

Family Court Proceedings Reform Bill

Government Bill

As reported from the Justice and Electoral
Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Family Court Proceedings Reform Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The Family Court Proceedings Reform Bill seeks to implement the Government's decisions resulting from a review of the Family Court conducted by the Ministry of Justice in 2011. The review involved a public consultation paper, "Reviewing the Family Court", an online questionnaire for court users, and an independent external reference group.

The reforms proposed are intended to address the following issues raised during the review of the family justice system, and confirmed by the external reference group:

- insufficient focus on children and vulnerable people

- lack of support for the resolution of parenting disputes out of court
- complex and uncertain court processes
- significant reliance on court professionals
- fiscal constraints.

The principal reforms proposed would affect the way the system deals with post-separation parenting arrangements for children, shifting the focus from court resolution of disputes to encouraging parents to resolve matters themselves where possible.

The bill is an omnibus bill, which seeks to amend nine Acts. The principal proposed amendments are to the Care of Children Act 2004, the Domestic Violence Act 1995, the Family Courts Act 1980, and the Legal Services Act 2011. The bill would also amend the Children, Young Persons, and Their Families Act 1989, the Child Support Act 1991, the Family Proceedings Act 1980, the Property (Relationships) Act 1976, and the Protection of Personal and Property Rights Act 1988.

This commentary covers the main amendments we recommend to the bill; it does not cover minor or technical amendments.

Commencement of the Act

We recommend amending clause 2 of the bill as introduced, so that most of its provisions, instead of coming into force on 1 October 2013, would come into effect on a date appointed by the Governor-General by Order in Council or 1 October 2014, whichever was earlier. This would provide more time to put new processes and systems in place to implement the changes made by the bill, and in particular to ensure there is a workforce of appropriately skilled family dispute resolution providers.

To the same end, we also recommend that some provisions come into force on the day after the bill receives the Royal assent. These provisions relate to the approval of counselling organisations and service providers, the appointment of counsellors, and the family dispute resolution provisions (except those concerning the use of forms).

Structure of the bill

Part 3 of the bill as introduced seeks to amend the Family Courts Act 1980 and to insert family dispute resolution provisions into the front of that Act and change its title to the “Family Dispute (Resolution Methods) Act 1980”. Concern has been expressed about the proposed title and in particular the omission of any reference to the Family Court.

We recommend that the bill be amended to restrict Part 3 of the bill to the provisions relating to family dispute resolution only, moving the small number of unrelated amendments to the Family Courts Act 1980 to new subpart 2A in Part 5 of the bill. The title of the Family Courts Act 1980 would then remain unchanged.

Family dispute resolution

The bill proposes to introduce a new out-of-court family dispute resolution (FDR) service. We recommend amending clause 9 to insert new section 46CB into the Care of Children Act 2004. It would be mandatory for a person who sought to apply to the court under that Act for a parenting order or to resolve a guardianship dispute to first attend FDR, unless an exemption listed in new section 46CB(3) of that Act applied, for example because of domestic violence.

Family Dispute Resolution would be free for those under the income threshold for civil legal aid (estimated at about 60 per cent of participants). People above the threshold would be required to arrange FDR privately and pay for it themselves. We heard concerns about the cost involved, but most of us are aware of the view that FDR is likely to be less expensive than hiring a lawyer and proceeding to a defended hearing in court.

FDR providers

We considered the absence of criteria for granting, suspending, or cancelling the approval of an FDR provider. We consider it desirable to include more detail about FDR in the bill.

We recommend amending the FDR provisions in the bill as introduced to allow the Secretary for Justice or an approved dispute resolution organisation to appoint a person as an FDR provider. In making the appointment the Secretary for Justice or approved dispute resolution organisation would have to apply the high-level criteria

listed, and any more detailed criteria prescribed by regulations under new clause 60E(c).

New clause 60E(d) would provide for the making of regulations prescribing the matters that would disqualify a person from being appointed as an FDR provider. New clause 60A sets out the duties of an FDR provider.

As introduced the bill proposes that providers, after FDR, give to each party a form setting out the matters on which resolution was and was not reached. We recommend inserting new clause 60(B)(6)(b) to require these forms to also include the FDR provider's opinion as to whether a settlement conference would be likely to help settle matters, and whether either of the parties would need legal representation at such a conference. Most of us believe that the FDR provider would be well placed as a result of the time they had spent with the parties to form a view on the capacity and ability of parties to self-represent.

We also recommend amending clause 9 of the bill as introduced to insert new section 46CB(2) of the Care of Children Act, so that an FDR form would be valid for one year.

Referral to FDR

We also recommend amending clause 9 to insert new section 46D into the Care of Children Act to allow a Judge to refer a case to FDR and to refer parties back to FDR. This reinforces the focus on out of court processes to resolve disputes, and would reduce any incentives that might exist for parties to refuse to participate in FDR.

Lawyers acting for parties

Clause 5 of the bill as introduced would insert a new section 7A into the Care of Children Act 2004 to allow a lawyer to act for a party in a proceeding if the application was made without notice, relates to international child abduction, the party is the Crown, a Judge has directed that the case proceed to a defended hearing, or the lawyer is lawyer for a child who is party to the proceedings. The changes proposed in the bill to the role of lawyers for parties have attracted expressions of concern that lawyers would no longer be involved in the initial stages of proceedings under the Care of Children Act.

We consider that lawyers can assist in settlement conferences by mitigating power imbalances, representing parties incapable of represent-

ing themselves, and ultimately improving the chances of resolving a dispute. We therefore recommend amending clause 5 of the bill as introduced to insert new paragraphs 7A(5A) and 7A(5B), which would allow a lawyer to act for a party at a settlement conference if a Judge considered that at least one of the parties needed representation, and that legal representation would be likely to facilitate settlement of the issues in dispute. A lawyer could also act for a party to a proceeding if their application met the criteria set out in new paragraph 7A(4).

Concurrent proceedings

The provisions in the bill concerning legal representation for parties relate to Care of Children Act proceedings only. We recommend further amending clause 5 of the bill to insert new subparagraph 7A(4)(b)(ii) into the Care of Children Act to allow a lawyer to act for a party if the Judge has directed that the application under that Act be heard concurrently with an application filed under any other Act. We recognise it would make sense for a lawyer to act on all proceedings that have been directed to be heard concurrently.

Conciliation

We also recommend amending clause 5 by inserting new section 7B into the Care of Children Act 2004, which would place an obligation on lawyers to promote conciliation in cases proceeding under sections 46L, 48, or 56 of that Act by ensuring that the person concerned was aware of the need for the best interests and welfare of children to be the paramount consideration, the mechanisms for assisting resolution of family disputes, the steps for commencing and pursuing the proceedings in court, and the types of directions and orders the court may make.

We consider that the duty of lawyers to consider the best interests and welfare of the child and the requirement to promote conciliation in the interests of the child is an overarching one that should be reflected in the bill. We therefore recommend that clause 81B also be included to insert new section 9A of the Family Courts Act to make it clear that a lawyer acting for a party in any proceedings in the Family Court must, so far as possible, promote conciliation between parties.

Definition of settlement conference

We recommend amending clause 9 of the bill by inserting new sections 46J and 46K into the Care of Children Act to provide for settlement conferences to be convened by a Judge at any time before a proceeding is set down for a hearing. The purpose of settlement conferences is to ascertain whether the issues disputed by the parties can be settled and, if so, settling them by consent orders.

Contribution to costs of lawyers appointed to assist the court

Most of us consider it should be a default requirement that parties contribute to the cost of a lawyer to assist the court under the Care of Children Act, the Family Proceedings Act, and the Child Support Act, unless this would cause serious hardship. Most of us therefore recommend amending each of these Acts to include provisions that mirror those in the Legal Assistance Amendment Bill that require parties to contribute to the costs of lawyers appointed to represent children. The proportion of costs to be paid by parties would be prescribed by regulation; we were advised it is likely to be set at one third of the total cost.

Lawyer for the child

Most of us recommend amending the bill as introduced to amend new section 9B(1)(d) of the Family Courts Act (via new clause 81B) to make it clear that a lawyer for the child would be required to advise a child or young person on the merits of an appeal only to the extent that it was appropriate given the level of understanding of that child or young person.

We also recommend amending new section 9B(2) to make it clear that a lawyer should have regard to a child's age and maturity in ascertaining his or her views on matters in relation to the proceedings.

Counselling

The bill would repeal existing provisions for Family Court counselling under the Family Proceedings Act and Care of Children Act, and replace them with a new scheme involving mandatory parenting information programmes, FDR, and Judge-directed counselling. Most of us believe that counselling may help parties to prepare for

FDR, but rather than providing for this counselling in the bill, we recommend it be considered as an operational matter.

We recommend amending proposed section 46E(4) of the Care of Children Act (contained in clause 9 of the bill as introduced) to clarify that a Judge may direct parties to attend counselling when making a final order. We consider that taxpayer-funded counselling should still be available for cases under the Care of Children Act, before or after final orders are made, if a Judge considers counselling to be the best way to help parties with their parenting relationship and the implementation of any decision of the court.

We also recommend amending clause 29 of the bill to enable regulations to be made prescribing the criteria to be applied when approving counselling organisations and the qualifications and competency requirements for appointment as a counsellor.

Parenting information programmes

The bill as introduced would require applicants for a parenting order to have undertaken a parenting information programme within the preceding two years of filing their application. However, this would not apply if they had been unable to participate effectively in a programme, or the application was made without notice. The applicant must state in their parenting order application whether they have attended a parenting information programme, or give a reason why they have not done so.

We recommend amending clause 9 of the bill to insert new section 46I into the Care of Children Act, allowing a Judge to direct parties to attend a parenting information programme, unless they have done so within the preceding two years. We consider that it could be useful for a Judge to be able to direct a person to attend a parenting information programme if they would not otherwise be required to attend or if they last attended a parenting information programme more than two years ago.

We also recommend amending the bill to make provision in section 8 of the Care of Children Act for parenting information programmes to be specified in regulations made under the Act.

Interim orders

We recommend amending clause 12 of the bill to move proposed new sections 49(2) and 49(3) of the Care of Children Act into new section 49A, and to insert a new section 49(2) requiring that before making an interim order a Judge must be satisfied that it would serve the welfare and best interests of the child better than a final order would. It is generally agreed that children need finality and certainty about arrangements for their care, and this change would ensure that their needs remained paramount in decisions on the making of interim orders.

Short reports

Short reports are crucial for alerting the court to potential risks to a child's safety, particularly when there are allegations of violence and abuse. They are generally provided within a day. We recommend the insertion of new clause 21A to insert new section 131A in the Care of Children Act to allow a Registrar to request brief written advice from a social worker on the nature and extent of any involvement Child, Youth and Family has had with the parties.

We recommend replacing section 133(5)(b) of the Care of Children Act (inserted by clause 22 of the bill) to allow the court to obtain a short-form psychological report on any of the matters specified in the definition of psychological report in section 133(1) of the Act. Short-form reports would be timely and less expensive than standard reports. We also recommend amending clause 22 of the bill to insert new section 133(11A), to make it clear that a party requesting a second opinion must pay for it.

Cases involving allegations of violence

The bill as introduced seeks to repeal sections 58 to 62 of the Care of Children Act 2004 and rely instead on sections 4 and 5 to protect the welfare and best interests of the child in all proceedings under the Act as well as in any other proceedings involving the guardianship, day-to-day care of, or contact with a child. The provisions in sections 58 to 62 require the court to establish whether the violence is proven, and if it is, to determine whether the child will be safe in the care of, or having contact with, the violent person. The existing provisions are concerned only with physical and sexual violence. Psychological

violence is excluded unless the applicant has a protection order under the Domestic Violence Act 1995 on that ground; and the provisions do not distinguish levels or contexts of violence. The process is also considered to result in significant delay.

Clause 4 of the bill states that the welfare and best interests of the child must be paramount, and sets out the principles that must be taken into account by the court in determining a child's best interests. Proposed section 5(a) states that a child's safety must be protected and a child must be protected from all forms of violence, as defined in the Domestic Violence Act, from any person. This would allow a broader inquiry into any situation that might pose a risk to a child's safety than the current provisions. We consider that sections 4 and 5 provide strong protection for children.

However, we have taken into account concern that removal of the current provisions risks reducing the protections for children; so we recommend an amendment to clause 4 of the bill, to insert section 5A in the Act. This new section would mean that when the court is considering the safety of a child in relation to an application for a guardianship or parenting order, and a final protection order made under section 14 of the Domestic Violence Act is or has been in force against any of the parties to the application, then it must have regard to certain matters listed in section 5A(2).

Clause 4 of the bill as introduced proposes that section 4(2)(b) of the Care of Children Act specify that the conduct of persons wishing to have a role in the upbringing of the child may be taken into account in considering the child's welfare and best interests if that conduct was causing unnecessary delays in decision-making or was obstructive to any other person seeking to have a role in the upbringing of the child. We recommend amending proposed section 4(2)(b) of the Act to allow the court to take into account the conduct of a person seeking to be involved in the upbringing of the child to the extent this conduct is relevant to the child's welfare and best interests.

Domestic violence

The bill proposes changes to the Domestic Violence Act 1995 to ensure that existing provisions for the safety of children and other vulnerable people affected by domestic violence can be implemented safely and practically.

We recommend deleting clauses 38 to 50 of the bill as introduced and introducing a new clause 52A to insert new Part 2A into the Domestic Violence Act to set out the provisions relating to the delivery of safety programmes for protected persons and non-violence programmes for respondents and associated respondents. It is intended that practice guidelines and other operational matters would be developed with providers to support their practice, and these guidelines would be made available to the public.

We recommend that the interpretation in new section 51A now refer to “safety programme” rather than the “domestic violence support programme” in the bill as introduced. The proposed change in the term reflects the intended emphasis on the improvement of safety of protected persons in programme content. New section 51A would also change “programme provider” to “service provider”, recognising that providers undertake an assessment as well as delivering a programme. We also recommend that the definition of assessment in new section 51A include a service provider’s determination of the extent to which the respondent poses a safety risk for any person.

We recommend including new sub-section 51C(3) in new Part 2A of the Domestic Violence Act to allow persons who are under a protection order to request provision of a safety programme at any time. New section 51C(5) would allow a Registrar to determine the number of safety programme sessions following discussion with the service provider. We consider this flexibility would address the individual safety needs of each protected person and improve attendance at such programmes.

We recommend including new section 51L in the Domestic Violence Act, providing for the service provider and the respondent to settle the terms of attendance at a non-violence programme. We recommend, however, that new section 51M be included, to require the service provider to notify the Registrar if things are not going to plan, and the Registrar to bring the matter to the attention of a Judge if necessary. We consider this would provide increased opportunity for review where the respondent might have difficulty meeting the terms of the programme.

We recommend including new section 51I, which would require the service provider to notify the Registrar without delay if safety concerns are identified after undertaking an assessment of the respondent, or during the provision of a non-violence programme to a re-

spondent. New subsection 51I(3) would then require the Registrar, on receiving a safety concern notification under 51I(2), to forward a copy of the notification to a Judge and advise the protected person of the service provider's concerns. This would ensure that a protected person was notified promptly if there were any perceived risk to their safety. New section 51I(4) would allow a Judge, on receiving a copy of a notification, to make any orders or directions appropriate to the circumstances.

We also recommend the inclusion of new section 51R requiring the service provider, on a respondent's completion of a non-violence programme, to promptly provide the Registrar with a report stating whether the respondent has achieved the non-violence programme objectives and advising of any concerns the service provider has about the safety of a protected person. Section 51R would also require the Registrar to forward the report to a Judge and to notify the protected person of any safety concerns raised in that report. New section 51R(3) would also enable a Judge to make any orders or directions he or she thinks fit following receipt of the report.

Approval of service providers

Within proposed new Part 2A, we recommend including sub-section 51B(1) to provide for the Secretary for Justice to grant, suspend, or cancel an approval of a person or organisation as a service provider. We also recommend amending clause 54 of the bill as introduced to replace section 127(a) to (e) of the Domestic Violence Act with a regulation-making power providing that regulations may be made prescribing the approval process to be followed by a person or an organisation seeking an approval, and the criteria to be applied by the Secretary for Justice when deciding whether to grant, suspend, or cancel an approval. This regime would replace the current Approvals Panel, which is expensive to administer and prevents the Ministry of Justice collaborating with other government funders of service providers. It would also streamline the process for providers.

Regulations Review Committee consideration

On 14 March 2013 the Regulations Review Committee considered the Family Court Proceedings Reform Bill, as provided for by Standing Order 314(3). The committee advised us that the bill as intro-

duced contained a number of empowering provisions that would allow regulations made under them to include matters of substantial policy that would more appropriately be included in primary legislation.

The committee raised concern about family dispute resolution, and particularly the fact that the bill does not specify the principles, criteria, purpose, operational details, selection of providers, and the duration and scope of the process. It also highlighted a lack of detail on the appointment and payment of lawyers for children and lawyers to assist the court, and specialist report writers.

We have considered the matters drawn to our attention by the Regulations Review Committee and discuss our recommended amendments in the commentary above.

Petition of Noel Christopher Roderick Perry and 4,470 others

On 14 March 2013, Noel Christopher Roderick Perry and 4,470 others requested that the House “take action against imposing certain reforms in the New Zealand Family Court”. They asked that Parliament

Not implement changes to the Family Court system that will place restrictions on the right for people to have a lawyer represent them in proceedings involving the care of children or any proceedings in the Family Court.

Not implement changes to the Family Court system that will restrict the ability of a Judge to appoint a lawyer for the child in proceedings, even proceedings that are not regarded as serious cases.

Not reduce the availability of legal aid in proceedings in the Family Court including those cases involving the care of children.

Not to impose a fee for parties to enter the Family Dispute Resolution process to ensure that the process is not inaccessible and will not prevent matters resolving in a timely and child focussed way.

We have considered the petition alongside the Family Court Proceedings Reform Bill, as it concerns the reforms that the bill proposes to the family justice system. We have reported the petition to the House separately.

Labour Party minority view

The establishment more than 30 years ago of a specialist Family Court, with its jurisdiction covering care of children, domestic violence and property matters, with a high degree of state assistance provided to the parties, signalled an important policy principle: the state has an interest in effective and just resolution of family disputes. It is natural that after 30 years of operation, with its jurisdiction extended and adjusted in that time, the court should be subject to review and reform. It is widely known that the court suffers from delays which in turn can prevent effective resolution of disputes and can shift the focus away from the needs of children and vulnerable persons when their needs should be paramount.

Reasons for delays in the court were not fully explored in the evidence and advice received by the committee, but anecdotally they appear to include a greater insistence on issues in dispute going before a Judge for decision, elevated expectations by one or more parties of what they can achieve, more complex family arrangements being subject to court orders (for example the involvement of grandparents) and an increasing workload being carried by a static number of professionals advising the court and parties. Delays in the court almost certainly are one factor behind a rapid increase in the cost to the state of family dispute resolution.

The review and reform process which preceded this bill included an admirable level of consultation with interested stakeholders. This entailed a day-long workshop hosted by the then Minister in 2011, the release of a consultation paper in September 2011 which elicited over 200 submissions, and the establishment of an external reference group. The external reference group comprised court professionals, lawyers, a Judge and academics.

In the end, the reform to the court has focussed on care of children disputes, which comprise 39 per cent of the court's work. But the main reforms in the bill are not reflective of the results of the consultative process.

The principal reforms in the bill are:

- Limiting access to court-funded counselling at the time of separation. Limited counselling is only available after proceedings have been commenced (clause 9).

- Limiting the role of lawyers in the processes of the court and, therefore, limiting access to legal aid where that is presently available to a party. Legal aid will be available to a party entitled to it to a limited degree prior to (but not during) any mandated dispute resolution process and if the dispute or any part of it goes before a Judge (clause 5).
- Establishment of a mandatory (except where domestic violence is alleged) private, non-judicial process, called family dispute resolution (FDR), for resolving disputes which will require parties to participate in a mediation or facilitation process without representation. The parties are to meet the cost of this process which official advice suggests will be around \$900, although no advice has been provided about how much mediation/facilitation time this might purchase and whether it is expected to be sufficient for most disputes (clause 9). The court will have the power to order parties to undertake further FDR if the court considers it may benefit the parties, and this may entail more expense for the parties.
- Limiting the role of counsel for the child by raising the threshold for appointment by the court. In order to make an appointment, the bill requires the court to have “concerns for the safety or well-being of the child and consider an appointment necessary” (clause 5). Children will not be separately represented in the FDR process where that takes place. The official advice is that parents are expected to represent the best interests of the child in that process.
- Part of the costs of a lawyer appointed to represent a child or to assist the court (usually where one or neither party to the proceeding is represented) may be passed onto one or both parties to the proceeding (clause 21).
- Principles relating to the child’s welfare and best interests to include that a child’s care, development and upbringing should entail ongoing consultation and co-operation between parents and/or guardians and a child should continue to have a relationship with both parents (clause 4).

We are opposed to the bill.

We reject the ideological underpinning of the reform, which appears to be that as family disputes are private matters, there is no role for

the state in assisting people to resolve those disputes. We believe that there is a very real public interest in the peaceful resolution of disputes, whether or not they are of a personal nature.

This bill is a departure from what is well settled practice. The New Zealand legal system has always reflected the need to provide specialised support to assist people deal with the breakdown in a range of relationships, including employment relationships; and family relationships are no different.

The Family Proceedings Act 1980 requires the court to promote reconciliation (that is, restoring parties' intimate relationship) or, if that is not possible, conciliation (that is, reaching an amicable agreement). The regulatory impact statement states that the court fulfils this obligation by providing court-funded counselling. It then goes on to say that counselling costs the State approximately \$9.7 million per year.

Instead of identifying the public benefit in promoting reconciliation and conciliation, the RIS states that this may not be the best use of the court's limited resources. "The primary expertise of Judges is adjudicating disputes. A reconciliation and conciliation function can contribute to delay and may be better dealt with in the community." This makes it clear that the primary interest is the cost, rather than the outcome. The private nature of the dispute is used as a convenient smokescreen for shifting the cost of a tried and true method for achieving what is an enormous public benefit, as well as risking losing those successful reconciliations or conciliated results.

When children are involved then the public interest is even clearer. Children, unfortunately, cannot always rely on their parents, especially in the throes of a relationship breakdown, to keep their interests as a paramount consideration, which is the foundation of the Care of Children Act 2004.

We do not accept that a process in which separating parents are required to resolve their disputes without representation and with only a mediator/facilitator to assist can realistically or practically be relied on to deliver robust and enduring settlements. Moreover, we do not think that parents going through the stress and distress of separation are, in most cases, able to objectively consider the best interests of their children. We think that independent assistance to the child is necessary for the benefit of the child and for the parents.

The overwhelming evidence received by the committee was that counsel for the child played an invaluable role, often mediating between the parents' positions and interests. One submitter, a father, averred that counsel for the child was the only objective advice in the process and was crucial to achieving an acceptable outcome in his family's case.

The external reference group involved in the consultation processes before the bill was introduced made its own submission to the committee largely out of concern that the principal reforms in the bill did not reflect their advice and work on the reforms. They stated in their submission:

Most Family Court cases involve high stress to parties and for a wide variety of reasons parties struggle to advocate for themselves in the legal process. The risk to vulnerable adults and children from a limited right to legal representation will be significant because in the absence of legal representation:

- (a) It will be more difficult to identify the "hidden" risks in what may appear to otherwise be a straightforward case;
- (b) Cases will be more, rather than less, adversarial;
- (c) It will be more difficult to focus on the relevant factual and legal issues in cases and where there is risk for adults and children;
- (d) The power imbalance between parties which permeate cases under this Act is more entrenched if parties do not have legal representation. (Antony Mahon and others, "Response of Members of Expert Reference Group to Cabinet Policy Announcements for Reform of the Family Court", paragraph 3.7)

Even though the Minister of Justice announced during the committee's consideration of this bill that more provision for access to legal advice would be made than had earlier been proposed, we do not think the bill in its present form goes far enough to ensure parties will be properly advised and supported.

Since the Minister's announcement there has been a further change in the landscape, with the Court of Appeal decision on 24 May 2013 in *Criminal Bar Association v. Attorney General* [2013] NZCA 176 on the operation of the legal aid system. Even though that decision concerned legal aid for criminal cases, it will have implications for legal aid for family cases too, and so the claimed fiscal benefits of the Family Court reforms are now uncertain.

We do not think that the denial of independent representation of the child in the FDR process or the higher threshold for appointment of counsel for the child satisfies New Zealand's obligations in the United National Convention on the Rights of the Child (UNCRoC), specifically Article 12, which says:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

We do not see how the FDR process, which excludes the voice of affected children, can be seen as enabling a child to express their views and ensure they are given due weight. We do not think that excluding the child's voice in a process that is an informal substitute for a purely judicial proceeding is consistent with the words and spirit of paragraph 2 of Article 12 of UNCROc.

It is clear that the overriding motivation behind this bill is fiscal. It is the wish to reduce the costs to the state of family disputation. In our view, the measures contained in this bill go far beyond a sensible adjustment to reduce delay in the present system and will more likely result in a transfer of the cost of family conflict and poorly resolved family disputes to other parts of government.

Green Party minority view

It has been proposed that this bill is necessary to effect changes to the Family Court, as it has not worked as well for some children and their families as it should have for many years.

While after some thirty years of operation it is evident that improvements could well be made to the court, we do not see in this bill a positive or workable set of provisions that will serve the interests of those who seek remedy through the court.

The intention to try and reduce the number of cases going to court, to divert separating couples into some form of dispute resolution, is not without merit. What has been largely overlooked however is that

a significant majority of couples do resolve their issues informally, without recourse to the court, and that those who do become engaged in legal proceedings are already less amenable to a negotiated outcome.

The select committee heard from a large number of submitters, including lawyers, counsellors, and other professionals with experience in Family Court matters, and many of them expressed serious concern about the proposed changes.

These concerns included the limits being placed on access to court-funded counselling; the reduced role for legal representation for parties to disputes; the expectation that parties will be obliged to pay quite substantial amounts of money at a time when many are already financially stressed; and concerns that the wellbeing of children and vulnerable parents would not be adequately protected.

Some useful amendments have been made to the bill in the course of the select committee process, but we still have no confidence that the reforms will not leave some people in a much worse position than might otherwise be achieved.

There is no evidence that the suite of services required to implement the bill will be available to all those who might need those services—barriers will include location, lack of access to information about what (if any) services are available, the complexity of processes and documents, and affordability.

We are not convinced that victims of domestic violence will be identified at an early stage in every case, and so victims may well find themselves obliged to enter a resolution process with their abusers.

The Green Party does not support this bill, and recommends that it proceed no further.

Appendix

Committee process

The Family Court Proceedings Reform Bill was referred to the committee on 4 December 2012. The closing date for submissions was 13 February 2013. We received and considered 383 submissions from interested groups and individuals. We heard 217 submissions, which included holding hearings in Christchurch and Auckland.

We received advice from the Ministry of Justice. The Regulations Review Committee reported to the committee on the powers contained in clauses 60, 64, and 66.

Committee membership

Scott Simpson (Chairperson)

Hon Lianne Dalziel

Paul Foster-Bell

Julie Anne Genter

Andrew Little

Alfred Ngaro

Denis O'Rourke

Katrina Shanks

Hon Kate Wilkinson

David Clendon replaced Julie Anne Genter for this item of business.

Family Court Proceedings Reform Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

~~text deleted unanimously~~

Hon Judith Collins

Family Court Proceedings Reform Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Family Court Proceedings Reform Act **20123**.

2 Commencement

(1) **Sections 33, 35 to 49, 51, 53(1), and 54** come into force on the earlier of the following: 5

- (a) a date appointed by the Governor-General by Order in Council; and
 - (b) **1 October 2014**.
- (2) The rest of this Act comes into force on **1 October 2013**.

2 Commencement

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent:

(a) section 9, to the extent only that it inserts **new sections 46EA and 46FA** into the Care of Children Act 2004:

(b) section 29(1):

(c) section 51(1):

(d) section 52A, to the extent only that it inserts **new section 51B** into the Domestic Violence Act 1995:

(e) section 54(1):

(f) **Part 3**, except **section 60B**.

- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates.

- (3) Any provision that has not earlier been brought into force comes into force on **1 October 2014**.

Part 1 Amendments to Care of Children Act 2004

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:

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

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

- “(a) in the administration and application of this Act, for example, in proceedings under this Act; and
- “(b) in any other proceedings involving the guardianship of, or the role of providing day-to-day care for, or contact with, a child. 5
- “(2) Any person considering the welfare and best interests of a child in his or her particular circumstances—
- “(a) must take into account—
- “(i) the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child’s sense of time; and 10
- “(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—~~ 15
- ~~“(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~~ 20
- ~~“(iii) is otherwise relevant.~~
- “(b) may take into account the conduct of the person who is seeking to have a role in the upbringing of the child to the extent that that conduct is relevant to the child’s welfare and best interests. 25
- “(3) It must not be presumed that the welfare and best interests of a child (of any age) require the child to be placed in the day-to-day care of a particular person because of that person’s gender.
- “(4) This section does not— 30
- “(a) limit section 6 or 83, or subpart 4 of Part 2; or
- “(b) prevent any person from taking into account other matters relevant to the child’s welfare and best interests.
- “5 Principles relating to child’s welfare and best interests** 35
- The principles relating to a child’s welfare and best interests are that—
- “(a) a child’s safety must be protected and, in particular, a child must be protected from all forms of violence (as

- defined in section 3(2) to (5) of the Domestic Violence Act 1995) from all persons, including members of the child's family, family group, whānau, hapū, and iwi:
- “(b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians: 5
- “(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~~ having a role in his or her care under a parenting or guardianship order: 10
- “(d) a child should have continuity in his or her care, development, and upbringing:
- “(e) a ~~child's~~ child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whānau, hapū or iwi should be preserved and strengthened: 15
- “(f) a child's identity (including without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened. 20

“5A Domestic violence to be taken into account

“(1) This section applies if—

- “(a) an application is made to the court for—**
- “(i) a guardianship order under section 19 or 27; or**
- “(ii) a direction under **section 46L** in relation to a guardianship dispute; or** 25
- “(iii) a parenting order under section 48; or**
- “(iv) a variation of a parenting order under section 56;**
- and**
- “(b) a final protection order made under section 14 of the Domestic Violence Act 1995 is, or at any time has been, in force against 1 or more parties to the application.** 30

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

- “(a) whether the protection order is still in force:** 35
- “(b) the circumstances in which the protection order was made:**

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

5 Section 7 replaced (Lawyer to act for child)

Replace section 7 with:

“7 Appointment of lawyer to represent child in proceedings 5

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

“(a) has concerns for the safety or well-being of the child; 10
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 15
provided in **subsections (2) to (5) (5A)**.

~~“(2) A lawyer may act for a party to a proceeding commenced by an application made—~~

~~“(a) without notice;~~

~~“(b) under subpart 4 of Part 2.~~ 20

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

“(3) A lawyer may act for a party to a proceeding if that party is the Crown.

~~“(4) A lawyer may act for a party to a defended proceeding if a Judge has directed that the issues in dispute between the parties proceed to a hearing.~~ 25

“(4) A lawyer may act for a party to a proceeding—

“(a) commenced by an application made without notice, until such time (if at all) a Judge directs that the application proceed on notice; 30

“(b) commenced by an application made on notice, from such time (if at all) a Judge directs that—

“(i) the application proceed as if it were an application made without notice; or 35

- “(ii) the application be heard by the court in conjunction with an application that is filed under any other Act; or
- “(iii) the application proceed to a hearing:
- “(c) commenced by an application made without notice that a Judge has directed proceed on notice, from such time (if at all) the Judge makes a direction of a kind specified in **paragraph (b)(ii) or (iii)**. 5
- “(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. 10
- “(5A) A lawyer may act for a party at a settlement conference convened under **section 46K** if a Judge directs that the parties may be represented at that conference.
- “(5B) A direction referred to in **subsection (5A)** may be made by a Judge if the Judge considers that— 15
- “(a) at least 1 of the parties needs legal representation at the settlement conference; and
- “(b) the parties having legal representation at the settlement conference will be likely to facilitate settlement of the issues in dispute by agreement between the parties. 20
- “(6) In this section,—
- “**act**, in relation to a party, means—
- “(a) to sign any document for the party:
- “(b) to file any document for the party: 25
- “(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
- “**defended proceeding** means a proceeding in which a respondent is defending or opposing the application 30
- “**party to a proceeding** includes a party to a proposed proceeding.
- “(7) To avoid doubt, nothing in this section prevents a lawyer from—
- “(a) giving legal advice to a party: 35
- “(b) preparing any document for a party:
- “(c) conducting negotiations for a party.

“7B Duties on lawyer for proposed party

A lawyer for a person who is proposing to commence proceedings under section **46L**, 48, or 56 must ensure that the person is aware of—

- “(a) the need for the child’s welfare and best interests to be the first and paramount consideration; and** 5
- “(b) the mechanisms for assisting resolution of family disputes; and**
- “(c) the steps for commencing the proceeding and subsequently pursuing the proceeding through the court process to obtain a resolution; and** 10
- “(d) the types of directions and orders that the court may make.”**

6 Section 8 amended (Interpretation)

In section 8, insert in their appropriate alphabetical order: 15

“approved counselling organisation means ~~an~~ a counselling organisation that is approved by the Secretary as a counselling organisation for the purpose of providing counselling under section 46E under section 46EA

“counselling services means counselling ~~provided by a counsellor~~ services provided by a counsellor for the purposes specified in section 46E(2) 20

“counsellor means a person nominated by an approved counselling organisation to act as a counsellor

“counsellor means a person who is appointed as a counsellor under section 46FA 25

“parenting information programme means a programme specified in regulations made under this Act

“parenting information programme means a programme specified as a parenting information programme in regulations made under this Act”. 30

7 Section 40 amended (Agreements between parents and guardians)

Replace section 40(1) with:

- “(1) A party to an agreement to which subsection (2) applies may seek to have the terms of the agreement embodied in an order** 35

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

Repeal sections 44 to 46 and the cross-heading above section 44. 5

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

After section 46B, insert:

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

10

“(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.

15

“(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.

20

“(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.

25

“Family dispute resolution

“46CA Meaning of family dispute resolution

In section 46CB, family dispute resolution form and family dispute resolution provider have the meanings given to them by Part 3 of the Family Court Proceedings Reform Act 2013.

30

“46CB Family dispute resolution mandatory before commencement of proceedings

“(1) This section applies to an application under **section 46L or 48 of the Care of Children Act 2004.**

“(2) The application must be accompanied by a family dispute resolution form signed by a family dispute resolution provider within the preceding 12 months. 5

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

“(3) A family dispute resolution form is not required to accompany an application that— 10

“(a) is in response to an application that another party to the proceedings has made for an order under **section 46L or 48 of the Care of Children Act 2004; or**

“(b) is without notice; or

“(c) is for a consent order; or 15

“(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— 20

“(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 one of the parties, has been subject to domestic violence by one of the other parties to the dispute. 25

~~“Resolving disputes between guardians~~

“46D Disputes between guardians 30

“(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.** 35

~~“(3) An application under **subsection (1)** must be made to the High Court, and the High Court has exclusive jurisdiction to settle the dispute where,—~~

~~“(a) under an order of the High Court, 2 or more persons are guardians of, or have the role of providing day-to-day care for, a child; and that order has not been removed into a Family Court under section 127; or~~

~~“(b) 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.~~

“46D Family dispute resolution after proceedings commenced

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

“(a) a direction under **section 46L; or**

“(b) a parenting order under section 48.

“(2) A Family Court Judge may direct the parties to attend family dispute resolution.

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

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

“(b) the parties—

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

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

“Counselling

“46E Counselling ~~where~~ after proceedings commenced

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

“(a) a direction under **section 46D 46L; or**

“(b) a parenting order under section 48.

- “(2) A Family Court Judge may direct the Registrar of the court to refer the parties to the application to counselling services for the following purposes:
- “(a) to improve the relationship between the parties; and
 - “(b) to encourage compliance with any direction or order subsequently made by the court. 5
- “(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. 10
- “(4) A Family Court Judge may make a direction under **subsection (2)**—
- “(a) at any stage of the proceedings, including when making a final order; but
 - “(b) once only ~~during the course of the proceedings~~. 15
- ~~“(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. 20~~
- “(5) On receipt of a direction under **subsection (2)**, the Registrar must—
- “(a) arrange for the parties to be referred to a counsellor or an approved counselling organisation; and
 - “(b) inform the parties accordingly. 25
- “46EA Approval of counselling organisations**
- “(1) The Secretary may, by notice in the *Gazette*, approve any organisation (whether incorporated or unincorporated) as an approved counselling organisation.
- “(2) In deciding whether to approve an organisation under **subsection (1)**, the Secretary must apply any criteria prescribed by regulations made under **section 147(2)(aa)**. 30
- “46EB Suspension or cancellation of approval of counselling organisations**
- The Secretary may, by notice in the *Gazette*, suspend or cancel the approval of an organisation as an approved counselling 35

organisation on any ground prescribed by regulations made under **section 147(2)(ab)**.

“46F Duties of approved counselling organisation

An approved counselling organisation to which any parties are referred ~~for counselling~~ under **section 46E(5)(b)** must—

~~“(a) arrange for a counsellor to meet with the parties; and
“(b) provide counselling services for the purposes specified in **section 46E(2)**;~~

“(a) nominate a counsellor to provide counselling services to the parties; and

“(b) arrange for the counsellor to meet with the parties.

“46FA Appointment of counsellors

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

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

“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.

“(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.

“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.

*“Parenting information programmes***“46I Judge may direct party to undertake parenting information programme**

- “(1) At any time after an application has been made to the court for a parenting order, a Judge may direct 1 or more parties to the application to attend a parenting information programme.** 5
- “(2) However, the Judge may not make a direction under **subsection (1)** in respect of a party if that party has undertaken a parenting information programme within the preceding 2 years.**

“Settlement conferences

10

“46J Purpose of settlement conferences

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

- “(a) ascertain whether any or all of the issues in dispute between the parties can be settled; and** 15
- “(b) settle those issues.**

“46K Settlement conferences

- “(1) A settlement conference may be convened on the direction of a Judge at any time before a proceeding is set down for hearing.**
- “(2) A Judge may, with the consent of the parties, make an order settling some or all of the issues in dispute between the parties.** 20
- “(3) Before a party consents to the making of an order, a Judge may advise that party to obtain legal advice.**
- “(4) A Judge may adjourn a settlement conference to enable a party to obtain legal advice.** 25

*“Guardianship disputes***“46L Disputes between guardians**

- “(1) If 2 or more guardians of a child are unable to agree on a matter concerning the exercise of their guardianship, any of them may apply to the court for its direction.** 30
- “(2) An application under **subsection (1)** must be made to a Family Court unless **subsection (3)** applies.**

- “(3) An application under **subsection (1)** must be made to the High Court, and the High Court has exclusive jurisdiction to settle the dispute, where,—
- “(a) under an order of the High Court, 2 or more persons are guardians of, or have the role of providing day-to-day care for, a child, and that order has not been removed into a Family Court under section 127; or
- “(b) 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.”

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.

“47B Mandatory statement and evidence in applications

- “(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—
- “(a) that the applicant has undertaken a parenting information programme within the preceding 2 years; or
- “(b) that the applicant is not required to undertake a parenting information programme because—
- “(i) the applicant is unable to participate effectively in a parenting information programme; or
- “(ii) the applicant is making the application without notice.
- “(3) Evidence in support of a statement made under **subsection (2)(a) or (b)(i)** must be included in the application.

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

11 Section 48 amended (Parenting orders)

Repeal section 48(4) to (6).

5

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

“(b) a specified event; or

“(c) it is replaced by—

“(i) another interim order; or

“(ii) a final order.

15

~~“(2) However, **subsection (3)** applies if—~~

~~“(a) an interim parenting order is made; and~~

~~“(b) the parents of the child in respect of whom the interim parenting order is made are parties to the order; and~~

~~“(c) under the interim parenting order, one of the parents has neither the role of providing day-to-day care for nor contact with the child.~~

20

~~“(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.~~

25

“(2) However, a Judge must not make an interim order unless the Judge is satisfied that an interim order serves the welfare and best interests of the child better than a final order.

30

“49A Interim parenting order where parent has neither day-to-day care nor contact with child

“(1) This section applies if—

“(a) an interim parenting order is made; and

35

- “(b) the parents of the child in respect of whom the interim parenting order is made are parties to the order; and
“(c) under the interim parenting order, one of the parents has neither the role of providing day-to-day care for nor contact with the child. 5
- “(2) If this section applies, the court must, as soon as practicable, assign a hearing date that is not more than 3 months after the date of the interim parenting order, and at the hearing on that date the court may replace the interim order with—
“(a) a further interim order; or 10
“(b) a final parenting order.
- “49AB 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 15
 in the Family Court, a Judge must make a final parenting order.
- “(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)** 20
 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 25
 58 with:
- “57 Variation of final parenting order by consent memorandum instead of application**
- “(1) This section applies if the parties to a final parenting order made under this Act agree to a variation of the order, or to a 30
 variation of any term or condition to which the order is subject (the **proposed variation**).
- “(2) A party to the final parenting order may, instead of applying under section 56 for a variation of the order, file a consent

memorandum seeking an order in terms of the proposed variation.

- “(3) The consent memorandum must—
- “(a) set out the proposed variation; and
 - “(b) state that all persons affected by the final parenting order (other than children) agree to the proposed variation; and
 - “(c) be signed by all parties.
- “(4) On the filing of a consent memorandum, the Registrar may make and seal an order varying the final parenting order in terms of the proposed variation set out in the memorandum.

“Supervised contact

“58 Interpretation

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

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

- “(a) approved—
 - “(i) by the chief executive as a community service under section 403 of the Children, Young Persons, and Their Families Act 1989; or
 - “(ii) by the Secretary; or, and
 - ~~“(iii) by an officer of the court appointed under section 8(2) of the Family Disputes (Resolution Methods) Act 1986; and~~
- “(b) nominated by the court or Registrar for the particular case

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

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

“59 Court may order supervised contact

- “(1) This section applies if the court—

- “(a) is making or varying a parenting order determining the time or times when a person may have contact with a child; and
- “(b) is not satisfied that the child will be safe with that person. 5
- “(2) The court may make an order for supervised contact between the child and that person, and, if it does so, the court must specify in the order whether the supervised contact is to occur—
- “(a) under the supervision of an approved provider; or
- “(b) in the immediate presence of a person approved by the court (for example, a relative, a friend of the family of the child, or any other person whom the court considers suitable). 10
- “60 Costs of formal supervised contact**
- “(1) This section applies only to supervised contact that is ordered under **section 59** and supervised by an approved provider. 15
- “(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. 20
- “(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 25
- “(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. 30
- 16 Section 64 amended (Guiding consideration and principles)**
- 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)

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

(2) Repeal section 69(1)(a).

19 Section 78 replaced (Contravening parenting order)

Replace section 78 with:

“78 Contravening parenting or guardianship order

10

“(1) A person commits an offence who, without reasonable excuse, intentionally—

“(a) contravenes—

“(i) a parenting order; or

“(ii) a guardianship order made under section 40 or ~~46B46L~~; or

15

“(b) prevents compliance with—

“(i) a parenting order; or

“(ii) a guardianship order made under section 40 or ~~46B46L~~.

20

“(2) A person who commits an offence under **subsection (1)** is liable on conviction to—

“(a) a term of imprisonment not exceeding 3 months; or

“(b) a fine not exceeding \$2,500.

“(3) Nothing in this section limits the power of a court to punish a person for contempt of court.”

25

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—

30

“(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**”.

(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

“(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**”.

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

Replace section 131 with:

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

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

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

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

“(2) An invoice rendered by a lawyer appointed under **section 7 or 130** for fees and expenses must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may tax the invoice.

“(3) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the invoice may, within 14 days after the date of the decision, apply to a Judge to review the decision; and the Judge may on the application make any order varying or confirming the decision that the Judge considers fair and reasonable.

“(4) Where the fees and expenses of a lawyer appointed under **section 7** have been paid under **subsection (1)(b)**, the court may, if it thinks it appropriate, order a party to the proceedings to refund to the Crown an amount the court specifies in respect

of those fees and expenses, and the amount ordered to be re-funded is a debt due to the Crown by that party and, in default of payment of that amount, payment 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.

5

“(5) Where the fees and expenses of a lawyer appointed under **section 130** have been paid under **subsection (1)(b)**, the court must make an order under **section 135A** unless the court declines to do so in accordance with that section.

“(6) However, no order under **section 135A** may be made— 10

“(a) in any proceedings commenced by an application under section 105 or a request under section 111; or

“(b) against—

“(i) the Crown, whether acting through the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989 or otherwise; or 15

“(ii) a person in whose custody the child concerned has been placed pursuant to an order made under the Children, Young Persons, and Their Families Act 1989.” 20

21A New section 131A inserted (Advice from chief executive or social worker)

After section 131, insert:

“131A Advice from chief executive or social worker 25

“(1) For the purpose of expediting an application for a guardianship order or parenting order (other than an interim parenting order), a Registrar, on his or her own initiative, may—

“(a) refer the application to the chief executive; and

“(b) request the chief executive to provide brief written advice on the nature and extent of any involvement that the department has had with the parties. 30

“(2) On receipt of a request for advice made under **subsection (1)**, the chief executive or a social worker must provide the advice.

“(3) The Registrar must refer advice received under **subsection (2)** to the Judge who is considering the application.” 35

22 Section 133 replaced (Reports from other persons)

Replace section 133 with:

“133 Reports from other persons

“Definitions

“(1) In this section,—

5

“application—

“(a) means—

“(i) an application for guardianship; or

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

“(iii) an application under section 105(1); ~~and but~~ 10

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

“approval means an approval under subsection (10)

“cultural report means a report that is about the child who is the subject of an application and that covers an aspect or aspects of the child’s cultural background, including the child’s religious denomination and practice 15

“materials means—

“(a) the psychological report; and

“(b) the report writer’s notes; and 20

“(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 25

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

“(a) how current arrangements for the child’s care are working for the child; ~~and~~ 30

“(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~~ 35

“(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~~—
- “(f) the advantages and disadvantages for the child of the options for the care of the child; ~~and~~— 5
- “(g) any matter that the court specifies under **subsection (5)(b)(ii)**
- “**report writer** means—
- “(a) the person requested under **subsection (2)** to prepare a report: 10
- “(b) the psychologist requested under **subsection (5)** to prepare a report
- “**second opinion** means—
- “(a) a critique of a psychological report; and
- “(b) a report covering the same matters as those covered by a psychological report. 15
- “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— 20
- “(a) request a person whom the court considers qualified for the purpose to prepare one; or
- “(b) direct the Registrar to request a person whom the Registrar considers qualified for the purpose to prepare one.
- “(3) The court may act under **subsection (2)** only if satisfied that— 25
- “(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 30
- “(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. 35
- “(4) If the court is entitled by **subsection (3)** to act under **subsection (2)** and if the court knows the parties’ wishes about the obtaining of a report or can speedily ascertain them, the

court must have regard to the parties' wishes before deciding whether or not to act under **subsection (2)**.

"Court's power to obtain psychological reports"

"(5) To obtain a written psychological report,—

"(a) the court may—

"(i) request a psychologist whom the court considers qualified for the purpose to prepare one; or

"(ii) direct the Registrar to request a psychologist whom the Registrar considers qualified for the purpose to prepare one; and

~~"(b) the court may specify any matter that the report is to cover.~~

"(b) the court—

"(i) must specify which of the matters listed in **paragraphs (a) to (f)** of the definition of psychological report in **subsection (1)** that the report is to cover; and

"(ii) may specify any matter not listed in **paragraphs (a) to (f)** of the definition of psychological report in **subsection (1)** that the report is to cover.

"(6) The court may act under **subsection (5)(a)** only if—

"(a) the court is satisfied that the information that the psychological report will provide is essential for the proper disposition of the application; and

"(b) the court is satisfied that the psychological report is the best source of the information, having regard to the quality, timeliness, and cost of other sources; and

"(c) the court is satisfied that the proceedings will not be unduly delayed by the time taken to prepare the psychological report; and

"(d) the court is satisfied that any delay in the proceedings will not have an unacceptable effect on the child; and

"(e) the court does not seek the psychological report solely or primarily to ascertain the child's wishes.

"(7) If the court is entitled by **subsection (6)** to act under **subsection (5)** and if the court knows the parties' wishes about the obtaining of a psychological report or can speedily ascertain them, the court must have regard to the parties' wishes before deciding whether or not to act under **subsection (5)**.

“Court’s power to direct meetings

- “(8) If the court acts under **subsection (2) or (5)**, it may give directions at the same time on arrangements for—
- “(a) the child to meet with the report writer; or
 - “(b) 1 or more of the parties to meet with the report writer; 5
 - or
 - “(c) the child and 1 or more of the parties to meet with the report writer.
- “(9) If a party or the child fails to meet with the report writer as directed by the court,— 10
- “(a) the report writer must notify the court; and
 - “(b) the court may make further directions.

“Second opinions

- “(10) The approval of the court must be obtained before a second opinion may be prepared ~~or~~ and presented. 15
- “(11) The court may give approval only if there are exceptional circumstances.
- “(11A) A party who obtains the approval of the court for the preparation and presentation of a second opinion is liable for the costs of that opinion. 20
- “(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 25 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.” 30

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

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

24 Section 135 replaced (Costs of reports under section 133) 35
Replace section 135 with:

“135 Costs of reports requested under section 133

“(1) Fees for the preparation of reports requested under **section 133, and reasonable expenses incurred, must—**

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

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

“(2) ~~Despite **subsection (1), where~~ Where in any proceedings a report requested under **section 133** has been prepared and the fees and expenses relating to that report have been paid under **subsection (1)**, the court must make an order under **section 135A**, unless the court declines to do so in accordance with that section.**

“135A Order requiring refund of costs payments ~~in respect of reports requested under section 133~~

“(1) An order referred to in **section 131(5) or **135(2)** must order the parties to refund to the Crown the prescribed proportion of the amount paid by the Crown; ~~under **section 135(4)(b)**; in respect of a report requested under **section 133**—~~**

“(a) under **section 131(1)(b), in respect of the fees and expenses of a lawyer appointed under **section 130**;**

“(b) 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.**

“(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.**

~~“(5) If the court substitutes another amount under subsection (4), the court must give written reasons for doing so.”~~

“(6) In this section,—

~~“dependent child, in relation to a party, means a child—~~

~~“(a) whose care is substantially the responsibility of the party; and~~ 5

~~“(b) who is maintained as a member of that party’s family; and~~

~~“(c) who is financially dependent on that party”~~

“dependent child, in relation to a party, means a child whose day-to-day care is substantially the responsibility of the party 10

“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,— 15

“(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 20

“(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 25

“(iv) the cost of education for a dependent child of the party:

“(b) does not include significant financial difficulties that arise because— 30

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

“(ii) the party is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards. 35

“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. 5
- “(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— 10
- “(a) is to be added to the amount sought to be enforced; and
- “(b) must be paid to the Registrar of the court out of any proceeds that result from the enforcement.
- “(3) For the purposes of section 14(1)(b) of the Crown Proceedings Act 1950, the Secretary may, on behalf of the Crown, enforce a debt under this section. 15

“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: 20
- “(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. 25
- “(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 against the person in default as if default had been made in the payment of all instalments then remaining unpaid.” 30

25 Section 137 amended (Attendance at hearings generally)

- (1) Replace section 137(1)(b) with: 35
- “(b) parties to the proceedings:

- “(ba) lawyers acting for the parties (if any):”.
- (2) Replace section 137(1)(c) with:
“(c) lawyers appointed under **section 7 or 130**:”.
- (3) Repeal section 137(4)(c).
- (4) Repeal section 137(5). 5
- 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)** 10
After section 139, insert:
“139A Leave required in certain cases to commence substantially similar proceedings
 “(1) A proceeding may not be commenced under **section 46B** 15
46L, 48, 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 proceeding**); and 20
 “(b) is to be commenced less than 2 years after ~~final judgment~~ the final direction or order was given in the previous proceeding.
 “(2) The leave of the court may only be given under **subsection (1)** if, since final judgment was given in the previous proceeding, there has been a material change in the circumstances of— 25
 “(a) any party to the previous proceeding;
 “(b) any child who was the subject of the previous proceeding.
 “(3) In this section, a proceeding is **substantially similar** to a previous proceeding if— 30
 “(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 35
 “(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
 “(iii) is for an order discharging the order made in the previous proceeding. 5
- “(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)** 10
 In the heading to section 141, after “proceedings”, insert “if vexatious proceedings previously instituted”.
- 28A Section 142 amended (Costs)**
 After section 142(2), insert:
 “(3) This section is subject to **sections 131(5) and 135(2).**” 15
- 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)**:~~
 “(aa) prescribing for the purposes of **section 46EA** any 20
criteria that the Secretary must apply when deciding whether to approve an organisation as an approved counselling organisation:
 “(ab) prescribing for the purposes of **section 46EB** the 25
grounds on which the Secretary may suspend or cancel the approval of an organisation as an approved counselling organisation, which may include—
 “(i) that the approval was given on the basis of information that was false or misleading in a material 30
respect; or
 “(ii) that the organisation no longer satisfies any criteria for approval prescribed by regulations made under **paragraph (aa)**; or
 “(iii) that the organisation has requested the suspension or cancellation of the approval; or 35

- “(iv) that the organisation has been wound up, dissolved, or otherwise ceases to exist:
- “(ac) prescribing for the purposes of **section 46FA** the qualification and competency requirements that must be met for a person to be appointed as a counsellor, which, 5
without limitation, may require a person—
- “(i) to be a member of a specified professional body:
- “(ii) to have a specified qualification:
- “(iii) to have a specified level of counselling experience: 10
- “(ad) prescribing for the purposes of **section 46FA** any matters that disqualify a person from being appointed as a counsellor, which, without limitation, may include having a conviction for certain types of offences:
- “(ae) prescribing for the purposes of **section 46H** the amount of fees and expenses payable for counselling services: 15
- “(af) specifying for the purposes of **sections 46I and 47B(2)** 1 or more parenting information programmes that provide information about the effects of a relationship breakdown, including— 20
- “(i) how a child may be affected when parents separate; and
- “(ii) how the needs of a child may be met when parents separate.”
- (2) In section 147(2)(a),— 25
- (a) replace “section 62(2)” with “**section 60(2)**”; and
- (b) replace “section 60(5)” with “**section 59(2)**”.
- (3) In section 147(2)(b),—
- (a) replace “section 62(3)” with “**section 60(3)**; and”
- (b) replace “section 60(5)” with “**section 59(2)**; and” 30
- (c) replace “section 62(2)” with “**section 60(2)**”.
- (4) Repeal section 147(2)(c).
- (5) Replace section 147(2)(d) with:
- “(d) prescribing, for the purposes of **section 135A**, the proportion of any amount paid by the Crown under **section** 35
~~**135(1)(b)**~~—
- “(i) **section 131(1)(b)**:
- “(ii) **section 135(1)(b)**.”

30 Section 148 amended (Other Acts not affected)

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.” 5

32 New section 165 inserted (Proceedings pending before commencement of Part 1 of Family Court Proceedings Reform Act 2012~~3~~)

After section 164, insert: 10

“165 Proceedings pending before commencement of Part 1 of Family Court Proceedings Reform Act 2012~~3~~”

- “(1) This section applies to proceedings under this Act that were commenced before ~~4 October 2013~~ the date of commencement of Part 1 of the Family Court Proceedings Reform Act 2013 but were not by that date completed (a pending proceeding). 15

- “(2) The following provisions do not apply to a pending proceeding: 20

“(a) **section 7A**; and

“(b) **section 135A**; and

“(c) **section 135B**; and

“(d) **section 135C**.

- “(3) The following provisions, as in force immediately before ~~4 October 2013~~ the date of commencement of Part 1 of the Family Court Proceedings Reform Act 2013, continue to apply to a pending proceeding with any necessary modifications as if **Part 1 of the Family Court Proceedings Reform Act 2012~~3~~** had not come into force: 25

“(aa) section 131; and 30

“(a) section 135; and

“(b) section 137.

- “(4) If section 57, as in force immediately before ~~4 October 2013~~ the date of commencement of Part 1 of the Family Court Proceedings Reform Act 2013, applied in respect of any interim order, section 57 continues to apply in respect of that 35

order as if **Part 1 of the Family Court Proceedings Reform Act 2012~~3~~** had not come into force.

- “(5) If in any pending proceeding there is in force immediately before ~~4 October 2013~~ the date of commencement of Part 1 of the Family Court Proceedings Reform Act 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~~3~~** had not come into force.
- “(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 ~~4 October 2013~~ the date of commencement of Part 1 of the Family Court Proceedings Reform Act 2013,—
- “(a) sections 66, 67, 69, and 138 continue to apply as if **Part 1 of the Family Court Proceedings Reform Act 2012~~3~~** had not come into force; but
- “(b) the counselling may not start or continue ~~after 31 January 2014~~ 4 months after the date of commencement of Part 1 of the Family Courts Proceedings Reform Act 2013.”

Part 2

Amendments to Domestic Violence Act 1995

33 Principal Act

This Part amends the Domestic Violence Act 1995 (the principal Act).

34 Section 2 amended (Interpretation)

- (1) In section 2, insert in ~~their~~ its appropriate alphabetical order:
- “**contact** has the meaning given to it by section 8 of the Care of Children Act 2004.

~~“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,—~~
~~“(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; 5~~
~~“(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 10~~
- ~~“non-violence programme means a programme that—~~
~~“(a) is provided by a programme provider; and~~
~~“(b) is provided to a respondent or an associated respondent; and 15~~
~~“(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— 20~~
~~“(a) domestic violence support programmes; or~~
~~“(b) non-violence programmes; or 25~~
~~“(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: 30
~~“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 35~~
~~“(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”.~~
- (2) In section 2, repeal the definitions of:
- (a) approved agency;
 - (b) programme;
 - (c) programme provider.
- 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 safety programmes”~~.
 - (2) In section 5(2)(d), replace “programmes” with “non-violence programmes”.
- 36A Section 13 amended (Application without notice for protection order)**
- (1) Replace section 13(4)(e) with:
 - “(e) where a direction is made under **section 51D**, in respect of the respondent, notify the court, in accordance with **section 51E**, that he or she objects to the direction.”
 - (2) Replace section 13(5)(e) with:
 - “(e) where a direction is made under **section 51D**, in respect of the associated respondent, notify the court, in accordance with **section 51E**, that he or she objects to the direction.”

36B Section 19 amended (Standard conditions of protection order)

(1) In section 19(2)(e)(iv), after “1989”, insert “; or”.

(2) After section 19(2)(e)(iv), insert:

“(v) as is necessary for the purposes of attending a settlement conference convened under **section 46K** of the Care of Children Act 2004”.

37 Cross-heading above section 29 replaced

Replace the cross-heading above section 29 with:

“Domestic violence support programmes”.

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37 Sections 29 to 44 and cross-heading above section 29 repealed

Repeal sections 29 to 44 and the cross-heading above section 29.

38 Section 29 amended (Programmes for protected persons)

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(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.

39 Section 30 repealed (Commencement of section 29)

20

Repeal section 30.

40 Sections 31 to 35 replaced

Replace sections 31 to 35 with:

“31 Joint programmes

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

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

“(i) the respondent is present; or

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“(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~~
- ~~“(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.~~ 5
- ~~“(2) The conditions referred to in **subsection (4)** are that—~~
 - ~~“(a) the protected person agrees; and~~
 - ~~“(b) the respondent or, as the case may be, the associated respondent agrees; and~~ 10
 - ~~“(c) the programme provider is satisfied that no safety issues exist; and~~
 - ~~“(d) the programme provider is authorised to undertake both domestic violence support programmes and non-violence programmes.~~ 15

“Non-violence programmes

- ~~“32 Direction to attend assessment and non-violence programme~~
- ~~“(1) On the making of a protection order, the court must direct the respondent to—~~ 20
 - ~~“(a) undertake an assessment with a programme provider to determine the most appropriate non-violence programme for the respondent to attend; and~~
 - ~~“(b) attend the non-violence programme that the programme provider determines to be the most appropriate.~~ 25
- ~~“(2) The court need not make a direction under **subsection (4)** if—~~
 - ~~“(a) there is no non-violence programme available that is appropriate for the respondent, having regard to—~~
 - ~~“(i) the respondent’s character; and~~ 30
 - ~~“(ii) the respondent’s personal history; and~~
 - ~~“(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~~ 35

may, if it considers it appropriate in all the circumstances to do so, direct the associated respondent to—

- “(a) undertake an assessment with a programme provider to determine the most appropriate non-violence programme for the associated respondent to attend; and
- “(b) attend the non-violence programme that the programme provider determines to be the most appropriate.

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“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,—

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- “(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
- “(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.

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“34 Registrar to arrange programme provider

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.

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“35 Programme provider to arrange meeting with respondent or associated respondent

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- “(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—

- “(a) assess the respondent or associated respondent; and

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- ~~“(b) determine the most appropriate non-violence programme for the respondent or associated respondent to attend.~~
- ~~“(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—~~ 5
- ~~“(a) the non-violence programme that the respondent or associated respondent is required to attend; and~~
- ~~“(b) the importance of attending that programme; and~~ 10
- ~~“(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 non-violence programme the programme provider—~~ 15
- ~~“(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 is not participating fully in the programme; and that this is significantly affecting the respondent’s or associated respondent’s ability to benefit fully from the programme.~~ 20
- ~~“(2) The programme provider may request the Registrar of the court to refer the respondent or, as the case requires, the associated respondent to a different programme provider.~~ 25
- ~~“(3) On receipt of a request under subsection (2), the Registrar of the court may—~~
- ~~“(a) refer the respondent or associated respondent, as the case requires, to a different programme provider; and~~ 30
- ~~“(b) notify that other programme provider of the direction made under section 32.~~
- ~~“(4) If a programme provider receives a notification under subsection (3), that notification is to be treated as if it were given under section 34.”~~ 35

- 41 Section 36 amended (Direction to attend programme made on application without notice)**
In the heading to section 36, after “attend”, insert “non-violence”.
- 42 Section 38 repealed (Respondent or associated respondent excused from attending)** 5
Repeal section 38.
- 43 Sections 39 and 40 replaced**
Replace sections 39 and 40 with:
- “39 Notice of non-compliance”** 10
- “(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:
- “(a)”** undertake an assessment with the programme provider to whom notice of the direction has been given under **section 34**; 15
- “(b)”** attend, in accordance with the terms of the direction, the non-violence programme that the programme provider determines to be the most appropriate.
- “(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. 20
- “(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”** 25
- “(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.
- “(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— 30
- “(a)”** the applicant; or
- “(b)”** the applicant’s lawyer.”

- 44 Section 41 repealed (Programme provider may request variation of direction)**
Repeal section 41.
- 45 Section 41A amended (Powers of Registrar on receipt of notice under section 39 or 41)** 5
(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)** 10
Replace section 42 with:
“42 Judge may call respondent or associated respondent before court
“(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. 15
“(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.” 20
- 47 Section 42A amended (Respondent or associated respondent called before court)**
Repeal section 42A(2).
- 48 New cross-heading above section 43 inserted** 25
After section 42A, insert:
“Confidentiality of information”.
- 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**”. 30

- (2) In section 43(4)(c)(ii), after “course of a”, insert “non-violence”.
- (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”.
- (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”.*
- 50A Section 46 amended (Power to vary protection order)**
- (1) In section 46(1)(c) and (d), replace “section 32” with “**section 51D**”.
- (2) In section 46(2)(c) and (d), replace “section 32” with “**section 51D**”.
- 51 Section 49 amended (Offence to breach protection order)**
- (1) In section 49(3), replace “2 years” with “3 years”.
- (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.”
- (2) In section 49(4), replace “section 32(1) or (2) to attend a specified programme” with “**section 51D**”.
- 52 Section 49A amended repealed (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(4) or (3)** to attend—
- “(a) an assessment; or
- “(b) a non-violence programme.”

Repeal section 49A.

52A New Part 2A inserted

After Part 2, insert:

“Part 2A
“Programmes

5

“51A Interpretation

In this Part, unless the context otherwise requires,—

“approval means an approval of a service provider under **section 51B** that has not been suspended or cancelled

“assessment, in relation to a respondent, means an assessment of the respondent undertaken by a service provider to determine— 10

“(a) the extent to which the respondent poses a safety risk to any person or the public; and

“(b) what, if any, non-violence programme is the most appropriate for the respondent to attend 15

“non-violence programme means a programme that—

“(a) is provided by a service provider; and

“(b) is provided to a respondent; and

“(c) has the primary objective of stopping or preventing domestic violence on the part of the respondent 20

“programmes means—

“(a) safety programmes; and

“(b) non-violence programmes

“respondent means the person against whom an application has been made for an order under this Act, and includes an associated respondent 25

“safety programme means a programme that—

“(a) is provided by a service provider; and

“(b) is provided to a protected person; and 30

“(c) has the primary objective of promoting (whether by education, information, support, or otherwise) the protection of the protected person from domestic violence

“service provider means a person or an organisation that has been granted an approval to do either or both of the following: 35

“(a) undertake assessments:

“(b) provide programmes.

“Approval of service providers

“51B Service providers

- “(1) The Secretary may decide to grant, suspend, or cancel an approval of a person or an organisation as a service provider. 5
- “(2) The Secretary must publish on an Internet site maintained by or on behalf of the Ministry of Justice a list of service providers.

“Safety programmes

“51C Safety programmes for protected persons 10

- “(1) Where the court makes a protection order,—
- “(a) the applicant, or the applicant’s representative, may request the Registrar to authorise the provision of a safety programme to all or any of the following persons:
- “(i) the applicant: 15
- “(ii) a child of the applicant’s family:
- “(iii) a specified person; and
- “(b) a specified person (other than a child) may request the Registrar to authorise the provision of a safety programme to that specified person if no request has been made under **paragraph (a)(iii)**. 20
- “(2) Where, at the time the protection order is made, the applicant has not made a request pursuant to this section, and the applicant is not legally represented, the Judge or the Registrar must cause the applicant to be informed of the applicant’s right to make such a request. 25
- “(3) A request may be made under **subsection (1)** at any time while the protection order remains in force.
- “(4) Where a request is made to a Registrar under **subsection (1)**, the Registrar must arrange for the matter to be referred to a service provider without delay. 30
- “(5) The number of safety programme sessions to be provided to a protected person by a service provider to whom a referral has been made under **subsection (4)** is to be determined by the Registrar following discussion with the service provider. 35

- “(6) Every lawyer acting for an applicant for a protection order must—
- “(a) ensure that the applicant is aware of the applicant’s right to make a request under this section; and
- “(b) where the applicant wishes to exercise that right, take such further steps as the lawyer considers necessary to enable the applicant to do so. 5

“Non-violence programmes

- “51D Direction to attend assessment and non-violence programme 10
- “(1) On making a protection order, the court must direct the respondent to—
- “(a) undertake an assessment; and
- “(b) attend a non-violence programme.
- “(2) The court need not make a direction under **subsection (1)** if— 15
- “(a) there is no service provider available; or
- “(b) the court considers that there is any other good reason for not making a direction.

- “51E Direction to attend non-violence programme made on application without notice 20
- “(1) This section applies where the court makes a direction under **section 51D** on an application made without notice.
- “(2) Where this section applies,—
- “(a) the direction does not take effect until 10 working days after a copy of the direction is served on the respondent; 25
- and
- “(b) the respondent may, within those 10 days, notify the court that he or she objects to the direction.
- “(3) Where the respondent notifies the court, in accordance with **subsection (2)(b)**, that he or she objects to the direction,— 30
- “(a) the Registrar must, if the respondent wishes to be heard, assign a hearing date, which must be—
- “(i) as soon as practicable; and

- “(ii) unless there are special circumstances, in no case later than 42 days after receipt of the notice of objection; and
- “(b) the direction is suspended from the date on which the court receives the notice of objection until the court, after considering the respondent’s objection, confirms (whether with or without variation) or discharges the direction. 5
- “(4) Nothing in this section or **section 51F** gives the court power to review any order or decision other than the direction to which the notice relates, but nothing in this section limits section 76 or section 79. 10
- “51F Court may confirm or discharge direction after considering objection made under section 51E**
- “(1) After considering an objection, made under **section 51E**, to a direction, the court may— 15
- “(a) confirm the direction; or
- “(b) confirm the direction but vary the terms of the direction; or
- “(c) discharge the direction. 20
- “(2) Where, pursuant to **subsection (1)**, the court confirms or varies a direction, then, if the respondent is before the court, the Judge must warn the respondent that non-compliance with the direction is an offence punishable by imprisonment.
- “(3) Failure to give the warning required by **subsection (2)** does not affect the validity of the direction confirmed or varied. 25
- “51G Referral of respondent to service provider**
- “(1) After the court has made a direction under **section 51D**, the Registrar must without delay—
- “(a) arrange for the respondent to be referred to a service provider; and 30
- “(b) notify the service provider of the direction made under **section 51D**.
- “(2) This section is subject to **section 51E**.

“51H Service provider to meet with respondent

As soon as possible after receiving a notification under **section 51G**, the service provider must arrange to meet with the respondent to—

- “(a) undertake an assessment of the respondent; and** 5
- “(b) determine whether there is an appropriate non-violence programme for the respondent to attend.**

“51I Service provider to notify Registrar about safety concerns

“(1) This section applies if a service provider has concerns about the safety of a protected person— 10

- “(a) after undertaking an assessment of the respondent; or**
- “(b) during the provision of a non-violence programme to a respondent.**

“(2) The service provider must, without delay, notify the Registrar of those concerns. 15

“(3) On receiving a notification under **subsection (2), the Registrar must—**

- “(a) forward a copy of the notification to a Judge; and**
- “(b) advise the protected person of the service provider’s concerns.** 20

“(4) On receiving a copy of a notification under **subsection (3)(a), the Judge may make such orders or directions as the Judge thinks fit in the circumstances.**

“51J Referral to different service provider

“(1) This section applies if a service provider, after undertaking an assessment of the respondent,— 25

- “(a) determines that there is an appropriate non-violence programme for the respondent to attend; but**
- “(b) is not able to provide that programme to the respondent.**

“(2) The service provider must— 30

- “(a) notify the Registrar; and**
- “(b) send to the Registrar the following information:**
 - “(i) the result of the assessment of the respondent undertaken by the service provider; and**
 - “(ii) any other information relating to the respondent held by the service provider.** 35

“(3) After receiving a notification under **subsection (2)(a)** and the information referred to in **subsection (2)(b)**, the Registrar must make a new referral under **section 51G** to a service provider that is able to provide an appropriate programme to the respondent.

5

“51K Judge may discharge direction to attend non-violence programme in certain cases

“(1) This section applies if a service provider, after undertaking an assessment of a respondent, determines that—

“(a) there is an appropriate non-violence programme for the respondent to attend but that—

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“(i) the respondent’s attendance at the programme should be delayed to enable other matters to first be addressed; or

“(ii) it would not be appropriate for the respondent to attend the programme; or

15

“(b) there is not an appropriate non-violence programme for the respondent to attend.

“(2) The service provider must notify the Registrar, and the Registrar must bring the matter to the attention of a Judge.

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“(3) When a matter is brought to the attention of a Judge under **subsection (2)**, the Judge must—

“(a) discharge the direction made under **section 51D(1)(b)**; and

“(b) make such other orders or directions as the Judge thinks fit in the circumstances.

25

“51L Service provider and respondent to settle terms of attendance at non-violence programme

“(1) Before providing a non-violence programme to a respondent, the service provider must settle in writing with the respondent the terms of attendance, which must include—

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“(a) the number of programme sessions that the respondent must attend; and

“(b) the place, date, and time of the first programme session, and all subsequent sessions, that the respondent must attend.

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- “(2) The service provider must provide to the Registrar a copy of the terms of attendance that the service provider has settled with the respondent.
- “(3) If a service provider is not able to settle with a respondent the terms of attendance, the service provider must notify the Registrar. 5
- “(4) On receipt of a notice under **subsection (2)**, the Registrar must—
- “(a) settle the terms of attendance with the respondent and the service provider; or 10
- “(b) bring the matter to the attention of a Judge.
- “(5) When a matter is brought to the attention of a Judge under **subsection (4)(b)**, the Judge may make such further directions as the Judge thinks fit in the circumstances.
- “**51M Notice to be given to court if continued provision of non-violence programme inappropriate** 15
- “(1) **Subsection (2)** applies if at any time during the provision of a non-violence programme the service provider considers that—
- “(a) it is no longer appropriate for the service provider to provide the programme to the respondent; or 20
- “(b) the respondent is not participating fully in the programme, and that this is significantly affecting the respondent’s ability to benefit fully from the programme.
- “(2) The service provider must— 25
- “(a) notify the Registrar; and
- “(b) send to the Registrar all information relating to the respondent that is held by the service provider.
- “(3) After receiving a notification under **subsection (2)(a)** and the information referred to in **subsection (2)(b)**, the Registrar must— 30
- “(a) make a new referral under **section 51G** to a different service provider; or
- “(b) bring the matter to the attention of a Judge.
- “(4) When a matter is brought to the attention of a Judge under **subsection (3)(b)**, the Judge may make such other orders or directions as the Judge thinks fit in the circumstances. 35

*“Non-compliance with direction to attend
assessment and non-violence programme*”

“51N Notice of non-compliance with direction

- “(1) This section applies if the court makes a direction under **section 51D** and the respondent fails to do either or both of the following:** 5
- “(a) undertake an assessment with the service provider to whom notice of the direction has been given under **section 51G**:**
- “(b) attend a non-violence programme in accordance with terms of attendance settled under **section 51L**.** 10
- “(2) The service provider must give written notice to the Registrar of the respondent’s failure.**
- “(3) Notice under **subsection (2)** must be given within 7 days of the respondent’s failure.** 15

“51O Powers of Registrar on receipt of notice under section 51N

- “(1) On receiving a notice under **section 51N**, the Registrar must, without delay,—**
- “(a) exercise the powers under section 82, as if he or she were the court referred to in that section, to call the respondent before the court; or** 20
- “(b) bring the matter to the attention of a Judge so that the Judge may consider whether to exercise the power conferred by **section 51P** in relation to the respondent.**
- “(2) If the Registrar exercises the powers under section 82 in the manner allowed by **subsection (1)(a)**, then, subject to any regulations made under this Act, section 82 applies so far as applicable and with the necessary modifications as if the respondent were a witness in proceedings.** 25

“51P Judge may call respondent before court 30

- “(1) If, under **section 51O(1)(b)**, a Registrar brings a matter to the attention of a Judge, **subsection (2)** applies.**
- “(2) A Judge may exercise the powers under section 82 to call the respondent before the court.**

“(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 were a witness in proceedings.”

“51Q Respondent called before court

- “(1) If a respondent appears before the court under **section 51O(1)(a) or 51P(2)**, the court may, after hearing from the respondent, confirm, vary, or discharge the direction or change the terms of attendance. 5
- “(2) If the court confirms or varies a direction under **subsection (1)**, the Judge must warn the respondent that non-compliance with the direction is an offence punishable by imprisonment. 10
- “(3) Failure to give the warning required by **subsection (2)** does not affect the validity of the direction confirmed or varied.

“Completion of non-violence programme

“51R Notice of completion and outcome of non-violence programme 15

- “(1) When a respondent has completed a non-violence programme, the service provider must, without delay, provide to the Registrar a report that—
- “(a) states whether, in the opinion of the service provider, the respondent has achieved the objectives of the non-violence programme; and 20
- “(b) advises of any concerns that the service provider has about the safety of any protected person.
- “(2) On receiving a report under **subsection (1)**, the Registrar must— 25
- “(a) forward a copy of that report to a Judge; and
- “(b) notify the protected person—
- “(i) that the respondent has completed a non-violence programme; and 30
- “(ii) that a report has been provided by the service provider of that non-violence programme under **subsection (1)**; and
- “(iii) of any concerns that the service provider has about the safety of the protected person advised in that report. 35

“(3) On receiving a copy of a report under **subsection (2)(a)**, the Judge may make such orders or directions as the Judge thinks fit in the circumstances.

“Confidentiality of information

“51S Confidentiality of information disclosed to service provider 5

“(1) In this section, unless the context otherwise requires, **information** includes any statement or admission.

“(2) Information received by a service provider in the course of providing a programme may not— 10

“(a) be disclosed to any other person; or

“(b) be admitted as evidence in any court or before any person acting judicially.

“(3) However, nothing in **subsection (2)** prohibits the disclosure of information received by a service provider in the course of providing a programme if that disclosure is made— 15

“(a) for the purpose of giving a notification to a Registrar under—

“(i) **section 51I(2)**;

“(ii) **section 51J(2)**; 20

“(iii) **section 51K(2)**;

“(iv) **section 51M(2)**;

“(b) for the purpose of a Registrar making a referral under—

“(i) **section 51J(3)**;

“(ii) **section 51M(3)(a)**; 25

“(c) for the purpose of any proceedings under—

“(i) **section 51O**;

“(ii) **section 51P**;

“(d) for the purposes of investigating or prosecuting—

“(i) an offence against **section 51T**; or 30

“(ii) an offence committed or alleged to have been committed during the provision of a programme;

“(e) in circumstances in which the service provider believes, on reasonable grounds, that the disclosure is necessary to prevent or lessen a serious threat to public safety or the safety of any person: 35

- “(f) with the authority of the person who disclosed the information to the service provider.”

“Enforcement of directions

“51T Offence to fail to comply with direction

A respondent who fails, without reasonable excuse, to comply with a direction made under **section 51D** commits an offence and is liable on conviction to—

“(a) a fine not exceeding \$5,000; or

“(b) a term of imprisonment not exceeding 6 months.”

52B Section 76 amended (Respondent to notify intention to appear)

In section 76(2)(b), replace “36” with “51E”.

53 Section 81 amended (Court may appoint lawyer)

- (1) In section 81(2), (3), and (4), replace “this section” with “sub-section (1)(c)”.

- (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** ~~Family Courts Act 1980~~; and

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

- (3) Replace section 81(4) with:

“(4) An invoice rendered by a lawyer appointed under this section for fees and expenses must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may tax the invoice.”

- (4) In section 81(5), replace “bill” with “invoice”.

54 Section 127 amended (Regulations)

(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) ~~Repeat section 127(b) and (c).~~ 5

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

(1) Replace section 127(a) to (e) with:

“(a) prescribing for the purposes of **section 51B**—

“(i) the process to be followed by a person or an organisation seeking an approval; and

“(ii) the criteria that the Secretary must apply when deciding whether to grant, suspend, or cancel an approval:

“(b) prescribing the amount of fees and expenses, or a method for calculating the amount of fees and expenses, payable for the provision of assessments and programmes under **Part 2A**.”. 10

(2) In section 127(f), replace “section 81” with “section 81(1)(c)”. 15

(3) In section 127(g), replace “section 42” with “**section 51O or 51P**”. 20

54A Cross-heading above section 133 replaced

Replace the cross-heading above section 133 with:

“Transitional provisions on enactment of this Act”.

55 ~~New section 134 inserted (Programmes arranged or in progress immediately before 4 October 2014)~~ 25

~~After section 133, insert:~~

~~“134 Programmes arranged or in progress immediately before 4 October 2014~~

~~“(1) This section applies if—~~ 30

~~“(a) there has been arranged or in progress immediately before 4 October 2014—~~

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

~~“(ii) the provision of a programme to a respondent or associated respondent that the respondent or as—~~ 35

~~sociated respondent has been directed under section 32 to attend; and~~

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

~~“(2) Sections 2, 29, 31 to 43, and 127, as in force immediately before 4 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.”~~ 5

55 New sections 134 to 138 and cross-heading inserted

After section 133, insert:

“Transitional provisions applying on enactment
of Part 2 of the Family Court Proceedings
Reform Act 2013 10

**“134 Programmes requested or directed before commencement
of Part 2 of Family Court Proceedings Reform Act 2013**

**“(1) Subsection (2) applies if, before the date of commencement
of **Part 2 of the Family Court Proceedings Reform Act
2013**,—** 15

**“(a) an applicant or a specified person has made a request
under section 29; but**

“(b) the Registrar has not referred the request to a programme provider. 20

**“(2) The Registrar must refer the request to a service provider under
section 51C.**

**“(3) Subsection (4) applies if, before the date of commencement
of **Part 2 of the Family Court Proceedings Reform Act
2013**,—** 25

**“(a) a respondent or an associated respondent or both a
respondent and an associated respondent have been
directed under section 32 to attend a specified programme; but** 30

“(b) the Registrar has not, under section 34, notified the programme provider of that direction.

“(4) The Registrar must refer the respondent or associated respondent or both to a service provider under **section 51G.**

“135 Referrals to programme providers before commencement of Part 2 of Family Proceedings Reform Act 2013

“(1) Subsections (2) and (3) apply if, before the date of commencement of Part 2 of the Family Court Proceedings Reform Act 2013,—

5

“(a) a request made to a Registrar under section 29 has been referred to a programme provider; but

“(b) the programme provider has not arranged or commenced the provision of a programme in response to that request.

10

“(2) The programme provider must—

“(a) advise the Registrar of the position; and

“(b) take no further step in respect of the referral.

“(3) The Registrar must arrange for the matter to be referred to a service provider under section 51C.

15

“(4) Subsections (5) and (6) apply if, before the date of commencement of Part 2 of the Family Court Proceedings Reform Act 2013,—

“(a) a notification under section 38 has been given to a programme provider of a direction made under section 32; and

20

“(b) the programme provider has not arranged or commenced the provision of a programme in response to that notification.

“(5) The programme provider must—

25

“(a) advise the Registrar of the position; and

“(b) take no further step in respect of the notification.

“(6) The Registrar must, under section 51G,—

“(a) make a referral to a service provider; and

“(b) notify the service provider of the referral.

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“136 Programmes arranged or in progress before commencement of Part 2 of Family Court Proceedings Reform Act 2013

“(1) This section applies if—

“(a) there has been arranged or in progress immediately before the date of commencement of Part 2 of the Family Court Proceedings Reform Act 2013—

35

- “(i) the provision of a programme to a protected person that has been requested under section 29:
“(ii) the provision of a programme to a respondent or an associated respondent that the respondent or associated respondent has been directed under section 32 to attend; and 5
“(b) that programme has not been concluded by that date.
- “(2) The provisions of this Act, as in force immediately before the date of commencement of **Part 2 of the Family Court Proceedings Reform Act 2013**, continue to apply in respect of the provision of that programme as if **Part 2 of the Family Court Proceedings Reform Act 2013** had not come into force. 10
- “137 **Proceedings commenced before commencement of Part 2 of Family Court Proceedings Reform Act 2013** 15
- “(1) This section applies if at any time before the date of commencement of **Part 2 of the Family Court Proceedings Reform Act 2013**, proceedings have been commenced under any of the following provisions but have not been determined or completed by that date: 20
- “(a) section 42:
“(b) section 46:
“(c) section 49A.
- “(2) The provisions of this Act, as in force immediately before the date of commencement of **Part 2 of the Family Court Proceedings Reform Act 2013** continue to apply in respect of those proceedings as if **Part 2 of the Family Court Proceedings Reform Act 2013**. 25
- “138 **Approval panel disestablished**
- “(1) The approval panel established by regulation 46 of the Domestic Violence (Programmes) Regulations 1996 is disestablished. 30
- “(2) No member of the panel is entitled to compensation for loss of office resulting from the disestablishment of the panel.
- “(3) An approval given by the panel under Part 3 of the Domestic Violence (Programmes) Regulations 1996 before the date of 35

commencement of **Part 2 of the Family Court Proceedings Reform Act 2013** is of no effect on or after that date.”

Part 3

Amendments to Family Courts Act 1980

- 56 Principal Act** 5
This Part amends the Family Courts Act 1980 (the **principal Act**):
- 57 Long Title repealed**
 Repeal the Long Title:
- 58 Section 1 replaced (Short Title and commencement)** 10
 Replace section 1 with:
- “1 Title**
 This Act is the **Family Disputes (Resolution Methods) Act 1980**:
- “1A Commencement** 15
 “(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: 20
- “**(b)** the headings **Part 1**, **Part 2**, **Part 3**, and **Part 4**:
- “**(c)** **section 3A(a) and (b)**:
- “**(d)** **sections 3B to 3E**:
- “**(e)** **sections 9A and 9B**: 25
- “**(f)** **section 12A**:
- “**(g)** **section 16AA**:
- “**(h)** the amendment to the heading to section 16B:
- “**(i)** the repeal of section 16B(1)(g):
- “**(j)** **section 16D**: 30
- “**(k)** **section 17(3) and (4)**:
- “**(l)** **section 17A**:
- “**(m)** the amendment to the heading to section 18:
- “**(n)** **section 19**:

~~“(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 5

“**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— 10

“(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 15

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

“**family dispute resolution provider** means a person or organisation who holds an approval that has not been suspended or cancelled”. 20

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

After section 3, insert: 25

~~3A~~ Purposes

The purposes of this Act are—

“(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: 30

“(c) to establish Family Courts:

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

“Part 1**“Family dispute resolution****“3B Family dispute resolution providers**

- “(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. 5
- “(2) The Secretary for Justice must apply criteria prescribed in regulations under this Act in making the decisions.

“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— 10
- “(a) at least 1 of the parties to the family dispute is unable to participate effectively in family dispute resolution; or
- “(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 15
- “(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. 20
- “(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. 25
- “(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. 30
- “(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.
- “(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. 35

“(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.

5

“3D Purpose of family dispute resolution forms

“(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.

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

“(a) is in response to an application that another party to the proceedings has made for an order under **section 46D** or 48 of the Care of Children Act 2008; or

15

“(b) is without notice; or

“(c) is for a consent order; or

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

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

20

“(f) is accompanied by an affidavit providing reasonable grounds to believe that—

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

25

“(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.

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“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.

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- “(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.
- “(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 “Family Courts”.

- 61 New sections 9A and 9B inserted** 10
After section 9, insert:
- “9A Role of lawyer appointed to represent child or young person in proceedings**
- “(1) The role of a lawyer who is appointed to represent a child or young person in proceedings is to— 15
- “(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:
 - “(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: 20
 - “(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:
 - “(d) provide advice to the child or young person about— 25
 - “(i) any right of appeal against a decision of the court; and
 - “(ii) the merits of pursuing any such appeal:
 - “(e) undertake any other task required by or under any other Act. 30
- “(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.

“(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— 5

“(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

“(1) The role of a lawyer who is appointed to assist the court in proceedings is— 10

“(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; 15

“(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;

“(b) cross-examine witnesses called by any party to the proceedings or by the court.” 20

62 New section 12A inserted (Evidence)

After section 12, insert:

“12A Evidence

“(1) This section applies to a proceeding— 25

“(a) under an Act described in **subsection (2)**; and

“(b) in a court described in **subsection (3)**.

“(2) The Acts are—

“(a) Adoption Act 1955;

“(b) Care of Children Act 2004; 30

“(c) Child Support Act 1991;

“(d) Children, Young Persons, and Their Families Act 1989;

“(e) Domestic Violence Act 1995;

“(f) Family Proceedings Act 1980;

“(g) Property (Relationships) Act 1976; 35

“(h) Protection of Personal and Property Rights Act 1988.

- ~~“(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;~~ 5
 - ~~“(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~~ 10
 - ~~“(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.”~~ 15
- 63 New Part 3 heading inserted** 20
- After section 16, insert:
- “Part 3**
“Regulations and rules”.
- 64 New section 16AA inserted (Regulations relating to family dispute resolution)** 25
- After section 16A, insert:
- “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;~~ 30
 - ~~“(b) prescribing the process to be followed by a person or an organisation seeking the reactivation of an approval that has been suspended;~~

- “(e) prescribing the criteria that the Secretary for Justice must apply when deciding whether to grant, suspend, or cancel an approval:
- “(d) prescribing the way in which a family dispute resolution form must be set out: 5
- “(e) setting the minimum number of hours to be spent on family dispute resolution for a family dispute:
- “(f) setting the maximum number of hours to be spent on family dispute resolution for a family dispute.”
- 65 Section 16B amended (Regulations)** 10
- (1) In the heading to section 16B, after “**Regulations**”, insert “**relating to court fees**”.
- (2) Repeal section 16B(1)(g).
- 66 New section 16D and new Part 4 heading inserted**
- After section 16C, insert: 15
- “16D Regulations relating to payments to professionals**
- “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: 20
- “(b) **section 130** of the Care of Children Act 2004:
- “(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: 25
- “(f) **section 160** of the Children, Young Persons, and Their Families Act 1989:
- “(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: 30
- “(j) **section 162A** of the Family Proceedings Act 1980:
- “(k) section 37A(1) of the Property (Relationships) Act 1976:
- “(l) **section 65A** of the Protection of Personal and Property Rights Act 1988: 35

- “(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.
- “(3) Regulations under **subsection (2)** may provide for any or all of the following: 5
- “(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: 10
 - “(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: 15
- “(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— 20
- “(a) increase a maximum hourly rate set under **subsection (3)**:
 - “(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— 25
- “(a) to protect the child’s welfare and best interests; or
 - “(b) to cater for exceptional circumstances:
- “(6) The Governor-General may, from time to time, by Order in Council, make regulations for 1 or both of the following purposes: 30
- “(a) specifying the types of expenses for which the person may claim reimbursement:
 - “(b) setting the rate or rates of reimbursement of expenses: 35

“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. 5
- “(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:
- “(a) preparing the report: 10
- “(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:
- “(a) the setting of a maximum hourly rate: 15
- “(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: 20
- “(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 25 which the person is engaged during a specified period:

“Part 4

“Amendment, transitional, and savings provisions”.

- 67 Section 17 amended (Certain enactments amended)** 30
- (1) Repeal section 17(2):
- (2) Insert in section 17:
- “(3) Replace ‘this Act’ with ‘the **Family Disputes (Resolution Methods) Act 1980**² in—
- “(a) section 226(3) of the Child Support Act 1991; and 35

- “(b) ~~section 81(3)(a) of the Domestic Violence Act 1995;~~
and
- “(c) ~~section 162(3)(a) of the Family Proceedings Act 1980;~~
and
- “(d) ~~section 37A(2)(a) of the Property (Relationships) Act 1976.”~~ 5

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;~~ 10
- “(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;~~ 15
- “(e) ~~section 84 of the Domestic Violence Act 1995;~~
- “(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.”~~ 20

69 Section 18 amended (Transitional and savings provisions)

In the heading to section 18, after “**provisions**”, insert “**in 1980**”.

Part 3

25

Family dispute resolution

56 Interpretation

In this **Part**,—

approved dispute resolution organisation means a dispute resolution organisation that is approved by the Secretary under **section 58** 30

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

family dispute means a dispute that will require an application described in **section 46D(1)** of the Care of Children Act 2004 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— 5

- (a) assisting parties to a family dispute to resolve the dispute without having to pursue court proceedings; and
- (b) ensuring that the parties' first and paramount consideration in reaching a resolution is the welfare and best interests of the children 10

family dispute resolution form means a form described in **section 60B(2), (4), or (6)**

family dispute resolution provider means a person who is appointed as a family dispute resolution provider under **section 60** 15

Secretary means the chief executive of the Ministry of Justice.

57 **Purposes**

The purposes of this **Part** are—

- (a) to require the use of family dispute resolution in specified family disputes: 20
- (b) to provide for operational measures required for the use of family dispute resolution.

58 **Approval of dispute resolution organisations**

(1) The Secretary may, by notice in the *Gazette*, approve an organisation (whether incorporated or unincorporated) as an approved dispute resolution organisation. 25

(2) In deciding whether to approve an organisation under **subsection (1)**, the Secretary must apply any criteria prescribed by regulations made under **section 60E(a)**. 30

59 **Suspension or cancellation of approval of dispute resolution organisations**

The Secretary may, by notice in the *Gazette*, suspend or cancel the approval of an organisation as an approved dispute reso-

lution organisation on any ground prescribed by regulations made under **section 60E(b)**.

60 Appointment of family dispute resolution providers

(1) The Secretary or an approved dispute resolution organisation may appoint a person as a family dispute resolution provider if that person is qualified and competent to provide services intended to resolve family disputes. 5

(2) In deciding whether a person meets the criteria in **subsection (1)**, the Secretary or approved dispute resolution organisation must apply the qualification and competency requirements prescribed by regulations made under **section 60E(c)**. 10

60A Duties of family dispute resolution providers

(1) A family dispute resolution provider must determine whether it is appropriate to start family dispute resolution for a family dispute. 15

(2) If a family dispute resolution provider determines that it is appropriate to start family dispute resolution for a family dispute, the family dispute resolution provider must make every endeavour to—

- (a) identify the matters in issue between the parties; and 20
- (b) facilitate discussion between the parties in respect of those matters; and
- (c) assist the parties to reach an agreement on the resolution of those matters that best serves the welfare and best interests of all children involved in the dispute. 25

60B Family dispute resolution forms

(1) **Subsection (2)** applies when a family dispute resolution provider decides that it is inappropriate to start or continue 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 one of the parties, has been subject to domestic violence by one of the other parties to the dispute; or
- (c) a situation exists that gives the family dispute resolution provider reasonable grounds for deciding that family 35

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 one 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 one party refused to attend or to continue to attend family dispute resolution.
- (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. 15
- (6) The family dispute resolution provider must give each of the parties to the family dispute a form that states—
- (a) the matters on which the parties reached, and did not reach, resolution while the family dispute resolution provider was dealing with the dispute; and 20
- (b) if proceedings are commenced, or have been commenced, whether, in the opinion of the provider,—
- (i) a settlement conference would be likely to facilitate settlement of the matters on which the parties did not reach resolution; and 25
- (ii) at least 1 of the parties would need legal representation at a settlement conference in order to participate effectively in that hearing. 30
- (7) **Subsection (8)** applies when a family dispute resolution provider and the parties agree that resolution has been reached on all matters in dispute.
- (8) The family dispute resolution provider must give each of the parties to the family dispute a form that states— 35
- (a) all of the matters on which resolution has been reached; and
- (b) the agreement reached in respect of those matters.

- (9) A family dispute resolution provider cannot be required to attend court to explain the opinion of the family dispute resolution provider given under **subsection (6)**.

60C Provision of family dispute resolution forms to court

- (1) If the parties have attended family dispute resolution pursuant to a direction made under **section 46D** of the Care of Children Act 2004, the family dispute resolution provider must send to the court a copy of the form given to the parties under **section 60B(2), (4), (6), or (8)**. 5
- (2) In any other case where the parties have attended family dispute resolution and proceedings have been commenced, the family dispute resolution provider must send to the court a copy of the form given to the parties under **section 60B(2), (4), (6), or (8)** if— 10
- (a) requested to do so by the court; and 15
- (b) the request is received by the family dispute resolution provider no more than 12 months after completion of the family dispute resolution.

60D Privilege

- (1) This section applies to a statement that 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. 20
- (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. 25
- (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. 30

60E Regulations

The Governor-General may, from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing for the purposes of **section 58(2)** any criteria that the Secretary must apply when deciding whether to approve an organisation as a dispute resolution organisation:
- (b) prescribing for the purposes of **section 59** the grounds on which the Secretary may suspend or cancel the approval of an organisation as an approved dispute resolution organisation, which may include— 5
- (i) that the approval was given on the basis of information that was false or misleading in a material respect; or 10
- (ii) that the organisation no longer satisfies any criteria for approval prescribed by regulations made under **paragraph (a)**; or
- (iii) that the organisation has requested the suspension or cancellation of the approval; or 15
- (iv) that the organisation has been wound up or dissolved, or has otherwise ceased to exist:
- (c) prescribing for the purposes of **section 60(2)** the qualification and competency requirements that must be met for a person to be appointed as a family dispute resolution provider, which, without limitation, may require a person— 20
- (i) to be a member of a specified professional body;
- (ii) to have a specified qualification: 25
- (iii) to have a specified level of dispute resolution experience:
- (d) prescribing for the purposes of **section 60(2)** any matters that disqualify a person from being appointed as a family dispute resolution provider, which, without limitation, may include having a conviction for certain types of offences: 30
- (e) prescribing the content of a family dispute resolution form.

Part 4

Amendments to Legal Services Act 2011

70 Principal Act

This Part amends the Legal Services Act 2011 (the **principal Act**).

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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—

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“(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) or (5A)** 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

“(c) a lawyer is providing legal advice and assistance to—

“(i) a proposed applicant, in connection with the commencement of proceedings; or

“(ii) a respondent, in connection with the preparation of a notice of intention to appear or a notice of defence; or

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“(d) a lawyer is giving legal advice to a party who—

“(i) has indicated at a settlement conference an intention to consent to the making of an order settling 1 or more of the issues in dispute in the proceedings; and

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“(ii) has been advised by the Judge to obtain legal advice before that order is made.

“(3B) The kinds of proceedings referred to in **subsection (3A)(a)** are—

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“(a) proceedings commenced by an application that—

“(i) affects the applicant only; or

- “(ii) is in respect of a routine matter; or
 “(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.” 5
- (2) After section 7(5), insert:
- “(6) **Subsections (3A) and (3B)** do not apply in respect of any proceedings commenced under the Care of Children Act 2004 before ~~4 October 2013~~ the date of commencement of Part 1 of the Family Court Proceedings Reform Act 2013.” 10

Part 5

Amendments to other Acts

Subpart 1—Amendments to Child Support Act 1991

- 72 **Principal Act** 15
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)**
 Replace section 226 with: 20
- “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 25
 “(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** 30
 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.

“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— 5
- “(a) be determined in accordance with regulations made under **section 16D** of the **Family Disputes (Resolution Methods) Act 1980** Family Courts Act 1980; 10
- and
- “(b) be paid out of public money appropriated by Parliament for the purpose.
- “(2) ~~The bill of costs~~ An invoice rendered by a lawyer appointed under **section 226 or 226A** for fees and expenses must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may tax the ~~bill of costs~~ invoice. 15
- “(3) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the ~~bill of costs~~ invoice may, within 14 days after the date of the decision, apply to a Family Court Judge to review the decision; and the Judge may on the application 20 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.~~ 25 30
- “(4) Where the fees and expenses of a lawyer appointed under **section 226** have been paid under **subsection (1)(b)**, the court may, if it thinks it appropriate, order a party to the proceedings to refund to the Crown an amount the court specifies in respect of those fees and expenses, and the amount ordered to be refunded is a debt due to the Crown by that party and, in default of payment of that amount, payment may be enforced, 35

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.

- “(5) Where the fees and expenses of a lawyer appointed under **section 226A** have been paid under **subsection (1)(b)**, the court must make an order under **section 226C** unless the court declines to do so in accordance with that section. 5
- “(6) However, no order under **section 226C** may be made against the Crown, whether acting through the department for the time being responsible for the administration of this Act or otherwise. 10

“226C Order requiring refund of costs payments

- “(1) An order referred to in **section 226B(5)** must order the parties to refund to the Crown the prescribed proportion of the amount paid by the Crown, under **section 226B(1)(b)**, in respect of the appointment of the lawyer under **section 226A**. 15
- “(2) Each party must pay an equal share of the prescribed proportion. 20
- “(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. 25
- “(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. 30
- “(5) In this section,—
 “**dependent child**, in relation to a party, means a child whose day-to-day care is substantially the responsibility of the party
 “**prescribed proportion** means the same proportion that is prescribed by regulations made under section 147 of the Care of Children Act 2004 for the purposes of **section 135A** of that Act
 “**serious hardship**, in relation to a party or a dependent child of a party, has the same meaning as in section 135G(3). 35

“226D Enforcement of orders made under section 226C

“(1) The amount that a party is ordered to refund under **section 226C is a debt due to the Crown by that party and may be enforced in the same manner as a judgment given by the District Court in any civil proceeding.**

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“(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—**

10

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

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

“(3) For the purposes of section 14(1)(b) of the Crown Proceedings Act 1950, the Secretary for Justice may, on behalf of the Crown, enforce a debt under this section.

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“226E Time may be extended for payments ordered under section 226C

“(1) If an amount that a party is ordered to refund under **section 226C is outstanding, the Registrar may enter into an arrangement with the party to allow for either or both of the following:**

20

“(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.**

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

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73A Section 232 amended (Costs)

In section 232, insert as subsection (2):

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“(2) This section is subject to **section 226B(5).”**

74 Section 235 amended (Regulations)

Repeal section 235(1)(d).

74A New section 268A and cross-heading inserted

After section 268, insert:

*“Subpart 1 of Part 5 of the Family Court
Proceedings Reform Act 2013”*

5

**“268A Transitional provision for proceedings pending before
the commencement of subpart 1 of Part 5 of the Family
Court Proceedings Reform Act 2013 but not completed
by that date**

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**“(1) This section applies to proceedings under this Act that were
commenced before the date of commencement of subpart 1
of Part 5 of the Family Court Proceedings Reform Act
2013 but were not by that date completed (a pending pro-
ceeding).**

15

**“(2) The following provisions do not apply to a pending proceed-
ing:**

“(a) section 226A:

“(b) section 226B:

“(c) section 226C:

“(d) section 226D:

“(e) section 226E.

20

**“(3) Section 226, as in force immediately before the date of com-
mencement of subpart 1 of Part 5 of the Family Court Pro-
ceedings Reform Act 2013, continues to apply to a pending
proceeding with any necessary modifications as if subpart 1
of Part 5 of the Family Court Proceedings Reform Act
2013 had not come into force.”**

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

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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: 5

“(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**”. 10

(2) In section 159, replace “barrister or solicitor” with “lawyer” in each place.

(3) In section 159(3)(a), replace “barrister’s or solicitor’s” with “lawyer’s”. 15

78 Sections 160 and 161 replaced

Replace sections 160 and 161 with:

“160 Appointment of lawyer to assist court

In any proceedings in a Family Court under Part 2 or 3A, the court may— 20

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

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

“161 Further provisions relating to appointment under section 159 or 160 25

“(1) A lawyer appointed under section 159—

“(a) must be served with all documents required to be served 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: 30

“(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**—
- “(a) must be served with all documents required to be served on the parties to the proceedings; and 5
- “(b) may request the court to obtain any report that the court is empowered to obtain for the purposes of the proceedings.”
- 79 Section 162 amended (Payment of barrister or solicitor appointed under section 159 or section 160)** 10
- (1) Replace the heading to section 162 with “**Payment of lawyer appointed under section 159 or 160**”:
- (2) Replace section 162(1) with:
- “(1) The fees and expenses of any lawyer appointed under section 159 or **160** must— 15
- “(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.” 20
- (3) In section 162(2) and (3), replace “barrister or solicitor” with “lawyer”.
- 79 Section 162 replaced**
- Replace section 162 with:
- “162 Payment of lawyer appointed under section 159 or 160** 25
- “(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 Courts Act 1980; and**
- “(b) be paid out of public money appropriated by Parliament for the purpose.** 30
- “(2) An invoice rendered by a lawyer appointed under section 159 or 160 for fees and expenses must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may tax the invoice.** 35

- “(3) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the invoice may, within 14 days after the date of the decision, apply to a Family Court Judge to review the decision, and the Judge may on the application make any order varying or confirming the decision that the Judge considers fair and reasonable.” 5
- “(4) Where the fees and expenses of a lawyer appointed under section 159 or **160** have been paid under **subsection (1)(b)**, the court may, if it thinks it is appropriate, order a party to the proceedings to refund to the Crown an amount the court specifies in respect of those fees and expenses, and the amount ordered to be refunded is a debt due to the Crown by that party and, in default of payment of that amount, payment 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.” 10 15

80 New sections 206A and 206B inserted

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~~ the final direction or order 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— 30
- “(a) any party to the previous proceeding;
- “(b) any child or young person who was the subject of the previous proceeding.
- “(3) In this section, a proceeding is **substantially similar** to a previous proceeding if— 35
- “(a) the party commencing the new proceeding was a party to the previous proceeding; and

- “(b) a child who is the subject of the new proceeding was the subject of the previous proceeding; and
- “(c) the proceeding—
- “(i) is commenced under the same provision of this Act as the previous proceeding; or 5
- “(ii) is for an order varying the order made in the previous proceeding; or
- “(iii) is for an order discharging the order made in the previous proceeding.
- “(4) This section does not apply if— 10
- “(a) every party to the new proceeding consents to its commencement; or
- “(b) the new proceeding is commenced by—
- “(i) the chief executive; or
- “(ii) a social worker; or 15
- “(iii) a constable.

“206B Power to dismiss proceedings

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.” 25

81 Section 447 amended (Regulations)

Repeal section 447(e)(i).

Subpart 2A—Amendments to Family Courts
Act 1980

81A Principal Act

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

81B New sections 9A to 9C inserted

After section 9, insert:

“9A Duty on lawyers to promote conciliation**“(1) A lawyer acting for a party in any proceeding in the Family Court must, so far as possible, promote conciliation.****“(2) In **subsection (1)**, party includes a proposed party.****“9B Role of lawyer appointed to represent child or young person in proceedings**

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“(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:**

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“(b) ensure that any views expressed by the child or young person to the lawyer on matters affecting the child or young person and relevant to the proceedings are communicated to the court:

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“(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:**“(d) provide advice to the child or young person, at a level commensurate with that child’s or young person’s level of understanding, about—**

20

“(i) any right of appeal against a decision of the court; and**“(ii) the merits of pursuing any such appeal:****“(e) undertake any other task required by or under any other Act.**

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“(2) To facilitate the role set out in **subsection (1)(b), the lawyer must meet with the child or young person and, if it is appropriate to do so having regard to that child’s age and maturity, ascertain the child’s or young person’s views on matters affecting the child or young person relevant to the proceedings.**

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“(3) However, **subsection (2) does not apply if, because of exceptional circumstances, a Judge directs that it is inappropriate for the lawyer to meet with the child or young person.****“(4) A lawyer appointed to represent a child or young person in proceedings may—**

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“(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.”

“9C Role of lawyer appointed to assist court

- “(1) The role of a lawyer who is appointed to assist the court in proceedings is to—” 5
- “(a) provide independent legal advice to the court on any complex factual or legal issue requested by the court:
- “(b) offer an impartial perspective in relation to any issue arising in the proceedings:
- “(c) undertake any other task required by or under any other Act.” 10
- “(2) A lawyer appointed to assist the court in proceedings may—”
- “(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.” 15

81C 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 20
- “(b) in a court described in **subsection (3)**.
- “(2) The Acts referred to in **subsection (1)(a)** are as follows:
- “(a) the Adoption Act 1955:
- “(b) the Care of Children Act 2004:
- “(c) the Child Support Act 1991: 25
- “(d) the Children, Young Persons, and Their Families Act 1989:
- “(e) the Domestic Violence Act 1995:
- “(f) the Family Proceedings Act 1980:
- “(g) the Property (Relationships) Act 1976: 30
- “(h) the Protection of Personal and Property Rights Act 1988.
- “(3) The courts referred to in **subsection (1)(b)** are as follows:
- “(a) a Family Court:
- “(b) a District Court that has concurrent jurisdiction with a Family Court: 35

- “(c) a District Court acting under section 15:
“(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— 5
“(i) under an Act described in **subsection (2)**; and
“(ii) not a criminal proceeding; and
“(iii) one in which the court receives evidence or fur-
ther evidence.
- “(4) The effect of section 5(3) of the Evidence Act 2006 is that that 10
Act applies to the proceeding. However, the court hearing the
proceeding may receive any evidence, whether or not admis-
sible under the Evidence Act 2006, that the court considers
may assist it to determine the proceeding.”
- 81D Section 16B amended (Regulations)** 15
(1) In the heading to section 16B, after “**Regulations**”, insert “**re-**
lating to court fees”.
(2) Repeal section 16B(1)(g).
- 81E New section 16D inserted**
After section 16C, insert: 20
- “16D Regulations relating to payments to professionals**
“Fees and expenses for lawyers for child and lawyers to
assist court
- “(1) In **subsections (2) to (5)**, lawyer means either of the follow- 25
ing:
“(a) a lawyer appointed under any of the following provi-
sions to represent a child:
“(i) **section 7** of the Care of Children Act 2004:
“(ii) **section 226** of the Child Support Act 1991:
“(iii) section 159(1) of the Children, Young Persons, 30
and Their Families Act 1989:
“(iv) section 81(1)(b) of the Domestic Violence Act
1995:
“(v) **section 162(1)** of the Family Proceedings Act
1980: 35

- “(vi) section 37A(1) of the Property (Relationships) Act 1976; or
- “(b) a lawyer appointed under any of the following provisions to assist the court:
- “(i) section 130 of the Care of Children Act 2004: 5
- “(ii) section 226A of the Child Support Act 1991:
- “(iii) section 160 of the Children, Young Persons, and Their Families Act 1989:
- “(iv) section 81(1)(a) of the Domestic Violence Act 1995: 10
- “(v) section 162A of the Family Proceedings Act 1980:
- “(vi) 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 for determining— 15
- “(a) the fees payable to a lawyer in respect of the lawyer’s appointment:
- “(b) the expenses payable to a lawyer in respect of the lawyer’s appointment. 20
- “(3) Regulations under **subsection (2)(a)** may—
- “(a) prescribe the maximum hourly rate or rates for the fee payable, and different rates may be prescribed depending on—
- “(i) the complexity of the proceedings: 25
- “(ii) the number of proceedings in which the lawyer is engaged during a specified period:
- “(b) prescribe the maximum number of hours for which the fee is payable, and different numbers of hours may be prescribed depending on— 30
- “(i) the complexity of the proceedings:
- “(ii) the number of proceedings in which the lawyer is engaged during a specified period:
- “(c) provide that any rate prescribed under **paragraph (a)**, or any number of hours prescribed under **paragraph (b)**, or both, may be increased by the court in a particular proceeding if the court is satisfied that the increase is justified because of exceptional circumstances. 35

- “(4) If no regulations are made under **subsection (2)(a)** in respect of any lawyer, the fees payable to that lawyer are to be determined by the Registrar of the court.
- “(5) Regulations under **subsection (2)(b)** may prescribe—
- “(a) the types of expenses for which a lawyer may claim reimbursement: 5
 - “(b) the rate of reimbursement of those expenses:
 - “(c) the circumstances in which expenses may be reimbursed.
- “*Fees and expenses for report writers under Care of Children Act 2004*
- “(6) In **subsections (7) to (10)**, report writer means any of the following:
- “(a) a person who prepares a cultural report when requested to do so under section **133(2)** of the Care of Children Act 2004: 15
 - “(b) a person who prepares a medical report, when requested to do so under section **133(2)** of the Care of Children Act 2004:
 - “(c) a person who prepares a psychiatric report when requested to do so under section **133(2)** of the Care of Children Act 2004: 20
 - “(d) a person who prepares a psychological report when requested to do so under section **133(5)** of the Care of Children Act 2004. 25
- “(7) The Governor-General may, from time to time, by Order in Council, make regulations for determining—
- “(a) the fees payable to a report writer for doing either or both of the following: 30
 - “(i) preparing a report:
 - “(ii) attending as a witness in the proceedings for which the report writer prepared the report:
 - “(b) the expenses payable to a report writer for doing either or both of the following: 35
 - “(i) preparing a report:
 - “(ii) attending as a witness in the proceedings for which the report writer prepared the report.
- “(8) Regulations under **subsection (7)(a)** may—

- “(a) prescribe the maximum hourly rate or rates for the fee payable, and different rates may be prescribed depending on—
- “(i) the type of report:
 - “(ii) the complexity of the proceedings: 5
 - “(iii) the number of proceedings in which the report-writer is engaged during a specified period:
- “(b) prescribe the maximum number of hours for which the fee is payable, and different numbers of hours may be prescribed depending on— 10
- “(i) the type of report:
 - “(ii) the complexity of the proceedings:
 - “(iii) the number of proceedings in which the report-writer is engaged during a specified period:
- “(c) provide that any rate prescribed under **paragraph (a)**, or any number of hours prescribed under **paragraph (b)**, or both, may be increased by the court in a particular proceeding if the court is satisfied that the increase is justified because of exceptional circumstances. 15
- “(9) If no regulations are made under **subsection (7)(a)** in respect of any report writer, the fees payable to that report writer are to be determined by the Registrar of the court. 20
- “(10) Regulations under **subsection (7)(b)** may prescribe the following:
- “(a) the types of expenses for which a report writer may claim reimbursement: 25
 - “(b) the rate of reimbursement of those expenses:
 - “(c) the circumstances in which expenses may be reimbursed.”
- 81F Section 17 amended (Certain enactments amended)** 30
Repeal section 17(2).
- 81G New section 17A inserted (Repeals)**
After section 17, insert:
- “17A Repeals** 35
The following provisions are repealed:
- “(a) section 24 of the Adoption Act 1955:
 - “(b) section 128 of the Care of Children Act 2004:

	<u>“(c) section 228 of the Child Support Act 1991:</u>	
	<u>“(d) section 195 of the Children, Young Persons, and Their Families Act 1989:</u>	
	<u>“(e) section 84 of the Domestic Violence Act 1995:</u>	
	<u>“(f) section 4 of the Family Courts Amendment Act 2008:</u>	5
	<u>“(g) section 164 of the Family Proceedings Act 1980:</u>	
	<u>“(h) section 36 of the Property (Relationships) Act 1976:</u>	
	<u>“(i) section 77 of the Protection of Personal and Property Rights Act 1988.”</u>	
	 Subpart 3—Amendments to Family Proceedings Act 1980	10
82	Principal Act This subpart amends the Family Proceedings Act 1980 (the principal Act).	
83	Section 2 amended (Interpretation) In section 2, repeal the definitions of—	15
	(a) approved marriage or civil union guidance organisation or counselling organisation:	
	(b) attachment order:	
	(c) charging order:	20
	(d) child of the civil union:	
	(e) counsellor:	
	(f) employer:	
	(g) family chattels:	
	(h) family home:	25
	(i) mediation conference:	
	(j) salary or wages.	
84	Section 5 repealed (Marriage or civil union guidance or counselling organisations) Repeal section 5.	30
85	Part 2 repealed Repeal Part 2.	

86 Section 160 amended (Applications may be heard together)

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)

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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—

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“(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.

15

“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

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“(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

“(1) The fees and expenses of a lawyer appointed under **section 162 or 162A** must—

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

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

“(2) ~~The bill of costs~~ An invoice rendered by a lawyer appointed under **section 162 or 162A** for fees and expenses must be

given to the Registrar of the court in which the proceedings were heard, and the Registrar may tax the ~~bill of costs~~ invoice.

“(3) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the ~~bill of costs~~ invoice may, within 14 days after the date of the decision, apply to a Family Court Judge to review the decision; and the Judge may on the application make any order varying or confirming the decision that the Judge considers fair and reasonable. 5

“(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.~~ 10 15

“(4) Where the fees and expenses of a lawyer appointed under **section 162** have been paid under **subsection (1)(b)**, the court may, if it thinks it appropriate, order a party to the proceedings to refund to the Crown an amount the court specifies in respect of those fees and expenses, and the amount ordered to be refunded is a debt due to the Crown by that party and, in default of payment of that amount, payment 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. 20 25

“(5) Where the fees and expenses of a lawyer appointed under **section 162A** have been paid under **subsection (1)(b)**, the court must make an order under **section 162C** unless the court declines to do so in accordance with that section.

“(6) However, no order under **section 162C** may be made against the Crown, whether acting through the department for the time being responsible for the administration of this Act or otherwise. 30

“162C Order requiring refund of costs payments

“(1) An order referred to in **section 162B(5)** must order the parties to refund to the Crown the prescribed proportion of the amount 35

paid by the Crown, under **section 162B(1)(b)**, in respect of the appointment of the lawyer under **section 162A**.

“(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.

“(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.

“(5) In this section,—

“**dependent child**, in relation to a party, means a child whose day-to-day care is substantially the responsibility of the party
“**prescribed proportion** means the same proportion that is prescribed by regulations made under section 147 of the Care of Children Act 2004 for the purposes of **section 135A** of that Act

“**serious hardship**, in relation to a party or a dependent child of the party,—

“(a) includes significant financial difficulties that arise because of—

“(i) the party’s inability to meet minimum living expenses according to normal community standards; or

“(ii) the cost of medical treatment for an illness or injury of the party or a dependent child of the party; or

“(iii) a serious illness suffered by the party or by a dependent child of the party; or

“(iv) the cost of education for a dependent child of the party;

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

- “(i) the social activities and entertainment of the party or those of a dependent child of the party may be limited; or
- “(ii) the party is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards. 5

“162D Enforcement of orders made under section 162C

- “(1) The amount that a party is ordered to refund under **section 162C** 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.
- “(3) For the purposes of section 14(1)(b) of the Crown Proceedings Act 1950, the Secretary for Justice may, on behalf of the Crown, enforce a debt under this section. 20

“162E Time may be extended for payments ordered under section 162C

- “(1) If an amount that a party is ordered to refund under **section 162C** 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. 35

“(4) If an amount may be paid by instalments and default is made in the payment of any instalment, proceedings may be taken against the person in default as if default had been made in the payment of all instalments then remaining unpaid.”

88 Section 165 amended (Power of District Court or Family Court to call witnesses) 5

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 10

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

88A Section 171 amended (Costs)

After section 171(2), insert:

“(3) This section is subject to **section 162B(5)**.” 15

89 Section 187 amended (Regulations)

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

90 New ~~section~~ sections 193 and 194 inserted (~~Transitional provision for counselling or mediation arranged before commencement of subpart 3 of Part 5 of Family Court Proceedings Reform Act 2012~~) 20

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~~3~~ 25

If any counselling or mediation has been arranged under Part 2 before ~~4 October 2013~~ the date of commencement of **subpart 3 of Part 5 of the Family Court Proceedings Reform Act 2013**, but that counselling or mediation has not been commenced or completed by that date,— 30

“(a) the counselling or mediation may be commenced or completed on or after ~~4 October 2013~~ the date of commencement of **subpart 3 of Part 5 of the Family Court Proceedings Reform Act 2013** as if subpart

3 of Part 5 of the Family Court Proceedings Reform Act 2012²³ had not come into force; but

- “(b) the counselling or mediation may not be commenced or continued after **31 January 2014** 4 months after the date of commencement of **subpart 3 of Part 5 of the Family Court Proceedings Reform Act 2013**.” 5

“194 Transitional provision for proceedings pending before the commencement of subpart 3 of Part 5 of the Family Court Proceedings Reform Act 2013 but not completed by that date” 10

- “(1) This section applies to proceedings under this Act that were commenced before the date of commencement of **subpart 3 of Part 5 of the Family Court Proceedings Reform Act 2013** but were not by that date completed (a **pending proceeding**).” 15

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

“(a) **section 162A**:

“(b) **section 162B**:

“(c) **section 162C**:

“(d) **section 162D**:

“(e) **section 162E**.” 20

- “(3) Section 162, as in force immediately before the date of commencement of **subpart 3 of Part 5 of the Family Court Proceedings Reform Act 2013** continues to apply to a pending proceeding with any necessary modifications as if **subpart 3 of Part 5 of the Family Court Proceedings Reform Act 2013** had not come into force.” 25

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)**”. 30

Subpart 4—Amendments to Property
(Relationships) Act 1976

- 92 Principal Act**
This subpart amends the Property (Relationships) Act 1976 (the **principal Act**). 5
- 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: 10
 “(a) must be determined in accordance with regulations made under **section 16D** of the **Family Disputes (Resolution Methods) Act 1980** Family Courts Act 1980; and”.
- 95 New section 38A and cross-heading inserted** 15
 After section 38, insert:
“Transfer of proceedings
“38A Transfer of proceedings to High Court
 “(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. 20
 “(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)—
 “(a) the complexity of the proceedings or of any question in issue in the proceedings: 25
 “(b) any proceedings before the High Court that are between the same parties and that involve related issues.
 “(3) An order may be made under **subsection (1)** on—
 “(a) the application of a party to the proceedings; or 30
 “(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.”

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

97 Principal Act 5

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**”.

(2) In section 65, replace “barrister or solicitor” with “lawyer” in each place.

(3) Repeal section 65(3). 15

(4) In section 65(5), replace “barristers or solicitors” with “lawyers”.

(5) Replace section 65(6) with:

“(6) An invoice rendered by a lawyer appointed under this section for fees and expenses must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may tax the invoice.” 20

(6) In section 65(7), replace “bill” with “invoice”.

99 New sections 65A and 65B inserted (~~Appointment of lawyer to assist court~~) 25

After section 65, insert:

“65A Appointment of lawyer to assist court

In any proceedings under this Act, 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. 30

“65B Payment of lawyer appointed under section 65A

“(1) The fees and expenses of any lawyer appointed under **section 65A must—**

- “(a) be determined in accordance with regulations made under **section 16D** of the Family Courts Act 1980; and** 5
- “(b) be paid out of public money appropriated by Parliament for the purpose.**

“(2) An invoice rendered by a lawyer appointed under **section 65A for fees and expenses must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may tax the invoice.** 10

“(3) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the invoice may, within 14 days after the date of the decision, apply to a Family Court Judge to review the decision; and the Judge may on the application make any order varying or confirming the decision that the Judge considers fair and reasonable. 15

“(4) Where the fees and expenses of a lawyer appointed under **section 65A have been paid under **subsection (1)(b)**, the court may, if it thinks it appropriate, order a party to the proceedings to refund to the Crown an amount the court specifies in respect of those fees and expenses, and the amount ordered to be refunded is a debt due to the Crown by that party and, in default of payment of that amount, payment 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.”** 20 25

100 Section 76 amended (Court may call for report on person)

- (1) In section 76, replace “barrister or solicitor” with “lawyer” in each place.
- (2) In section 76(3)(b), replace “section 65(3)” with “**section 65A**”. 30
- (3) In section 76(6), replace “section 65(3)” with “**section 65A**”.

101 Section 78 amended (Power of court to call witnesses)

In section 78(3), delete “, or by any barrister or solicitor assisting the court,”. 35

102 Section 79 amended (Attendance at hearings)

Replace section 79(1)(f) with:

“(f) a lawyer appointed under **section 65A** to assist the court.”.

103 Section 88 amended (Procedure on review)

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In section 88, replace “65” with “**65A**”.**104 Section 112 amended (Regulations)**

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

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