of a child to request counselling from the Family Court in respect of a dispute arising from that agreement.

Clause 8 repeals sections 44 to 46.

Section 44, which is about disputes between guardians, now appears as *new section 46D* (inserted by *clause 9*) but no longer enables guardians to request counselling in respect of guardianship disputes. Section 45, which currently provides for parties to a parenting dispute to be referred to counselling, is not preserved.

Section 46, which is about reviewing a parent's or guardian's decision or refusal to give consent, now appears as *new section 46C* (inserted by *clause 9*) and is unchanged.

Clause 9 inserts *new sections 46C to 46H*.

New section 46C re-enacts existing section 46, which is repealed (by *clause 8*).

New section 46D replaces section 44, which is repealed (by *clause 8*).

New section 46E enables a Judge to refer to counselling parties to a guardianship or parenting dispute for the purposes of—

- improving their relationship; and
- encouraging compliance with a subsequent court order or direction.

A referral can, however, only be made if the Judge considers that counselling is the best means of fulfilling these purposes.

A direction to attend counselling may be made at any stage of the proceedings, but only once.

New section 46F sets out the duties of an approved counselling organisation to whom parties are referred under *new section 46E*.

New section 46G provides that evidence of a statement made by a party to a counsellor is not admissible in any court.

New section 46H provides that the fees and reasonable expenses incurred for counselling carried out under *new section 46E* are payable by the Crown.

Clause 10 inserts *new sections 47A and 47B*. Section 49 of the Act currently requires an application for a parenting order to include a statement about the involvement of other persons in the child's life.

New section 47A re-enacts that requirement. *New section 47B* adds a requirement for another statement and evidence to support it. The new statement is required in applications for a parenting order and applications to vary a parenting order. The statement is that the applicant has undertaken a parenting information programme or that the applicant is not required to undertake a programme. If a Registrar considers that the evidence provided in support of the statement is not adequate, the Registrar may refuse to accept the application.

Clause 11 repeals section 48(4) to (6). These provisions are now dealt with in *new sections 49 and 49A* (inserted by *clause 12*).

Clause 12 replaces section 49 with *new sections 49 and 49A*.

New section 49 provides for the making of interim parenting orders. An interim parenting order may be made by the court at any time before a final parenting order is made.

New section 49A provides for the making of final parenting orders. A final parenting order must be made at the final Family Court hearing,

unless made earlier during the proceeding with the consent of the parties.

Clause 13 repeals section 51(3), consequential on the amendments to section 48.

Clause 14 replaces section 57. *New section 57* provides that parties to a final parenting order may subsequently obtain a variation of that order by filing in court a consent memorandum. Parties who agree to a variation will not have to file a formal application under section 56 and attend court.

Clause 14 also replaces sections 58 to 62. These provisions currently prevent a court from making an order giving a violent party day-to-day care of, or contact with, a child unless it is satisfied, after taking into account certain specified matters, that the child will be safe. The court may instead make an order for supervised contact between the child and the violent party. This regime is replaced by the simpler provisions of *new sections 58 to 60*.

New section 58 is an interpretation provision and defines approved provider and supervised contact.

New section 59 enables the court to make an order for supervised contact between a child and any person if it is not satisfied that the child will be safe with that person.

New section 60, which re-enacts existing section 62, deals with the cost of supervised contact.

Clause 15 repeals section 63, which is no longer relevant in view of the repeal of sections 65 to 67 (*see clause 17*) and *new section 78* (*see clause 19*).

Clause 16 repeals section 64(2), which is not necessary.

Clause 17 repeals sections 65 to 67 so that counselling from the Family Court may no longer be requested by any of the following persons in relation to a dispute—

- a party to a parenting order:
- a party to a parenting agreement:
- a guardian of a child.

Clause 18 amends the heading to section 69 and repeals section 69(1)(a). These amendments are consequential on the repeal of sections 65 and 66 (*see clause 17*).

Clause 19 replaces the offence provision in section 78. *New section 78* is substantially the same as existing section 78 but provides that it is also an offence to intentionally contravene, or prevent compliance with, a guardianship order made under section 40 or *new section 46D* (inserted by *clause 9*).

Clause 20 replaces section 130, which provides for the appointment of a lawyer to assist the court in proceedings under the Act. *New section 130* re-enacts existing section 130(1), but not existing section 130(2). The latter provision is dealt with in *new section 9B* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clause 61*).

Clause 21 amends section 131, which provides for payment of the fees and expenses of a lawyer appointed to represent a child or to assist the court. The substantive amendment is to section 131(1)(a), to refer to fees and expenses being determined in accordance with regulations made under *new section 16D* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clause 66*).

Clause 22 replaces section 133, which provides that the court may request the preparation of a cultural, medical, psychiatric, or psychological report on a child who is the subject of an application for guardianship or a parenting order. The new provisions—

- limit the court's power to request reports:
- enable the court, when requesting a report, to make directions regarding the child and parties meeting with the report writer:
- limit the matters that may be covered in a court-requested psychological report:
- prohibit the preparation and presentation of critiques of court-requested psychological reports or second reports on the same matters:
- allow the court, in exceptional circumstances, to approve the preparation and presentation of critiques of court-requested psychological reports or second reports on the same matters.

Clause 23 amends section 134, which is consequential on the replacement of section 130 (*see clause 20*).

Clause 24 replaces section 135, which provides for the costs of reports requested under section 133. *New section 135(1)(a)* provides for the fees and reasonable expenses incurred in the preparation of a report requested under *new section 133* to be determined in accord-

ance with regulations made under *new section 16D* of the **Family Disputes (Resolution Methods) Act 1980**. *New section 135(1)(b)* provides that these fees and expenses are payable by the Crown. However, under *section 135(2)*, the court must make an order under *new section 135A* unless the court declines to do so in accordance with that section.

New section 135A provides that the court must order the parties to refund a proportion of the amount paid by the Crown for the preparation of a report requested under *new section 133*. The proportion will be prescribed by regulations. The court may decline to make an order against a party if it is satisfied that it would cause serious hardship to the party or to a dependent child of the party. The new section sets out definitions of serious hardship and dependent child. Generally, the part-reimbursement of the fees will be shared equally by the parties. However, the court may set a different amount for a party, having regard to the circumstances of the case, including the conduct of the party.

New section 135B provides for the enforcement of orders requiring parties to refund the fees for the preparation of a report requested under *new section 133*. Such orders may be enforced in the same way as judgments of the court. The provision discontinues the requirement for a further order.

New section 135C authorises a Registrar to enter into an arrangement with a party who has an outstanding obligation to contribute towards the fees for the preparation of a report requested under *new section 133*. The arrangement may allow the party greater time to pay, or to pay by instalments.

Clause 25 amends section 137, which provides who may attend the hearing of a proceeding. Subsection (1)(b) is replaced as a consequence of *new section 7A* (inserted by *clause 5*), because parties will not always be represented at a hearing. Subsection (1)(c) is replaced as a consequence of *new section 7* (inserted by *clause 5*) and *new section 130* (inserted by *clause 20*). Subsection (4)(c) and (5) are repealed because of the repeal of section 138 (*see clause 26*).

Clause 26 repeals section 138, which provides for the attendance at hearings of persons involved in counselling. The repeal of sections 65 to 67 (*see clause 17*) makes section 138 redundant.

Clause 27 inserts *new section 139A*, which requires the leave of the court to be obtained if it is proposed to commence a proceeding for a parenting order, an order varying or discharging a parenting order, or an order resolving a guardianship dispute that is—

- substantially similar to a previous proceeding; and
- less than 2 years after the final judgment was given in that previous proceeding.

The leave of the court may only be given if, since the previous proceeding, there has been a material change in the circumstances of any party or any child who was the subject of the previous proceeding.

Clause 28 amends the heading to section 141 to better reflect the scope of that section.

Clause 29 amends section 147, which provides for the making of regulations. These are all consequential amendments. For example, a new power is inserted to make regulations prescribing the proportion of the amount paid by the Crown for the preparation of a report requested under *new section 133* that parties must be ordered to refund under *new section 135A* (inserted by *clause 24*).

Clause 30 amends section 148(2). This amendment is consequential on the repeal of sections 66 and 69(1)(a).

Clause 31 amends section 152 to repeal the Care of Children Amendment Act 2008. Although there are a number of provisions in this Amendment Act relating to counselling and mediation that have not yet come into force, these provisions are not to come into force.

Clause 32 is a transitional provision for proceedings commenced under the Act before **1 October 2013** but not completed by that date. These proceedings are not affected by *new section 7A* (inserted by *clause 5*), *new sections 135A to 135C* (inserted by *clause 24*), or by the repeal of section 57 (*see clause 14*). Also, existing sections 58 to 62 and 147(2)(a) and (b) continue to apply in any of these proceedings in which an order for supervised contact has been made. Further, if in any of these proceedings counselling has been arranged or is in progress immediately before **1 October 2013**, that counselling may continue (but not beyond 31 January 2014).

Part 2

Amendments to Domestic Violence Act 1995

Clause 33 provides that *Part 2* amends the Domestic Violence Act 1995 (the **Act**).

Clause 34 amends section 2, which is the interpretation provision, to—

- insert a definition of domestic violence support programme (which is a programme provided to a person protected by a protection order):
- insert a definition of non-violence programme (which is a programme provided to a respondent or an associated respondent):
- repeal the definition of programme (which is redundant because of the distinction now made between a domestic violence support programme and a non-violence programme):
- replace the definitions of approved agency and programme provider (to take account of the new terms domestic violence support programme and non-violence programme).

Clause 35 amends section 3, which defines violence. The amendment adds to this definition, as a further type of psychological abuse, financial or economic abuse. Examples of this kind of abuse are denying or limiting access to financial resources, and preventing or restricting employment opportunities.

Clause 36 amends section 5, which is the object provision. The amendment is necessary because of the distinction now made between domestic violence support programmes and non-violence programmes.

Clause 37 replaces the cross-heading above section 29 so it is clear that section 29 is about the provision of domestic violence support programmes.

Clause 38 amends section 29 so that it refers appropriately to domestic violence support programmes.

Clause 39 repeals section 30, which provides for the commencement of section 29. Because all the provisions of section 29 have been in force since 1 July 1998, section 30 is now redundant.

Clause 40 replaces sections 31 to 35.

New section 31 provides that a protected person may attend a non-violence programme at which the respondent or an associated respondent is present, and that a respondent or an associated respondent may attend a domestic violence support programme at which a protected person is present. However, the following conditions must first be satisfied:

- the protected person must agree; and
- the respondent or associated respondent must agree; and
- the programme provider must be satisfied that there are no safety issues; and
- the programme provider is authorised to provide both kinds of programmes.

New section 32 requires the court, when making a protection order, to direct the respondent or associated respondent to attend a non-violence programme. It is different from existing section 32 in that rather than direct a respondent or associated respondent to attend a specific programme, the court must direct the respondent or associated respondent to—

- undertake an assessment with a programme provider to determine the most appropriate non-violence programme; and
- attend the non-violence programme determined to be the most appropriate.

New section 33 sets out the terms of a direction made under *new section 32*. It is different from existing section 33 in that the court no longer has a discretion to determine the details of a respondent's or an associated respondent's attendance at a non-violence programme. Instead, a respondent or an associated respondent will be directed—

- to attend the programme for such number of sessions as the programme provider specifies; and
- to attend the first session on the date and at the time and place advised by the programme provider.

New section 34 is substantially the same as existing section 34. After making a direction under *new section 32*, the Registrar must refer the respondent or associated respondent to a programme provider and notify the programme provider accordingly.

New section 35 requires a programme provider, after receiving a notification under *new section 34*, to arrange to meet with the respondent or associated respondent to undertake an assessment and determine

the most appropriate programme for the respondent or associated respondent to attend. The programme provider must then provide the respondent or associated respondent with details of that programme and of the first attendance required.

New section 35A provides that a programme provider may request the Registrar to refer the respondent or associated respondent to a different programme provider. Such a request may be made if the programme provider believes that the programme is no longer appropriate for the respondent or associated respondent or that the respondent or associated respondent is not participating fully in the programme. On receipt of a request, the Registrar may refer the respondent or associated respondent to a different programme provider and notify that programme provider accordingly.

Clause 41 amends the heading to section 36 so that it refers to non-violence programmes.

Clause 42 repeals section 38. The effect of this is that there is no longer provision for a respondent or an associated respondent to be excused from attending a non-violence programme.

Clause 43 replaces sections 39 and 40. Currently, section 39 requires a programme provider to notify the Registrar within 7 days if a respondent or an associated respondent fails to attend any programme session. *New section 39* requires a programme provider to notify the Registrar if a respondent or an associated respondent fails to undertake an assessment or to attend a programme in accordance with the terms of the direction. *New section 40* requires a programme provider to notify the Registrar when a programme attended by a respondent or an associated respondent has concluded. The Registrar must then notify this fact to the applicant or to the applicant's lawyer.

Clause 44 repeals section 41, which is no longer required because of *new section 35A* (see *clause 40*).

Clause 45 amends section 41A, consequential on the repeal of section 41 (see *clause 44*).

Clause 46 replaces section 42 so that it applies only where a Registrar has brought a matter to the attention of a Judge under section 41A(1)(b).

Clause 47 repeals section 42A(2), which is no longer relevant because a variation of a direction cannot be requested under section 41 by a programme provider. Section 41 is repealed by *clause 44*.

Clause 48 inserts a new cross-heading above section 43, for clarity.

Clause 49 amends section 43(4) to replace references to programme with references to domestic violence support programmes or non-violence programmes, as appropriate.

Clause 50 inserts a new cross-heading above section 44, for clarity.

Clause 51 amends the offence provision in section 49. The maximum penalty for breaching a protection order is increased from 2 years' imprisonment to 3 years' imprisonment.

The amendment also clarifies that failing to attend an assessment or a non-violence programme is not a breach of a protection order.

Clause 52 replaces section 49A(1) so that it is an offence to fail to attend an assessment or a non-violence programme without reasonable excuse. The maximum penalty for this offence is 6 months' imprisonment or a fine up to \$5,000.

Clause 53 amends section 81 so that subsections (2), (3), and (4) do not apply in respect of a lawyer appointed to assist the court, or to represent a child, in proceedings under the Act (*new sections 9A and 9B* of the **Family Disputes (Resolution Methods) Act 1980** apply to such appointments). A *new subclause (2A)* is also inserted to deal with payment of the fees and expenses of a lawyer appointed to assist the court or represent a child.

Clause 54 makes consequential amendments to section 127, which is the regulation-making provision.

Clause 55 is a transitional provision for programmes arranged or in progress immediately before **1 October 2014**, but not concluded by that date. The existing provisions of the Act continue to apply in respect of those programmes as if they had not been amended by this Bill.

Part 3

Amendments to Family Courts Act 1980

Clause 56 provides that *Part 3* amends the Family Courts Act 1980.

Clause 57 repeals the statement that used to be known colloquially as the Long Title.

Clause 58 replaces the title Family Courts Act 1980 with the title **Family Disputes (Resolution Methods) Act 1980**. The purpose of the change in title is to change the focus of parties to family dis-

putes and those who work with them. There will no longer be a Family Courts Act to which those involved can turn. Instead, there will be legislation that clearly indicates—

- Family Courts are only 1 method for resolving family disputes:
- family dispute resolution is the other method and it comes first.

To emphasise the primary position of family dispute resolution, the Bill inserts Part headings in the Act. Family dispute resolution is in *new Part 1 (clause 60)*, Family Courts are in *new Part 2 (clause 60)*, regulations and rules are in *new Part 3 (clause 63)*, and amendments, transitionals, and savings are in *new Part 4 (clause 66)*.

In addition to providing a re-focused title, *clause 67* replaces the commencement provision with a new one incorporating references to the new measures introduced by the Bill.

Clause 59 amends the interpretation section to include definitions of terms associated with family dispute resolution.

Clause 60 inserts a purpose provision into the **Family Disputes (Resolution Methods) Act 1980**. The first 2 purposes concern family dispute resolution and the second 2 repeat the wording of the old Long Title.

Clause 60 then puts *new Part 1* into the Act.

The new Part deals first with family dispute resolution providers. Family dispute resolution providers are people or organisations outside the core public sector who provide family dispute resolution services. The Secretary for Justice will enter a contract with however many of the people or organisations the Secretary decides are needed. The persons or organisations with whom the Secretary contracts are, in the definition of family dispute resolution provider in section 2, described as persons or organisations holding an approval granted by the Secretary. The Secretary's powers to grant, suspend, or cancel an approval are in *new section 3B*.

Under the contract, the providers will be paid by the Ministry of Justice to provide family dispute resolution services to parties with limited incomes. The civil legal aid income threshold will be used to determine which parties have limited incomes.

The providers will not be paid by the Ministry of Justice to provide family dispute resolution services to parties with incomes over the threshold. Those parties must make a private contract for family dispute resolution services and, of course, must pay for the services.

All parties to a dispute over their children, whatever their level of income, must use approved family dispute resolution providers if they wish to avoid the possibility of having family dispute resolution twice. Only the approved family dispute resolution providers will have the power to issue a form allowing the parties to take their family dispute to a Family Court. Parties who go to a non-approved family dispute resolution provider, do not resolve their family dispute at the family dispute resolution, and want to take their family dispute to a Family Court may not go to the court without first going to an approved family dispute resolution provider. Parties in this situation will thus have family dispute resolution twice—the first time by a non-approved family dispute resolution provider and the second time by an approved family dispute resolution provider. The way to avoid having family dispute resolution twice is by going to an approved family dispute resolution provider in the first place.

It is, of course, not the case that all parties to a dispute over their children must use approved family dispute resolution providers. Parties who settle their own family disputes do not have to go to approved family dispute resolution providers. Parties who go to a non-approved family dispute resolution provider and resolve their family dispute at the family dispute resolution do not have to go to an approved family dispute resolution provider. Parties who go to a non-approved family dispute resolution provider, do not resolve their family dispute at family dispute resolution, and do not want to take their family dispute to a Family Court do not have to go to an approved family dispute resolution provider.

It is worth repeating here that, for parties whose income is over the civil legal aid threshold, the family dispute resolution services will be provided under a private contract. That makes it inappropriate for the Bill to dictate all the details about the family dispute resolution process. Where it is appropriate for the Bill to dictate details is at the 3 points at which family dispute resolution services and the Family Court system intersect. Thus, the Bill mandates that an application under the Care of Children Act 2004 about a dispute between guardians or for a parenting order cannot be made without a form (*new section 3D*); that the family dispute resolution provider must provide a form (*new section 3C*); and that statements made by parties to family dispute providers are inadmissible in court (*new section 3E*).

The contract between the Secretary for Justice and the approved family dispute resolution providers will deal with the services that the Ministry is paying for and can contain as much or as little prescription about family dispute resolution as the contracting parties agree on.

The contract between a private client and an approved family dispute resolution provider will deal with the services that the client is paying for. What the services are will depend on what the private client is able and willing to pay for.

Clause 61 inserts 2 new provisions.

New section 9A sets out the role of a lawyer appointed to represent a child or young person in proceedings in the Family Court under any Act. The role of the lawyer is to—

- act for the child or young person in a way that the lawyer considers promotes the child's welfare and best interests:
- ensure that the views of the child or young person are communicated to the court:
- assist the parties to reach agreement to the extent that to do so is in the best interests of the child or young person:
- provide advice to the child or young person:
- do anything else required by or under any other Act.

New section 9B sets out the role of a lawyer appointed to assist the court in proceedings in the Family Court under any Act. The role of the lawyer is to—

- provide independent legal advice to the court on any complex factual or legal issue requested by the court:
- offer an impartial perspective in relation to any issue arising in the proceedings:
- do anything else required by or under any Act.

Clause 62 inserts a *new section 12A* to combine, unify, and expand provisions about admissible evidence in Family Courts, provisions currently found in the Adoption Act 1955, Care of Children Act 2004, Child Support Act 1991, Children, Young Persons, and Their Families Act 1989, Domestic Violence Act 1995, Family Proceedings Act 1980, Property (Relationships) Act 1976, and Protection of Personal and Property Rights Act 1988.

The legal position is that the admissibility of evidence is determined initially by the Evidence Act 2006. The legal position is stated in the Evidence Act 2006. The expansion referred to in the previous paragraph that *new section 12A* makes is to state the legal position again so that in future it will appear in both the Evidence Act 2006 and the **Family Disputes (Resolution Methods) Act 1980**.

Clause 63 inserts a *new Part 3* heading after section 16.

Clause 64 provides for the making of regulations about family dispute resolution.

Clause 65 amends the heading of section 16B, the current provision on regulations, to make it clear that the provision deals only with court fees. It also removes a regulation-making power about Senior Family Court Registrars that is no longer necessary because there are no Senior Family Court Registrars, and it is no longer intended that there be Senior Family Court Registrars.

Clause 66 inserts a *new section 16D* in the **Family Disputes (Resolution Methods) Act 1980**. The new section provides powers to make regulations on payments to professional people working in the Family Courts. The professionals affected are people appointed as lawyers for children or lawyers to assist the court and people who prepare specialist reports on children.

The Acts that provide for the appointment of lawyers for children and lawyers to assist the court are the Care of Children Act 2004, Child Support Act 1991, Children, Young Persons, and Their Families Act 1989, Domestic Violence Act 1995, Family Proceedings Act 1980, Property (Relationships) Act 1976, and Protection of Personal and Property Rights Act 1988. Each Act currently contains powers to make regulations prescribing the lawyers' fees and expenses.

New section 16D(1) to (6) combine, unify, and expand the powers. The expansions allow the making of regulations—

- setting a minimum or maximum number of hours for which fees will be paid:
- providing for the Family Court, in extreme cases, to allow increases in maximums set in regulations:
- specifying the kinds of expenses that will be reimbursed.

The fact that a regulation-making power is available—for example, a power to set a maximum number of hours for which fees will be paid—does not mean that regulations using that power must be made

for all the Acts. It may be that setting a maximum number of hours for which fees will be paid is an appropriate measure only for proceedings under, say, the Care of Children Act 2004. Generally speaking, however, consistency in the expression and implementation of family law would help make all court proceedings understandable, simple, transparent, and timely.

The Acts that provide for the preparation of specialist reports on children are the Care of Children Act 2004 and the Children, Young Persons, and Their Families Act 1989. The Acts do not currently contain powers to make regulations prescribing report writers' fees and expenses.

New section 16D(7) to (9) provide power for regulations to be made prescribing the fees and expenses of persons who prepare reports under the Care of Children Act 2004 (but not under the Children, Young Persons, and Their Families Act 1989).

Clause 67 adds amendments to section 17. Most of the amendments simplify family law by removing provisions that have been combined and unified.

Clause 68 inserts a *new section 17A* to repeal provisions that are no longer needed.

Clause 69 amends the heading of section 18 to make it clear that the section deals with transitional matters for measures introduced in 1980.

Part 4

Amendments to Legal Services Act 2011

Clause 70 provides that *Part 4* amends the Legal Services Act 2011 (the Act).

Clause 71 amends section 7, which provides that legal aid may be granted for proceedings in a Family Court. The amendment inserts 3 new subsections in section 7. The effect of *new subsections (3A) and (3B)* is to limit the availability of legal aid in proceedings under the Care of Children Act 2004 in the Family Court. In general, legal aid will be available if a lawyer may, under *new section 7A* of the Care of Children Act 2004, act in those proceedings for the party (not being the Crown). However, legal aid will not be available in proceedings

commenced under the Act on an application made without notice that—

- affects the applicant only; or
- is in respect of a routine matter; or
- does not affect the interests of any other person.

Legal aid may also be granted for legal advice given to a party to proceedings who has been directed by a Judge to obtain legal advice before consenting to an order settling the issues in dispute.

New subsection (6) provides that *new subsections (3A) and (3B)* do not apply in respect of any proceedings commenced under the Care of Children Act 2004 before **1 October 2013**.

Part 5 Amendments to other Acts

Subpart 1—Amendments to Child Support Act 1991

Clause 72 provides that *subpart 1 of Part 5* amends the Child Support Act 1991 (the **Act**).

Clause 73 replaces section 226, which provides for the appointment of a barrister or solicitor to assist the court or represent children in proceedings under the Act.

There are 3 new provisions—

- *new section 226*, dealing with the appointment of a lawyer to represent children in proceedings under the Act; and
- *new section 226A*, dealing with the appointment of a lawyer to assist the court in proceedings under the Act; and
- *new section 226B*, dealing with the fees and expenses of a lawyer appointed under either *new section 226* or *new section 226A*.

The new provisions refer to lawyer rather than to barrister or solicitor and simplify the wording of section 226, having regard to *new sections 9A, 9B, and 16D* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clauses 61 and 66*).

Clause 74 repeals section 235(1)(d) because the power to make regulations relating to the fees and expenses of court-appointed lawyers

is now set out in *new section 16D* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clause 66*).

Subpart 2—Amendments to Children, Young Persons, and Their Families Act 1989

Clause 75 provides that *subpart 2 of Part 5* amends the Children, Young Persons, and Their Families Act 1989 (the **Act**).

Clause 76 amends section 137, which sets out the orders and directions that a court may make after considering a report filed under section 135 and an accompanying revised plan prepared in relation to a child or young person. The purpose of the amendment is to clarify that the court need not give any person the opportunity to be heard before making an order or direction under this section.

Clause 77 amends section 159, which provides for the appointment of a barrister or solicitor to represent a child or young person in proceedings under the Act. References to barrister or solicitor are replaced with references to lawyer.

Clause 78 replaces sections 160 and 161.

New section 160, which provides for the appointment of a lawyer to assist the court in proceedings under the Act, re-enacts existing section 160, but refers to a lawyer instead of a barrister or solicitor.

New section 161, which sets out further provisions relating to the appointment of a lawyer to represent a child or young person or to assist the court, re-enacts existing section 161, but simplifies it, having regard to *new sections 9A and 9B* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clause 61*).

Clause 79 amends section 162, which provides for the payment of the fees and expenses of a lawyer appointed under section 159 or *new section 160*. References to barrister or solicitor are updated and reference is made to the new regulation-making power in *new section 16D* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clause 66*).

Clause 80 inserts 2 new provisions.

New section 206A requires the leave of the court to be obtained if it is proposed to commence a proceeding—

- substantially similar to a previous proceeding; and

- less than 2 years after the final judgment was given in that previous proceeding.

The leave of the court may only be given if, since the previous proceeding, there has been a material change in the circumstances of any party or any child or young person who was the subject of the previous proceeding.

New section 206B provides that the court may dismiss a proceeding relating to the care and protection of a child or young person if it is satisfied that—

- the continuation of the proceeding is contrary to the welfare and best interests of the child or young person; or
- the proceeding is frivolous or vexatious or an abuse of the process of the court.

This provision is substantially the same as section 140 of the Care of Children Act 2004.

Clause 81 repeals the regulation-making power in section 447(e)(i) relating to the amounts payable to a lawyer appointed to represent a child or young person or to assist the court. The regulation-making power in respect of these amounts is now in *new section 16D* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clause 66*).

Subpart 3—Amendments to Family Proceedings Act 1980

Clause 82 provides that *subpart 3 of Part 5* amends the Family Proceedings Act 1980 (the Act).

Clause 83 amends section 2, which is the interpretation provision, to repeal definitions that are no longer required.

Clause 84 repeals section 5 as a consequence of the repeal of Part 2 of the Act (*see clause 85*).

Clause 85 repeals Part 2 of the Act (dispute resolution). The effect of this is that the Family Court will no longer arrange counselling for—

- parties to a marriage, civil union, or de facto relationship in respect of their relationship;
- parties to an application for a separation order in respect of that application:

- parties to an application for a parenting order in respect of the issue in dispute.

Also, there will no longer be mediation conferences (Judge-led mediation attended by the parties). Furthermore, lawyers and the court will no longer have a duty under the Act to promote conciliation and reconciliation.

Clause 86 amends section 160(1), which provides that an application under the Family Proceedings Act 1980 may be joined with an application under the Care of Children Act 2004.

Because parties to an application under the Care of Children Act 2004 will not always be represented by a lawyer (*see new section 7A* of the Care of Children Act 2004, inserted by *clause 5*), it will not be possible for such applications to be joined with applications under the Family Proceedings Act 1980, in which parties are represented. Section 160(1) is therefore amended so that separate applications will need to be filed. However, under section 160(2), such applications can continue to be heard and determined together.

Clause 87 replaces section 162, which provides for the appointment of a barrister or solicitor to assist the court or represent children in proceedings under the Act.

There are 3 new provisions—

- *new section 162*, dealing with the appointment of a lawyer to represent children in proceedings under the Act; and
- *new section 162A*, dealing with the appointment of a lawyer to assist the court in proceedings under the Act; and
- *new section 162B*, dealing with the fees and expenses of a lawyer appointed under either *new section 162* or *new section 162A*.

The new provisions refer to lawyer rather than to barrister or solicitor and have regard to *new sections 9A, 9B, and 16D* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clauses 61 and 66*).

Clause 88 amends section 165(4) to refer to lawyer rather than to barrister or solicitor, and also to take account of *new section 9A(4)(b)* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clause 61*).

Clause 89 repeals the regulation-making power in section 187(a), (ca), (cb), and (cc) in consequence of the repeal of Part 2 of the

Act and *new section 16D* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clause 66*).

Clause 90 is a transitional provision to provide for the commencement or continuation (between 1 October 2013 and 31 January 2014) of counselling or mediation arranged, but not commenced or completed, before this Bill comes into force.

Clause 91 amends Schedule 2 to include repeal of the Family Proceedings Amendment Act 2008.

Although there are a number of provisions in this Amendment Act relating to counselling and mediation that have not yet come into force, these provisions are not to come into force.

Subpart 4—Amendments to Property (Relationships) Act 1976

Clause 92 provides that *subpart 4 of Part 5* amends the Property (Relationships) Act 1976 (the Act).

Clause 93 repeals section 22(3) to (5), which provide for the transfer of proceedings to the High Court. This matter is now dealt with in *new section 38A* (inserted by *clause 95*).

Clause 94 amends section 37A(2), which provides for the payment of the fees and expenses of a lawyer appointed to represent a child in proceedings under the Act. Paragraph (a) is replaced to refer to the new regulation-making power for these fees and expenses in *new section 16D* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clause 66*).

Clause 95 inserts *new section 38A*.

New section 38A provides for the transfer of proceedings to the High Court. It is substantially the same as existing section 22(3) to (5), but enables a Family Court Judge to order the transfer of proceedings in any case where the Judge is satisfied that the High Court is the more appropriate venue. Complexity of the proceedings or of a question in issue in the proceedings is not the only matter that a Judge may have regard to in considering whether to make a transfer order.

Clause 96 repeals the regulation-making power in section 53(2A)(a) as a consequence of *new section 37A(2)(a)* (inserted by *clause 94*).

Subpart 5—Amendments to Protection of Personal and Property Rights Act 1988

Clause 97 provides that *subpart 5 of Part 5* amends the Protection of Personal and Property Rights Act 1988 (the **Act**).

Clause 98 amends section 65 to refer to lawyer rather than to barrister or solicitor. Section 65(3), which provides for the appointment of a barrister or solicitor to assist the court, is repealed. This matter is now dealt with in *new section 65A* (inserted by *clause 99*).

Clause 99 inserts *new section 65A*, which provides for the appointment of a lawyer to assist the court in proceedings under the Act. *New sections 9B and 16D* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clauses 61 and 66*) will apply in respect of an appointment under *new section 65A*.

Clause 100 amends section 76 to refer to lawyer rather than to barrister or solicitor, and also to refer to *new section 65A* (inserted by *clause 99*).

Clause 101 amends section 78, consequential on *new section 9B(2)(b)* of the **Family Disputes (Resolution Methods) Act 1980** (inserted by *clause 61*).

Clause 102 amends section 79, to refer to *new section 65A* (inserted by *clause 99*).

Clause 103 amends section 88, to take account of *new section 65A* (inserted by *clause 99*).

Clause 104 updates the terminology of section 112, which is the regulation-making provision.

Hon Judith Collins

Family Court Proceedings Reform Bill

Government Bill

Contents

		Page
1	Title	7
2	Commencement	8
Part 1		
Amendments to Care of Children Act 2004		
3	Principal Act	8
4	Sections 4 and 5 replaced	8
4	4 Child's welfare and best interests to be paramount	8
5	5 Principles relating to child's welfare and best interests	9
5	Section 7 replaced (Lawyer to act for child)	9
7	7 Appointment of lawyer to represent child in proceedings	10
7A	7A Lawyers acting for parties	10
6	Section 8 amended (Interpretation)	11
7	Section 40 amended (Agreements between parents and guardians)	11
8	Sections 44 to 46 and cross-heading above section 44 repealed	11
9	New sections 46C to 46H and cross-headings inserted	11
46C	46C Certain children may seek review of parent's or guardian's decision or refusal to give consent	11
<i>Resolving disputes between guardians</i>		
46D	46D Disputes between guardians	12

Family Court Proceedings Reform Bill

Counselling

	46E	Counselling where proceedings commenced	12
	46F	Duties of approved counselling organisation	13
	46G	Privilege	13
	46H	Counselling fees and expenses	13
10		New sections 47A and 47B inserted	14
	47A	Mandatory statement in applications	14
	47B	Mandatory statement and evidence in applications	14
11		Section 48 amended (Parenting orders)	14
12		Section 49 replaced (Applications to include statement on others' involvement)	14
	49	Interim parenting orders	15
	49A	Final parenting orders	15
13		Section 51 amended (Court must consider protective conditions in certain cases)	15
14		Sections 57 to 62 and cross-heading above section 58 replaced	15
	57	Variation of final parenting order by consent memorandum instead of application	16

Supervised contact

	58	Interpretation	16
	59	Court may order supervised contact	17
	60	Costs of formal supervised contact	17
15		Section 63 repealed (Purpose and overview of sections 64 to 80)	18
16		Section 64 amended (Guiding consideration and principles)	18
17		Sections 65 to 67 repealed	18
18		Section 69 amended (Court may require parties to attend for counselling or for hearing of application under section 68)	18
19		Section 78 replaced (Contravening parenting order)	18
	78	Contravening parenting or guardianship order	18
20		Section 130 replaced (Counsel to assist court)	19
	130	Appointment of lawyer to assist court	19
21		Section 131 amended (Costs of court-appointed counsel)	19
22		Section 133 replaced (Reports from other persons)	19
	133	Reports from other persons	19
23		Section 134 amended (Distribution, etc, of reports under sections 132 and 133)	23
24		Section 135 replaced (Costs of reports under section 133)	23

Family Court Proceedings Reform Bill

	135	Costs of reports requested under section 133	23
	135A	Order requiring refund of payments in respect of reports requested under section 133	23
	135B	Enforcement of orders made under section 135A	25
	135C	Time may be extended for payments ordered under section 135A	25
25		Section 137 amended (Attendance at hearings generally)	26
26		Section 138 repealed (Attendance at hearings of persons involved in counselling or conciliation under Family Proceedings Act 1980)	26
27		New section 139A inserted (Leave required to commence substantially similar proceedings)	26
	139A	Leave required in certain cases to commence substantially similar proceedings	26
28		Section 141 amended (Power to restrict commencement of proceedings)	27
29		Section 147 amended (Regulations)	27
30		Section 148 amended (Other Acts not affected)	27
31		Section 152 amended (Repeal)	28
32		New section 165 inserted (Proceedings pending before commencement of Part 1 of Family Court Proceedings Reform Act 2012)	28
	165	Proceedings pending before commencement of Part 1 of Family Court Proceedings Reform Act 2012	28

Part 2

Amendments to Domestic Violence Act 1995

33		Principal Act	29
34		Section 2 amended (Interpretation)	29
35		Section 3 amended (Meaning of domestic violence)	30
36		Section 5 amended (Object)	31
37		Cross-heading above section 29 replaced	31
38		Section 29 amended (Programmes for protected persons)	31
39		Section 30 repealed (Commencement of section 29)	31
40		Sections 31 to 35 replaced	31
	31	Joint programmes	31
	32	Direction to attend assessment and non-violence programme	32
	33	Terms of direction that respondent or associated respondent attend non-violence programme	33
	34	Registrar to arrange programme provider	33

Family Court Proceedings Reform Bill

35	Programme provider to arrange meeting with respondent or associated respondent	33
	35A Referral to different programme provider	34
41	Section 36 amended (Direction to attend programme made on application without notice)	34
42	Section 38 repealed (Respondent or associated respondent excused from attending)	34
43	Sections 39 and 40 replaced	35
	39 Notice of non-compliance	35
	40 Notice of conclusion of non-violence programme	35
44	Section 41 repealed (Programme provider may request variation of direction)	35
45	Section 41A amended (Powers of Registrar on receipt of notice under section 39 or 41)	35
46	Section 42 replaced (Judge may call respondent or associated respondent before court)	36
	42 Judge may call respondent or associated respondent before court	36
47	Section 42A amended (Respondent or associated respondent called before court)	36
48	New cross-heading above section 43 inserted	36
49	Section 43 amended (Confidentiality of information disclosed to programme provider)	36
50	New cross-heading above section 44 inserted	37
51	Section 49 amended (Offence to breach protection order)	37
52	Section 49A amended (Offence to fail to comply with direction)	37
53	Section 81 amended (Court may appoint lawyer)	37
54	Section 127 amended (Regulations)	37
55	New section 134 inserted (Programmes arranged or in progress immediately before 1 October 2014)	38
	134 Programmes arranged or in progress immediately before 1 October 2014	38

Part 3

Amendments to Family Courts Act 1980

56	Principal Act	38
57	Long Title repealed	38
58	Section 1 replaced (Short Title and commencement)	38
	1 Title	38
	1A Commencement	39
59	Section 2 amended (Interpretation)	39

Family Court Proceedings Reform Bill

60	New section 3A, new Part 1, and new Part 2 heading inserted	40
	3A Purposes	40
Part 1		
Family dispute resolution		
	3B Family dispute resolution providers	40
	3C Family dispute resolution forms	40
	3D Purpose of family dispute resolution forms	41
	3E Privilege	42
61	New sections 9A and 9B inserted	42
	9A Role of lawyer appointed to represent child or young person in proceedings	42
	9B Role of lawyer appointed to assist court	43
62	New section 12A inserted (Evidence)	44
	12A Evidence	44
63	New Part 3 heading inserted	44
64	New section 16AA inserted (Regulations relating to family dispute resolution)	45
	16AA Regulations relating to family dispute resolution	45
65	Section 16B amended (Regulations)	45
66	New section 16D and new Part 4 heading inserted	45
	16D Regulations relating to payments to professionals	45
67	Section 17 amended (Certain enactments amended)	48
68	New section 17A inserted (Repeals)	48
	17A Repeals	48
69	Section 18 amended (Transitional and savings provisions)	48
Part 4		
Amendments to Legal Services Act 2011		
70	Principal Act	49
71	Section 7 amended (Proceedings for which legal aid may be granted: civil matters)	49
Part 5		
Amendments to other Acts		
Subpart 1—Amendments to Child Support Act 1991		
72	Principal Act	50
73	Section 226 replaced (Appointment of barrister or solicitor to assist court or represent children)	50
	226 Appointment of lawyer to represent child in proceedings	50

Family Court Proceedings Reform Bill

	226A Appointment of lawyer to assist court	50
	226B Fees and expenses of lawyer appointed under section 226 or 226A	50
74	Section 235 amended (Regulations)	51
	Subpart 2—Amendments to Children, Young Persons, and Their Families Act 1989	
75	Principal Act	51
76	Section 137 amended (Court to consider report and make directions)	51
77	Section 159 amended (Appointment of barrister or solicitor to represent child or young person)	52
78	Sections 160 and 161 replaced	52
	160 Appointment of lawyer to assist court	52
	161 Further provisions relating to appointment under section 159 or 160	52
79	Section 162 amended (Payment of barrister or solicitor appointed under section 159 or section 160)	53
80	New sections 206A and 206B inserted	53
	206A Leave required to commence substantially similar proceedings	53
	206B Power to dismiss proceedings	54
81	Section 447 amended (Regulations)	54
	Subpart 3—Amendments to Family Proceedings Act 1980	
82	Principal Act	54
83	Section 2 amended (Interpretation)	54
84	Section 5 repealed (Marriage or civil union guidance or counselling organisations)	55
85	Part 2 repealed	55
86	Section 160 amended (Applications may be heard together)	55
87	Section 162 replaced (Appointment of barrister or solicitor to assist court or represent children)	55
	162 Appointment of lawyer to represent child in proceedings	55
	162A Appointment of lawyer to assist court	55
	162B Fees and expenses of lawyer appointed under section 162 or 162A	56
88	Section 165 amended (Power of District Court or Family Court to call witnesses)	56
89	Section 187 amended (Regulations)	57

90	New section 193 inserted (Transitional provision for counselling or mediation arranged before commencement of subpart 3 of Part 5 of Family Court Proceedings Reform Act 2012)	57
	193 Transitional provision for counselling or mediation arranged before commencement of subpart 3 of Part 5 of Family Court Proceedings Reform Act 2012	57
91	Schedule 2 amended	57
	Subpart 4—Amendments to Property (Relationships) Act 1976	
92	Principal Act	57
93	Section 22 amended (Jurisdiction)	57
94	Section 37A amended (Court may appoint lawyer for children)	58
95	New section 38A and cross-heading inserted	58
	<i>Transfer of proceedings</i>	
	38A Transfer of proceedings to High Court	58
96	Section 53 amended (Rules of court and regulations)	58
	Subpart 5—Amendments to Protection of Personal and Property Rights Act 1988	
97	Principal Act	58
98	Section 65 amended (Appointment of barrister or solicitor by court or Registrar)	59
99	New section 65A inserted (Appointment of lawyer to assist court)	59
	65A Appointment of lawyer to assist court	59
100	Section 76 amended (Court may call for report on person)	59
101	Section 78 amended (Power of court to call witnesses)	59
102	Section 79 amended (Attendance at hearings)	59
103	Section 88 amended (Procedure on review)	60
104	Section 112 amended (Regulations)	60

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Family Court Proceedings Reform Act **2012**.

2 Commencement

- (1) **Sections 33, 35 to 49, 51, 53(1), and 54** come into force on the earlier of the following:
- (a) a date appointed by the Governor-General by Order in Council; and 5
 - (b) **1 October 2014**.
- (2) The rest of this Act comes into force on **1 October 2013**.

Part 1**Amendments to Care of Children Act
2004**

10

3 Principal Act

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

4 Sections 4 and 5 replaced

Replace sections 4 and 5 with:

15

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

“(1) The welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration—

“(a) in the administration and application of this Act, for example, in proceedings under this Act; and 20

“(b) in any other proceedings involving the guardianship of, or the role of providing day-to-day care for, or contact with, a child.

“(2) Any person considering the welfare and best interests of a child in his or her particular circumstances— 25

“(a) must take into account—

“(i) the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child’s sense of time; and 30

“(ii) the principles in **section 5**; and

“(b) may take into account the conduct of the person who is seeking to have a role in the upbringing of the child if that conduct— 35

“(i) unnecessarily delays the making of decisions; or

- “(ii) is obstructive toward any person who has, or who is seeking to have, a role in the upbringing of the child; or
- “(iii) is otherwise relevant.
- “(3) It must not be presumed that the welfare and best interests of a child (of any age) require the child to be placed in the day-to-day care of a particular person because of that person’s gender. 5
- “(4) This section does not—
- “(a) limit section 6 or 83, or subpart 4 of Part 2; or 10
- “(b) prevent any person from taking into account other matters relevant to the child’s welfare and best interests.
- “5 **Principles relating to child’s welfare and best interests**
- The principles relating to a child’s welfare and best interests are that— 15
- “(a) a child’s safety must be protected and, in particular, a child must be protected from all forms of violence as defined in section 3(2) to (5) of the Domestic Violence Act 1995:
- “(b) a child’s care, development, and upbringing should be primarily the responsibility of his or her parents and guardians: 20
- “(c) a child’s care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians and any other person who has a role in his or her care: 25
- “(d) a child should have continuity in his or her care, development, and upbringing:
- “(e) a child’s relationship with his or her parents, family group, whānau, hapū or iwi should be preserved and strengthened: 30
- “(f) a child’s identity (including without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.”
- 5 **Section 7 replaced (Lawyer to act for child)** 35
- Replace section 7 with:

- “7 **Appointment of lawyer to represent child in proceedings**
 A court may appoint, or direct the Registrar of the court to appoint, a lawyer to represent a child who is the subject of, or who is a party to, proceedings (other than criminal proceedings) under this Act if the court— 5
 “(a) has concerns for the safety or well-being of the child; and
 “(b) considers an appointment necessary.
- “7A **Lawyers acting for parties**
- “1) A lawyer may act for a party to a proceeding under this Act that is to be heard and determined in a Family Court only as provided in **subsections (2) to (5)**. 10
- “2) A lawyer may act for a party to a proceeding commenced by an application made—
 “(a) without notice: 15
 “(b) under subpart 4 of Part 2.
- “3) A lawyer may act for a party to a proceeding if that party is the Crown.
- “4) A lawyer may act for a party to a defended proceeding if a Judge has directed that the issues in dispute between the parties proceed to a hearing. 20
- “5) A lawyer may act for a child who is a party to a proceeding if the lawyer has been appointed by the court under **section 7** to represent that child.
- “6) In this section,— 25
 “**act**, in relation to a party, means—
 “(a) to sign any document for the party:
 “(b) to file any document for the party:
 “(c) to accept service for the party:
 “(d) to represent the party in court, or otherwise attend with the party before a Judge or Registrar 30
 “**defended proceeding** means a proceeding in which a respondent is defending or opposing the application
 “**party to a proceeding** includes a party to a proposed proceeding. 35
- “7) To avoid doubt, nothing in this section prevents a lawyer from—

- “(a) giving legal advice to a party:
 “(b) preparing any document for a party.”

6 Section 8 amended (Interpretation)

In section 8, insert in their appropriate alphabetical order:

- “**approved counselling organisation** means an organisation 5
 that is approved by the Secretary as a counselling organisation
 for the purpose of providing counselling under **section 46E**
 “**counselling** means counselling provided by a counsellor
 “**counsellor** means a person nominated by an approved coun- 10
 selling organisation to act as a counsellor
 “**parenting information programme** means a programme
 specified in regulations made under this Act”.

7 Section 40 amended (Agreements between parents and guardians)

Replace section 40(1) with: 15

- “(1) A party to an agreement to which subsection (2) applies may seek to have the terms of the agreement embodied in an order of the court that may be enforced, as provided in subsections (3) and (4).”

8 Sections 44 to 46 and cross-heading above section 44 repealed 20

Repeal sections 44 to 46 and the cross-heading above section 44.

9 New sections 46C to 46H and cross-headings inserted

After section 46B, insert: 25

“**46C Certain children may seek review of parent’s or guardian’s decision or refusal to give consent**

- “(1) A child of or over the age of 16 years who is affected by a decision or by a refusal of consent by a parent or guardian in an important matter may (unless the child is under the guardianship of the court) apply to a Family Court Judge, who may, if he or she thinks it reasonable in all the circumstances to do so, review the decision or refusal and make any order in respect of it that he or she thinks fit. 30

- “(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. 5

“Resolving disputes between guardians

- “**46D Disputes between guardians** 10
- “(1) If 2 or more guardians of a child are unable to agree on a matter concerning the exercise of their guardianship, any of them may apply to the court for its direction.
- “(2) An application under **subsection (1)** must be made to a Family Court unless **subsection (3)** applies. 15
- “(3) An application under **subsection (1)** must be made to the High Court, and the High Court has exclusive jurisdiction to settle the dispute where,—
- “(a) under an order of the High Court, 2 or more persons are guardians of, or have the role of providing day-to-day care for, a child, and that order has not been removed into a Family Court under section 127; or 20
- “(b) the child is under the guardianship of the High Court.
- “(4) On an application under **subsection (1)**, the court may make any order relating to the matter that it thinks proper. 25

“Counselling

- “**46E Counselling where proceedings commenced**
- “(1) This section applies when an application has been made to a Family Court for—
- “(a) a direction under **section 46D**; or 30
- “(b) a parenting order under section 48.
- “(2) A Family Court Judge may direct the Registrar of the court to refer the parties to the application to counselling for the following purposes:
- “(a) to improve the relationship between the parties; and 35

- “(b) to encourage compliance with any direction or order subsequently made by the court.
- “(3) A direction under **subsection (2)** may only be made by a Judge if the Judge considers that the provision of counselling services is the best means of assisting the parties with their relationship and the implementation of any decision of the court. 5
- “(4) A Family Court Judge may make a direction under **subsection (2)**—
- “(a) at any stage of the proceedings; but
- “(b) once only during the course of the proceedings. 10
- “(5) On receipt of a direction under **subsection (2)**, the Registrar must—
- “(a) arrange for the parties to be referred to an approved counselling organisation; and
- “(b) inform the parties accordingly. 15
- “**46F Duties of approved counselling organisation**
- An approved counselling organisation to which any parties are referred for counselling under **section 46E** must—
- “(a) arrange for a counsellor to meet with the parties; and
- “(b) provide counselling services for the purposes specified in **section 46E(2)**. 20
- “**46G Privilege**
- “(1) This section applies to a statement a party makes to a counsellor for the purpose of enabling the counsellor to provide counselling services. 25
- “(2) No evidence of the statement is admissible in any court or before any person acting judicially.
- “(3) A counsellor commits an offence and is liable on conviction to a fine not exceeding \$500 who discloses to any other person a statement made to the counsellor for the purpose of enabling the counsellor to provide counselling services. 30
- “**46H Counselling fees and expenses**
- Fees in respect of counselling carried out under **section 46E**, and reasonable expenses incurred, are payable out of public money appropriated by Parliament for the purpose.” 35

10 New sections 47A and 47B inserted

After section 47, insert:

“47A Mandatory statement in applications

“(1) This section applies to an application for a parenting order.

“(2) The application must include a statement made by or on behalf of the applicant for the order about whether and how the order can and should provide for any other person or persons to have the role of providing day-to-day care for, or contact with, the child. 5

“47B Mandatory statement and evidence in applications

10

“(1) This section applies to—

“(a) an application for a parenting order;

“(b) an application to vary a parenting order.

“(2) The application must include a statement made by or on behalf of the applicant for the order— 15

“(a) that the applicant has undertaken a parenting information programme within the preceding 2 years; or

“(b) that the applicant is not required to undertake a parenting information programme because—

“(i) the applicant is unable to participate effectively in a parenting information programme; or 20

“(ii) the applicant is making the application without notice.

“(3) Evidence in support of a statement made under **subsection (2)(a) or (b)(i)** must be included in the application. 25

“(4) A Registrar may refuse to accept an application if the Registrar considers that the evidence provided does not adequately support the statement.”

11 Section 48 amended (Parenting orders)

Repeal section 48(4) to (6).

30

12 Section 49 replaced (Applications to include statement on others' involvement)

Replace section 49 with:

- “49 Interim parenting orders**
- “(1) At any time before an application for a parenting order is finally determined in the Family Court, a Judge may make an interim parenting order that has effect until—
- “(a) a specified date; or 5
 - “(b) a specified event; or
 - “(c) it is replaced by—
 - “(i) another interim order; or
 - “(ii) a final order.
- “(2) However, **subsection (3)** applies if— 10
- “(a) an interim parenting order is made; and
 - “(b) the parents of the child in respect of whom the interim parenting order is made are parties to the order; and
 - “(c) under the interim parenting order, one of the parents has neither the role of providing day-to-day care for nor 15 contact with the child.
- “(3) If this subsection applies, the court must, as soon as practicable, assign a date for the final determination of the application for a parenting order that is within 3 months of the date of the interim order. 20
- “49A Final parenting orders**
- “(1) At any time during a proceeding, a Judge may make a final parenting order if the parties consent.
- “(2) When an application for a parenting order is finally determined in the Family Court, a Judge must make a final parenting order. 25
- “(3) A final parenting order may be made subject to any terms and conditions the court considers appropriate (for example, a condition requiring a party to enter into a bond).”
- 13 Section 51 amended (Court must consider protective conditions in certain cases)** 30
Repeal section 51(3).
- 14 Sections 57 to 62 and cross-heading above section 58 replaced**
Replace sections 57 to 62 and the cross-heading above section 58 with: 35

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

“(1) This section applies if the parties to a final parenting order made under this Act agree to a variation of the order, or to a variation of any term or condition to which the order is subject (the **proposed variation**). 5

“(2) A party to the final parenting order may, instead of applying under section 56 for a variation of the order, file a consent memorandum seeking an order in terms of the proposed variation. 10

“(3) The consent memorandum must—

“(a) set out the proposed variation; and

“(b) state that all persons affected by the final parenting order (other than children) agree to the proposed variation; and 15

“(c) be signed by all parties.

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

“Supervised contact” 20

“58 Interpretation

In this section, and **sections 59 and 60**,—

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

“(a) approved— 25

“(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 Disputes (Resolution Methods) Act 1980**; and 30

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

“**supervised contact** means direct (that is, face-to-face) contact between a party and a child, being contact that occurs— 35

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

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

“59 Court may order supervised contact 5

“(1) This section applies if the court—

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

“(b) is not satisfied that the child will be safe with that person. 10

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

“(a) under the supervision of an approved provider; or 15

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

“60 Costs of formal supervised contact 20

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

“(2) The number of sessions of the contact that will be funded out of public money must be determined in accordance with regulations made under section 147(2)(a) or, in the absence of regulations of that kind, by the Registrar or the court. 25

“(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 30

“(b) are payable out of public money appropriated by Parliament for the purpose.”

- 15 Section 63 repealed (Purpose and overview of sections 64 to 80)**
Repeal section 63.
- 16 Section 64 amended (Guiding consideration and principles)** 5
Repeal section 64(2).
- 17 Sections 65 to 67 repealed**
Repeal sections 65 to 67.
- 18 Section 69 amended (Court may require parties to attend for counselling or for hearing of application under section 68)** 10
- (1) In the heading to section 69, delete “for counselling or”.
- (2) Repeal section 69(1)(a).
- 19 Section 78 replaced (Contravening parenting order)** 15
Replace section 78 with:
- “78 Contravening parenting or guardianship order**
- “(1) A person commits an offence who, without reasonable excuse, intentionally—
- “(a) contravenes—
- “(i) a parenting order; or 20
- “(ii) a guardianship order made under section 40 or **46D**; or
- “(b) prevents compliance with—
- “(i) a parenting order; or
- “(ii) a guardianship order made under section 40 or **46D**. 25
- “(2) A person who commits an offence under **subsection (1)** is liable on conviction to—
- “(a) a term of imprisonment not exceeding 3 months; or
- “(b) a fine not exceeding \$2,500. 30
- “(3) Nothing in this section limits the power of a court to punish a person for contempt of court.”

20 Section 130 replaced (Counsel to assist court)

Replace section 130 with:

“130 Appointment of lawyer to assist court

In any proceedings under this Act (other than criminal proceedings) a court may— 5

“(a) appoint a lawyer to assist the court; or

“(b) direct the Registrar of the court to appoint a lawyer to assist the court.”

21 Section 131 amended (Costs of court-appointed counsel)

(1) Replace the heading to section 131 with “**Fees and expenses of lawyer appointed under section 7 or 130**”. 10

(2) Replace section 131(1) with:

“(1) The fees and expenses of a lawyer appointed under **section 7 or 130** must—

“(a) be determined in accordance with regulations made under **section 16D** of the **Family Disputes (Resolution Methods) Act 1980**; and 15

“(b) be paid out of public money appropriated by Parliament for the purpose.”

(3) In section 131(2), replace “section 7(1) or section 130(1)” with “**section 7 or 130**”. 20

22 Section 133 replaced (Reports from other persons)

Replace section 133 with:

“133 Reports from other persons

“*Definitions* 25

“(1) In this section,—

“**application**—

“(a) means—

“(i) an application for guardianship; or

“(ii) an application for a parenting order; or 30

“(iii) an application under section 105(1); and

“(b) does not include an application for an interim order about the role of providing day-to-day care for a child

“**approval** means an approval under **subsection (10)**

“**cultural report** means a report that is about the child who is the subject of an application and that covers an aspect or as- 35

pects of the child’s cultural background, including the child’s religious denomination and practice

“**materials** means—

- “(a) the psychological report; and
- “(b) the report writer’s notes; and 5
- “(c) other materials the report writer used in preparing the psychological report

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

“**psychiatric report** means a psychiatric report that is about the child who is the subject of an application 10

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

- “(a) how current arrangements for the child’s care are working for the child; and 15
- “(b) the child’s relationship with each party, including, if appropriate, the child’s attachment to or bonding with each party; and
- “(c) the child’s relationship with other significant persons in the child’s life; and 20
- “(d) the effect or likely effect on the child of each party’s parenting skills; and
- “(e) the effect or likely effect on the child of the parties’ ability or otherwise to co-operate in the parenting of the child; and 25
- “(f) the advantages and disadvantages for the child of the options for the care of the child; and
- “(g) any matter that the court specifies under **subsection (5)(b)** 30

“**report writer** means—

- “(a) the person requested under **subsection (2)** to prepare a report:
- “(b) the psychologist requested under **subsection (5)** to prepare a report 35

“**second opinion** means—

- “(a) a critique of a psychological report; and

- “(b) a report covering the same matters as those covered by a psychological report.
- “*Court’s power to obtain cultural reports, medical reports, or psychiatric reports*
- “(2) To obtain a written cultural report, medical report, or psychiatric report, the court may—
- “(a) request a person whom the court considers qualified for the purpose to prepare one; or
- “(b) direct the Registrar to request a person whom the Registrar considers qualified for the purpose to prepare one. 10
- “(3) The court may act under **subsection (2)** only if satisfied that—
- “(a) the information that the report will provide is essential for the proper disposition of the application; and
- “(b) the report is the best source of the information, having regard to the quality, timeliness, and cost of other sources; and 15
- “(c) the proceedings will not be unduly delayed by the time taken to prepare the report; and
- “(d) any delay in the proceedings will not have an unacceptable effect on the child. 20
- “(4) If the court is entitled by **subsection (3)** to act under **subsection (2)** and if the court knows the parties’ wishes about the obtaining of a report or can speedily ascertain them, the court must have regard to the parties’ wishes before deciding 25 whether or not to act under **subsection (2)**.
- “*Court’s power to obtain psychological reports*
- “(5) To obtain a written psychological report,—
- “(a) the court may—
- “(i) request a psychologist whom the court considers 30 qualified for the purpose to prepare one; or
- “(ii) direct the Registrar to request a psychologist whom the Registrar considers qualified for the purpose to prepare one; and
- “(b) the court may specify any matter that the report is to 35 cover.
- “(6) The court may act under **subsection (5)** only if—

- “(a) the court is satisfied that the information that the psychological report will provide is essential for the proper disposition of the application; and
- “(b) the court is satisfied that the psychological report is the best source of the information, having regard to the quality, timeliness, and cost of other sources; and 5
- “(c) the court is satisfied that the proceedings will not be unduly delayed by the time taken to prepare the psychological report; and
- “(d) the court is satisfied that any delay in the proceedings will not have an unacceptable effect on the child; and 10
- “(e) the court does not seek the psychological report solely or primarily to ascertain the child’s wishes.
- “(7) If the court is entitled by **subsection (6)** to act under **subsection (5)** and if the court knows the parties’ wishes about the obtaining of a psychological report or can speedily ascertain them, the court must have regard to the parties’ wishes before deciding whether or not to act under **subsection (5)**. 15
- “Court’s power to direct meetings*
- “(8) If the court acts under **subsection (2) or (5)**, it may give directions at the same time on arrangements for— 20
- “(a) the child to meet with the report writer; or
- “(b) 1 or more of the parties to meet with the report writer; or
- “(c) the child and 1 or more of the parties to meet with the report writer. 25
- “(9) If a party or the child fails to meet with the report writer as directed by the court,—
- “(a) the report writer must notify the court; and
- “(b) the court may make further directions. 30
- “Second opinions*
- “(10) The approval of the court must be obtained before a second opinion may be prepared or presented.
- “(11) The court may give approval only if there are exceptional circumstances. 35
- “(12) If the court gives approval, it may permit disclosure of the materials to the psychologist preparing the second opinion.

- “(13) If the court declines to give approval to a party, or if a party does not seek approval, the court may permit disclosure of the materials to a psychologist who is employed by the party and who is not the report writer.
- “(14) The court may permit disclosure under **subsection (13)** only if the court is satisfied that the psychologist requires the materials to assist the party to prepare the party’s cross-examination.” 5
- 23 Section 134 amended (Distribution, etc, of reports under sections 132 and 133)** 10
In section 134(3)(b), replace “section 130(1)” with “**section 130**”.
- 24 Section 135 replaced (Costs of reports under section 133)**
Replace section 135 with:
- “135 Costs of reports requested under section 133** 15
- “(1) Fees for the preparation of reports requested under **section 133**, and reasonable expenses incurred, must—
- “(a) be determined in accordance with regulations made under **section 16D** of the **Family Disputes (Resolution Methods) Act 1980**; and 20
- “(b) be paid out of public money appropriated by Parliament for the purpose.
- “(2) Despite **subsection (1)**, where in any proceedings a report requested under **section 133** has been prepared and the fees and expenses relating to that report have been paid under **subsection (1)**, the court must make an order under **section 135A**, unless the court declines to do so in accordance with that section. 25
- “135A Order requiring refund of payments in respect of reports requested under section 133** 30
- “(1) An order referred to in **section 135(2)** must order the parties to refund to the Crown the prescribed proportion of the amount paid by the Crown, under **section 135(1)(b)**, in respect of a report requested under **section 133**.

- “(2) Each party must pay an equal share of the prescribed proportion.
- “(3) Despite **subsection (1)**, the court may decline to make an order against a party if satisfied that the order would cause serious hardship to the party or to a dependent child of the party. 5
- “(4) Despite **subsection (2)**, if the court is satisfied that, in view of the circumstances of the case, including the conduct of any party, it would be inappropriate to require a party to pay the amount payable in accordance with that subsection, the court may substitute, for that party, a different amount not exceeding the prescribed proportion. 10
- “(5) If the court substitutes another amount under **subsection (4)**, the court must give written reasons for doing so.
- “(6) In this section,— 15
- “**dependent child**, in relation to a party, means a child—
- “(a) whose care is substantially the responsibility of the party; and
- “(b) who is maintained as a member of that party’s family; and 20
- “(c) who is financially dependent on that party
- “**prescribed proportion** means the proportion that is prescribed by regulations made under section 147 for the purposes of this section
- “**serious hardship**, in relation to a party or a dependent child of a party,— 25
- “(a) includes significant financial difficulties that arise because of—
- “(i) the party’s inability to meet minimum living expenses according to normal community standards; or 30
- “(ii) the cost of medical treatment for an illness or injury of the party or a dependent child of the party; or
- “(iii) a serious illness suffered by the party or by a dependent child of the party; or 35
- “(iv) the cost of education for a dependent child of the party:

“(b) does not include significant financial difficulties that arise because—

“(i) the social activities and entertainment of the party or those of a dependent child of the party may be limited; or 5

“(ii) the party is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards.

“**135B Enforcement of orders made under section 135A**

“(1) The amount that a party is ordered to refund under **section 135A** is a debt due to the Crown by that party and may be enforced in a District Court or the High Court, as the case may require, in the same manner as a judgment of that court. 10

“(2) Despite section 113 or 123 of the District Courts Act 1947 or section 100A of the Judicature Act 1908, no court fee is payable by a person who seeks to enforce, on behalf of the Crown, an order referred to in **subsection (1)**, but the fee that would otherwise be payable— 15

“(a) is to be added to the amount sought to be enforced; and

“(b) must be paid to the Registrar of the court out of any proceeds that result from the enforcement. 20

“**135C Time may be extended for payments ordered under section 135A**

“(1) If an amount that a party is ordered to refund under **section 135A** is outstanding, the Registrar may enter into an arrangement with the party to allow for either or both of the following: 25

“(a) a greater time for payment:

“(b) payment to be made by instalments.

“(2) No arrangement under **subsection (1)** may permit an amount to remain unpaid for more than 5 years after the date on which the arrangement is entered into. 30

“(3) No action to enforce an amount that is the subject of an arrangement under this section may be taken as long as the arrangement continues in force and is duly observed.

“(4) If an amount may be paid by instalments and default is made in the payment of any instalment, proceedings may be taken 35

against the person in default as if default had been made in the payment of all instalments then remaining unpaid.”

25 Section 137 amended (Attendance at hearings generally)

- (1) Replace section 137(1)(b) with:
- “(b) parties to the proceedings: 5
“(ba) lawyers acting for the parties (if any):”.
- (2) Replace section 137(1)(c) with:
“(c) lawyers appointed under **section 7 or 130**:”.
- (3) Repeal section 137(4)(c).
- (4) Repeal section 137(5). 10

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

Repeal section 138.

27 New section 139A inserted (Leave required to commence substantially similar proceedings) 15

After section 139, insert:

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

- “(1) A proceeding may not be commenced under **section 46D**, 48, 20
or 56 without the leave of the court if that proceeding—
“(a) is substantially similar to a proceeding previously filed
in a Family Court by any person (a **previous proceed-**
ing); and
“(b) is to be commenced less than 2 years after final judg- 25
ment was given in the previous proceeding.
- “(2) The leave of the court may only be given under **subsection**
(1) if, since final judgment was given in the previous proceed-
ing, there has been a material change in the circumstances of—
“(a) any party to the previous proceeding: 30
“(b) any child who was the subject of the previous proceed-
ing.
- “(3) In this section, a proceeding is **substantially similar** to a pre-
vious proceeding if—

- “(a) the party commencing the proceeding was a party to the previous proceeding; and
- “(b) a child who is the subject of the proceeding was the subject of the previous proceeding; and
- “(c) the proceeding— 5
- “(i) is commenced under the same provision of this Act as the previous proceeding; or
- “(ii) is for an order varying the order made in the previous proceeding; or
- “(iii) is for an order discharging the order made in the previous proceeding. 10
- “(4) This section does not apply if every party to the new proceeding consents to its commencement.”
- 28 Section 141 amended (Power to restrict commencement of proceedings)** 15
- In the heading to section 141, after “**proceedings**”, insert “**if vexatious proceedings previously instituted**”.
- 29 Section 147 amended (Regulations)**
- (1) Before section 147(2)(a), insert:
- “(aa) specifying 1 or more parenting information programmes for the purposes of **section 47B(2)**.” 20
- (2) In section 147(2)(a),—
- (a) replace “section 62(2)” with “**section 60(2)**”; and
- (b) replace “section 60(5)” with “**section 59(2)**”.
- (3) In section 147(2)(b),— 25
- (a) replace “section 62(3)” with “**section 60(3)**; and”
- (b) replace “section 60(5)” with “**section 59(2)**; and”
- (c) replace “section 62(2)” with “**section 60(2)**”.
- (4) Repeal section 147(2)(c).
- (5) Replace section 147(2)(d) with: 30
- “(d) prescribing, for the purposes of **section 135A**, the proportion of any amount paid by the Crown under **section 135(1)(b)**.”.
- 30 Section 148 amended (Other Acts not affected)** 35
- In section 148(2), delete “66 and 69 and”.

31 Section 152 amended (Repeal)

In section 152, insert as subsection (2):

- “(2) The Care of Children Amendment Act 2008 (2008 No 74) is repealed.”

32 New section 165 inserted (Proceedings pending before commencement of Part 1 of Family Court Proceedings Reform Act 2012) 5

After section 164, insert:

“165 Proceedings pending before commencement of Part 1 of Family Court Proceedings Reform Act 2012 10

- “(1) This section applies to proceedings under this Act that were commenced before **1 October 2013** but were not by that date completed (a **pending proceeding**).

- “(2) The following provisions do not apply to a pending proceeding: 15

- “(a) **section 7A**; and
“(b) **section 135A**; and
“(c) **section 135B**; and
“(d) **section 135C**.

- “(3) The following provisions, as in force immediately before **1 October 2013**, continue to apply to a pending proceeding with any necessary modifications as if **Part 1 of the Family Court Proceedings Reform Act 2012** had not come into force: 20

- “(a) section 135; and 25
“(b) section 137.

- “(4) If section 57, as in force immediately before **1 October 2013**, applied in respect of any interim order, section 57 continues to apply in respect of that order as if **Part 1 of the Family Court Proceedings Reform Act 2012** had not come into force. 30

- “(5) If in any pending proceeding there is in force immediately before **1 October 2013** an order for supervised contact between a child who is the subject of the proceedings and any party, sections 58 to 62 and 147(2)(a) and (b) continue to apply in respect of that proceeding as if **Part 1 of the Family Court Proceedings Reform Act 2012** had not come into force. 35

- “(6) If in any pending proceeding a referral to counselling was made either on the court’s initiative (under section 45) or on the request of a party (under section 65) and that counselling has been arranged or is in progress immediately before **1 October 2013**,— 5
- “(a) sections 66, 67, 69, and 138 continue to apply as if **Part 1 of the Family Court Proceedings Reform Act 2012** had not come into force; but
- “(b) the counselling may not start or continue after **31 January 2014**.” 10

Part 2

Amendments to Domestic Violence Act 1995

- 33 Principal Act** 15
This Part amends the Domestic Violence Act 1995 (the **principal Act**).
- 34 Section 2 amended (Interpretation)**
- (1) In section 2, insert in their appropriate alphabetical order:
- “**contact** has the meaning given to it by section 8 of the Care of Children Act 2004 20
- “**domestic violence support programme** means a programme—
- “(a) that is provided by a programme provider; and
- “(b) that is provided to a protected person; and
- “(c) that,— 25
- “(i) in the case of a programme provided to a protected person other than a child, has the primary objective of promoting (whether by education, information, support, or otherwise) the protection of that person from domestic violence: 30
- “(ii) in the case of a programme provided to a protected person who is a child, has the primary objective of assisting the child to deal with the effects of domestic violence
- “**non-violence programme** means a programme that— 35
- “(a) is provided by a programme provider; and

- “(b) is provided to a respondent or an associated respondent; and
“(c) has the primary objective of stopping or preventing domestic violence on the part of the respondent or, as the case requires, the associated respondent”.
- (2) In section 2, replace the definition of **approved agency** with:
“approved agency means any organisation (whether incorporated or unincorporated) that is for the time being approved, in accordance with regulations made under this Act, to provide—
“(a) domestic violence support programmes; or
“(b) non-violence programmes; or
“(c) domestic violence support programmes and non-violence programmes”.
- (3) In section 2, repeal the definition of **programme**.
- (4) In section 2, replace the definition of **programme provider** with:
“programme provider—
“(a) means a person who is for the time being approved, in accordance with regulations made under this Act, to provide—
“(i) domestic violence support programmes; or
“(ii) non-violence programmes; or
“(iii) domestic violence support programmes and non-violence programmes; and
“(b) includes a person who, in accordance with the terms of the approval of any approved agency, is for the time being authorised to provide—
“(i) domestic violence support programmes; or
“(ii) non-violence programmes; or
“(iii) domestic violence support programmes and non-violence programmes”.
- 35 Section 3 amended (Meaning of domestic violence)**
After section 3(2)(c)(iv), insert:
“(iva) financial or economic abuse (for example, denying or limiting access to financial resources, or

preventing or restricting employment opportunities or access to education):”.

36 Section 5 amended (Object)

- (1) In section 5(2)(c), replace “programmes” with “domestic violence support programmes”. 5
- (2) In section 5(2)(d), replace “programmes” with “non-violence programmes”.

37 Cross-heading above section 29 replaced

Replace the cross-heading above section 29 with:
“Domestic violence support programmes”. 10

38 Section 29 amended (Programmes for protected persons)

- (1) Replace the heading to section 29 with “**Domestic violence support programmes**”.
- (2) In section 29(1), (2), (4), and (5), replace “programme” with “domestic violence support programme” in each place. 15

39 Section 30 repealed (Commencement of section 29)

Repeal section 30.

40 Sections 31 to 35 replaced

Replace sections 31 to 35 with:

“31 Joint programmes” 20

“(1) If the conditions in **subsection (2)** are satisfied, a programme provider may arrange for—

“(a) a protected person to whom a domestic violence support programme is provided to attend a non-violence programme at which— 25

“(i) the respondent is present; or

“(ii) an associated respondent is present; or

“(b) the respondent to whom a non-violence programme is provided to attend a domestic violence support programme at which a protected person is present; or 30

“(c) an associated respondent to whom a non-violence programme is provided to attend a domestic violence support programme at which a protected person is present.

- “(2) The conditions referred to in **subsection (1)** are that—
- “(a) the protected person agrees; and
 - “(b) the respondent or, as the case may be, the associated respondent agrees; and
 - “(c) the programme provider is satisfied that no safety issues exist; and 5
 - “(d) the programme provider is authorised to undertake both domestic violence support programmes and non-violence programmes.
- “Non-violence programmes”* 10
- “**32 Direction to attend assessment and non-violence programme**
- “(1) On the making of a protection order, the court must direct the respondent to—
- “(a) undertake an assessment with a programme provider to determine the most appropriate non-violence programme for the respondent to attend; and 15
 - “(b) attend the non-violence programme that the programme provider determines to be the most appropriate.
- “(2) The court need not make a direction under **subsection (1)** if— 20
- “(a) there is no non-violence programme available that is appropriate for the respondent, having regard to—
 - “(i) the respondent’s character; and
 - “(ii) the respondent’s personal history; and 25
 - “(iii) any other relevant circumstances; or
 - “(b) the court considers there is any other good reason for not making a direction.
- “(3) Where the court makes a direction under section 17 that a protection order apply against an associated respondent, the court may, if it considers it appropriate in all the circumstances to do so, direct the associated respondent to— 30
- “(a) undertake an assessment with a programme provider to determine the most appropriate non-violence programme for the associated respondent to attend; and 35
 - “(b) attend the non-violence programme that the programme provider determines to be the most appropriate.

- “33 Terms of direction that respondent or associated respondent attend non-violence programme**
When the court makes a direction under **section 32**, it must state in the direction that the respondent or associated respondent, as the case requires,— 5
- “(a) attend the non-violence programme for the number of sessions in each month that the programme provider may from time to time specify in accordance with regulations made under this Act, or, if no such regulations apply, as determined by the Registrar of the court; and 10
- “(b) attend the non-violence programme for the first time on a date and at a time and place to be advised by the programme provider as soon as practicable after the direction is made.
- “34 Registrar to arrange programme provider** 15
After the court has made a direction under **section 32**, the Registrar must without delay—
- “(a) refer the respondent or associated respondent, as the case requires, to a programme provider; and
- “(b) notify the programme provider that the direction has been made. 20
- “35 Programme provider to arrange meeting with respondent or associated respondent**
- “(1) As soon as possible after receiving a notification under **section 34**, the programme provider must arrange to meet the respondent or associated respondent, as the case may be, at a time and place the programme provider thinks fit, to— 25
- “(a) assess the respondent or associated respondent; and
- “(b) determine the most appropriate non-violence programme for the respondent or associated respondent to attend. 30
- “(2) After determining the most appropriate non-violence programme for the respondent or associated respondent to attend, the programme provider must inform the respondent or associated respondent of— 35
- “(a) the non-violence programme that the respondent or associated respondent is required to attend; and

- “(b) the importance of attending that programme; and
- “(c) when and where the respondent’s or associated respondent’s first attendance at that programme is required.

“35A Referral to different programme provider

- “(1) This section applies if at any time during the provision of a 5
non-violence programme the programme provider—
- “(a) believes, on reasonable grounds, that the programme is
no longer appropriate for the respondent or associated
respondent; or
 - “(b) considers that the respondent or associated respondent 10
is not participating fully in the programme, and that
this is significantly affecting the respondent’s or asso-
ciated respondent’s ability to benefit fully from the pro-
gramme.
- “(2) The programme provider may request the Registrar of the 15
court to refer the respondent or, as the case requires, the
associated respondent to a different programme provider.
- “(3) On receipt of a request under **subsection (2)**, the Registrar of
the court may—
- “(a) refer the respondent or associated respondent, as the 20
case requires, to a different programme provider; and
 - “(b) notify that other programme provider of the direction
made under **section 32**.
- “(4) If a programme provider receives a notification under **subsec-
tion (3)**, that notification is to be treated as if it were given 25
under **section 34**.”

**41 Section 36 amended (Direction to attend programme
made on application without notice)**

In the heading to section 36, after “attend”, insert “non-vio-
lence”. 30

**42 Section 38 repealed (Respondent or associated respondent
excused from attending)**

Repeal section 38.

43 Sections 39 and 40 replaced

Replace sections 39 and 40 with:

“39 Notice of non-compliance

“(1) This section applies if the court makes a direction under **section 32** and the respondent or associated respondent fails to do either or both of the following: 5

“(a) undertake an assessment with the programme provider to whom notice of the direction has been given under **section 34**:

“(b) attend, in accordance with the terms of the direction, the non-violence programme that the programme provider determines to be the most appropriate. 10

“(2) If this section applies, the programme provider must give written notice to the Registrar of the court of the respondent’s or associated respondent’s failure. 15

“(3) Notice under **subsection (2)** must be given within 7 days of the respondent’s or associated respondent’s failure.

“40 Notice of conclusion of non-violence programme

“(1) When a programme attended by a respondent or associated respondent has concluded, the programme provider must notify that fact in writing and without delay to the Registrar of the court. 20

“(2) On receiving a notification under **subsection (1)** that the programme has concluded, the Registrar must notify that fact in writing and without delay to— 25

“(a) the applicant; or

“(b) the applicant’s lawyer.”

44 Section 41 repealed (Programme provider may request variation of direction)

Repeal section 41. 30

45 Section 41A amended (Powers of Registrar on receipt of notice under section 39 or 41)

(1) In the heading to section 41A, delete “or 41”.

(2) In section 41A(1), delete “or 41”.

46 Section 42 replaced (Judge may call respondent or associated respondent before court)

Replace section 42 with:

“42 Judge may call respondent or associated respondent before court

5

“(1) If, under section 41A(1)(b), a Registrar brings a matter to the attention of a Judge, **subsection (2)** applies.

“(2) The Judge may exercise the powers under section 82 to call the respondent or, as the case may be, the associated respondent before the court.

10

“(3) If a Judge exercises the powers under section 82, that section applies, so far as applicable and with all necessary modifications, as if the respondent or, as the case may be, the associated respondent were a witness in proceedings.”

47 Section 42A amended (Respondent or associated respondent called before court)

15

Repeal section 42A(2).

48 New cross-heading above section 43 inserted

After section 42A, insert:

“Confidentiality of information”.

20

49 Section 43 amended (Confidentiality of information disclosed to programme provider)

(1) In section 43(4)(a), replace “section 39 or section 40 or section 41” with **“section 39 or 40”**.

(2) In section 43(4)(c)(ii), after “course of a”, insert “non-violence”.

25

(3) In section 43(4)(f)(i), after “is to provide, a”, insert “domestic violence support programme or non-violence”.

(4) In section 43(4)(f)(ii), after “is to provide, a”, insert “domestic violence support”.

30

(5) In section 43(4)(f)(iii), after “is to provide, a”, insert “non-violence”.

- 50 New cross-heading above section 44 inserted**
After section 43, insert:
“Programme providers’ fees and expenses”.
- 51 Section 49 amended (Offence to breach protection order)**
- (1) In section 49(3), replace “2 years” with “3 years”. 5
- (2) Replace section 49(4) with:
- “(4) To avoid doubt, it is not a breach of a protection order under subsection (1)(b) to fail to attend—
- “(a) an assessment; or
- “(b) a non-violence programme.” 10
- 52 Section 49A amended (Offence to fail to comply with direction)**
Replace section 49A(1) with:
- “(1) Every person commits an offence who, without reasonable excuse, fails on any occasion to comply with a direction made under **section 32(1) or (3)** to attend—
- “(a) an assessment; or
- “(b) a non-violence programme.”
- 53 Section 81 amended (Court may appoint lawyer)**
- (1) In section 81(2), (3), and (4) replace “this section” with “sub-section (1)(c)”. 20
- (2) After section 81(2), insert:
- “(2A) The fees and expenses of a lawyer appointed under subsection (1)(a) or (b) must—
- “(a) be determined in accordance with regulations made under **section 16D** of the **Family Disputes (Resolution Methods) Act 1980**; and 25
- “(b) be paid out of public money appropriated by Parliament for the purpose.”
- 54 Section 127 amended (Regulations)** 30
- (1) In section 127(a), replace “programmes, and for the approval of programmes for the purposes of this Act” with “domestic violence support programmes and non-violence programmes”.
- (2) Repeal section 127(b) and (c).

(3) In section 127(f), replace “section 81” with “section 81(1)(c)”.

55 New section 134 inserted (Programmes arranged or in progress immediately before 1 October 2014)

After section 133, insert:

“134 Programmes arranged or in progress immediately before 1 October 2014 5

“(1) This section applies if—

“(a) there has been arranged or in progress immediately before **1 October 2014**—

“(i) the provision of a programme to a protected person that has been requested under section 29: 10

“(ii) the provision of a programme to a respondent or associated respondent that the respondent or associated respondent has been directed under section 32 to attend; and 15

“(b) that programme has not been conducted by that date.

“(2) Sections 2, 29, 31 to 43, and 127, as in force immediately before **1 October 2014**, continue to apply in respect of the provision of the programme as if **Part 2 of the Family Courts Proceedings Reform Act 2012** had not come into force.” 20

Part 3

Amendments to Family Courts Act 1980

56 Principal Act

This Part amends the Family Courts Act 1980 (the **principal Act**). 25

57 Long Title repealed

Repeal the Long Title.

58 Section 1 replaced (Short Title and commencement)

Replace section 1 with:

“1 Title 30

This Act is the **Family Disputes (Resolution Methods) Act 1980**.

“1A Commencement

“(1) Section 6 comes into force on 21 January 1981.

“(2) The following provisions come into force on **1 October 2013**:

“(a) the definitions of **approval, domestic violence, family dispute, family dispute resolution, family dispute resolution form, and family dispute resolution provider** in section 2: 5

“(b) the headings **Part 1, Part 2, Part 3, and Part 4**:

“(c) **section 3A(a) and (b)**:

“(d) **sections 3B to 3E**: 10

“(e) **sections 9A and 9B**:

“(f) **section 12A**:

“(g) **section 16AA**:

“(h) the amendment to the heading to section 16B:

“(i) the repeal of section 16B(1)(g): 15

“(j) **section 16D**:

“(k) **section 17(3) and (4)**:

“(l) **section 17A**:

“(m) the amendment to the heading to section 18:

“(n) **section 19**. 20

“(3) The rest of this Act comes into force on 1 October 1981.”

59 Section 2 amended (Interpretation)

In section 2, insert in their appropriate alphabetical order:

“**approval** means an approval under **section 3B**

“**domestic violence** has the meaning given to it in the Domestic Violence Act 1995 25

“**family dispute** means a dispute that will require an application described in **section 3D(1)** if a party to the dispute wants a court to resolve it

“**family dispute resolution** means family dispute resolution provided by a family dispute resolution provider for the purposes of— 30

“(a) assisting parties to a family dispute to resolve the dispute without applying to a court; and

“(b) ensuring that the welfare and best interests of children affected by a family dispute are the first and paramount consideration in the resolution of the dispute 35

“**family dispute resolution form** means a form described in **section 3C(2), (4), or (6)**

“**family dispute resolution provider** means a person or organisation who holds an approval that has not been suspended or cancelled”.

5

60 New section 3A, new Part 1, and new Part 2 heading inserted

After section 3, insert:

“3A Purposes

The purposes of this Act are—

10

“(a) to require the use of family dispute resolution in specified family disputes:

“(b) to provide for operational measures required for the use of family dispute resolution:

“(c) to establish Family Courts:

15

“(d) to provide for the constitution, jurisdiction, powers, and procedures of Family Courts.

“Part 1

“Family dispute resolution

“3B Family dispute resolution providers

20

“(1) The Secretary for Justice may decide to grant, suspend, or cancel an approval of a person or an organisation as a provider of services intended to resolve family disputes.

“(2) The Secretary for Justice must apply criteria prescribed in regulations under this Act in making the decisions.

25

“3C Family dispute resolution forms

“(1) **Subsection (2)** applies when a family dispute resolution provider decides that it is inappropriate to start or continue with family dispute resolution for a family dispute because—

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

30

“(b) at least 1 of the parties to the family dispute, or a child of 1 of the parties, has suffered or is suffering domestic violence inflicted by 1 of the other parties to the dispute; or

35

- “(c) a situation exists that gives the family dispute resolution provider reasonable grounds for deciding that family dispute resolution is inappropriate for the parties to the family dispute.
- “(2) The family dispute resolution provider must give each of the parties to the family dispute a form that states that family dispute resolution is inappropriate for the dispute. 5
- “(3) **Subsection (4)** applies when a family dispute resolution provider decides that it is inappropriate to start or continue with family dispute resolution for a family dispute because 1 of the parties to the family dispute refuses to attend or to continue to attend family dispute resolution. 10
- “(4) The family dispute resolution provider must give every other party to the family dispute a form that states that family dispute resolution was not possible because 1 party refused to attend or to continue to attend family dispute resolution. 15
- “(5) **Subsection (6)** applies when a family dispute resolution provider decides that a family dispute with which the provider is dealing is unable to be resolved within a reasonable time.
- “(6) The family dispute resolution provider must give each of the parties to the family dispute a form that states the matters on which the parties reached, and did not reach, resolution while the family dispute resolution provider was dealing with the dispute. 20
- “**3D Purpose of family dispute resolution forms** 25
- “(1) This section applies to an application under **section 46D** or 48 of the Care of Children Act 2004.
- “(2) The application must be accompanied by a family dispute resolution form, unless **subsection (3)** applies.
- “(3) A family dispute resolution form is not required to accompany an application that— 30
- “(a) is in response to an application that another party to the proceedings has made for an order under **section 46D** or 48 of the Care of Children Act 2008; or
- “(b) is without notice; or 35
- “(c) is for a consent order; or
- “(d) seeks the enforcement of an existing order; or

- “(e) relates to a child who is the subject of proceedings already begun under Part 2 of the Children, Young Persons, and Their Families Act 1989; or
- “(f) is accompanied by an affidavit providing reasonable grounds to believe that— 5
- “(i) at least 1 of the parties to the family dispute is unable to participate effectively in family dispute resolution; or
- “(ii) at least 1 of the parties to the family dispute, or a child of 1 of the parties, has suffered or is suffering domestic violence inflicted by 1 of the other parties to the dispute. 10
- “3E Privilege**
- “(1) This section applies to a statement a party to a family dispute makes to a family dispute resolution provider for the purpose of enabling the family dispute resolution provider to deal with the dispute. 15
- “(2) No evidence of the statement is admissible in any court or before any person acting judicially, unless the statement is recorded in a family dispute resolution form. 20
- “(3) A family dispute resolution provider commits an offence and is liable on conviction to a fine not exceeding \$500 who discloses to any other person a statement made to the provider for the purpose of enabling the provider to deal with a family dispute.
- “Part 2 25**
“Family Courts”.
- 61 New sections 9A and 9B inserted**
After section 9, insert:
- “9A Role of lawyer appointed to represent child or young person in proceedings 30**
- “(1) The role of a lawyer who is appointed to represent a child or young person in proceedings is to—
- “(a) act for the child or young person in the proceedings in a way that the lawyer considers promotes the child’s welfare and best interests: 35

- “(b) ensure that any views expressed by the child or young person on matters affecting the child that are relevant to the proceedings are communicated to the court:
- “(c) assist the parties to reach agreement on the matters in dispute in the proceedings to the extent to which doing so is in the best interests of the child or young person: 5
- “(d) provide advice to the child or young person about—
- “(i) any right of appeal against a decision of the court; and
- “(ii) the merits of pursuing any such appeal: 10
- “(e) undertake any other task required by or under any other Act.
- “(2) To facilitate the role set out in **subsection (1)(b)**, the lawyer must meet with the child or young person to ascertain the child’s or young person’s views on matters affecting the child or young person relevant to the proceedings. 15
- “(3) However, **subsection (2)** does not apply if, because of exceptional circumstances, the lawyer does not consider it appropriate to meet with the child.
- “(4) A lawyer appointed to represent a child or young person in proceedings may— 20
- “(a) call any person as a witness in the proceedings;
- “(b) cross-examine witnesses called by any party to the proceedings or by the court.
- “9B Role of lawyer appointed to assist court 25**
- “(1) The role of a lawyer who is appointed to assist the court in proceedings is—
- “(a) to provide independent legal advice to the court on any complex factual or legal issue requested by the court:
- “(b) to offer an impartial perspective in relation to any issue arising in the proceedings: 30
- “(c) to undertake any other task required by or under any other Act.
- “(2) A lawyer appointed to assist the court in proceedings may—
- “(a) call any person as a witness in the proceedings: 35
- “(b) cross-examine witnesses called by any party to the proceedings or by the court.”

62 New section 12A inserted (Evidence)

After section 12, insert:

“12A Evidence

- “(1) This section applies to a proceeding—
- “(a) under an Act described in **subsection (2)**; and 5
 - “(b) in a court described in **subsection (3)**.
- “(2) The Acts are—
- “(a) Adoption Act 1955:
 - “(b) Care of Children Act 2004:
 - “(c) Child Support Act 1991: 10
 - “(d) Children, Young Persons, and Their Families Act 1989:
 - “(e) Domestic Violence Act 1995:
 - “(f) Family Proceedings Act 1980:
 - “(g) Property (Relationships) Act 1976:
 - “(h) Protection of Personal and Property Rights Act 1988. 15
- “(3) The courts are—
- “(a) a Family Court:
 - “(b) a District Court that has concurrent jurisdiction with a Family Court:
 - “(c) a District Court acting under section 15: 20
 - “(d) a District Court hearing a proceeding under section 151 of the Children, Young Persons, and Their Families Act 1989:
 - “(e) any other court hearing a proceeding that is—
 - “(i) under an Act described in **subsection (2)**; and 25
 - “(ii) not a criminal proceeding; and
 - “(iii) one in which the court receives evidence or further evidence.
- “(4) The effect of section 5(3) of the Evidence Act 2006 is that that Act applies to the proceeding. However, the court hearing the proceeding may receive any material, whether or not admissible under the Evidence Act 2006, that the court considers may assist it to determine the proceeding.” 30

63 New Part 3 heading inserted

After section 16, insert:

35

**“Part 3
“Regulations and rules”.**

- 64 New section 16AA inserted (Regulations relating to family dispute resolution)**
After section 16A, insert: 5
- “16AA Regulations relating to family dispute resolution**
The Governor-General may, from time to time, by Order in Council, make regulations for all or any of the following purposes:
- “(a) prescribing the process to be followed by a person or an organisation seeking the grant of an approval: 10
 - “(b) prescribing the process to be followed by a person or an organisation seeking the reactivation of an approval that has been suspended:
 - “(c) prescribing the criteria that the Secretary for Justice must apply when deciding whether to grant, suspend, or cancel an approval: 15
 - “(d) prescribing the way in which a family dispute resolution form must be set out:
 - “(e) setting the minimum number of hours to be spent on family dispute resolution for a family dispute: 20
 - “(f) setting the maximum number of hours to be spent on family dispute resolution for a family dispute.”
- 65 Section 16B amended (Regulations)**
- (1) In the heading to section 16B, after “**Regulations**”, insert “**relating to court fees**”. 25
 - (2) Repeal section 16B(1)(g).
- 66 New section 16D and new Part 4 heading inserted**
After section 16C, insert:
- “16D Regulations relating to payments to professionals** 30
“Fees and expenses for lawyers for child and lawyers to assist court
- “(1) **Subsections (2) to (6)** apply to a person appointed under—
- “(a) **section 7** of the Care of Children Act 2004:
 - “(b) **section 130** of the Care of Children Act 2004: 35

- “(c) **section 226** of the Child Support Act 1991:
- “(d) **section 226A** of the Child Support Act 1991:
- “(e) section 159(1) of the Children, Young Persons, and Their Families Act 1989:
- “(f) **section 160** of the Children, Young Persons, and Their Families Act 1989: 5
- “(g) section 81(1)(a) of the Domestic Violence Act 1995:
- “(h) section 81(1)(b) of the Domestic Violence Act 1995:
- “(i) **section 162(1)** of the Family Proceedings Act 1980:
- “(j) **section 162A** of the Family Proceedings Act 1980: 10
- “(k) section 37A(1) of the Property (Relationships) Act 1976:
- “(l) **section 65A** of the Protection of Personal and Property Rights Act 1988.
- “(2) The Governor-General may, from time to time, by Order in Council, make regulations setting a rate or rates for the fees payable to the person. 15
- “(3) Regulations under **subsection (2)** may provide for any or all of the following:
- “(a) the setting of a maximum hourly rate: 20
- “(b) the setting of a minimum hourly rate:
- “(c) the setting of a maximum number of hours for which a fee will be paid:
- “(d) the setting of a minimum number of hours for which a fee will be paid: 25
- “(e) the setting of different hourly rates, or different numbers of hours, according to the complexity of the proceedings:
- “(f) the setting of different hourly rates, or different numbers of hours, according to the number of proceedings in which the person is engaged during a specified period. 30
- “(4) The Governor-General may, from time to time, by Order in Council, make regulations providing for Family Courts to hear and determine applications to—
- “(a) increase a maximum hourly rate set under **subsection (3)**: 35
- “(b) increase a maximum number of hours set under **subsection (3)**.

- “(5) Regulations under **subsection (4)** may provide that the court may grant an application only if granting the application is justified—
- “(a) to protect the child’s welfare and best interests; or
 - “(b) to cater for exceptional circumstances. 5
- “(6) The Governor-General may, from time to time, by Order in Council, make regulations for 1 or both of the following purposes:
- “(a) specifying the types of expenses for which the person may claim reimbursement: 10
 - “(b) setting the rate or rates of reimbursement of expenses.
- “*Fees and expenses for report writers under Care of Children Act 2004*
- “(7) **Subsections (8) and (9)** apply to a person who prepares a report when requested to do so under **section 133(2) or (5)** of the Care of Children Act 2004. 15
- “(8) The Governor-General may, from time to time, by Order in Council, make regulations setting a rate or rates for the fees and expenses payable to the person for doing 1 or both of the following: 20
- “(a) preparing the report:
 - “(b) attending as a witness in the proceedings for which the person prepared the report.
- “(9) Regulations under **subsection (8)** may provide for any or all of the following: 25
- “(a) the setting of a maximum hourly rate:
 - “(b) the setting of a minimum hourly rate:
 - “(c) the setting of a maximum number of hours for which a fee will be paid:
 - “(d) the setting of a minimum number of hours for which a fee will be paid: 30
 - “(e) the setting of different hourly rates, or different numbers of hours, according to the complexity of the proceedings:
 - “(f) the setting of different hourly rates, or different numbers of hours, according to the number of proceedings in which the person is engaged during a specified period. 35

**“Part 4
“Amendment, transitional, and savings
provisions”.**

- 67 Section 17 amended (Certain enactments amended)**
- (1) Repeal section 17(2). 5
- (2) Insert in section 17:
- “(3) Replace ‘this Act’ with ‘the **Family Disputes (Resolution Methods) Act 1980**’ in—
- “(a) section 226(3) of the Child Support Act 1991; and
- “(b) section 81(3)(a) of the Domestic Violence Act 1995; 10
and
- “(c) section 162(3)(a) of the Family Proceedings Act 1980;
and
- “(d) section 37A(2)(a) of the Property (Relationships) Act 1976.” 15
- 68 New section 17A inserted (Repeals)**
- After section 17, insert:
- “17A Repeals**
- The following provisions are repealed:
- “(a) section 24 of the Adoption Act 1955: 20
- “(b) section 128 of the Care of Children Act 2004:
- “(c) section 228 of the Child Support Act 1991:
- “(d) section 195 of the Children, Young Persons, and Their Families Act 1989:
- “(e) section 84 of the Domestic Violence Act 1995: 25
- “(f) section 4 of the Family Courts Amendment Act 2008:
- “(g) section 164 of the Family Proceedings Act 1980:
- “(h) section 36 of the Property (Relationships) Act 1976:
- “(i) section 77 of the Protection of Personal and Property Rights Act 1988.” 30
- 69 Section 18 amended (Transitional and savings provisions)**
- In the heading to section 18, after “**provisions**”, insert “**in 1980**”.

Part 4
Amendments to Legal Services Act 2011

- 70 Principal Act**
This Part amends the Legal Services Act 2011 (the **principal Act**). 5
- 71 Section 7 amended (Proceedings for which legal aid may be granted: civil matters)**
- (1) After section 7(3), insert:
- “(3A) Despite subsection (1), legal aid is only available in proceedings under the Care of Children Act 2004 that are to be heard and determined in a Family Court if— 10
- “(a) a lawyer may, under **section 7A(2)(a)** of that Act, act in the proceedings and the proceedings are not of a kind specified in **subsection (3B)**; or
- “(b) a lawyer may, under **section 7A(2)(b) or (4)** of that Act, act in the proceedings; or 15
- “(c) a lawyer is giving legal advice to an applicant or a respondent who has been directed by a Judge to obtain legal advice before consenting to an order settling some or all of the issues in dispute in the proceedings. 20
- “(3B) The kinds of proceedings referred to in **subsection (3A)(a)** are—
- “(a) proceedings commenced by an application that—
- “(i) affects the applicant only; or
- “(ii) is in respect of a routine matter; or 25
- “(iii) is about a matter that does not affect the interests of any other person; or
- “(b) proceedings where every person in respect of whom the order is sought has either died or cannot be found.”
- (2) After section 7(5), insert: 30
- “(6) **Subsections (3A) and (3B)** do not apply in respect of any proceedings commenced under the Care of Children Act 2004 before **1 October 2013**.”

Part 5 Amendments to other Acts

Subpart 1—Amendments to Child Support Act 1991

- 72 Principal Act** 5
This subpart amends the Child Support Act 1991 (the **principal Act**).
- 73 Section 226 replaced (Appointment of barrister or solicitor to assist court or represent children)** 10
Replace section 226 with:
- “226 Appointment of lawyer to represent child in proceedings**
- “(1)** In any proceedings under this Act (other than criminal proceedings), a court may appoint a lawyer to represent any child who is—
- “(a)** the subject of the proceedings; or 15
- “(b)** a party to the proceedings.
- “(2)** An appointment under **subsection (1)** may be made only if the court is satisfied that the appointment is necessary or desirable.
- “226A Appointment of lawyer to assist court** 20
In any proceedings under this Act (other than criminal proceedings), a court may—
- “(a)** appoint a lawyer to assist the court; or
- “(b)** direct the Registrar of the court to appoint a lawyer to assist the court. 25
- “226B Fees and expenses of lawyer appointed under section 226 or 226A**
- “(1)** The fees and expenses of a lawyer appointed under **section 226 or 226A** must— 30
- “(a)** be determined in accordance with regulations made under **section 16D** of the **Family Disputes (Resolution Methods) Act 1980**; and
- “(b)** be paid out of public money appropriated by Parliament for the purpose.

- “(2) The bill of costs rendered by a lawyer appointed under **section 226 or 226A** 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 of costs may, within 14 days after the date of the decision, apply to a Family Court Judge to review the decision; and the Judge may on the application make any order varying or confirming the decision that the Judge considers fair and reasonable.
- “(4) 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.”
- 74 Section 235 amended (Regulations)**
Repeal section 235(1)(d).
- Subpart 2—Amendments to Children,
Young Persons, and Their Families Act 1989
- 75 Principal Act**
This subpart amends the Children, Young Persons, and Their Families Act 1989 (the **principal Act**).
- 76 Section 137 amended (Court to consider report and make directions)**
- (1) In section 137(1), delete “, after giving such persons (if any) as it thinks fit an opportunity to be heard.”
- (2) After section 137(1), insert:
- “(1A) When considering the report and revised plan, the court may, but need not, give to any person the opportunity to be heard.”

- 77 Section 159 amended (Appointment of barrister or solicitor to represent child or young person)**
- (1) Replace the heading to section 159 with “**Appointment of lawyer to represent child or young person in proceedings**”.
- (2) In section 159, replace “barrister or solicitor” with “lawyer” 5
in each place.
- (3) In section 159(3)(a), replace “barrister’s or solicitor’s” with “lawyer’s”.
- 78 Sections 160 and 161 replaced**
- Replace sections 160 and 161 with: 10
- “160 Appointment of lawyer to assist court**
- In any proceedings in a Family Court under Part 2 or 3A, the court may—
- “(a) appoint a lawyer to assist the court; or
- “(b) direct the Registrar of the court to appoint a lawyer to 15
assist the court.
- “161 Further provisions relating to appointment under section 159 or 160**
- “(1) A lawyer appointed under section 159—
- “(a) must be served with all documents required to be served 20
on the parties to the proceedings; and
- “(b) may—
- “(i) request the court to obtain any report that the court is empowered to obtain for the purposes of the proceedings: 25
- “(ii) act on behalf of the child or young person in respect of any matter relating to the detention of that child or young person in secure care, or the care of that child or young person in a residence.
- “(2) A lawyer appointed under **section 160**— 30
- “(a) must be served with all documents required to be served on the parties to the proceedings; and
- “(b) may request the court to obtain any report that the court is empowered to obtain for the purposes of the proceedings.” 35

- 79 Section 162 amended (Payment of barrister or solicitor appointed under section 159 or section 160)**
- (1) Replace the heading to section 162 with “**Payment of lawyer appointed under section 159 or 160**”.
- (2) Replace section 162(1) with: 5
- “(1) The fees and expenses of any lawyer appointed under section 159 or **160** must—
- “(a) be determined in accordance with regulations made under **section 16D** of the **Family Disputes (Resolution Methods) Act 1980**; and 10
- “(b) be paid out of public money appropriated by Parliament for the purpose.”
- (3) In section 162(2) and (3), replace “barrister or solicitor” with “lawyer”.
- 80 New sections 206A and 206B inserted** 15
- After section 206, insert:
- “206A Leave required to commence substantially similar proceedings**
- “(1) A proceeding may not be commenced under Part 2 without the leave of the court if that proceeding— 20
- “(a) is substantially similar to a proceeding previously filed in a Family Court by any person (a **previous proceeding**); and
- “(b) is to be commenced less than 2 years after final judgment was given in the previous proceeding. 25
- “(2) The leave of the court may only be given under **subclause (1)** if, since final judgment was given in the previous proceeding, there has been a material change in the circumstances of—
- “(a) any party to the previous proceeding;
- “(b) any child or young person who was the subject of the previous proceeding. 30
- “(3) In this section, a proceeding is **substantially similar** to a previous proceeding if—
- “(a) the party commencing the new proceeding was a party to the previous proceeding; and 35
- “(b) a child who is the subject of the new proceeding was the subject of the previous proceeding; and

- “(c) the proceeding—
- “(i) is commenced under the same provision of this Act as the previous proceeding; or
 - “(ii) is for an order varying the order made in the previous proceeding; or 5
 - “(iii) is for an order discharging the order made in the previous proceeding.
- “(4) This section does not apply if—
- “(a) every party to the new proceeding consents to its commencement; or 10
 - “(b) the new proceeding is commenced by—
 - “(i) the chief executive; or
 - “(ii) a social worker; or
 - “(iii) a constable.
- “**206B Power to dismiss proceedings** 15
- The court may dismiss proceedings before it under Part 2 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 20
 - “(b) that the proceedings are frivolous or vexatious or an abuse of the procedure of the court.”
- 81 Section 447 amended (Regulations)** 25
- Repeal section 447(e)(i).
- Subpart 3—Amendments to Family Proceedings Act 1980
- 82 Principal Act** 30
- This subpart** amends the Family Proceedings Act 1980 (the **principal Act**).
- 83 Section 2 amended (Interpretation)**
- In section 2, repeal the definitions of—
- (a) **approved marriage or civil union guidance organisation or counselling organisation:**

	(b) attachment order:	
	(c) charging order:	
	(d) child of the civil union:	
	(e) counsellor:	
	(f) employer:	5
	(g) family chattels:	
	(h) family home:	
	(i) mediation conference:	
	(j) salary or wages.	
84	Section 5 repealed (Marriage or civil union guidance or counselling organisations)	10
	Repeal section 5.	
85	Part 2 repealed	
	Repeal Part 2.	
86	Section 160 amended (Applications may be heard together)	15
	In section 160(1), delete “Care of Children Act 2004 or under the”.	
87	Section 162 replaced (Appointment of barrister or solicitor to assist court or represent children)	20
	Replace section 162 with:	
	“162 Appointment of lawyer to represent child in proceedings	
	“(1) In any proceedings under this Act (other than criminal proceedings), a court may appoint a lawyer to represent any child who is—	25
	“(a) the subject of the proceedings; or	
	“(b) a party to the proceedings.	
	“(2) An appointment under subsection (1) may be made only if the court is satisfied that the appointment is necessary or desirable.	30
	“162A Appointment of lawyer to assist court	
	In any proceedings under this Act (other than criminal proceedings), a court may—	

- “(a) appoint a lawyer to assist the court; or
- “(b) direct the Registrar of the court to appoint a lawyer to assist the court.

“**162B Fees and expenses of lawyer appointed under section 162 or 162A** 5

- “(1) The fees and expenses of a lawyer appointed under **section 162 or 162A** must—
 - “(a) be determined in accordance with regulations made under **section 16D** of the **Family Disputes (Resolution Methods) Act 1980**; and 10
 - “(b) be paid out of public money appropriated by Parliament for the purpose.
- “(2) The bill of costs rendered by a lawyer appointed under **section 162 or 162A** must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may tax the bill of costs. 15
- “(3) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the bill of costs may, within 14 days after the date of the decision, apply to a Family Court Judge to review the decision; and the Judge may on the application make any order varying or confirming the decision that the Judge considers fair and reasonable. 20
- “(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.” 25 30

88 Section 165 amended (Power of District Court or Family Court to call witnesses)

Replace section 165(4) with:

- “(4) A witness called by the court under this section may be—
 - “(a) examined and re-examined by the court, or by a lawyer appointed to assist the court; and 35

“(b) cross-examined by or on behalf of any party to the proceedings.”

89 Section 187 amended (Regulations)

Repeal section 187(a), (ca), (cb), and (cc).

90 New section 193 inserted (Transitional provision for counselling or mediation arranged before commencement of subpart 3 of Part 5 of Family Court Proceedings Reform Act 2012) 5

After section 192, insert:

“193 Transitional provision for counselling or mediation arranged before commencement of subpart 3 of Part 5 of Family Court Proceedings Reform Act 2012 10

If any counselling or mediation has been arranged under Part 2 before **1 October 2013**, but that counselling or mediation has not been commenced or completed by that date,— 15

“(a) the counselling or mediation may be commenced or completed on or after **1 October 2013** as if **subpart 3 of Part 5 of the Family Court Proceedings Reform Act 2012** had not come into force; but

“(b) the counselling or mediation may not be commenced or continued after **31 January 2014**.” 20

91 Schedule 2 amended

In Schedule 2, after the item relating to the Matrimonial Proceedings Amendment Act 1970, insert “**Family Proceedings Amendment Act 2008 (2008 No 79)**”. 25

Subpart 4—Amendments to Property
(Relationships) Act 1976

92 Principal Act

This subpart amends the Property (Relationships) Act 1976 (the **principal Act**). 30

93 Section 22 amended (Jurisdiction)

Repeal section 22(3) to (5).

94 Section 37A amended (Court may appoint lawyer for children)

Replace section 37A(2)(a) with:

“(a) must be determined in accordance with regulations made under **section 16D** of the **Family Disputes (Resolution Methods) Act 1980**; and”.

95 New section 38A and cross-heading inserted

After section 38, insert:

“Transfer of proceedings

“38A Transfer of proceedings to High Court 10

“(1) A Family Court Judge may order the transfer of proceedings to the High Court if the Judge is satisfied that the High Court is the more appropriate venue for dealing with the proceedings.

“(2) In considering whether to make an order under **subsection (1)**, the Judge may have regard to any matter the Judge considers relevant, including (but not limited to)— 15

“(a) the complexity of the proceedings or of any question in issue in the proceedings:

“(b) any proceedings before the High Court that are between the same parties and that involve related issues. 20

“(3) An order may be made under **subsection (1)** on—

“(a) the application of a party to the proceedings; or

“(b) the court’s initiative.

“(4) Any proceedings transferred to the High Court by an order made under **subsection (1)** continue in that court as if they had been properly commenced there.” 25

96 Section 53 amended (Rules of court and regulations)

Repeal section 53(2A)(a).

Subpart 5—Amendments to Protection of Personal and Property Rights Act 1988 30

97 Principal Act

This **subpart** amends the Protection of Personal and Property Rights Act 1988 (the **principal Act**).

- 98 Section 65 amended (Appointment of barrister or solicitor by court or Registrar)**
- (1) Replace the heading to section 65 with “**Appointment of lawyer to represent person in respect of whom application made**”. 5
- (2) In section 65, replace “barrister or solicitor” with “lawyer” in each place.
- (3) Repeal section 65(3).
- (4) In section 65(5), replace “barristers or solicitors” with “lawyers”. 10
- 99 New section 65A inserted (Appointment of lawyer to assist court)**
- After section 65, insert:
- “65A Appointment of lawyer to assist court**
- In any proceedings under this Act, a court may— 15
- “(a) appoint a lawyer to assist the court; or
- “(b) direct the Registrar of the court to appoint a lawyer to assist the court.”
- 100 Section 76 amended (Court may call for report on person)**
- (1) In section 76, replace “barrister or solicitor” with “lawyer” in each place. 20
- (2) In section 76(3)(b), replace “section 65(3)” with “**section 65A**”.
- (3) In section 76(6), replace “section 65(3)” with “**section 65A**”.
- 101 Section 78 amended (Power of court to call witnesses)** 25
- In section 78(3), delete “, or by any barrister or solicitor assisting the court,”.
- 102 Section 79 amended (Attendance at hearings)**
- Replace section 79(1)(f) with:
- “(f) a lawyer appointed under **section 65A** to assist the court.” 30

103 Section 88 amended (Procedure on review)

In section 88, replace “65” with “**65A**”.

104 Section 112 amended (Regulations)

In section 112(a), replace “barristers and solicitors” with “lawyers”.

5