

Family Courts Matters Bill

Government Bill

As reported from the Social Services
Committee

Commentary

Recommendation

The Social Services Committee has examined the Family Courts Matters Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to make Family Court proceedings more open and improve the efficiency and effectiveness of the Family Courts. The bill incorporates recommendations made in the Law Commission's 2003 report, *Dispute Resolution in the Family Court*, and the Commission's 2004 report, *Delivering Justice for All*. The changes introduced by the bill are intended to enhance the public's confidence in the Family Courts by making them more open to scrutiny. The bill is a response to criticism from individuals, interest groups, and the media about the closed nature of the Family Courts. The principle of openness was introduced in the Care of Children Act 2004 and this bill brings other family law statutes into line with the changes introduced in that Act.

This commentary focuses on our recommendations for significant changes, and does not cover minor changes of a technical nature.

Publication

Reports of Family Court proceedings

We recommend changes to new sections 11B to 11E of the Family Courts Act 1980, as inserted by clause 45, to consolidate reporting provisions in the family law statutes and create a generic reporting provision applicable to all Family Court proceedings. Our suggested amendments include protecting the disclosure of identifying information where a person under the age of 18 years is involved in proceedings, broadening the definition of “vulnerable person,” and providing specified exemptions for the reporting of proceedings in professional and technical publications. These changes also carry over the existing prohibition on the disclosure of the name of any school that a person who is the subject of proceedings under the Children, Young Persons, and Their Families Act 1989 is or was attending, or any other particulars likely to lead to the identification of the school. The reporting provisions in individual statutes have been amended to apply sections 11B to 11D of the Family Courts Act. These changes would create consistency in the reporting of Family Court proceedings and simplify this body of law.

We also recommend the removal of provisions in the bill as drafted that in some cases would have allowed children or vulnerable people to publish, without the leave of the Judge, reports of proceedings containing identifying information. We are concerned that children and vulnerable people may not fully understand the consequences of their actions, and these provisions might leave them open to manipulation.

Proceedings under Child Support Act 1991

Clauses 22 to 24 of the bill provide the Commissioner of Inland Revenue with the power to determine who may publish reports of proceedings under the parts of the Child Support Act 1991 that relate to exemptions for certain groups of people, including hospital patients and prisoners, and departures from formula assessments. We recommend an amendment to allow the Family Court to continue to grant leave to publish reports of these proceedings.

DNA testing

We have been advised that an amendment to enable the Family Court to order DNA testing when paternity is disputed is outside the scope of this bill. New Zealand Labour, New Zealand National, ACT New Zealand, and United Future consider that child support is a substantial financial obligation and this anomaly should be addressed.

Counselling for children

We recommend three amendments to Part 2 of the bill in order to extend counselling services to children under the Care of Children Act 2004. Proposed new section 46P (clause 9) of the Care of Children Act would allow the Court, in exceptional circumstances, to direct that a child attend counselling if the Court believed that the child might have difficulty accepting or complying with a court order. Only a small proportion of children are likely to need such counselling services, as only 5 to 6 percent of Family Court cases involve defended hearings. Under new section 46T(3)(c) (clause 9) children would be permitted to attend counselling when the day-to-day care, contact, or guardianship of the child is in dispute. New section 46ZA (clause 9) would permit a child who wants to participate in mediation to request counselling, to clarify his or her views in preparation.

Research shows that children who have been consulted cope better when their parents separate, and counselling can help parents focus on children's needs.

Impact on the Care of Children Act 2004

We recommend changes to the bill as introduced to separate the counselling and mediation provisions in the Care of Children Act 2004 from those in the Family Proceedings Act 1980. Increased access to, and attendance at, counselling and mediation under the amended bill would mean it would no longer be tenable for the Care of Children Act to continue to rely on the provisions in the Family Proceedings Act relating to counselling and mediation. We recommend that cross-references be removed, and provisions in the Family Proceedings Act be adapted and inserted into the Care of Children Act. Our amendments would mean that counselling and mediation under the Care of Children Act would relate to disputes about children, while

counselling and mediation under the Family Proceedings Act would address relationship disputes.

McKenzie friends and support persons

The attendance of support persons does not affect the common law entitlement to use a McKenzie friend. A McKenzie friend may help a litigant conduct his or her case when the litigant does not have legal representation. A support person, by contrast, is present only to provide emotional and personal support. We recommend changes to the bill to make it clear that the attendance of support persons does not limit the power of the court to permit a McKenzie friend to be present (clauses 4, 19A, 30, 31, 40, 45, 66, and 83).

Guardianship disputes and mediation

We recommend an amendment to introduce new sections 46J(1)(a) and 46J(2) in clause 9 to allow guardianship disputes that are the subject of proceedings to be referred to mediation; and an amendment to introduce new section 46Z(c) to allow any lawyer appointed to act for a child who is the subject of the dispute to attend the mediation.

Transitional provisions for civil unions

The bill inserts new section 2BAA in the Property (Relationships) Act 1976 to provide that a de facto relationship that immediately precedes a civil union is to be taken into account when determining the length of a civil union relationship (clause 77). We recommend new section 97A (new clause 79A) be inserted to clarify that new section 2BAA applies to proceedings if the hearing of proceedings commences after section 2BAA comes into force.

Other amendments

We recommend amending new section 12D of the Family Proceedings Act 1980, as inserted by clause 55, to extend from 28 to 42 the number of days that must elapse after a referral to mediation before a party can request that a hearing proceed.

We recommend amending the bill to remove the requirement to specify the issues to be addressed and tasks to be completed, when a direction is issued to appoint counsel to assist the Court (clauses 18,

29, 81), to appoint a lawyer to represent a child or person who is the subject of the proceedings (clauses 6 and 28), or to request a person to prepare a written report (clauses 19 and 82). We consider that allowing the Court to detail specific issues and tasks would create an inconsistency between appointments made by Registrars and those made by Judges.

We recommend amending clause 4, which specifies who may attend the hearing of an application under the Adoption Act 1955, to clarify that a respondent, the respondent's lawyer, and any support person for the respondent may attend.

Appendix

Committee process

The Family Courts Matters Bill was referred to the committee on 4 September 2007. The closing date for submissions was 29 October 2007. We received and considered 36 submissions from interested groups and individuals. We heard 22 submissions.

We received advice from the Ministry of Justice.

Committee membership

Russell Fairbrother (Chairperson)

Sue Bradford

Hon Steve Chadwick (until 7 November 2007)

Bob Clarkson

Judith Collins (Deputy Chairperson)

Hon Harry Duynhoven (until 7 November 2007)

Hon George Hawkins (from 7 November 2007)

Dr Paul Hutchison

Hon Steve Maharey (from 7 November 2007)

Lynne Pillay

Heather Roy

Katrina Shanks

Judy Turner

Family Courts Matters Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Rick Barker

Family Courts Matters Bill

Government Bill

Contents

		Page
1	Title	7
2	Commencement	7
 Part 1		
Adoption Act 1955		
3	Principal Act amended	7
4	New sections 22 and 22A substituted	7
	22 Attendance at hearings	7
	22A Publication of reports of proceedings	9
 Part 2		
Care of Children Act 2004		
5	Principal Act amended	9
6	Lawyer to act for child	9
6A	Interpretation	9
7	Agreements between parents and guardians	10
8	Cross-heading and sections repealed	11
9	New sections 46C to 46ZF and heading inserted	11
	46C Certain children may seek review of parent's or guardian's decision or refusal to give consent	11
	<i>Counselling and mediation to resolve disputes</i>	
	46D Duty of lawyers to promote reconciliation and conciliation	12
	46E Duty of Courts as to reconciliation and conciliation	12

Family Courts Matters Bill

46F	Disputes between guardians	13
46G	Request for counselling by party to agreement or person proposing to enter agreement	13
46H	Request for mediation by party to an agreement or person proposing to enter agreement	14
46I	Counselling where proceedings commenced	14
46J	Mediation where proceedings commenced	15
46K	Mediation conference	15
46L	Procedure at mediation conference	16
46M	Attendance at mediation conference	16
46N	Power of Chairperson to make consent orders at mediation conference	17
46O	Proceedings after mediation conference	17
46P	Counselling for child on making of parenting order or order relating to guardianship matter	18
46Q	Request for counselling by party to parenting order	18
46R	Request for mediation by party to parenting order	18
46S	Registrar may decline requests for counselling or mediation and recommend instead applications under section 68	19
46T	Reference to counsellor	19
46U	Duty of counsellors	20
46V	Number of sessions of counselling	20
46W	Counselling fees and expenses	20
46X	Reference to mediator	21
46Y	Duties of mediators	21
46Z	Mediation must be held in private	22
46ZA	Child who is attending mediation may request counselling	22
46ZB	Mediation may be adjourned	23
46ZC	Duration of mediation	23
46ZD	Mediation fees and expenses	23
46ZE	Power to require attendance for counselling or mediation	23
46ZF	Privilege	24
10	Interpretation	24
12	Purpose and overview of sections 64 to 80	25
13	Guiding consideration and principles	25
14	Sections 65 to 67 repealed	26
17	Section 69 repealed	28
18	Counsel to assist Court	28

Family Courts Matters Bill

19	Reports from other persons	28
19A	Attendance at hearings generally	29
20	New section 139 substituted	29
	139 Publication of reports of proceedings	29
20A	Appeals to High Court	29
20B	Appeal to Court of Appeal	29
20C	Regulations	29
20D	Other Acts not affected	30

Part 3

Child Support Act 1991

21	Principal Act amended	31
22	New section 89X substituted	31
	89X Restriction on publication of reports of proceedings	31
23	New section 96P substituted	31
	96P Restriction on publication of reports of proceedings	32
24	New section 96ZF substituted	32
	96ZF Restriction on publication of reports of proceedings	32
25	Conduct of proceedings	33
26	New section 124 substituted	34
	124 Publication of reports of proceedings	34

Part 4

Children, Young Persons, and Their Families Act 1989

27	Principal Act amended	35
28	Appointment of barrister or solicitor to represent child or young person	35
29	Appointment of barrister or solicitor to assist Court	36
30	Persons entitled to be present at hearing of proceedings in Family Court	36
31	Persons entitled to be present at hearing of application under section 371	37
32	New section 437A inserted	38
	437A Publication of reports of proceedings under Part 2, Part 3A, or section 371	39
33	Restriction on publication of reports of proceedings	39

Family Courts Matters Bill

Part 5
Domestic Violence Act 1995

34	Principal Act amended	40
35	Notice of absence from programme	40
36	Programme provider may request variation of direction	40
37	New section 41A inserted	40
	41A Powers of Registrar on receipt of notice under section 39 or 41	40
38	Judge may call respondent or associated respondent before Court	40
39	New section 42A inserted	41
	42A Respondent or associated respondent called before Court	41
40	Conduct of proceedings	41
41	New section 125 substituted	42
	125 Restriction of publication of reports of proceedings	42

Part 6
Family Courts Act 1980

42	Principal Act amended	43
43	Counselling supervisors, counsellors, and other officers	43
44	Avoidance of unnecessary formality	43
45	New sections 11A to 11D inserted	43
	11A Attendance at hearings	43
	11B Publication of reports of proceedings	44
	11C Meaning of identifying information	46
	11D Meaning of vulnerable person	47
46	Family Courts Rules	48
47	New sections 16B and 16C inserted	48
	16B Regulations	48
	16C Reviews of decisions of Registrars concerning fees	49

Part 7
Family Proceedings Act 1980

48	Principal Act amended	50
49	Interpretation	50
50	New heading to Part 2 substituted	50
50A	Duty of legal advisers to promote reconciliation and conciliation	51
51	New heading inserted	51

Family Courts Matters Bill

52	Counselling where proceedings commenced	51
53	New section 11 substituted	51
	11 Reference to counsellor	51
54	New section 12 substituted	52
	12 Duties of counsellors	52
54A	New sections 12A and 12B substituted	53
	12A Number of sessions of counselling	53
	12B Counselling fees and expenses	53
55	New heading and sections 12C to 12J inserted	53
	<i>Mediation</i>	
	12C Requests for mediation	53
	12D Mediation where proceedings commenced	54
	12E Reference to mediator	54
	12F Duties of mediators	55
	12G Mediation must be held in private	56
	12H Mediation may be adjourned	56
	12I Duration of mediation	56
	12J Mediation fees and expenses	56
56	New heading inserted	57
56A	Mediation conference	57
57	Procedure at mediation conference	57
58	New section 14A inserted	57
	14A Attendance at mediation conference	57
59	Power of Chairman to make consent orders	58
60	Power to require attendance for counselling or mediation	58
61	New section 18 substituted	59
	18 Privilege	59
62	Duty of Courts as to reconciliation and conciliation	60
63	Discharge or variation of registered or confirmed order	60
64	Discharge, variation, etc, of child maintenance order	60
65	Court may make provisional order discharging, etc, child maintenance order	61
66	Conduct of proceedings	61
67	New section 169 substituted	62
	169 Publication of reports of proceedings	62
68	Section 186 repealed	62
69	Regulations	62

Part 8

Family Protection Act 1955

70	Principal Act amended	63
----	-----------------------	----

Family Courts Matters Bill

71	Claims against estate of deceased person for maintenance	63
----	--	----

Part 9
Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

72	Principal Act amended	64
73	New section 130 substituted	65
130	Publication of reports of proceedings	65

Part 10
Mental Health (Compulsory Assessment and Treatment) Act 1992

74	Principal Act amended	65
75	New section 25 substituted	66
25	Publication of reports of proceedings	66

Part 11
Property (Relationships) Act 1976

76	Principal Act amended	67
77	New section 2BAA inserted	67
	2BAA Civil union includes immediately preceding de facto relationship	67
78	New section 35 substituted	67
35	Attendance at hearings	67
79	New section 35A substituted	68
35A	Publication of reports of proceedings	68
79A	New section 97A inserted	68
97A	Transitional provisions applying in respect of section 2BAA	68

Part 12
Protection of Personal and Property Rights Act 1988

80	Principal Act amended	69
81	Appointment of barrister or solicitor by Court	69
82	Court may call for report on person	69
83	New section 79 substituted	70
79	Attendance at hearings	70
84	New section 80 substituted	72
80	Publication of reports of proceedings	72

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Family Courts Matters Act **2007**.

2 Commencement

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council. 5
- (2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions and for different purposes.

Part 1

10

Adoption Act 1955

3 Principal Act amended

This **Part** amends the Adoption Act 1955.

4 New sections 22 and 22A substituted

Section 22 is repealed and the following sections are substituted: 15

“22 Attendance at hearings

- “(1) The following persons may attend a hearing of an application under this Act:

“(a) officers of the Court: 20

“(b) ~~the applicant, or in the case of a joint application, the applicants parties to the proceedings:~~

“(c) ~~the lawyers representing the applicant or joint applicants parties to the proceedings:~~

“(d) a social worker who furnished a report under section 10: 25

“(e) accredited news media reporters:

“(f) persons whom the Judge permits to be present as support persons for ~~an applicant a party~~ on the request of that ~~applicant party~~:

“(g) any other persons whom the Judge permits to be present. 30

- “(2) No other person may attend a hearing of an application under this Act.

- “(3) The Judge must agree to a request under **subsection (1)(f)** unless the Judge considers there is a good reason why the named support persons should not be permitted to be present.
- “(4) No support persons may help an applicant conduct his or her case. 5
- “(5) If, during a hearing, the Judge requests a person of any of the following kinds to leave the courtroom, the person must do so:
- “(a) an accredited news media reporter;
 - “(b) a support person whom the Judge permitted to be present under **subsection (1)(f)**. 10
- “(6) Nothing in this section limits any other power of the Court—
- “(a) to hear proceedings in private; or
 - “(ab) to permit a McKenzie friend to be present; or
 - “(b) to exclude any person from the Court.
- “22A Publication of reports of proceedings 15**
- “(1) Subject to **subsection (2)**, any person may publish a report of proceedings under this Act:
- “(2) No person may, without the leave of the Court hearing the proceedings, publish a report of proceedings under this Act that includes any name or particulars likely to lead to the identification of any of the following persons: 20
- “(a) the child who is the subject of the proceedings;
 - “(b) the applicant or applicants in the proceedings;
 - “(c) a person who is related to, or associated with, a person referred to in **paragraph (a) or (b)** or who is, or may be, in any other way concerned in the matter to which the proceedings relate (for example, a support person for an applicant). 25
- “(3) However, a report of proceedings under this Act that includes any name or particulars likely to lead to the identification of the persons described in **subsection (2)(a) or (b) or (c)** may be published by the child who is the subject of the proceedings. 30
- “(4) The Court may grant leave under **subsection (2)** with or without conditions:
- “(5) Every person who contravenes **subsection (2)** commits an offence against this Act and is liable on summary conviction. 35

- “(a) in the case of an individual, either to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$2,000;
- “(b) in the case of a body corporate, to a fine not exceeding \$10,000.” 5
- “(6) Nothing in this section limits the power of a court to punish any contempt of Court.”

“22A Publication of reports of proceedings

- Sections 11B to 11D** of the Family Courts Act 1980 apply to the publication of a report of any proceedings under this Act— 10
- “(a) in a Family Court;
- “(b) in any other court, in which case references in those sections to the Family Court or Court must be read as references to that other court.”

Part 2

15

Care of Children Act 2004

5 Principal Act amended

This **Part** amends the Care of Children Act 2004.

6 Lawyer to act for child

- (1) Section 7(1) is amended by inserting “, or direct the Registrar of the Court to appoint,” after “appoint”. 20
- (2) Section 7(2) is amended by inserting “or a direction” after “appointment” in the second place where it appears.
- (3) Section 7 is amended by inserting the following subsection after subsection (2): 25
- “(2A) A direction to a Registrar under subsection (1) must set out—
- “(a) the issues to be addressed by the lawyer; and
- “(b) the tasks to be completed by the lawyer.”

6A Interpretation

- Section 8 is amended by inserting the following definitions in their appropriate alphabetical order: 30
- “counsellor has the meaning given to it by section 2 of the Family Proceedings Act 1980

“mediator has the meaning given to it by section 2 of the Family Proceedings Act 1980”.

7 Agreements between parents and guardians

- (1) Section 40 is amended by omitting the heading and substituting the following heading: “**Agreements relating to care of children**”. 5
- (2) Section 40(1) is amended by repealing paragraph (a) and substituting the following paragraph:
 - “(a) may request a Registrar of a Family Court to arrange—
 - “(i) counselling in respect of a dispute relating to the agreement, under **section 65(1) 46G(1)**; or 10
 - “(ii) mediation in respect of a dispute relating to the agreement, under **section 66A(1) 46H(1)**; and”.
- (3) Section 40 is amended by inserting the following subsection after subsection (1): 15

“(1A) A person who, with any other person, is proposing to enter into an agreement of the kind described in section 40(2) may request a Registrar of a Family Court to arrange—

 - “(a) counselling in respect of a dispute relating to the proposed agreement, under **section 65(3) 46G(2)**; or 20
 - “(b) mediation in respect of a dispute relating to the proposed agreement, under **section 65A(3) 46H(2)**.”
- (4) Section 40(2) is amended by omitting “between parents or guardians of a child”.

8 Disputes between guardians

- (1) Section 44(1) is amended by inserting the following paragraph after paragraph (a): 25

“(ab) request mediation in respect of their dispute under **section 66A(2)**; or”.
- (2) Section 44 is amended by repealing subsection (2) and substituting the following subsection: 30

“(2) Subsection (1)(a) and (ab) do not limit **section 45** (which relates to an application for a parenting order being referred to a counsellor or mediator).”

8 Cross-heading and sections repealed

- (1)** The cross-heading above section 44 is repealed.
- (2)** Sections 44 to 46 are repealed.

9 New sections 45 substituted

Section 45 is repealed and the following sections substituted: 5

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

The following sections of the Family Proceedings Act 1980 apply in respect of an application under section 48 for a parenting order: 10

- “(a) section 10(4) and (5) (under which a Family Court Judge may refer the matter to a counsellor, in which case a Family Court hearing generally does not proceed unless either the applicant or the respondent, not less than 28 days after the date of the reference, requests that the hearing should proceed); and 15
- “(b) **section 12B(2) and (3)** (under which a Family Court Judge may refer the matter to a mediator, in which case a Family Court hearing generally does not proceed unless either the applicant or the respondent, not less than 28 days after the date of the reference, requests that the hearing should proceed); and 20
- “(c) section 19(1) (which, among other things, requires the Court to consider the possibility of a reconciliation between spouses, civil union partners, or de facto partners; or of conciliation between them on any matter in issue).” 25

9 New sections 46C to 46ZF and heading inserted

The following sections and heading are inserted after section 46B: 30

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

- “(1)** A child of or over the age of 16 years who is affected by a decision or by a refusal of consent by a parent or guardian in an important matter may (unless the child is under the guardianship of the Court) apply to a Family Court Judge who may, if he or she thinks it reasonable in all the circumstances to do so, 35

review the decision or refusal and make any order in respect of it that he or she thinks fit.

“(2) A consent given by a Family Court Judge under this section has the same effect as if it had been given by the parent or guardian.

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“(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.

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“Counselling and mediation to resolve disputes

“46D Duty of lawyers to promote reconciliation and conciliation

“(1) In all matters in issue between spouses, civil union partners, or de facto partners that are or may become the subject of proceedings under this Act, every lawyer acting for either spouse, civil union partner, or de facto partner must—

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“(a) ensure that the spouse, civil union partner, or de facto partner for whom the lawyer is acting is aware of the facilities that exist for promoting reconciliation and conciliation; and

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“(b) take such further steps as in the opinion of the lawyer may assist in promoting reconciliation or, if reconciliation is not possible, conciliation.

“(2) Every lawyer who is acting for a spouse, civil union partner, or de facto partner, and who applies to the Court to have set down for hearing any matter in issue between the spouses, civil union partners, or de facto partners under this Act, must certify on the application that he or she has carried out his or her responsibilities under **subsection (1)**.

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“46E Duty of Courts as to reconciliation and conciliation

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In all proceedings under this Act between spouses, civil union partners, or de facto partners for a parenting order, the Court must—

“(a) consider the possibility of a reconciliation between the spouses, civil union partners, or de facto partners, or of conciliation between them on any matter in issue; and

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“(b) take such further steps as in its opinion may assist in promoting reconciliation or, if reconciliation is not possible, conciliation.

“46F 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— 5
- “(a) request a Registrar of a Family Court to arrange counselling in respect of their dispute; or
- “(b) request a Registrar of a Family Court to arrange mediation in respect of their dispute; or 10
- “(c) apply to a Court for its direction.
- “(2) Where a request has been made to a Registrar under **subsection (1)(a)**, the Registrar must, on the completion by the person making the request on the prescribed form, arrange for the matter to be referred to a counsellor. 15
- “(3) Where a request has been made to a Registrar under **subsection (1)(b)**, the Registrar may, on the completion by the person making the request on the prescribed form, arrange for the matter to be referred to a mediator. 20
- “(4) An application under **subsection (1)(c)** must be made to a Family Court unless **subsection (5)** applies.
- “(5) An application under **subsection (1)(c)** must be made to a High Court, and the High Court has exclusive jurisdiction to settle the dispute, where— 25
- “(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:
- “(b) the child is under the guardianship of the High Court. 30
- “(6) On an application under **subsection (1)(c)**, the Court may make any order relating to the matter it thinks proper.

“46G Request for counselling by party to agreement or person proposing to enter agreement

- “(1) A party to an agreement of the kind described in section 40(2) may request a Registrar of a Family Court to arrange coun- 35

selling in respect of a dispute arising from another party to the agreement contravening or appearing to contravene the agreement.

“(2) A person, who with any other person, is proposing to enter into an agreement of the kind described in section 40(2) may request a Registrar of a Family Court to arrange counselling in respect of a dispute arising in connection with the terms of the proposed agreement. 5

“(3) Where a request has been made to a Registrar under **subsection (1) or (2)**, the Registrar must, on the completion by the person making the request on the prescribed form, arrange for the matter to be referred to a counsellor. 10

“46H Request for mediation by party to an agreement or person proposing to enter agreement

“(1) A party to an agreement of the kind described in section 40(2) may request a Registrar of a Family Court to arrange mediation in respect of a dispute arising from another party to the agreement contravening or appearing to contravene the agreement. 15

“(2) A person, who with any other person, is proposing to enter into an agreement of the kind described in section 40(2) may request a Registrar of a Family Court to arrange mediation in respect of a dispute arising in connection with the terms of the proposed agreement. 20

“(3) Where a request has been made to a Registrar under **subsection (1) or (2)**, the Registrar may, on the completion by the person making the request on the prescribed form, arrange for the matter to be referred to a mediator. 25

“46I Counselling where proceedings commenced

“(1) This section applies on the filing of— 30

“(a) an application under **section 46F(1)(c)** for a direction of the Court on a guardianship matter;

“(b) an application under section 48 for a parenting order.

“(2) A Family Court Judge may, if he or she thinks it expedient to do so, direct the Registrar to arrange for the matter to be referred to a counsellor. 35

“(3) On receipt of a direction under **subsection (2)**, the Registrar must arrange for the matter to be referred accordingly.

“(4) If, not less than 28 days after the date on which the Registrar has arranged for the matter to be referred to a counselor under **subsection (3)**, either party requests that the application proceed, the proceedings must be continued unless the Court otherwise directs. 5

“(5) Nothing in **subsection (4)** prevents the continuation of the proceedings before the expiry of 28 days if the Court, upon application to it, so directs. 10

“46J Mediation where proceedings commenced

“(1) This section applies on the filing of—

“(a) an application under **section 46F(1)(c)** for a direction of the Court on a guardianship matter:

“(b) an application under section 48 for a parenting order. 15

“(2) A Family Court Judge may, if he or she thinks it expedient to do so, direct the Registrar to arrange for the matter to be referred to a mediator.

“(3) On receipt of a direction under **subsection (2)**, the Registrar must arrange for the matter to be referred accordingly. 20

“(4) If, not less than 42 days after the date on which the Registrar has arranged for the matter to be referred to a mediator under **subsection (3)**, either party requests that the application proceed, the proceedings must be continued unless the Court otherwise directs. 25

“(5) Nothing in **subsection (4)** prevents the continuation of the proceedings before the expiry of 42 days if the Court, upon application to it, so directs.

“46K Mediation conference

“(1) This section applies where— 30

“(a) an application is made under **section 46F(1)(c)** for a direction of the Court on a guardianship matter:

“(b) an application is made under section 48 for a parenting order.

“(2) Any party to the proceedings, or a Family Court Judge, may request the Registrar of the Court to arrange for a mediation conference to be convened.

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

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“(a) appoint a time and place for the holding of a mediation conference in accordance with **section 46L**; and

“(b) inform each of the parties to the application of the time and place of the mediation conference and request them to attend.

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“(4) The time appointed under **subsection (3)(a)** must be as soon as is reasonably practicable.

“46L Procedure at mediation conference

“(1) Each mediation conference is chaired by a Family Court Judge.

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“(2) The objectives of the conference are—

“(a) to identify the matters in issue between the parties; and

“(b) to try to obtain agreement between the parties on the resolution of those matters.

“(3) The Chairperson may from time to time adjourn the conference to a time and place to be appointed by the Chairperson.

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“(4) The Chairperson must record in writing the matters in issue at the conference, showing separately—

“(a) those matters on which agreement is reached between the parties; and

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“(b) those matters on which no agreement is reached between the parties.

“(5) The Chairperson must then file his or her written record in the Family Court in which the proceedings are filed.

“46M Attendance at mediation conference

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“(1) In addition to the parties, the following persons may attend a mediation conference:

“(a) a lawyer representing a party, if the party so requests:

“(b) a lawyer appointed to act for a child, if an appointment under section 7 has been made:

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- “(c) a person who the Chairperson agrees may attend as a support person for a party, if the party so requests.
- “(2) A lawyer attending a mediation conference at the request of a party may assist and advise that party.
- “(3) The Chairperson must agree to a request under **subsection (1)(c)** unless the Chairperson considers there is a good reason why the named support person should not be permitted to attend. 5
- “(4) Except to the extent provided in **subsection (1)**, and unless the Chairperson otherwise directs, a mediation conference is held in private. 10
- “(5) If, during a mediation conference, the Chairperson requests a support person to leave the mediation conference, the support person must do so.
- “46N **Power of Chairperson to make consent orders at mediation conference** 15
- “(1) The Chairperson presiding at a mediation conference may, by consent of the parties, make any orders that could have been made by a Family Court and that relate to an application by either party for a parenting order. 20
- “(2) However, where a party has no lawyer, or a party’s lawyer is not present at the conference, a consent order must not be made unless that party states expressly that the party does not wish the conference to be adjourned to provide an opportunity for legal advice to be taken. 25
- “(3) An order made under this section has for all purposes the same effect as if it were made by the consent of the parties in proceedings before a Family Court.
- “46O **Proceedings after mediation conference** 30
- The Family Court Judge who presides over a mediation conference between the parties to an application is entitled to hear any subsequent proceedings between those parties under that application unless in all the circumstances he or she decides, on his or her own motion or on the application of any party,—
- “(a) that it would be inappropriate for him or her to do so; or 35

“(b) that there is some other sufficient reason for the application to be heard by another Judge.

“46P Counselling for child on making of parenting order or order relating to guardianship matter

“(1) The Court may direct a child to attend counselling if the circumstances in **subsection (2)** exist. 5

“(2) The circumstances are that—

“(a) the Court is making an order under section **46F(6)** or 48(1); and

“(b) the Court considers that the child is in exceptional need of assistance in accepting the terms of the order or in adjusting to any changes resulting from the terms of the order. 10

“(3) Where a direction is made under this section, the Registrar must arrange for the matter to be referred to a counsellor. 15

“46Q Request for counselling by party to parenting order

“(1) A party to a parenting order may request a Registrar of a Family Court to arrange counselling in respect of a dispute arising from another party to the order contravening or appearing to contravene the order. 20

“(2) Where a request has been made to a Registrar under **subsection (1)**, the Registrar must, on the completion by the person making the request on the prescribed form, arrange for the matter to be referred to a counsellor.

“46R Request for mediation by party to parenting order 25

“(1) A party to a parenting order may request a Registrar of a Family Court to arrange mediation in respect of a dispute arising from another party to the order contravening or appearing to contravene the order.

“(2) Where a request has been made to a Registrar under **subsection (1)**, the Registrar may, on the completion by the person making the request on the prescribed form, arrange for the matter to be referred to a mediator. 30

“46S Registrar may decline requests for counselling or mediation and recommend instead applications under section 68

- “(1) The Registrar may decline a request under **section 46Q(1) or 46R(1)** if he or she considers that arranging for the matter to be referred to a counsellor or mediator, as the case may be, is unlikely to help the parties to resolve the dispute.** 5
- “(2) Without limiting the discretion under **subsection (1)**, in exercising that discretion the Registrar must have regard to whether a party to the order has used violence (as defined in section 3(2) of the Domestic Violence Act 1995) against—** 10
- “(a) another party to the order; or**
- “(b) a child in the care of another party to the order; or**
- “(c) both.**
- “(3) In declining a request under **subsection (1)**, the Registrar may recommend that any or all of the parties to the order make an application under section 68.** 15
- “(4) This section overrides **sections 46Q and 46R.****

“46T Reference to counsellor

- “(1) This section applies to a referral to counselling under—** 20
- “(a) **section 46F(2)**;**
- “(b) **section 46G(3)**;**
- “(c) **section 46I(3)**;**
- “(d) **section 46Q(2)**.**
- “(2) A counsellor to whom a matter is referred must—** 25
- “(a) arrange to meet either or both of the parties at such times and places (including the home of either party) as the counsellor thinks fit for the purposes of counselling; or**
- “(b) request either or both of the parties to attend before the counsellor at a specified time and place for the purposes of counselling.** 30
- “(3) The counsellor may meet with one of the parties, or both of the parties separately, if the counsellor considers a meeting would enable him or her to do any or all of the following:**
- “(a) clarify the main issues between the parties;** 35
- “(b) gather any further information that may be relevant to the conduct of the counselling;**

- “(c) determine with the parties whether, if the child who is the subject of the matter in issue wishes to do so, the child should attend 1 or more sessions of counselling.”

“46U Duty of counsellors

- “(1) A counsellor to whom a matter is referred under **section 46F(2), 46G(3), 46I(3), or 46Q(2)** must attempt to promote conciliation between the parties. 5
- “(2) After carrying out his or her obligations under **subsection (1)**, the counsellor must provide a report to the Registrar stating whether the parties have resolved the dispute. 10
- “(3) A report provided under **subsection (2)** may also state any of the following:
- “(a) details of the understanding reached between the parties:
- “(b) details of the matters remaining in issue between the parties: 15
- “(c) a recommendation as to the next step or steps to be taken by the parties.
- “(4) The Registrar must give a copy of the counsellor’s report to each party or to each party’s lawyer. 20
- “(5) A recommendation made by a counsellor under **subsection (3)(c)** is not binding on the parties or on the Courts.

“46V Number of sessions of counselling

The number of sessions of counselling to be carried out in respect of a referral under **section 46F(2), 46G(3), 46I(3), 46P(2), 46Q(2), or 46ZA(4)** must be determined in accordance with such regulations as may be made under this Act, or if no regulations apply, by the Registrar of the Court. 25

“46W Counselling fees and expenses

Fees in respect of counselling services carried out under **section 46F(2), 46G(3), 46I(3), 46P(2), 46Q(2), or 46ZA(4)**, and reasonable expenses incurred,— 30

“(a) may be determined in accordance with regulations made under this Act; and

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

“46X Reference to mediator

“(1) This section applies to a referral to mediation under—

“(a) **section 46F(3):**

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“(b) **section 46H(3):**

“(c) **section 46J(3):**

“(d) **section 46R(2):**

“(2) A mediator to whom a matter is referred must—

“(a) arrange to meet both of the parties, at such times and places (including the home of either party) as the mediator thinks fit for the purpose of mediation; or

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“(b) request both of the parties to attend before the mediator at a specified time and place for the purposes of mediation.

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“(3) Prior to the mediation, the mediator may meet with one of the parties, or both of the parties separately, if the mediator considers a meeting would enable him or her to do any or all of the following:

“(a) assess whether mediation is appropriate:

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“(b) clarify the main issues between the parties:

“(c) determine with the parties—

“(i) who should attend the mediation:

“(ii) how the mediation should proceed:

“(d) gather any further information that may be relevant to the conduct of the mediation.

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“46Y Duties of mediators

“(1) A mediator to whom a matter is referred under **section 46F(3), 46H(3), 46J(3), or 46R(2)** must make every endeavour to—

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“(a) identify the matters in issue between the parties; and

“(b) facilitate negotiations between the parties in respect of those matters; and

“(c) assist the parties to reach agreement on the resolution of those matters.

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- “(2) After carrying out his or her obligations under **subsection (1)**, the mediator must provide a report to the Registrar stating whether the parties have resolved the dispute.
- “(3) A report provided under **subsection (2)** may also state any of the following: 5
- “(a) details of the resolution reached between the parties:
- “(b) details of the matters on which resolution has not been reached between the parties:
- “(c) a recommendation as to the next step or steps to be taken by the parties. 10
- “(4) The Registrar must give a copy of the mediator’s report to each party or to each party’s barrister or solicitor.
- “(5) A recommendation made by a mediator under **subsection (3)(c)** is not binding on the parties or on the Court.
- “46Z **Mediation must be held in private** 15
- The only persons who may attend mediation before a mediator are as follows:
- “(a) the parties to the mediation; and
- “(b) a lawyer representing a party to the mediation, if the mediator considers that in all the circumstances attendance by a lawyer is appropriate; and 20
- “(c) a lawyer appointed to act for a child, if an appointment under section 7 has been made; and
- “(d) a child who is the subject of the matter in issue between the parties, if the mediator agrees; and 25
- “(e) a person who the mediator agrees may attend as a support person for a party, if the party so requests.
- “46ZA **Child who is attending mediation may request counselling**
- “(1) This section applies where, under **section 46Z(d)**, the mediator agrees that a child who is the subject of the matter in issue may attend mediation. 30
- “(2) The mediator must discuss with the child whether, prior to the child attending mediation, the child wishes to attend counselling for the purpose of clarifying his or her views on the matter in issue. 35

“(3) If the child wishes to attend counselling, the mediator must give notice of this to the Registrar of the Family Court from whom the mediation referral was received.

“(4) On receiving notice under **subsection (3)**, the Registrar must arrange for the matter to be referred to a counsellor.

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“46ZB Mediation may be adjourned

The mediator may from time to time adjourn the mediation.

“46ZC Duration of mediation

The duration of mediation to be carried out under **section 46F(3), 46H(3), 46J(3), or 46R(2)** must be determined in accordance with such regulations as may be made under this Act or, if no regulations apply, by the Registrar of the Court.

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“46ZD Mediation fees and expenses

Fees in respect of mediation carried out under **section 46F(3), 46H(3), 46J(3), or 46R(2)**, and reasonable expenses incurred,—

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“(a) may be determined in accordance with regulations made under this Act; and

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

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“46ZE Power to require attendance for counselling or mediation

“(1) This section applies where a person fails to comply with—

“(a) a request under **section 46T(2)(b)** to attend before a counsellor; or

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“(b) a request under **section 46X(2)(b)** to attend before a mediator; or

“(c) a request under **section 46K(3)(b)** to attend a mediation conference; or

“(d) a request under section 68(4)(b) to attend the hearing of an application under section 68.

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“(2) On an application for the purpose or on its own initiative, the Court may issue a summons requiring the person to attend be-

fore the counsellor or the mediator, or to attend a mediation conference, at a time and place to be specified in the summons.

- “(3) Section 20(1) to (3) and (5) of the Summary Proceedings Act 1957 applies to a summons under this section as if it were a witness summons issued under that section.

5

“46ZF Privilege

- “(1) No evidence is admissible in any court, or before any person acting judicially, of any information, statement, or admission disclosed or made—

“(a) to a counsellor or mediator exercising his or her functions under this Part; or

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“(b) in the course of a mediation conference.

- “(2) Nothing in **subsection (1)** applies to—

“(a) a report provided by a counsellor under **section 46U(2)**; or

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“(b) a report provided by a mediator under **section 46Y(2)**; or

“(c) a record of the matters in issue at the conference made by a Chairperson under **section 46L(4)**; or

“(d) a consent order made under **section 46N(1)**, or to any proceedings for the review of such an order.

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- “(3) Except to the extent that it is necessary for a counsellor or mediator to do so in the proper discharge of his or her functions, every counsellor and every mediator commits an offence and is liable on summary conviction to a fine not exceeding \$500 who discloses to any other person any information, statement, or admission received by or made to him or her in the exercise of his or her functions under this Part.”

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10 Interpretation

The definition of **approved provider** in section 58 is amended by omitting all the words after the word “as” and substituting “a Community Service for the purposes of the Children, Young Persons, and Their Families Act 1989 under section 403(1) of that Act”.

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11 Heading above section 63 amended

The heading above section 63 is amended by inserting “*and agreements*” after “*orders*”.

12 Purpose and overview of sections 64 to 80

(1AA) The heading to section 63 is amended by inserting “**46Q, 46R, and**” after “**sections**”. 5

(1AB) Section 63(1) is amended by inserting “**46Q, 46R, and**” after “**sections**”.

(1AC) Section 63(2) is amended by inserting “**46Q, 46R, and**” after “**sections**”. 10

(1) Section 63(2)(a) is amended by inserting “or mediation” after “counselling”.

13 Request for counselling

Section 65 is amended by adding the following subsections:

“(3) A person who, with any other person, is proposing to enter into an agreement of the kind described in section 40(2) may ask a Registrar of a Family Court to arrange counselling in respect of a dispute arising in connection with the terms of the proposed agreement.” 15

13 Guiding consideration and principles 20

Section 64(1) is amended by omitting “sections 68 to 77” and substituting “sections **46ZE**, 68, or 70 to 77”.

14 Procedure for request under section 65(1) or (2)

(1) The heading to section 66 is amended by omitting “**or (2)**” and substituting “**, (2); or (3)**”. 25

(2) Section 66 is amended by inserting “or (3)” after “section 65(1) or (2)”.

(3) Section 66(b) is amended by omitting all the words after “matter)”.

(4) Section 66(c) is amended by adding “, except that the reference in **subsection (2)(a)** to whether the parties wish to resume or continue the marriage or de facto relationship must be read as a reference to whether the parties to the parenting order (or 30

the agreement); or the 2 or more guardians, have resolved the dispute”.

(5) Section 66(e) is amended by omitting “.” and substituting “.”.

(6) Section 66 is amended by adding the following paragraph:

“(f) **section 18** (which relates to privilege).”

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14 Sections 65 to 67 repealed

Sections 65 to 67 are repealed.

15 New sections 66A and 66B inserted

The following sections are inserted after section 66:

“66A Request for mediation

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

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“(2) If 2 or more guardians of a child are unable to agree on a matter concerning the exercise of their guardianship, any of them may ask a Registrar of a Family Court to arrange mediation in respect of their dispute:

“(3) A person who, with any other person, is proposing to enter into an agreement of the kind described in section 40(2) may ask a Registrar of a Family Court to arrange mediation in respect of a dispute arising in connection with the terms of the proposed agreement:

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“66B Procedure for request under section 66A(1), (2), or (3)

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The following sections of the Family Proceedings Act 1980 apply, with the following and all other necessary modifications, to a request under **section 66A(1), (2), or (3)** as if the request were one under **section 12G(1)** of that Act by a party to a marriage, civil union, or de facto relationship for mediation in respect of the marriage, civil union, or de facto relationship:

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“(a) **section 12G(2)** (which provides that the Registrar may arrange for the matter to be referred to a mediator):

- “(b) **section 12E** (which relates to the procedure the mediator must follow on being referred the matter):
- “(c) **section 12F** (which relates to the mediator’s duties); except that the reference in **subsection (2)(a)** to whether the parties wish to resume or continue the marriage, civil union, or de facto relationship must be read as a reference to whether the parties to the parenting order (or the agreement), or the 2 or more guardians, have resolved the dispute: 5
- “(d) **section 12G** (which provides that mediation must be held in private): 10
- “(e) **section 12H** (which provides that mediation may be adjourned):
- “(f) **section 12I** (which relates to the duration of mediation): 15
- “(g) **section 12J** (which relates to mediation fees and expenses):
- “(h) **section 18** (which relates to privilege).”
- 16 New section 67A inserted**
- The following section is inserted after section 67: 20
- “67A Registrar may decline requests for mediation and recommend instead applications under section 68**
- If in the exercise of his or her discretion in **section 12G(2)** of the Family Proceedings Act 1980 (as modified and applied by **section 66B** of this Act) the Registrar declines a request under **section 66A(1)**, the Registrar may recommend that any or all of the parties to the parenting order make an application under section 68.” 25
- 17 Court may require parties to attend for counselling or for hearing of application under section 68** 30
- (1) The heading to section 69 is amended by inserting “or mediation” after “counselling”.
- (2) Section 69(1) is amended by inserting the following paragraph after paragraph (a):
- “(ab) a request under **section 12E(1)(b)** of the Family Proceedings Act 1980 (as modified and applied by **section** 35

~~66B~~ of this Act) that the person attend before a mediator, or”.

17 Section 69 repealed

Section 69 is repealed.

18 Counsel to assist Court

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Section 130(1) is amended by inserting “, or direct the Registrar of the Court to appoint,” after “appoint”.

- (2) Section 130 is amended by inserting the following subsection after subsection (1):

“(1A) A direction to a Registrar under subsection (1) must set out— 10

“(a) the issues to be addressed by the lawyer; and

“(b) the tasks to be completed by the lawyer.”

19 Reports from other persons

- (1) Section 133 is amended by repealing subsection (2) and substituting the following subsections: 15

“(2) If satisfied that it is necessary for the proper disposition of an application, the Court may—

“(a) request a person whom the Court considers qualified for the purpose to prepare a written cultural, medical, psychiatric, or psychological report on the child who is the subject of the application; or 20

“(b) direct the Registrar of the Court to request a person whom the Registrar considers qualified for the purpose to prepare a written cultural, medical, psychiatric, or psychological report on the child who is the subject of the application. 25

“(2A) A direction to a Registrar under **subsection (2)(b)** must set out—

“(a) the issues to be addressed in the report; and

“(b) the tasks to be completed by the person requested to prepare the report.” 30

- (2) Section 133(4) is amended by omitting “the report” where it first appears and substituting “a report or to direct the Registrar of the Court to request a report”.

19A Attendance at hearings generally

Section 137(6) is amended by inserting the following paragraph after paragraph (a):

“(ab) to permit a McKenzie friend to be present; or”

20 Publication of reports of proceedings

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(1) Section 139(4)(b) is amended by inserting “mediators,” after “counselling.”

(2) Section 139 is amended by repealing subsection (9) and substituting the following subsection:

“(9) Nothing in this section limits the power of a court to punish any contempt of Court.” 10

20 New section 139 substituted

Section 139 is repealed and the following section substituted:

“139 Publication of reports of proceedings

Sections 11B to 11D of the Family Courts Act 1980 apply to the publication of a report of any proceedings under this Act (other than criminal proceedings)— 15

“(a) in a Family Court:

“(b) in any other court, in which case references in those sections to the Family Court or Court must be read as references to that other court.” 20

20A Appeals to High Court

(1) Section 143(2) is amended by omitting “section 44 or section 46” and substituting “**section 46C or 46F**”.

(2) Section 143(3) is amended by omitting “section 44 or section 46” and substituting “**section 46C or 46F**”. 25

20B Appeal to Court of Appeal

Section 145(1)(a) is amended by omitting “section 44 or section 46” and substituting “**section 46C or 46F**”.

20C Regulations

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Section 147(2) is amended by inserting the following paragraphs after paragraph (b):

- “(ba) providing for the determination of the number of sessions of counselling that may be carried out under **section 46F(2), 46G(3), 46I(3), 46P(2), 46Q(2), or 46ZA(4)**;
- “(bb) providing for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of counselling services carried out under **section 46F(2), 46G(3), 46I(3), 46P(2), 46Q(2), or 46ZA(4)**, which fees and expenses may differ according to—
- “(i) the number of sessions of counselling determined to be carried out under **section 46V**; and
- “(ii) whether counselling services are to be provided in a specified number of proceedings during a specified period:
- “(bc) making provision for the determination of the duration of mediation that may be carried out under **section 46F(3), 46H(3), 46J(3), or 46R(2)**;
- “(bd) providing for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of mediation services carried out under **section 46F(3), 46H(3), 46J(3), or 46R(2)**, which fees and expenses may differ according to—
- “(i) the duration of the mediation (not exceeding the maximum duration of mediation that may be carried out as determined under **section 46ZC**; and
- “(ii) the time spent by the mediator in meeting with the parties prior to mediation; and
- “(iii) the complexity of the matter in issue between the parties.”

20D Other Acts not affected

Section 148(2) is amended by omitting “66 and 69 and”.

Part 3 Child Support Act 1991

21 Principal Act amended

This **Part** amends the Child Support Act 1991.

22 **Restriction of publication of reports** New section 89X substituted 5

Section 89X is repealed and the following section substituted:

“89X Restriction on publication of reports of proceedings

- “(1) No person may, without the leave of the Commissioner or a Family Court, publish a report of any proceedings under this subpart. 10
- “(2) The Commissioner or a Family Court may grant leave under **subsection (1)** with or without conditions.
- “(3) Every person who contravenes **subsection (1)** commits an offence against this Act and is liable on summary conviction,— 15
- “(a) in the case of an individual, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$2,000;
- “(b) in the case of a body corporate, to a fine not exceeding \$10,000. 20
- “(4) Nothing in this section applies to the publication of any report in any publication that—
- “(a) is of a bona fide professional or technical nature; and
- “(b) is intended for circulation among members of the legal profession, employees of the Crown, relationship counsellors, mediators, or social workers. 25
- “(5) Nothing in section 81 of the Tax Administration Act 1994 prevents the publication of a report of any proceedings under this subpart— 30
- “(a) with the leave of the Commissioner or a Family Court; or
- “(b) in accordance with **subsection (4)**.”

23 **Restriction of publication of reports** New section 96P substituted 35

Section 96P is repealed and the following section substituted:

“96P Restriction on publication of reports of proceedings

- “(1) No person may, without the leave of the Commissioner or a Family Court, publish a report of any proceedings under this Part.
- “(2) The Commissioner or a Family Court may grant leave under **subsection (1)** with or without conditions. 5
- “(3) Every person who contravenes **subsection (1)** commits an offence against this Act and is liable on summary conviction,—
- “(a) in the case of an individual, to imprisonment for a term 10
not exceeding 3 months, or to a fine not exceeding \$2,000;
- “(b) in the case of a body corporate, to a fine not exceeding \$10,000.
- “(4) Nothing in this section applies to the publication of any report 15
in any publication that—
- “(a) is of a bona fide professional or technical nature; and
- “(b) is intended for circulation among members of the legal profession, employees of the Crown, relationship counsellors, mediators, or social workers. 20
- “(5) Nothing in section 81 of the Tax Administration Act 1994 prevents the publication of a report of any proceedings under this Part—
- “(a) with the leave of the Commissioner or a Family Court; 25
or
- “(b) in accordance with **subsection (4)**.”

24 Restriction of publication of reports New section 96ZF substituted

Section 96ZF is repealed and the following section substituted:

“96ZF Restriction on publication of reports of proceedings 30

- “(1) No person may, without the leave of the Commissioner or a Family Court, publish a report of any proceedings under this Part.
- “(2) The Commissioner or a Family Court may grant leave under **subsection (1)** with or without conditions. 35

- “(3) Every person who contravenes **subsection (1)** commits an offence against this Act and is liable on summary conviction,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$2,000; 5
- “(b) in the case of a body corporate, to a fine not exceeding \$10,000.
- “(4) Nothing in this section applies to the publication of any report in any publication that— 10
- “(a) is of a bona fide professional or technical nature; and
- “(b) is intended for circulation among members of the legal profession, employees of the Crown, relationship counsellors, mediators, or social workers.
- “(5) Nothing in section 81 of the Tax Administration Act 1994 prevents the publication of a report of any proceedings under this Part— 15
- “(a) with the leave of the Commissioner or a Family Court; or
- “(b) in accordance with **subsection (4)**.” 20

25 Conduct of proceedings

Section 123 is amended by repealing subsections (2) to (4) and substituting the following subsection:

- “(2) **Section 11A** of the Family Courts Act 1980 applies to the hearing of any application or appeal under this Act— 25
- “(a) in a Family Court:
- “(b) in any other court, in which case—
- “(i) references in that section to the Family Court or Court must be read as references to that other court; and 30
- “(ii) references in that section to the Family Court Judge or the Judge must be read as references to the Judge presiding at the hearing.”

26 Restriction of publication of reports

- (1) The heading to section 124 is amended— 35
- (a) by omitting “of” in the first place where it appears and substituting “on”; and

- (b) by adding “**of proceedings**”.
- (2) Section 124 is amended by repealing subsection (1) and substituting the following subsections:
- “(1) Subject to **subsection (1A)**; any person may publish a report of any proceedings in respect of any application or of any appeal made under this Part. 5
- “(1A) No person may, without the leave of the Court hearing the proceedings, publish a report of proceedings in respect of any application or of any appeal made under this Part that includes any name or particulars likely to lead to the identification of any of the following: 10
- “(a) a child to whom the proceeding relates;
- “(b) the parties to the proceedings;
- “(c) a person who is related to, or associated with, a person referred to in **paragraph (a) or (b)** or who is, or may be, in any other way concerned in the matter to which the proceedings relate (for example, a support person for the party). 15
- “(1B) The Court may grant leave under **subsection (1A)** with or without conditions.” 20
- (3) Section 124(2) is amended by omitting “subsection (1)” and substituting “**subsection (1A)**”.
- (4) Section 124(2)(a) is amended by omitting “\$500” and substituting “\$2,000”.
- (5) Section 124(2)(b) is amended by omitting “\$2,500” and substituting “\$10,000”. 25
- (6) Section 124 is amended by repealing subsection (3) and substituting the following subsection:
- “(3) Nothing in this section limits the power of a court to punish any contempt of Court.” 30
- (7) Section 124(4)(b) is amended by omitting “or social welfare workers” and substituting “mediators, or social workers”.

26 New section 124 substituted

Section 124 is repealed and the following section substituted:

- “124 Publication of reports of proceedings 35
- Sections 11B to 11D** of the Family Courts Act 1980 apply to the publication of a report of any proceedings under this Part—

- “(a) in a Family Court:
“(b) in any other court, in which case references in those
sections to the Family Court or Court must be read as
references to that other court.”

Part 4 5

Children, Young Persons, and Their Families Act 1989

- 27 Principal Act amended**
 This **Part** amends the Children, Young Persons, and Their Families Act 1989. 10
- 28 Appointment of barrister or solicitor to represent child or young person**
- (1) Section 159 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) Where a child or young person who is the subject of any proceedings under Part 2 or Part 3A is not represented by a barrister or solicitor, the Court or the Registrar of the Court must appoint a barrister or solicitor to represent the child or young person— 15
- “(a) in those proceedings: 20
- “(b) for any other specified purpose (including in relation to other proceedings under this Act or any other Act) considered desirable.
- ~~“(1A) A Registrar may only exercise the power conferred by **subsection (1)(b)** on receipt of a direction from the Court setting out—~~ 25
- “(a) ~~the issues to be addressed by the barrister or solicitor;~~
 and
- “(b) ~~the tasks to be completed by the barrister or solicitor.”~~
- (2) Section 159(2) is amended by omitting “Where the Court appoints a barrister or solicitor under subsection (1) of this section, it shall”; and substituting “Where a Court or a Registrar appoints a barrister or solicitor under **subsection (1)**, the Court or the Registrar (as the case may be) must”. 30
- (3) Section 159 is amended by repealing subsection (3) and substituting the following subsections: 35

- “(3) Although the proceedings in respect of which any barrister or solicitor was appointed under **subsection (1)(a)** have been disposed of, or that the appointment is no longer required for any other purpose specified under **subsection (1)(b)**, the Court may, if it is satisfied that it is necessary or desirable in the interests of the child or young person to do so,—
- “(a) extend the barrister’s or solicitor’s appointment for any specified purpose; or
 - “(b) subject to **subsection (2)**, appoint any other barrister or solicitor to represent the child or young person for any specified purpose; or
 - “(c) direct the Registrar of the Court to do either of these things.
- “(4) A direction to a Registrar under **subsection (3)(c)** must set out—
- “(a) the issues to be addressed by the barrister or solicitor; and
 - “(b) the tasks to be completed by the barrister or solicitor.”
- 29 Appointment of barrister or solicitor to assist Court**
- Section 160 is amended by inserting “, or direct the Registrar of the Court to appoint,” after “appoint”.
- (2) Section 160 is amended by adding the following subsection:
- “(2) A direction to a Registrar under **subsection (4)** must set out—
- “(a) the issues to be addressed by the barrister or solicitor; and
 - “(b) the tasks to be completed by the barrister or solicitor.”
- 30 Persons entitled to be present at hearing of proceedings in Family Court**
- (1) Section 166(1) is amended by inserting the following paragraphs after paragraph (n):
- “(na) accredited news media reporters;
 - “(nb) persons whom the Judge permits to be present as support persons for—
 - “(i) the child or young person on a request by that child or young person;
 - “(ii) a party on a request by that party.”

- (2) Section 166 is amended by repealing subsection (2) and substituting the following subsections:
- “(2) The Judge must agree to a request under **subsection (1)(nb)** unless the Judge considers there is a good reason why the named support persons should not be permitted to be present. 5
- “(3) If, during the hearing, the Judge requests a person of any of the following kinds to leave the courtroom, the person must do so:
- “(a) a witness:
- “(b) an accredited news media reporter: 10
- “(c) a support person whom the Judge permitted to be present under **subsection (1)(nb)**.
- “(4) Nothing in this section limits any other power of the Court—
- “(a) to hear proceedings in private; or
- “(ab) to permit a McKenzie friend to be present; or 15
- “(b) to exclude any person from the Court.”

31 Persons entitled to be present at hearing of application under section 371

- (1) Section 373(1) is amended by inserting the following paragraph after paragraph (k): 20
- ~~“(ka) persons whom the Judge permits to be present as support persons for—~~
- ~~“(i) the child or young person on a request by that child or young person:~~
- ~~“(ii) a party on a request by that party: 25~~
- “(ka) persons whom the Judge permits to be present as support persons for any person described in paragraphs (b) to (f) on a request by that person.”.
- (2) Section 373 is amended by inserting the following subsection after subsection (1): 30
- “(1A) The Judge must agree to a request under **subsection (1)(ka)** unless the Judge considers there is a good reason why the named support persons should not be permitted to be present.”
- (3) Section 373(2) is amended by omitting “shall” and substituting “and any support person whom the Judge permitted to be 35
- present under **subsection (1)(ka)** must”.

(4) Section 373 is amended by repealing subsection (3) and substituting the following subsection:

“(3) Nothing in this section limits any other power of the Court—

“(a) to hear the application in private; or

“(b) to permit a McKenzie friend to be present; or

“(c) to exclude any person from the Court.”

5

32 New section 437A inserted

The following section is inserted after section 437:

“437A **Restriction on publication of reports of proceedings under Part 2, Part 3A, or section 371**

10

“(1) Subject to **subsection (2)**, any person may publish a report of proceedings under Part 2 or Part 3A or section 371:

“(2) No person may, without the leave of the Court hearing the proceedings, publish a report of proceedings under Part 2 or Part 3A or section 371 that includes any name or particulars likely to lead to the identification of any of the following persons:

15

“(a) the child or young person who is the subject of the proceedings:

“(b) the parties to the proceedings:

“(c) a person who is related to, or associated with, a person referred to in **paragraph (a) or (b)** or who is, or may be, in any other way concerned in the matter to which the proceedings relate (for example, a support person for the party):

20

“(3) The Court may grant leave under **subsection (2)** with or without conditions:

25

“(4) However, a report of proceedings under Part 2 or Part 3A, or section 371 that includes any name or particulars likely to lead to the identification of the persons described in **subsection (2)(a) or (b) or (c)** may be published by the child or young person who is the subject of the proceedings, or where there is more than one child or young person who is the subject of the proceedings, by those children or young persons who are the subject of the proceedings jointly:

30

“(5) Every person who contravenes **subsection (1)** commits an offence against this Act and is liable on summary conviction,—

35

- “(a) in the case of an individual, either to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$2,000;
- “(b) in the case of a body corporate, to a fine not exceeding \$10,000.” 5
- “(6) Nothing in this section limits the power of a court to punish any contempt of Court.

“437A Publication of reports of proceedings under Part 2, Part 3A, or section 371

Sections 11B to 11D of the Family Courts Act 1980 apply to the publication of a report of any proceedings under Part 2, Part 3A, or section 371— 10

- “(a) in a Family Court;
- “(b) in any other court, in which case references in those sections to the Family Court or Court must be read as references to that other court.” 15

33 Restriction on publication of reports of proceedings

- (1) The heading to section 438 is amended by adding “**under Part 4**”.
- (1) Section 438 is amended by omitting the heading and substituting the following heading: “**Publication of reports of proceedings under Part 4**”. 20
- (2) Section 438(1) is amended by omitting “this Act” and substituting “Part 4”.
- (3) Section 438(2)(a)(ii) is amended by— 25
- (a) inserting “, counsellors and mediators carrying out duties under the Care of Children Act 2004” after “Act” in the first place where it appears; and
- (b) omitting “welfare”.
- (4) Section 438(3) is amended by omitting “this Act” in the first place where it appears and substituting “Part 4”. 30
- (5) Section 438(3)(d) is amended by omitting “In the case of proceedings under Part 4 of this Act,”.

Part 5

Domestic Violence Act 1995

- 34 Principal Act amended**
This **Part** amends the Domestic Violence Act 1995.
- 35 Notice of absence from programme** 5
Section 39(2) is repealed.
- 36 Programme provider may request variation of direction**
Section 41(2) is repealed.
- 37 New section 41A inserted** 10
The following section is inserted after section 41:
- “41A Powers of Registrar on receipt of notice under section 39 or 41**
- “(1) On receiving a notice under section 39 or 41, the Registrar must, without delay, either—
- “(a) exercise the powers under section 82, as if he or she were the Court referred to in that section, to call the respondent or, as the case may be, the associated respondent before the Court; or
- “(b) bring the matter to the attention of a Judge so that the Judge may consider whether to exercise the power conferred by section 42 in relation to the respondent or, as the case may be, the associated respondent. 15 20
- “(2) Where 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; ~~or~~ or, as the case may be, the associated respondent, were a witness in the proceedings.” 25
- 38 Judge may call respondent or associated respondent before Court** 30
- (1) Section 42(1)(b) is amended by omitting “section 39(2) or section 41(2) of this Act” and substituting “**section 41A(1)(b)**”.
- (2) Section 42(2) to (5) are repealed.

39 New section 42A inserted

The following section is inserted after section 42:

“42A Respondent or associated respondent called before Court

- “(1) Where a respondent or an associated respondent appears before the Court under **section 41A(1)(a)** or section 42, the Court may, after hearing the respondent or the associated respondent, confirm, vary, or discharge the direction. 5
- “(2) The Court may not vary or discharge a direction confirmed or varied under section 37 unless a variation of that direction has been requested under section 41. 10
- “(3) Where the Court confirms or varies a direction under **subsection (1)** and the respondent or, as the case may be, the associated respondent is before the Court, the Judge must warn him or her that non-compliance with the direction is an offence punishable by imprisonment. 15
- “(4) Failure to give the warning required by **subsection (3)** does not affect the validity of the direction confirmed or varied.”

40 Conduct of proceedings

- (1) Section 83(1) is amended by inserting the following paragraph after paragraph (f): 20
- “(fa) accredited news media reporters.”
- (2) Section 83(3) is amended by inserting “and any accredited news media reporter” after the word “witness”.
- (3) Section 83 is amended by repealing subsection (5) and substituting the following subsection: 25
- “(5) Nothing in this section limits any other power of the Court—
- “(a) to hear proceedings in private; or
- “(b) to permit a McKenzie friend to be present; or
- “(c) to exclude any person from the Court.”

41 Restriction on publication of reports of proceedings 30

- (1) Section 125 is amended by repealing subsections (1) to (3) and substituting the following subsections:
- “(1) Subject to **subsection (1A)**, any person may publish a report of proceedings under this Act.
- “(1A) No person may, without the leave of the Court hearing the proceedings, publish a report of proceedings under this Act that 35

includes any name or particulars likely to lead to the identification of any of the following persons:

“(a) the parties to the proceedings:

“(b) a person who is related to, or associated with, a party to the proceedings, or who is, or may be, in any other way concerned in the matter to which the proceedings relate (for example, a support person for the party):” 5

“(1B) The Court may grant leave under **subsection (1A)** with or without conditions:

“(2) Every person who contravenes **subsection (1A)** commits an offence against this Act and is liable on summary conviction,— 10

“(a) in the case of an individual, either to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$2,000:” 15

“(b) in the case of a body corporate, to a fine not exceeding \$10,000:

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

(2) Section 125(4)(a)(ii) is amended by omitting “carrying out duties under the Family Proceedings Act 1980, or social welfare workers” and substituting “and mediators carrying out duties under the Family Proceedings Act 1980 or the Care of Children Act 2004, or social workers”. 20

(3) Section 125(5) is amended by inserting “Competence Assurance” after “Health Practitioners”. 25

41 New section 125 substituted

Section 125 is repealed and the following section substituted:

“125 Restriction of publication of reports of proceedings

Sections 11B to 11D of the Family Courts Act 1980 apply to the publication of a report of any proceedings under this Act (other than criminal proceedings)— 30

“(a) in a Family Court:

“(b) in any other court, in which case references in those sections to the Family Court or Court must be read as references to that other court.” 35

Part 6

Family Courts Act 1980

42 Principal Act amended

This **Part** amends the Family Courts Act 1980.

43 Counselling supervisors, counsellors, and other officers 5

- (1) The heading to section 8 is amended by inserting “**mediators,**” after “**counsellors,**”.
- (2) Section 8(1) is amended by inserting “, mediation,” after “counselling”.
- (3) Section 8(2) is amended by inserting “mediators,” after “counsellors,”. 10
- (4) Section 8(3) is amended by inserting “mediator,” after “counsellor,”.

44 Avoidance of unnecessary formality

Section 10 is amended by repealing subsection (2) and substituting the following subsections: 15

- “(2) A Judge sitting in a Family Court may wear a gown, but must not wear a wig.
- “(3) A lawyer appearing in a Family Court must not wear a gown or a wig.” 20

45 New sections 11A to ~~11E~~ 11D inserted

The following sections are inserted after section 11:

“11A Attendance at hearings

- “(1) Unless the Act under which proceedings are brought provides otherwise, the only persons who may attend a hearing of proceedings in a Family Court are as follows: 25
 - “(a) officers of the Court:
 - “(b) parties to the proceedings:
 - “(c) lawyers representing parties to the proceedings:
 - “(d) witnesses: 30
 - “(e) accredited news media reporters:
 - “(f) persons whom the Family Court Judge permits to be present as support persons for a party on a request by that party:

- “(g) any other persons whom the Family Court Judge permits to be present.
- “(2) The Family Court Judge must agree to a request under **subsection (1)(f)** unless the Judge considers there is a good reason why the named support persons should not be permitted to be present. 5
- “(3) No support persons may help a party conduct his or her case.
- “(4) If, during a hearing, the Family Court Judge requests a person of any of the following kinds to leave the courtroom, the person must do so: 10
- “(a) a witness:
- “(b) an accredited news media reporter:
- “(c) a support person whom the Judge permitted to be present under **subsection (1)(f)**.
- “(5) Nothing in this section limits any other power of the Court— 15
- “(a) to hear proceedings in private; or
- “(ab) to permit a McKenzie friend to be present; or
- “(b) to exclude any person from the Court.
- “**11B Publication of reports of proceedings**
- “(1) Subject to **subsection (2)**, any person may publish a report of proceedings in a Family Court. 20
- “(2) No person may, without the leave of the Court hearing the proceedings, publish a report of proceedings in a Family Court that includes identifying information where—
- “(a) a child— 25
- “(i) is the subject of the proceedings; or
- “(ii) is a party to the proceedings; or
- “(iii) is an applicant in the proceedings; or
- “(iv) is referred to in the proceedings; or
- “(b) a vulnerable person— 30
- “(i) is the subject of the proceedings; or
- “(ii) is a party to the proceedings; or
- “(iii) is an applicant in the proceedings.
- “(3) However, a report of proceedings in a Family Court containing identifying information may be published by a person described in **subsection (2)(a), or (b)**; or where there is more 35

than one such person in the proceedings; by those persons jointly.

“(1) Any person may publish a report of proceedings in a Family Court.

“(2) **Subsection (1)** is subject to **subsection (3)**. 5

“(3) A person may not, without the leave of the Court, publish a report of proceedings in a Family Court that includes identifying information where—

“(a) a person under the age of 18 years—

“(i) is the subject of the proceedings; or 10

“(ii) is a party to the proceedings; or

“(iii) is an applicant in the proceedings; or

“(iv) is referred to in the proceedings; or

“(b) a vulnerable person—

“(i) is the subject of the proceedings; or 15

“(ii) is a party to the proceedings; or

“(iii) is an applicant in the proceedings.

“(4AA) However, **subsection (3)** does not apply to—

“(a) a report of proceedings in a publication that—

“(i) is genuinely of a professional or technical nature (including a publication that is intended for circulation among members of the legal or medical professions, officers of the Public service, psychologists, counsellors, mediators, or social workers); and 20 25

“(ii) does not include the name of—

“(A) any person under the age of 18 years who is the subject of the proceedings, or who is referred to in the proceedings;

“(B) any vulnerable person who is the subject of the proceedings; 30

“(C) any parties or applicants in the proceedings where **subparagraph (A) or (B)** applies;

“(D) any school that a person who is the subject of proceedings under the Children, Young Persons, and Their Families Act 1989 is or was attending, or any other particulars 35

likely to lead to the identification of that school:

“(b) a publication of statistical information relating to the proceedings.

“(4) The Court may grant leave under **subsection (2) (3)** with or without conditions. 5

“(5) Every person who contravenes **subsection (2)** this section commits an offence against this Act and is liable on summary conviction,—

“(a) in the case of an individual, either to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$2,000: 10

“(b) in the case of a body corporate, to a fine not exceeding \$10,000.

“(6) **Subsection (5)** does not limit the power of a court to punish any contempt of Court. 15

“(7) This section is subject to any other enactment relating to the publication or regulation of the publication of reports or particulars of a Family Court proceeding.

“11C Meaning of identifying information 20

“(1) For the purposes of **section 11B**, **identifying information** means information relating to proceedings that includes any name or particulars likely to lead to the identification of any of the following persons:

“(a) a party to the proceedings: 25

“(b) an applicant in the proceedings:

“(c) a person who is the subject of the proceedings:

“(d) a person who is related to, or associated with, a person referred to in **paragraphs (a) to (c)** or who is, or may be, in any other way concerned in the matter to which the proceedings relate (for example, a support person for a party). 30

“(2) For the purposes of **section 11B** in relation to proceedings under the Children, Young Persons, and Their Families Act 1989, **identifying information** also includes the name or particulars likely to lead to the identification of any school that a person the subject of the proceedings is or was attending. 35

~~“11D~~ Meaning of child

For the purposes of **~~section 11B~~**, **child** means,—

- ~~“(a) if the Act under which the proceedings are brought defines child, then child has that meaning; or~~
- ~~“(b) if the Act under which the proceedings are brought does not define child, then child means a person under the age of 20 years.~~

~~“11E~~ Meaning of vulnerable person

For the purposes of **~~section 11B~~**, **vulnerable person** means any person who—

- ~~“(a) is subject to a property order made under any of sections 10, 11, 12, 30, and 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act;~~
- ~~“(b) is a patient or restricted patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;~~
- ~~“(c) is the subject of an application for a declaration under section 28 of the Births, Deaths, and Marriages Registration Act 1995;~~
- ~~“(d) for any other reason (for example, because of domestic violence) is considered by the Court likely to be particularly susceptible to any adverse consequences associated with the publication of a report of the proceedings that contains identifying information.~~

“11D Meaning of vulnerable person

For the purposes of **section 11B**, **vulnerable person** means—

- “(a) a person in respect of whom a Family Court has jurisdiction under Part 1 or 3 of the Protection of Personal and Property Rights Act 1988;
- “(b) a person in respect of whom a personal order has been made under the Protection of Personal and Property Rights Act 1988;
- “(c) a person subject to a property order under the Protection of Personal and Property Rights Act 1988;

- “(d) a donor of an enduring power of attorney who is involved in proceedings under Part 9 of the Protection of Personal and Property Rights Act 1988:
- “(e) a person who is a proposed patient, patient, or restricted patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992: 5
- “(f) a person who has applied to a Family Court for the issue of a declaration under section 28 of the Births, Deaths, and Marriages Registration Act 1995:
- “(g) a person who is a proposed care recipient or care recipient within the meaning of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003: 10
- “(h) a person who has applied for a protection order under the Domestic Violence Act 1995, or in respect of whom a protection order has been made under that Act: 15
- “(i) a person who the Court considers likely for any other reason to be particularly susceptible to any adverse consequences associated with the publication of a report of the proceedings that contains identifying information.”

46 Family Courts Rules 20
Section 16A(2)(b) is repealed.

47 New sections 16B and 16C inserted
The following sections are inserted after section 16A:

“16B Regulations

- “(1) The Governor-General may, from time to time, by Order in Council, make regulations for all or any of the following purposes:** 25
 - “(a) prescribing fees payable in respect of proceedings, or intended proceedings, in a Family Court:**
 - “(b) in order to promote access to justice, empowering Registrars or Deputy Registrars of Family Courts to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or an intended proceeding, or to refund, in whole or in part, such a fee that has already been paid, if satisfied on the basis of criteria specified under **paragraph (c)** that—** 30 35

- “(i) the person otherwise responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or
- “(ii) unless one or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued: 5
- “(c) prescribing, for the purposes of the exercise of a power under **paragraph (b)**, the criteria—
 - “(i) for assessing a person’s ability to pay a fee; and 10
 - “(ii) for identifying proceedings that concern matters of genuine public interest:
- “(d) empowering Registrars or Deputy Registrars of Family Courts to postpone the payment of a fee pending the determination of— 15
 - “(i) an application for the exercise of a power specified in **paragraph (b)**; or
 - “(ii) an application for review under **section 16C**:
- “(e) providing for the postponement of the payment of a fee, including (without limitation) providing— 20
 - “(i) for the recovery of the fee after the expiry of the period of postponement; and
 - “(ii) for restrictions to apply (after the expiry of the period of postponement and so long as the fee remains unpaid) on the steps that may be taken in the proceedings in respect of which the fee is payable: 25
- “(f) providing for the manner in which an application for the exercise of a power specified in **paragraph (b) or (d) or paragraph (d)** is to be made, including, without limitation, requiring such an application to be in a form approved for the purpose by the chief executive of the Ministry of Justice. 30
- “(2) No fee is payable for an application for the exercise of a power specified in **subsection (1)(b) or (d)**. 35

“16C Reviews of decisions of Registrars concerning fees

- “(1) Any person who is aggrieved by a decision of a Registrar or Deputy Registrar under regulations made under **section**

- 16B(1)(b)** may apply to a Family Court Judge for a review of that decision.
- “(2) An application under **subsection (1)** may be made within—
- “(a) 20 working days after the date on which the applicant is notified of the decision of the Registrar or Deputy Registrar; or
 - “(b) any further time that the Judge allows on application made for that purpose either before or after the expiration of that period.
- “(3) The application may be made informally. 10
- “(4) The review—
- “(a) must be conducted by rehearing; and
 - “(b) may be dealt with on the papers, unless the Judge decides otherwise.
- “(5) The Judge may confirm, modify, or reverse the decision. 15
- “(6) No fee is payable for an application under this section.”

Part 7

Family Proceedings Act 1980

- 48 Principal Act amended**
- This **Part** amends the Family Proceedings Act 1980. 20
- 49 Interpretation**
- Section 2 is amended by inserting the following definition in its appropriate alphabetical order:
- “**mediator** means—
- “(a) a person nominated by a Family Court from a list of mediators prepared by an officer of the Family Court appointed under section 8(2) of the Family Courts Act 1980: 25
 - “(b) a mediator appointed pursuant to the Family Courts Act 1980”. 30
- 50 New heading to Part 2 substituted**
- The heading to Part 2 is omitted and the following heading substituted: “**Dispute resolution**”.

50A Duty of legal advisers to promote reconciliation and conciliation

Section 8 is amended by omitting “or the Care of Children Act 2004” in each place where it appears.

51 New heading inserted

The following heading is inserted above section 9: “*Counselling*”.

52 Counselling where proceedings commenced

(1) Section 10(2)(a) is amended by adding the following subparagraph:

“(iii) the applicant or the respondent have attended mediation before a mediator with or without a request under **section 12C** having been made; or”.

(1) Section 10(2) is amended by—

(a) omitting “either”; and

(b) adding the following subparagraph:

“(iii) the applicant and the respondent have attended mediation before a mediator with or without a request under **section 12C** having been made; or”.

(2) Section 10(4) is amended by omitting “or on an application by a party to a marriage, civil union, or de facto relationship for an order under the Care of Children Act 2004 with respect to the role of providing day-to-day care for a child of the marriage, civil union, or de facto relationship” and substituting “under section 48 of the Care of Children Act 2004 for a parenting order”.

(3) Section 10(5) is amended by omitting “party to the marriage, civil union, or de facto relationship” and substituting “the applicant or the respondent”.

53 Reference to counsellor New section 11 substituted

Section 11 is repealed and the following section substituted:

“11 Reference to counsellor

A counsellor to whom a matter is referred under section 9, 10, **12C(3)**, or 19 must—

- “(a) arrange to meet either or both of the ~~parties spouses or civil union partners or de facto partners (the parties)~~ at such times and places (including the home of either party) as the counsellor thinks fit for the purposes of counselling; or 5
- “(b) ~~by letter sent by post~~; request either or both of the parties to attend before the counsellor at a specified time and place for the purposes of counselling.”
- 54 ~~Duty on counsellors~~ New section 12 substituted** 10
 Section 12 is repealed and the following section substituted:
- “12 ~~Duties on~~ Duties of counsellors**
- “(1) A counsellor to whom a matter is referred under section 9, 10, **12C(3)**, or 19—
- “(a) must explore the possibility of reconciliation between the parties; and 15
- “(b) if reconciliation does not appear to be possible, must attempt to promote conciliation between the parties.
- “(2) After carrying out his or her obligations under **subsection (1)**, ~~a~~ the counsellor must provide a report to the Registrar stating— 20
- “(a) whether the parties wish to resume or continue the marriage, civil union, or de facto relationship; and
- “(b) if the parties do not wish to resume or continue the marriage, civil union, or de facto relationship and there is a matter in issue between them, whether that issue has 25 been resolved.
- “(3) A report provided under **subsection (2)** may also state any of the following:
- “(a) details of the understandings reached between the parties: 30
- “(b) details of the matters remaining in issue between the parties:
- “(c) a recommendation as to the next step or steps to be taken by the parties.
- “(4) The Registrar must give a copy of the counsellor’s report to 35 each party or to each party’s barrister or solicitor.

“(5) A recommendation made by a counsellor under **subsection (3)(c)** is not binding on the parties or on the Court.”

54A New sections 12A and 12B substituted

Sections 12A and 12B are repealed and the following sections substituted:

5

“12A Number of sessions of counselling

The number of sessions of counselling to be carried out pursuant to section 9, 10, **12C(3)**, or 19 must be determined in accordance with such regulations as may be made under this Act or, if no regulations apply, by the Registrar or the Court.

10

“12B Counselling fees and expenses

Fees in respect of counselling services carried out pursuant to section 9, 10, **12C(3)**, or 19, and reasonable expenses incurred,—

“(a) may be determined in accordance with regulations made under this Act; and

15

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

55 New heading and sections 12C to 12J inserted

The following heading and sections are inserted after **section 12B**:

20

“Mediation

“12C Requests for mediation

“(1) Either party to a marriage, civil union, or de facto relationship may request a Registrar of a Family Court to arrange mediation in respect of ~~any matter arising in relation to~~ the marriage, civil union, or de facto relationship.

25

“(2) Where a request has been made to a Registrar under **subsection (1)**, the Registrar may, on the completion by the person making the request ~~of~~ on the prescribed form, arrange for the matter to be referred to a mediator.

30

“(3) Where a request has been made to a Registrar under **subsection (1)**, the Registrar may, instead of arranging for the matter to be referred to a mediator, arrange for the matter to be referred to a counsellor, if the Registrar considers, having regard

35

to all of the circumstances, that ~~a~~ the referral of the matter to a counsellor is more appropriate.

“12D Mediation where proceedings commenced

- “(1) On the filing of an application for a separation order ~~under section 20~~, a Registrar of a Family Court may, if he or she thinks it expedient to do so, arrange for the matter to be referred to a mediator. 5
- “(2) On an application under section 67 for a maintenance order ~~or an application under section 48 of the Care of Children Act 2004 for a parenting order~~, a Family Court Judge may, if he or she thinks it expedient to do so, and without limiting his or her power to make an interim maintenance order, direct a Registrar of a Family Court to arrange for the matter to be referred to a mediator, and on receipt of a direction under this subsection, the Registrar must refer the matter accordingly. 10 15
- “(3) If, not less than ~~28~~ 42 days after the date on which the Registrar has arranged for the matter to be referred to a mediator under **subsection (1) or subsection (2)**, either ~~the applicant or respondent~~ party to the marriage, civil union, or de facto relationship requests that the hearing should proceed, the hearing must be commenced or resumed unless the Court otherwise directs. 20
- “(4) Nothing in **subsection (4) (3)** prevents the commencement or resumption of the hearing before the expiration of the period of ~~28~~ 42 days if the Court, upon application made to it, so directs. 25

“12E Reference to mediator

- “(1) A mediator to whom a matter is referred under **section 12C, 12D**, or 19 must—
- “(a) arrange to meet both of the ~~parties~~ spouses or civil union partners or de facto partners (the parties), at such times and places (including the home of either party) as the mediator thinks fit for the purposes of mediation; or 30
- “(b) ~~by letter sent by post~~, request both of the parties to attend before the mediator at a specified time and place for the purposes of mediation. 35

- “(2) Prior to the mediation, the mediator may meet with one of the parties, or both of the parties separately, if the mediator considers a meeting would enable him or her to do any or all of the following:
- “(a) assess whether mediation is appropriate: 5
 - “(b) clarify the main issues between the parties:
 - “(c) determine with the parties—
 - “(i) who should attend the mediation:
 - “(ii) how the mediation should proceed:
 - “(d) gather any further information that may be relevant to the conduct of the mediation. 10
- “**12F Duties of mediators**
- “(1) A mediator to whom a matter is referred under **section 12C, 12D**, or 19 must make every endeavour to—
- “(a) identify the matters in issue between the parties; and 15
 - “(b) facilitate negotiations between the parties in respect of those matters; and
 - “(c) assist the parties ~~in reaching to reach~~ agreement on the resolution of those matters.
- “(2) After carrying out his or her obligations under **subsection (1)**, ~~a~~ the mediator must provide a report to the Registrar stating—
- “(a) whether the parties wish to resume or continue the marriage, civil union, or de facto relationship; and
 - “(b) if the parties do not wish to resume or continue the marriage, civil union, or de facto relationship, and there is a matter in issue between them, whether that issue has been resolved. 25
- “(3) A report provided under **subsection (2)** may also state any of the following: 30
- “(a) details of the resolution reached between the parties:
 - “(b) details of the matters on which resolution has not been reached between the parties:
 - “(c) a recommendation as to the next step or steps to be taken by the parties. 35
- “(4) The Registrar must give a copy of the mediator’s report to each party or to each party’s barrister or solicitor.

“(5) A recommendation made by a mediator under **subsection (3)(c)** is not binding on the parties or on the Court.

“12G Mediation must be held in private

The only persons who may attend a mediation before a mediator are as follows:

5

“(a) the parties to the mediation; and

“(b) lawyers a barrister or solicitor representing the parties a party to the mediation, if the mediator considers that in all the circumstances attendance by lawyers a barrister or solicitor is appropriate; and

10

“(c) a lawyer appointed to act for a child, if the role of providing for the day-to-day care for, or contact with, the child is in issue at the mediation; and

“(d) a child who is the subject of the matter in issue between the parties, if the mediator agrees; and

15

“(e) a person whom the mediator agrees may attend as a support person for a party, if the party requests.

“12H Mediation may be adjourned

The mediator may from time to time adjourn the mediation.

“12I Duration of mediation

20

The duration of mediation to be carried out under **section 12C, 12D**, or 19 must be determined in accordance with such regulations as may be made under this Act or, if no regulations apply, by the Registrar or the Court.

“12J Mediation fees and expenses

25

Fees in respect of mediation carried out under **section 12C, 12D**, or 19, and reasonable expenses incurred,—

“(a) may be determined in accordance with regulations made under this Act; and

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

30

56 New heading inserted

The following heading is inserted above section 13: “*Mediation conferences*”.

56A Mediation conference

- (1) Section 13(1)(c) is repealed. 5
- (2) Section 13(2) is amended by repealing paragraph (b) and substituting the following paragraph:
“(b) inform each of the parties to the application of the time and place of the mediation conference and request them to attend.” 10

57 Procedure at mediation conference

- (1) Section 14(1) is amended by omitting “Chairman” and substituting “Chairperson”.
- (2) Section 14(3) to (5) are repealed.
- (3) Section 14(6) is amended by omitting “Chairman” and substituting “Chairperson” in ~~both places~~ each place where it appears. 15
- (4) Section 14(7) is amended by omitting “Chairman” and substituting “Chairperson”.

58 New section 14A inserted 20

The following section is inserted after section 14:

“14A Attendance at mediation conference

- “(1) In addition to the parties, the following persons may attend a mediation conference:
 - “(a) a barrister or solicitor representing a party, if the party so requests. 25
 - “(b) ~~a barrister or solicitor appointed to act for a child, if the role of providing day-to-day care for, or contact with, the child is in issue at the conference;~~
 - “(c) a person ~~whom~~ who the Chairperson agrees may attend as a support person for a party, if the party so requests. 30
- “(2) A barrister or solicitor attending a mediation conference at the request of a party may assist and advise that party.
- “(3) The Chairperson must agree to a request under **subsection (1)(c)** unless the Chairperson considers there is a good reason 35

why the named support person should not be permitted to attend.

- “(4) Except to the extent provided in **subsection (1)**, and unless the Chairperson otherwise directs, a mediation conference is held in private. 5
- “(5) If, during a mediation conference, the Chairperson requests a support person to leave the mediation conference, the support person must do so.”

59 Power of Chairman to make consent orders

- (1) The heading to section 15 is amended by omitting “**Chairman**” and substituting “**Chairperson**”. 10
- (2) Section 15(1) is amended by omitting “Chairman” and substituting “Chairperson”.
- (3) Section 15(1)(b) is repealed.

60 Power to require attendance for counselling or mediation 15

- (1) Section 17(1) is amended by inserting the following paragraph after paragraph (a):
“(ab) a request under **section 12E(1)(b)** to attend before a mediator; or”.
- (2) Section 17(1) is amended by— 20
- (a) inserting “or mediator,” after “counsellor” in the first second place where it appears; and
 - (b) inserting “or the mediator,” after “counsellor” in the second third place where it appears; and
 - (c) inserting “,” after “mediation conference” in the second place where it appears. 25

61 Privilege

- (1) ~~Section 18(1)(a) is amended by inserting “or mediator” after “counsellor”.~~
- (2) ~~Section 18 is amended by repealing subsections (2) and (3) and substituting the following subsections:~~ 30
- “(2) Nothing in subsection (1) applies to—
- “(a) a report provided by a counsellor under section 12; or
 - “(b) a report provided by a mediator under **section 12F**; or

- “(c) a record of the matters in issue at the conference made by a Chairperson under section 14(7); or
 - “(d) a consent order made under section 15; or to any proceedings for the review of such an order.
- “(3) Except to the extent that it is necessary for a counsellor or mediator to do so in the proper discharge of his or her functions, every counsellor and every mediator commits an offence and is liable on summary conviction to a fine not exceeding \$500 who discloses to any other person any information, statement, or admission received by or made to him or her in the exercise of his or her functions under this Part.”

61 New section 18 substituted

Section 18 is repealed and the following section substituted:

“18 Privilege

- “(1) No evidence shall be admissible in any court, or before any person acting judicially, of any information, statement, or admission disclosed or made—
- “(a) to a counsellor or mediator exercising his or her functions under this Part; or
 - “(b) in the course of a mediation conference.
- “(2) Nothing in **subsection (1)** applies to—
- “(a) a report provided by a counsellor under **section 12(2)**;
or
 - “(b) a report provided by a mediator under **section 12F(2)**;
or
 - “(c) a record of the matters in issue at the conference made by a Chairperson under section 14(7); or
 - “(d) a consent order made under section 15, or to any proceedings for the review of such an order.
- “(3) Except to the extent that it is necessary for a counsellor or mediator to do so in the proper discharge of his or her functions, every counsellor and every mediator commits an offence and is liable on summary conviction to a fine not exceeding \$500 who discloses to any other person any information, statement, or admission received by or made to him or her in the exercise of his or her functions under this Part.”

62 Duty of Courts as to reconciliation and conciliation

- (1) Section 19(1) is amended by omitting “and in all proceedings under the Care of Children Act 2004 between spouses, civil union partners, or de facto partners for any order about the role of providing day-to-day care for a child, or about contact with a child,”. 5
- (2) Section 19(2)(b) is amended by inserting “or mediator” after “counsellor”.

63 Discharge or variation of registered or confirmed order

- Section 142 is amended by repealing subsection (2) and substituting the following subsections: 10
- “(2) If it appears to the Court, on an application under subsection (1), that the order it proposes to make is one that, if made provisionally, may be confirmed under the law of the country in which the maintenance order was made, the New Zealand Court may, instead of making the proposed order, make a provisional order. 15
- “(2A) An order proposed to be made under subsection (1) must be a provisional order if—
- “(a) a reciprocal agreement is in force with the country in which the maintenance order was made (pursuant to an Order in Council made under section 215 of the Child Support Act 1991); and 20
- “(b) under that agreement only a provisional order may be made. 25
- “(2B) A provisional order has no effect unless and until it is confirmed by a competent Court in the country in which the maintenance order was originally made.
- “(2C) Where the Court makes a provisional order under subsection (1), section 147(5) to (9) apply, except that the Court must, instead of sending the statement referred to in section 147(6)(c), send a statement of the grounds on which the provisional order has been made.” 30

64 Discharge, variation, etc, of child maintenance order

- Section 142B is amended by adding the following subsection: 35
- “(6) This section is subject to section 142E.”

65 Court may make provisional order discharging, etc, child maintenance order

- (1) The heading to section 142E is amended by omitting “**Court may make provisional**” and substituting “**Provisional**”.
- (2) Section 142E is amended by inserting, ~~after subsection (1)~~, the following subsection after subsection (1):
 - “(1A) An order proposed to be made under subsection (1) must be a provisional order if—
 - “(a) a reciprocal agreement is in force with the country in which the maintenance order was made (pursuant to an Order in Council made under section 215 of the Child Support Act 1991); and
 - “(b) under that agreement only a provisional order may be made.”

66 Conduct of proceedings

- (1) Section 159(2) is amended by inserting the following paragraphs after paragraph (c):
 - “(ca) accredited news media reporters:
 - “(cb) persons whom the Judge permits to be present as support persons for a party on a request by that party.”.
- (2) Section 159 is amended by repealing subsections (3) ~~and (4)~~ to (5) and substituting the following subsections:
 - “(3) The Judge must agree to a request under **subsection (1)(cb) (2)(cb)** unless the Judge considers there is a good reason why the named support persons should not be permitted to be present.
 - “(4) No support persons may help a party conduct his or her case.
 - “(5) If, during a hearing, the Judge requests a person of any of the following kinds to leave the courtroom, the person must do so:
 - “(a) a witness:
 - “(b) an accredited news media reporter:
 - “(c) a support person whom the Judge permitted to be present under **subsection (1)(cb) (2)(cb)**.
 - “(6) Nothing in this section limits any other power of the Court—
 - “(a) to hear proceedings in private; or
 - “(b) to permit a McKenzie friend to be present; or
 - “(c) to exclude any person from the Court.”

67 Restriction of publication of reports of proceedings

(1) The heading to section 169 is amended by omitting “of” in the first place where it appears and substituting “on”.

(2) Section 169 is amended by repealing subsections (1) to (4) and substituting the following subsection: 5

“(1) **Sections 11B to 11E** of the Family Courts Act 1980 apply to the publication of a report of any proceedings under this Act (other than criminal proceedings under section 130)—

“(a) in a Family Court:

“(b) in any other court, in which case the references in those sections to Family Court or Court must be read as references to that other court.” 10

(3) Section 169(5) is amended by omitting—

(a) “this section” and substituting “**sections 11B to 11E** of the Family Courts Act 1980”; and 15

(b) “or social welfare workers” and substituting “mediators, or social workers”.

67 New section 169 substituted

Section 169 is repealed and the following section substituted:

“169 Publication of reports of proceedings 20

Sections 11B to 11D of the Family Courts Act 1980 apply to the publication of a report of any proceedings under this Act (other than criminal proceedings under section 130)—

“(a) in a Family Court:

“(b) in any other court, in which case references in those sections to the Family Court or Court must be read as references to that other court.” 25

68 Section 186 repealed

Section 186 is repealed.

69 Regulations 30

Section 187 is amended by inserting the following paragraphs after paragraph (cc):

“(cd) making provision for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of mediation services car- 35

ried out pursuant to **section 12C, 12D**, or 19, which fees and expenses may differ according to—

- “(i) the duration of the mediation (not exceeding the maximum duration of mediation that may be carried out determined under **section 12I**); and 5
- “(ii) the time spent by the mediator in meeting with the parties prior to the mediation; and
- “(iii) the complexity of the matter in issue between the parties:
- “(ce) making provision for the determination of the duration 10 of mediation that may be carried out pursuant to **section 12C, 12D**, or 19.”.

Part 8

Family Protection Act 1955

- 70 Principal Act amended** 15
This **Part** amends the Family Protection Act 1955.
- 71 Claims against estate of deceased person for maintenance**
Section 4 is amended by repealing subsection (3) and substituting the following subsections:
- “(3) An application must be served on the following persons: 20
 - “(a) the spouse or civil union partner of the deceased:
 - “(b) a de facto partner who was living in a de facto relationship with the deceased at the date of his or her death:
 - “(c) a child of a marriage, civil union, or de facto relationship of the deceased, or a child of a marriage, civil 25 union, or de facto relationship of any such child:
 - “(d) a person entitled to apply whom the Registrar of the Court considers, in his or her discretion, ought to be served because there are special circumstances rendering that desirable: 30
 - “(e) a person entitled to apply whom the Court considers, in its discretion, ought to be served because there are special circumstances rendering that desirable.
 - “(3A) Where an application has been filed, orders for representation must be made in respect of the following persons: 35
 - “(a) the persons referred to in **subsection (3)(a) to (c)**; and

- “(b) any other person entitled to apply whom the Court considers, in its discretion, ought to be represented because there are special circumstances rendering that desirable.
- “(3B) Except as provided in **subsections (3) and (3A)**, it is not necessary to— 5
- “(a) serve an application on any person; or
- “(b) make provision for the representation of any person on an application.”

Part 9

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 10

72 Principal Act amended

This **Part** amends the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

73 Restriction of publication of reports of proceedings 15

- (1) The heading to section 130 is amended by omitting “of” in the first place where it appears and substituting “on”.
- (2) Section 130 is amended by repealing subsections (1) to (3) and substituting the following subsections:
- “(1) Subject to **subsection (1A)** any person may publish a report of proceedings under this Act: 20
- “(1A) No person may, without the leave of the Court hearing the proceedings, publish a report of proceedings under this Act that includes any name or particulars likely to lead to the identification of any of the following persons: 25
- “(a) the care recipient;
- “(b) the applicant in the proceedings;
- “(c) a person who is related to, or associated with, a person referred to in **paragraph (a) or (b)** or who is, or may be, in any other way concerned in the matter to which 30 the proceedings relate (for example, a support person for a party);
- “(1B) The Court may grant leave under **subsection (1A)** with or without conditions.

- “(2) Every person who contravenes **subsection (1A)** commits an offence against this Act and is liable on summary conviction,—
- “(a) in the case of an individual, either to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$2,000; 5
- “(b) in the case of a body corporate, to a fine not exceeding \$10,000.
- “(3) Nothing in this section limits the power of a court to punish any contempt of Court.” 10
- (3) Section 130(4)(a)(ii) is amended by omitting “welfare”.

73 New section 130 substituted

Section 130 is repealed and the following section substituted:

“130 Publication of reports of proceedings

Sections 11B to 11D of the Family Courts Act 1980 apply to the publication of a report of any proceedings under this Act— 15

“(a) in a Family Court;

“(b) in any other court, in which case references in those sections to the Family Court or Court must be read as references to that other court.” 20

Part 10

Mental Health (Compulsory Assessment and Treatment) Act 1992

74 Principal Act amended

This **Part** amends the Mental Health (Compulsory Assessment and Treatment) Act 1992. 25

75 Restriction of publication of reports of proceedings

- (1) The heading to section 25 is amended by omitting “of” in the first place where it appears and substituting “on”. 30
- (2) Section 25 is amended by repealing subsections (1) to (3) and substituting the following subsections:
- “(1) Subject to **subsection (1A)** any person may publish a report of proceedings under this Act.

“(1A) No person may, without the leave of the Court hearing the proceedings, publish a report of proceedings under this Act that includes any name or particulars likely to lead to the identification of any of the following persons:

“(a) the patient: 5

“(b) the applicant in the proceedings:

“(c) a person who is related to, or associated with, a person referred to in **paragraph (a) or (b)** or who is, or may be, in any other way concerned in the matter to which the proceedings relate (for example, a support person for a party): 10

“(1B) However, a report of proceedings under this Act that includes any name or particulars likely to lead to the identification of the persons described in **subsection (1A)(a) or (b) or (c)** may be published by the patient who is the subject of the proceedings: 15

“(1C) The Court may grant leave under **subsection (1A)** with or without conditions:

“(2) Every person who contravenes **subsection (1A)** commits an offence against this Act and is liable on summary conviction,— 20

“(a) in the case of an individual, either to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$2,000:

“(b) in the case of a body corporate, to a fine not exceeding \$10,000: 25

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

75 New section 25 substituted

Section 25 is repealed and the following section substituted:

“25 Publication of reports of proceedings 30

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

“(a) in a Family Court:

“(b) in any other court, in which case references in those sections to the Family Court and Court must be read as references to that other court.” 35

Part 11

Property (Relationships) Act 1976

76 Principal Act amended

This **Part** amends the Property (Relationships) Act 1976.

77 New section 2BAA inserted

5

The following section is inserted after section 2B:

“2BAA Civil union includes immediately preceding de facto relationship

For the purposes of this Act, if a civil union was immediately preceded by a de facto relationship between the 2 civil union partners (‘A’ and ‘B’), the de facto relationship must be treated as if it were part of the civil union.”

10

Example of civil union including immediately preceding de facto relationship

If the de facto relationship of A and B lasts 1 year, and their civil union lasts 2 years, the civil union must be treated as if it—

15

(a) began 3 years ago; and

(b) lasted 3 years.

78 Proceedings may be in private New section 35 substituted

Section 35 is repealed and the following section substituted:

20

“35 Attendance at hearings

Section 11A of the Family Courts Act 1980 applies to the hearing of any application or appeal under this Act—

“(a) in a Family Court:

“(b) in any other court, in which case—

25

“(i) references in that section to the Family Court or Court must be read as references to that other court; and

“(ii) references in that section to the Family Court Judge or the Judge must be read as references to the Judge presiding at the hearing.”

30

79 Restriction of publication of reports of proceedings

(1) The heading to section 35A is amended by omitting “of” in the first place where it appears and substituting “on”.

(2) Section 35A is amended by repealing subsections (1) to (3) and substituting the following subsection:

“(1) **Sections 11B to 11E** of the Family Courts Act 1980 apply to the publication of a report of any proceedings under this Act—

“(a) in a Family Court: 5

“(b) in any other court, in which case the references in those sections to Family Court or Court must be read as references to that other court.”

(3) Section 35A(4) is amended by omitting “this section” and substituting “**sections 11B to 11E** of the Family Courts Act 1980”. 10

79 New section 35A substituted

Section 35A is repealed and the following section substituted:

“35A Publication of reports of proceedings

Sections 11B to 11D of the Family Courts Act 1980 apply to the publication of a report of any proceedings under this Act— 15

“(a) in a Family Court:

“(b) in any other court, in which case references in those sections to the Family Court or Court must be read as references to that other court.” 20

79A New section 97A inserted

The following section is inserted after section 97:

“97A Transitional provisions applying in respect of section 2BAA

“(1) In this section, **specified date** means the date of commencement of the **Property (Relationships) Amendment Act 2008**. 25

“(2) Where the hearing of any proceedings in which the duration of a civil union is in issue commenced before the specified date, the proceedings continue as if **section 2BAA** had not been passed. 30

“(3) Where the hearing of any proceedings in which the duration of a civil union is in issue commenced after the specified date, the proceedings continue as if **section 2BAA** had been passed.”

Part 12

Protection of Personal and Property Rights Act 1988

80 Principal Act amended

This **Part** amends the Protection of Personal and Property Rights Act 1988. 5

81 Appointment of barrister or solicitor by Court

(1) The heading to section 65 is amended by adding the words “or Registrar”. 10

(2) Section 65(1) is amended by—

(a) omitting “shall” and substituting “or the Registrar of a Court must” after the word “Court” in the first place it appears; and

(b) inserting “or the Registrar” after the word “Court” in the second place where it appears. 15

(3) Section 65(3) is amended by inserting: “, or direct the Registrar of the Court to appoint,” after the word “appoint”.

(4) Section 65 is amended by inserting the following subsection after subsection (3):

“(3A) A direction to a Registrar under subsection (3) must set out— 20

“(a) the issues to be addressed by the barrister or solicitor; and

“(b) the tasks to be completed by the barrister or solicitor.”

82 Court may call for report on person

(1) Section 76 is amended by repealing subsection (1) and substituting the following subsection: 25

“(1) On an application for the exercise of the Court’s jurisdiction under this Act, a Court may, if it is satisfied that it is necessary for the proper disposition of the application—

“(a) request any person whom it considers qualified to do so to prepare a medical, psychiatric, psychological, or other report on the person in respect of whom the application is made; or 30

“(b) direct the Registrar of the Court to request any person whom the Registrar considers qualified to do so to prepare a medical, psychiatric, psychological, or other re- 35

port on the person in respect of whom the application is made.”

(2) Section 76(2) is amended by inserting; the words “or make a direction” after the word “report”.

(3) Section 76 is amended by inserting the following subsection after subsection (2):

“(2A) A direction to the Registrar under **subsection (4)(b)** must set out—

“(a) the issues to be addressed in the report; and

“(b) the tasks to be completed by the person requested to prepare the report.”

83 Proceedings not open to public New section 79 substituted
Section 79 is repealed and the following section substituted:

“**79 Attendance at hearings**

Section 41A of the Family Courts Act 1980 applies to the hearing of any application or appeal under this Act—

“(a) in a Family Court;

“(b) in any other court, in which case—

“(i) references in that section to the Family Court or Court must be read as references to that other court; and

“(ii) references in that section to the Family Court Judge or the Judge must be read as references to the Judge presiding at the hearing.

“**79 Attendance at hearings** 25

“(1) The following persons may attend a hearing of an application under this Act:

“(a) officers of the Court:

“(b) parties to the proceedings:

“(c) lawyers representing parties to the proceedings: 30

“(d) the person in respect of whom the application is made:

“(e) the lawyer representing the person in respect of whom the application is made:

“(f) a barrister or solicitor appointed under section 65(3) to assist the Court: 35

“(g) witnesses:

“(h) accredited news media reporters:

- “(i) persons whom the Judge permits to be present as support persons for any person described in **paragraphs (b) and (d)**:
 “(j) any other person whom the Judge permits to be present.
- “(2) The Family Court Judge must agree to a request under **subsection (1)(i)** unless the Judge considers there is a good reason why the named support persons should not be permitted to be present. 5
- “(3) No support persons may help a party conduct his or her case.
- “(4) If, during a hearing, the Family Court Judge requests a person of any of the following kinds to leave the courtroom, the person must do so: 10
- “(a) a witness;
- “(b) an accredited news media reporter;
- “(c) a support person whom the Judge permitted to be present under **subsection (1)(i)**. 15
- “(5) Nothing in this section limits any other power of the Court—
- “(a) to hear proceedings in private; or
- “(b) to permit a McKenzie friend to be present; or
- “(c) to exclude any person from the Court.” 20

84 Restriction of publication of reports of proceedings

- (1) The heading to section 80 is amended by omitting “of” in the first place where it appears and substituting “on”.
- (2) Section 80 is amended by repealing subsection (1) and substituting the following subsections: 25
- “(1) Subject to **subsection (1A)**, any person may publish a report of proceedings under this Act.
- “(1A) No person may, without the leave of the Court hearing the proceedings, publish a report of proceedings under this Act that includes any name or particulars likely to lead to the identification of any of the following persons: 30
- “(a) the person who is the subject of the proceedings;
- “(b) the parties to the proceeding;
- “(c) a person who is related to, or associated with, a person referred to in **paragraph (a) or (b)** or who is, or may be, in any other way concerned in the matter to which 35

the proceedings relate (for example, a support person for the party):

- “(1B) However, a report of proceedings under this Act that includes any name or particulars likely to lead to the identification of the persons described in **subsection (1A)(a) or (b) or (c)** may be published by the person who is the subject of the proceedings: 5
- “(1C) The Court may grant leave under **subsection (1A)** with or without conditions.”
- (3) Section 80(2) is amended by omitting “subsection (1)” and substituting “**subsection (1A)**”. 10
- (4) Section 80(2)(a) is amended by omitting “\$500” and substituting “\$2,000”.
- (5) Section 80(2)(b) is amended by omitting “\$2,500” and substituting “\$10,000”.
- (6) Section 80 is amended by repealing subsection (3) and substituting the following subsection: 15
- “(3) Nothing in this section limits the power of a court to punish any contempt of Court.”
- (7) Section 80(4)(b)(i) is amended by omitting “welfare”.

84 New section 80 substituted 20
Section 80 is repealed and the following section substituted:

- “80** Publication of reports of proceedings
- Sections 11B to 11D** of the Family Courts Act 1980 apply to the publication of a report of any proceedings under this Act—
- “(a) in a Family Court: 25
- “(b) in any other court, in which case references in those sections to the Family Court or Court must be read as references to that other court.”

Family Courts Matters Bill

Legislative history

16 August 2007
4 September 2007

Introduction (Bill 143–1)
First reading and referral to Social Services
Committee
